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PALM DRIVE HEALTH CARE DISTRICT
7

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

12 In Re:

13 PALM DRIVE HEALTH CARE
DISTRICT, a California local health
14 care district,

15 Debtor.
16

Bk. No.: 14-10510-AJ

Chapter 9

**DEBTOR'S SECOND OMNIBUS
MOTION FOR REJECTION OF
EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, EFFECTIVE AS
OF APRIL 29, 2014**

17 Date: May 16, 2014

18 Time: 10:00 a.m.

19 Place: United States Bankruptcy Court
99 South "E" Street
Santa Rosa, CA 95404

20 Judge: The Honorable Alan Jaroslovsky
21

22 **All Parties Receiving this Second Omnibus Motion Are Directed to**
23 **Locate their Names and Executory Contracts or Unexpired**
24 **Leases on Exhibit A attached to this Motion.**
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1 Palm Drive Health Care District (the “District”), debtor in the above-captioned
2 bankruptcy case, respectfully requests the entry of an order authorizing the rejection of the
3 executory contracts and unexpired leases listed on Exhibit A (the “Contracts”) to this motion,
4 pursuant to Bankruptcy Code § 365(a) and Federal Rule of Bankruptcy Procedure 6006 (the
5 “Second Omnibus Motion”). (Bankruptcy Code refers to title 11, United States Code.) In
6 support of the Second Omnibus Motion, the District states the following:

7
8 **I. INTRODUCTION**

9 The Court should authorize the rejection of the Contracts , such rejection to be effective
10 as of April 29, 2014. The District in its sound business judgment has already concluded that it
11 should not continue to operate Palm Drive Hospital (the “Hospital”) at this time, since the
12 District is only willing to do so if it could maintain its high standards of medical care. On
13 April 7, 2014, after the bankruptcy filing, the District’s Board of Directors adopted a resolution
14 for a prompt closure of the Hospital, dedicated to acting *before* financial matters could have
15 any impact on the quality of patient care. Declaration of Thomas M. Harlan “Harlan Decl.)
16 filed concurrently, ¶ 4. As a result of the District’s policy decisions, as of close of business on
17 April 28, 2014, there are no patients being treated at the Hospital on an inpatient or outpatient
18 basis. Further, the emergency room is closed, and this closure has been given wide publicity
19 by District announcements (including paid notices in area media) and press coverage. Thus,
20 the Hospital will also not be receiving patients for emergency treatment.

21 Accordingly, the District has determined that as a result of the closure of the Hospital,
22 there is no need for certain contracts and leases.

23 **II. JURISDICTION**

24 1. This Court has jurisdiction to consider and determine this matter pursuant to 28
25 U.S.C. §§ 157(a) and 1334(b). This matter is a core proceeding within the meaning of 28
26 U.S.C. § 157(b)(2)(A) and (O).

27 2. Venue in this Court is proper pursuant to 28 U.S.C. § 1409(a).

28 3. The statutory bases for the relief requested are Bankruptcy Code § 365 (made
applicable in chapter 9 by Bankruptcy Code § 901(a)) and Bankruptcy Rule 6006.

1 III. **FACTUAL BACKGROUND**

2 On April 7, 2014 (the “Petition Date”), the District filed its voluntary petition (the
3 “Petition”) under Chapter 9 of the Bankruptcy Code, commencing this case.

4 In a step combining fiscal prudence and a highly dedicated devotion to patient safety,
5 the District resolved on April 7, 2014, that the Hospital and associated facilities must be
6 closed while the District considers its path forward for the provision of healthcare services to
7 the residents of the District. This closure took effect on April 28, 2014 (the “Closure Date”),
8 a fact disclosed to the residents of the District through multiple public announcements,
9 advertisements in newspapers, and letters sent directly to physicians, current and former
10 patients, vendors and other service providers – the District is not accepting new patients.
11 Harlan Decl., ¶¶ 6-7. As of the Closure Date, the emergency room is closed and not accepting
12 patients. Further, no inpatient or outpatient surgeries will take place. The Hospital is in
13 suspended license mode in accordance with all applicable state and federal regulations.
14 Harlan Decl., ¶ 7.

15 In light of the Hospital closure, the District has determined that the Contracts, listed on
16 **Exhibit A** attached hereto and made a part hereof, are no longer necessary for, or beneficial
17 to, the District, and will accrue unnecessary and burdensome administrative expenses for the
18 District. Harlan Decl., ¶ 8. This burden is accruing at approximately \$280,000 per month for
19 contract physicians alone. Harlan Decl., ¶ 8. In addition, the District has determined that no
20 meaningful value could be realized by the debtor if the Contracts were assumed and an
21 attempt made to assign them to third parties. For example, the physician contracts – contracts
22 for personal services – are not assignable as a matter of law. Harlan Decl., ¶ 9.

23 IV. **RELIEF REQUESTED AND LEGAL ARGUMENT**

24 Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s
25 approval, may assume or reject any executory contract or an unexpired lease.” *See NLRB v.*
26 *Bildisco & Bildisco*, 465 U.S. 513, 521 (1984). Courts have held that *Bildisco* applies in a
27 chapter 9 bankruptcy. *In re City of Vallejo*, 432 B.R. 262, 273 (E.D. Cal 2010); *In re County*
28 *of Orange*, 179 B.R. 177, 183 (Bankr. C.D. Cal. 1995); *see also* Bankruptcy Code § 901(a)

1 (making § 365 applicable in chapter 9). This Second Omnibus Motion is limited to 78
2 executory contracts and unexpired leases as permitted under Bankruptcy Rule 6006(f)(6).

3 **A. Rejection of the Contracts is Supported by the District's Sound**
4 **Business Judgment**

5 Generally, a court may approve a debtor's rejection of an unexpired contract or lease
6 if such rejection is made in the exercise of the debtor's sound business judgment and if such
7 rejection benefits the debtor's estate. *See generally In re G.I. Indus., Inc.*, 204 F.3d 1276,
8 1282 (9th Cir. 2000); *In re Chi-Feng Huang*, 23 B.R. 798, 799-800 (BAP 9th Cir. 1982). The
9 business judgment standard requires that the Court defer to the debtor's business judgment
10 unless that judgment is "so manifestly unreasonable that it could not be based on sound
11 business judgment, but only on bad faith, whim or caprice." *In re Pomona Valley Medical*
12 *Group, Inc.*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

13 As set forth above, the District has determined that in light of the Hospital closure,
14 the Contracts are no longer necessary for or beneficial to the District, and will accrue
15 unnecessary and burdensome administrative expenses for the District. This burden is
16 accruing at approximately \$280,000 per month for contract physicians alone. Harlan Decl.,
17 ¶ 8. In addition, the District has determined that no meaningful value could be realized by the
18 debtor if the Contracts were assumed and an attempt made to assign them to third parties.
19 Harlan Decl., ¶ 9. For example, the physician contracts – contracts for personal services – are
20 not assignable as a matter of law. *See* Bankruptcy Code § 365(c)(1)(A).

21 Accordingly, the Contracts should be rejected.

22 **B. The Court Should Authorize Rejection of the Contracts Effective**
23 **as of April 29, 2014.**

24 The District requests that the rejection of the Contracts be effective as of April 29,
25 2014. The Ninth Circuit has authorized the retroactive rejection of executory contracts
26 pursuant to Bankruptcy Code § 365 when there is evidence of exceptional circumstances
27 warranting *nunc pro tunc* relief. *See generally In re At Home Corp.*, 392 F.3d 1064, 1069-71
28 (9th Cir. 2004).

In *At Home Corp.* the Ninth Circuit approved the bankruptcy court's determination

1 that exceptional circumstances existed warranting retroactive relief. *Id.* Specifically, the
2 Ninth Circuit noted that the bankruptcy court in *At Home Corp.* identified four factors
3 supporting its conclusion that “exceptional circumstances” justified retroactive rejection in
4 that case. The four factors are as follows: (1) the immediate filing of debtor’s motion to reject
5 the leases; (2) debtor’s prompt action in setting that motion for hearing; (3) the fact that debtor
6 never occupied the premises; and (4) a lessor’s motivation in opposing rejection of the leases
7 *nunc pro tunc* to a certain date. During its analysis of *nunc pro tunc* relief, the Ninth Circuit
8 expressly stated that it “eschew[s] any attempt to limit the factors a bankruptcy court may
9 consider when balancing the equities in a particular case.”

10 The District submits that a similar exceptional circumstances analysis should be
11 applied to the Contracts in this case (and not limited to real property leases). First, the District
12 has taken immediate action in filing this Second Omnibus Motion (*i.e.*, within four business
13 days of the Closure Date of the Hospital) and thus expeditiously sought a hearing date to
14 address the rejection of the Contracts. Second, the District has sought a hearing on shortened
15 time to have the rights of the parties determined as promptly as possible. Third, the District
16 has been making no use of the services, goods, or premises that would otherwise be provided
17 by the counterparties to the Contracts since the Closure Date and receives no undue benefit
18 from retroactive rejection. Fourth, the District can see no likely motivation for a counter-
19 party to oppose rejection of a Contract other than to enjoy an unwarranted economic benefit at
20 the expense of this distressed debtor. Counterparties who had been providing personal
21 services, such as contract physicians, can and have been taking their services elsewhere.
22 Counterparties who have been providing supplies are free to look to other customers.
23 Counterparties who are landlords are free to actively re-let their premises.

24 Considering the equities of the matter, this Court should conclude that the District
25 should be freed from the burden of the Contracts. The counterparties will have general
26 unsecured claims under Bankruptcy Code § 365(g)(1), placing their economic situation on a
27 par with other general unsecured creditors.

28

1 Based on the foregoing facts and circumstances, the District respectfully requests
2 that the Court enter an order authorizing the rejection of the Contracts, effective as of April
3 29, 2014.

4 V. **NOTICE AND SERVICE**

5 Consistent with Bankruptcy Rule 6006, this Second Omnibus Motion is being
6 served on (a) the Office of the United States Trustee, (b) parties who have requested special
7 notice, (c) all Contract counterparties listed on Exhibit A, and (d) the list of 20 largest
8 unsecured creditors. In order to provide maximum time in advance of the hearing for this
9 Second Omnibus Motion, notice is being given by overnight courier service.

10 VI. **CONCLUSION**

11 Based on the foregoing facts and arguments, the District requests that the Court enter
12 an order pursuant to Bankruptcy Code § 365(a) and Bankruptcy Rule 6006, in the form
13 attached hereto as Exhibit B, (1) authorizing the rejection of the Contracts listed on Exhibit A
14 effective as of April 29, 2014, and (2) granting such other and further relief as may be just and
15 proper.

16 Date: May 5, 2014

FOX ROTHSCHILD LLP

17 /s/ Michael A. Sweet
18 Michael A. Sweet
19 Attorneys for Debtor
20 Palm Drive Health Care District
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EXHIBIT A

List of Contracts To Be Rejected

(in alphabetical order by name of Counterparty to Contract)

	Creditor Name	Notes
101	Mitchell Bailey M.D.	Physician Hospitalist Services Agreement
102	Moore Uebel Architecture - Mammo Unit	Mammography Unit
103	Motion Medical LLC	Biomet implants, purchasing and supply obligation
104	Mujeeb Altaf M.D.	Physician Inactive Hospitalist
105	National Headache Foundation	Support Group
106	Nature of Interpreting	Interpreting Services
107	Networks by Design	Professional Healthcare Services, Supplies and Products
108	NorCal Ambulance	Medical Transportation
109	North Bay Corporate Health Services Inc.	Workers Compensation
110	NRC Picker	Measurement and Improvement Services
111	Nutricopia	Nutrition Therapy
112	Peter Bretan	Physician Emergency Department On-Call Coverage for Urology
113	Peter Leoni, M.D.	Physician General Surgeon Emergency Department On-Call
114	Prima Medical Foundation	Equipment Rental Agreement and Funding Agreement
115	Quest Diagnostics Inc.	McKesson Interface
116	Quest MedAssets	Lab Services
117	Ready Link	Staffing Agreement
118	Redwood Building Maintenance Co.	Janitorial Services
119	Rx Remote Solutions	Remote Pharmacy Services - Staffing
120	San Francisco Bay Area, Boy Scouts	Transfer Agreement
121	San Francisco Lithotripsy, LLC	Equipment Sublease
122	San Mateo County Community College District	Clinical Preceptorship Agreement
123	Sanjay Dhar, M.D.	Physician Electrocardiogram Panel Agreement
124	Santa Rosa Ambulatory Surgical Center	Reciprocal Transfer Agreement
125	Santa Rosa Family Medicine Residency	Educational Training
126	Santa Rosa Junior College	Nursing Students
127	Santa Rosa Memorial Hospital	Lab Services
128	Santa Rosa Memorial Hospital	Reciprocal Transfer Agreement
129	Sebastopol Community Health	Transfer Agreement
130	Sebastopol Community Health Center	Transfer Agreement
131	Sevenex Group, LLC	ROI-7 Services Agreement
132	Siemens Diagnostic Finance, Co. LLC	Lab Equipment
133	Siemens Healthcare Diagnostics	Lab Equipment Maintenance
134	Siemens Maintenance	Maintenance Agreement
135	Siemens Water System	Water System
136	Siemens Water System	Lab Water System
137	Simco	Surgical Instruments Sharpening and Repair Service
138	Sonoma County Community College District	Nursing Students
139	Sonoma Department of Health Services	Service Agreement - Emergency Response
140	Sonoma Developmental Center	Transfer Agreement
141	Sonoma Developmental Center	Transfer Agreement
142	Sonoma State University	Clinical Education Experience Agreement
143	Sonoma State University	Training Affiliation
144	Specialty Laboratories	Laboratory Services
145	SpectraCorp	Language Services
146	SpectraCorp Language Services	Interpreter Services Agreement
147	Spine Wave Inc.	Surgical Supplies
148	SpineWave	Products Purchase and Data Service Agreement
149	Stephen DeNigris	Physician Gastroenterology Emergency Department On-Call Coverage
150	Stericycle Inc.	Medical & Pharmaceutical Waste Disposal
151	Stericycle Inc.	Biomedical Waste Management
152	Steve Mertens M.D.	Physician Pathology Services and Medical Director
153	Stryker Orthopaedics	Orthopedic Products
154	Surgistaff	Staffing Services
155	Sutter Medical Center	Transfer Agreement
156	Sutter Medical Center	Transfer Agreement
157	Team Makena LLC	Orthopedic Medical Supplies
158	Terry Hess	PSA - Research Coordinator
159	The Sevenex Group LLC	ROI Solutions
160	Thomas Cunningham M.D.	Physician Electrocardiogram Panel Agreement
161	Three Rivers Provider Network	Healthcare Consulting
162	Tina Dennison	EEG Technician
163	Tomas Vasiliauskas M.D.	Physician EKG Interpretation
164	Touro University	Clinical Perceptorship
165	Tully Wihr Co.	Forms Management
166	UC Davis Health System	Telehealth Equipment Loan
167	UCSF School of Nursing	Training Affiliation - Nursing Students
168	UCSF School of Pharmacy	Training Affiliation
169	University of CA, School of Nursing	Training Affiliation - Nursing Students

Creditor Name	Notes
170 University of CA, School of Pharmacy	Training Affiliation
171 University of California Davis	Telehealth Equipment Loan
172 Vera Berg and Gail Grimes	Fundraising Study
173 VeriHealth Inc.	Medical Transportation
174 Via Healthcare Consulting	Board Self-Assessment Consultation
175 Virtual Radiologic	Teleradiology
176 West County Emergency Medical Group	Emergency Department - Emergency Medical Services Group
177 West County Health Centers, Inc.	X-Ray Services
178 YWCA Sonoma County	Operational Agreement

EXHIBIT B
PROPOSED ORDER

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6 Attorneys for Debtor
PALM DRIVE HEALTH CARE DISTRICT
7

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

12 In Re:

13 PALM DRIVE HEALTH CARE
DISTRICT, a California local health
14 care district,

15 Debtor.
16
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Bk. No.: 14-10510-AJ

Chapter 9

**[Proposed] ORDER GRANTING
DEBTOR'S SECOND OMNIBUS
MOTION FOR REJECTION OF
CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES,
EFFECTIVE AS OF APRIL 29, 2014**

Date: May 16, 2014

Time: 10:00 a.m.

Place: United States Bankruptcy Court
99 South "E" Street
Santa Rosa, CA 95404

Judge: The Honorable Alan Jaroslovsky
21

22 Pursuant to the motion of debtor Palm Drive Health Care District (the "District")
23 seeking entry of an order authorizing the rejection of executory contracts and unexpired leases
24 effective as of April 29, 2014 , pursuant to Bankruptcy Code § 365 (as incorporated into
25 chapter 9 by Bankruptcy Code § 901(a)) and Federal Rule of Bankruptcy Procedure 6006 (the
26 "Second Omnibus Motion"), and based on the pleadings submitted by the District in support
27 thereof, the record before the Court, and any objections filed by an interested party or
28 arguments of counsel at a hearing,

1 THE COURT HEREBY FINDS AND DETERMINES that:

- 2 A. The Court has jurisdiction to consider the Second Omnibus Motion and the relief
3 requested pursuant to 28 U.S.C. §§ 157(b) and 1334. This Order is entered in a
4 “core” proceeding as defined in 28 U.S.C. § 157(b)(2)(A) and (O).
- 5 B. The District has presented substantial and sufficient evidence, in the form of the
6 Declaration of Thomas M. Harlan, CEO of the District, that the executory
7 contracts and unexpired leases (collectively, the “Contracts” and each a
8 “Contract”) listed on Exhibit A attached to the Second Omnibus Motion, are no
9 longer necessary for, or beneficial to, the District, and if not rejected will create
10 unnecessary and burdensome administrative expenses for the District.
- 11 C. The District has served the Second Omnibus Motion, and given notice of the
12 hearing thereon, by overnight delivery service to the Office of the United States
13 Trustee, parties who have requested special notice in this case, the Contract
14 counterparties, and the 20 largest unsecured creditors of the District. Such notice
15 is adequate and sufficient notice of the Second Omnibus Motion and the hearing
16 thereon under the circumstances.

17 Accordingly, and good cause appearing therefor,

18 IT IS HEREBY ORDERED that:

- 19 1. The Second Omnibus Motion is granted in its entirety.
- 20 2. The Contracts set forth on Exhibit A to the Second Omnibus Motion are hereby
21 rejected.
- 22 3. Opposition, if any, to the relief sought in the Second Omnibus Motion is hereby
23 overruled.
- 24 4. Any claim for contract rejection damages pursuant to Bankruptcy Code
25 § 365(g)(1) asserted by any party whose Contract is rejected pursuant to this Order shall
26 be filed with the Court and served on counsel for the District not later than 45 days after
27 entry of this Order.
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Dated: May __, 2014

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Alan Jaroslovsky
Chief Bankruptcy Judge