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PALM DRIVE HEALTH CARE FOUNDATION

12  
13 UNITED STATES BANKRUPTCY COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SANTA ROSA DIVISION

16  
17 In re  
18 PALM DRIVE HEALTH CARE DISTRICT,  
19 Debtor.

CHAPTER 9  
CASE NO. 14-10510  
**PALM DRIVE HEALTH CARE  
FOUNDATION'S EMERGENCY  
MOTION FOR APPOINTMENT OF  
MEDIATOR**  
Date: May 16, 2014  
Time: 10:00 a.m.  
Place: 99 South "E" Street  
Santa Rosa, CA 95404  
Judge: The Honorable Alan Jaroslovsky

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25 **TO THE HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY  
JUDGE:**

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27 Pursuant to Section 105(a) of title 11 of the United States Code and Local Bankruptcy  
28 Rule 9014, Palm Drive Health Care Foundation ("Foundation"), an interested party in the above-

1 captioned bankruptcy case, hereby moves the Court to enter an order appointing a mediator, on an  
2 emergency basis, to address the pressing and immediate health care crisis facing the residents of  
3 the Palm Drive Health Care District (“District”) in the wake of the closure of Palm Drive Hospital  
4 (“Hospital”). In support of the motion, the Foundation respectfully represents as follows:

5 **I. INTRODUCTION**

6 1. By this Motion, the Foundation requests that the Court appoint a mediator to  
7 resolve an impasse in discussions between the District and the Foundation regarding a proposal  
8 by the Foundation that, if approved, would allow for the immediate re-opening of the Hospital as  
9 a full-service health care facility for the benefit of creditors and the residents of the District.

10 **II. JURISDICTION**

11 2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157  
12 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157. Venue  
13 is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

14 **III. FACTUAL BACKGROUND**

15 **A. The Foundation is the Hospital’s Primary Pre-Bankruptcy Fundraiser and**  
16 **Benefactor**

17 3. Prior to its closure, the Hospital was the sole emergency acute care medical facility  
18 west of U.S. Route 101 in Sonoma County. It alone served the entire coastal area of the 5<sup>th</sup>  
19 District and the area known as “West County.” As such, the Hospital is critical to the health and  
20 safety of the citizens of the region, people traveling to the region, and the emergency medical  
21 responders who operate there.

22 4. The Foundation, an independent 501(c)(3) charitable organization, was established  
23 in 1999 to provide charitable donations to, and manage the operations of, the Hospital.

24 5. Upon the creation of the District in 2000, the Foundation transferred control over  
25 the Hospital’s assets and liabilities to the District. Since the District’s creation, the Foundation  
26 has steadfastly supported the Hospital and the District’s founding mission and purpose – to  
27 provide non-profit full service emergency room, in-patient and out-patient services to the  
28 residents of the District.

1           6.       Indeed, the Foundation has served as the Hospital’s primary benefactor, and has  
2 donated over \$2 million in additional funds to the Hospital. In 2013, the Foundation donated  
3 \$153,000 to support funding for several priorities named by the Hospital’s CEO, including a final  
4 payment for a digital mammogram machine for the Hospital.

5           7.       Historically, the Foundation enjoyed a constructive working relationship with the  
6 District, the members of the District’s board (“Board”) and members of the Hospital’s senior  
7 management. However, in late 2013 the relationship changed for the worse, as Hospital  
8 management complained that the Foundation had not provided the Hospital with donations  
9 sufficient to enable it to weather its financial difficulties. When the Foundation noted that its  
10 fundraising efforts were hampered by the District’s lack of a strategic plan to correct the  
11 operational issues impacting the Hospital’s financial performance, the District responded by  
12 requesting that the Foundation cede control of its endowment to the District. The Foundation  
13 refused, and in January 2014 the District voted to discontinue its relationship with the  
14 Foundation.

15       **B.     The District Board Forces the Closure of the Hospital and Rejects the Foundation’s**  
16       **Proposal**

17           8.       On April 7, 2014, and without adequately exploring alternatives, the Board voted  
18 to commence these proceedings and to close the Hospital by April 28, 2014. The Board’s  
19 decision was opposed by numerous community leaders in public sessions.

20           9.       On April 11, 2014, under great pressure from the public to avoid closing the  
21 Hospital, the Board issued a Request For Proposals (“RFP”) to continue services at the Hospital.

22           10.      On April 18, 2014, the Foundation responded to the RFP with a comprehensive  
23 71-page proposal, a true and correct copy of which is attached as **Exhibit A** to the Declaration of  
24 Gail Thomas in support of the Motion, concurrently filed herewith, that provided for the  
25 continuation of the vital services provided by the Hospital at no cost to the taxpayers or creditors  
26 by way of \$2 million in grants from private parties and a local charity.

27           11.      On April 23, 2014, the Board responded to the Foundation’s proposal with a litany  
28 of objections, some of which added new requirements not included in the RFP. The Foundation

1 responded to the Board's objections immediately, substantively rebutting its material objections  
2 and agreeing to make modifications where necessary to address governance and conflict concerns  
3 raised by the Board. Nevertheless, the Board maintained that nonspecific issues related to  
4 licensing, financial and governance issues remained with the proposal, and were unwilling to  
5 engage with the Foundation regarding concrete steps to remedy these purported defects.

6 12. While the Board failed to give the Foundation any concrete instructions on how to  
7 address its concerns, the date of the Hospital's closure drew near.

8 13. Importantly, the Board insisted that the Foundation's proposal be evaluated and  
9 vetted by Tom Harlan, the Hospital's Chief Executive Officer and Huron Consulting Group, the  
10 Hospital's restructuring advisors, notwithstanding that both parties had already expressed their  
11 belief that no entity could effectively run the Hospital as a full-service health care facility. The  
12 Foundation asserted that Mr. Harlan and Huron lacked the impartiality to fairly review the  
13 Foundation's proposal due to their preconception that operating the Hospital would not be  
14 feasible, and requested that the Hospital's independent auditors review the merits of its proposal  
15 instead, the Board failed to provide independent review.

16 14. On April 29, 2014, as the Hospital was closed, it was clear to the Foundation that  
17 the Board was too close-minded to fairly evaluate the Foundation's proposal. The Foundation  
18 requested that the Board submit the proposal to its independent auditors, which the Board said  
19 they could not do so because the auditors did not know how to proceed. On May 3, 2014, the  
20 Board issued a press release that incorrectly indicated that the Foundation had backed out of the  
21 negotiations.

22 15. Upon information and belief, the Board has commenced non-public negotiations  
23 with other parties, including a for-profit healthcare company and a local outpatient clinic,  
24 regarding the future of the Hospital and its premises. No party other than the Foundation has  
25 submitted an RFP that proposes to re-open the Hospital as a non-profit full-service health care  
26 facility consistent with the stated mission of the District.

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**V. NOTICE AND SERVICE**

Consistent with Bankruptcy Rule 6006, this Mediator Motion is being served on (a) the Debtor, (b) Debtor’s counsel, (c) the Office of the United States Trustee, (d) parties who have requested special notice, and (e) the list of 20 largest unsecured creditors. In order to provide maximum time in advance of the hearing for this Mediator Motion, notice is being given to parties (a) through (e) *via* email or overnight delivery.

**VI. CONCLUSION**

**WHEREFORE**, Applicant requests that the Court grant the Motion and appoint a mediator; and grant such other and further relief as may be just and proper.

Dated: May 12, 2014

COOLEY LLP

By: /s/ Robert L. Eisenbach III  
Robert L. Eisenbach III (124896)

Attorneys for Interested Party  
PALM DRIVE HEALTH CARE FOUNDATION

# Proposed Order

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Place: 99 South "E" Street  
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Judge: The Honorable Alan Jaroslovsky

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21  
22 Pursuant to the motion of Palm Drive Health Care District Foundation ("Applicant")  
23 seeking entry of an order to appoint a mediator ("Motion"), and based on the pleadings submitted  
24 by the Applicant in support thereof, the record before the Court, and any objections filed by an  
25 interested party or arguments of counsel at a hearing,  
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1 THE COURT HEREBY FINDS AND DETERMINES that:

2 A. The Court has jurisdiction to consider the Motion and the relief requested.

3 B. The Applicant has served the Motion, and given notice of the hearing thereon, *via*  
4 email or overnight delivery to (a) the Debtor, (b) Debtor's counsel, (c) the Office  
5 of the United States Trustee, (d) parties who have requested special notice, and (e)  
6 the list of 20 largest unsecured creditors of the debtor. Such notice is adequate and  
7 sufficient notice of the Mediator Motion and the hearing thereon under the  
8 circumstances.

9 Accordingly, and good cause appearing therefor,

10 1. The Motion is granted in its entirety.

11 2. Opposition, if any, to the relief sought in the Motion is hereby overruled.

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**\*\*\* END OF ORDER \*\*\***

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