

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

NORTH BAY GENERAL HOSPITAL, INC.,
HOSPITAL.

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CASE NO. 08-20368
(CHAPTER 11)

**MOTION TO COMPROMISE CONTROVERSY PURSUANT TO
BANKRUPTCY RULE 9019 REGARDING NORTH BAY GENERAL
HOSPITAL, INC. VS. NORTHERN HEALTHCARE CAPITAL, LLC**
(Adversary No. 09-2047)

A HEARING WILL BE CONDUCTED ON THIS MATTER ON _____, 2010 AT 2:00 P.M. IN COURTROOM 600, 515 RUSK STREET, HOUSTON, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING UNLESS YOU DID NOT RECEIVE THIS NOTICE IN TIME TO DO SO. IN THAT SITUATION, FILE YOUR RESPONSE AS SOON AS POSSIBLE. IN ADDITION TO FILING YOUR RESPONSE WITH THE CLERK, YOU MUST GIVE A COPY OF YOUR RESPONSE TO THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, North Bay General Hospital, Inc. (“North Bay” or the “Hospital”) and files its Motion to Compromise Controversy Pursuant to Bankruptcy Rule 9019 (the “Motion”) and would show the Court as follows:

Summary of Relief Requested

1. North Bay seeks approval of a comprehensive settlement reached in Adversary Proceeding No. 09-2047 under the style of *North Bay General Hospital, Inc. v. Northern Healthcare Capital, LLC* (the “Adversary”). Under the proposed settlement, the parties resolve

all claims asserted by North Bay against Northern Healthcare Capital, LLC (“NHC”) in the Adversary. Attached hereto as **Exhibit “A”** is a letter agreement between counsel for North Bay and counsel for NHC which contains the terms of the settlement agreement (“Agreement”) resulting from good faith settlement negotiations conducted over the past few weeks in conjunction with the sale of the Hospital to Care Holdings, LLC and a compromise between the Hospital and the Internal Revenue Service (“IRS”) over penalties attributable to the Hospital’s unpaid post-petition payroll taxes. A copy of the IRS settlement letter is attached hereto as **Exhibit “B”**.

Summary of Hospital’s Factual Allegations in Complaint

2. In June of 2006, the Hospital confirmed its Second Amended Plan of Reorganization (the “Plan”) in Bankruptcy Case No. 05-32121. In furtherance of the Plan, the Hospital entered into two loan arrangements with NHC, a Revolving Credit and Security Agreement and Promissory Note, (collectively the “Revolver”) and a Term Promissory Note (the “Term Note”) pursuant to which the Hospital initially borrowed approximately \$3,000,000.00 from NHC.

3. In September or October of 2007, an additional \$300,000.00 or \$400,000.00 was purportedly borrowed by the Hospital pursuant to a First Amended and Restated Term Promissory Note. An additional \$600,000.00 of purported “borrowing” occurred in the November or December 2007 period. This transaction was documented as a purchase of accounts receivable pursuant to a Purchase Agreement (“PA”).

4. Upon information and belief, the principal paid, fees and interest charged by NHC on the various loans were not in accordance with the agreements. Since NHC funded the payment on the Term Note and the Amended Term Note from the Revolver, the payments to

NHC on the Term Note were never late. The original monthly payment under the Term Note should have been approximately \$33,124.48. However, NHC charged and caused the Hospital to pay not only a monthly principal of \$19,382.46, but interest of approximately \$30,000.00 a month. The Hospital alleged that NHC was paid more than it was entitled to under the terms of the Term Note.

5. The PA purported to sell \$1,300,000.00 of accounts, which were to be collected over the following six months. The collections of the sold accounts were to be shared between NHC and the Hospital in a 65/35 split (although Thomas McNaull (“McNaull”) was to be repaid a loan that he never made to the Hospital from the Hospital’s share of collections). The accounts, purportedly being sold, were the very collateral that secured the Revolver. McNaull, pursuant to the PA, was to lend to the Hospital \$250,000.00 to be used for payroll purposes. The Hospital received none of McNaull’s funds. Upon information and belief, no accounts were identified in the PA and no accounts were actually sold.

6. According to a recap received from NHC’s in the Fall of 2008, NHC charged the Hospital \$41,666.67 a month in interest on the PA; however, the parties stated in the PA that it was not a loan transaction. A later recap from NHC (provided by NHC after the Hospital complained of the “interest” on the PA) in the Fall of 2009 reflects a \$49,000.00 a month repurchase obligation until NHC accounts for its purported 65% of the \$1.3 million of accounts, and thereafter NHC charged the Hospital interest of 24%. Based on the most current recap from NHC, NHC charged and collected, pre-petition from the Hospital, \$278,800.00 in interest or fees attributable to the PA.

7. On or about July 8, 2008, the Hospital filed for bankruptcy protection under Case No. 08-20368. Thereafter, with Court approval, the Hospital contracted with NHC for Hospital

in Possession Financing (Docket Nos. 21 and 54). Since early July 2008, NHC has generally been funding the Hospital's operations and sweeping substantially all of the Hospital's cash. This mechanism (which was also utilized by NHC pre-petition) left the Hospital almost completely dependent upon NHC to fund the Hospital's operations, including payroll. The Hospital was also dependent upon NHC to fund its pre-petition operations.

8. Prior to each of the Hospital's post-petition payroll periods, an e-mail was sent to NHC by an employee of the Hospital setting forth the components of payroll. At the end of 2008, NHC inexplicably began underfunding payroll. This resulted in the Hospital's payroll taxes not being paid for at least two payroll periods in December 2008. During most of the second quarter of 2009, NHC funded only net payroll. On or about June 22, 2009, the Hospital's counsel wrote a letter to NHC, among others, requesting assurances that NHC would fund the Hospital's gross payroll and advising NHC that funding of net payroll was unacceptable and could not continue.

9. NHC consistently restricted or threatened to restrict post-petition funding to exert pressure on the Hospital to improve the treatment of its pre-petition claims.

10. *NHC does not agree with all of the above facts nor does NHC agree with the inferences and consequences of the Hospital's alleged facts.*

Hospital's Causes of Action

A. COUNT I - ACCOUNTING

11. The Hospital claimed that NHC failed and refused to provide any meaningful accounting. The facts and accounts regarding NHC's advances, sweeps and payments of their own fees are complex because of the numerous advances and repayments on the Revolver from NHC's sweeps of the Hospital's various bank accounts and subsequent advances by NHC to the

Hospital for its operating expenses. The issues are further complicated by NHC's payment of its own fees and expenses from the Hospital's funds. NHC believes it timely provided the Hospital with recaps to account for the transactions.

B. COUNT II - NHC IS A NON STATUTORY INSIDER OF THE HOSPITAL

12. In the Complaint, the Hospital alleged that NHC, due to its control, intent to control, lack of arm's length transactions and/or undue influence over the Hospital's financial affairs, is a non-statutory insider of the Hospital. NHC has funded the Hospital's operations, it has entered into at least one transaction pre-petition that was not at arm's length and which caused the Hospital harm. The Hospital contends that NHC was able to and did coerce the Hospital into entering transactions, which were not beneficial to the Hospital and allowed NHC to charge sums benefiting NHC's bottom line.

13. The Hospital believes NHC continued the inappropriate behavior post-petition. NHC promised to fund operational expenses and then failed to do so. NHC failed to allow the Hospital to fully fund its gross payroll, resulting in a significant IRS claim for unpaid taxes, interest and penalties. NHC believes that it has maintained an arm's length lender/creditor relationship that it is not an insider of the Hospital.

C. COUNT III - EQUITABLE SUBORDINATION

14. The Hospital requests in the Complaint that the pre-petition claims of NHC be subordinated to the claims of pre-petition creditors; and that the post-petition claims of NHC be subordinated to the claims of post-petition creditors. The Hospital claims that NHC's conduct as described in the Complaint was at a minimum inequitable and that NHC's misconduct resulted in injury to the Hospital and its creditors and conferred an unfair advantage to NHC. NHC disagrees and asserts that it merely exercised its contractual rights.

D. COUNT IV - CLAIM OBJECTION AND DETERMINE THE VALIDITY, PRIORITY AND EXTENT OF NHC'S LIENS

15. In the Complaint, the Hospital objected to NHC's claim and sought a determination regarding the validity, priority and extent of NHC's liens, pursuant to section 506 of the Bankruptcy Code.

E. COUNT V - PREFERENCE AND /OR FRAUDULENT TRANSFER

16. The Hospital sought to recover preferential payments and fraudulent transfers made to NHC during the period prior to the filing of the bankruptcy case. The Hospital claimed in the Complaint that NHC, as an under secured creditor and as a non-statutory insider, improved its position from the payments from the Hospital's accounts. NHC asserts that it was an over secured creditor pre-petition and could not have received an avoidable transfer.

F. COUNT VI - BREACH OF CONTRACT

17. The Hospital asserts in the Complaint that NHC breached its contract with the Hospital and exercised control over the Hospital's finances in an effort to increase NHC's return to the detriment of the Hospital and its creditors. NHC retorts that it was simply exercising its contractual remedies.

G. COUNT VII - CONVERSION OF ESTATE ASSETS

18. The Hospital asserted that NHC, by paying itself: a) interest in excess of the contract rate, b) inappropriate fees and expenses, and c) reimbursing itself unauthorized attorney fees, converted the Hospital's estate property; and that NHC has converted the Hospital's accounts receivable by unauthorized and wrongfully assuming and exercising dominion and control over the Hospital's receipt and applying the Hospital's proceeds unilaterally to interest fees and expenses. NHC alleges it was simply making advances on the Revolver as authorized by the agreements.

H. COUNT VIII - NHC IS LIABLE FOR POST PETITION TRANSFERS

19. The Hospital alleged that NHC is liable pursuant to Sections 459 and 550 for post-petition transfers by paying itself excessive interest fees and expenses, NHC caused transfers of the bankruptcy estate's cash to be paid to NHC post petition without Court authority. Post petition attorney fees were paid to NHC by NHC advancing under the DIP Financing without Court approval. NHC disagrees.

Terms of the Compromise

20. NHC asserts an Administrative Claim in the approximate amount of \$1,775,000.00 and a secured claim of \$5,131,765.67 plus interest, fees and costs. Attached hereto as Exhibit "A" is the Agreement reached by the Parties. Under the Agreement:

- A. Within five (5) business days ("Pay Date" after the Court's Order Confirming the Hospital's Plan of Liquidation becomes final, the administrative claim of the Internal Revenue Service ("IRS") and the Texas Workforce Commission ("TWC") (estimated to be in the aggregate amount of \$790,000.00) will be paid in full out of the NHC Escrowed Funds established when Care Holdings, LLC (the "Buyer") replaced NHC as DIP Lender.
- B. NHC will receive \$790,000.00 from the NHC Escrowed Funds on the Pay Date.
- C. NHC's administrative claim will be reduced by \$195,000.00 to \$1,580,000.00 and those excess funds (after payment of the IRS, TWC and NHC) from the NHC Escrow will be available to pay costs to liquidate the Estate and pay Administrative Claims.

- D. From the settlement proceeds generated from the litigation against the insider and professionals engaged in the earlier bankruptcy case, NHC will be paid, on the Pay Date, \$316,000.00.
- E. Prior to the end of the thirty-sixth (36th) month, the Buyer is to make an initial payment on the purchase of the real estate in the amount of \$500,000.00. NHC's administrative claim, then with a balance of \$474,000.00, will be paid in full.
- F. After NHC receives the \$790,000.00 and \$316,000.00, other than a lien on all the Debtor's real property ("Real Property") to secure the \$474,000.00 remaining balance of NHC's Administrative Claim, NHC will have no other claim or lien on any of the Hospital's or the Bankruptcy Estate's assets regarding NHC's Administrative Claim. The lien for the \$474,000.00 administrative claim shall (i) have the same priority as NHC's allowed pre-petition secured claim discussed below and (ii) be perfected pursuant to NHC's already recorded deed of trust.
- G. Administrative claimants, other than NHC, shall receive distributions from the liquidation of various miscellaneous sources, including the excess after the payment of costs of administration, if any, of:
- (i) The first four years of lease payments from the Buyer;
 - (ii) Net benefit to the Estate of avoidance actions;
 - (iii) The net benefit, if any, of the 2009 cost reports with Medicaid/Medicare; and
 - (iv) Any other Estate asset, including funds from Wells Fargo and prosecution of claims described in the Disclosure Statement.

- H. NHC shall receive \$90,000.00 of the anticipated lease payments to be received from the Buyer in months thirty-seven (37) through forty-eight (48). These sums will be paid to NHC in quarterly payments of \$22,500.00 beginning on the fifteenth (15th) day after the Hospital receives the Buyer's rent payment number thirty-nine (39), forty-two (42), forty-five (45) and forty-eight (48). The remaining lease payments for months 37 through 48 will be available to pay costs to liquidate the Estate and to pay Administrative Claims.
- I. NHC shall be allowed a pre-petition secured claim in the amount of \$3,825,768.00. This secured claim will be junior and subordinated to the outstanding administrative claims (in an amount up to \$1,000,000.00, inclusive of NHC's \$474,000.00 remaining administrative claim) ("Administrative Carve-Out") and to a prior distribution of \$120,000.00 to the Class 16 unsecured creditors, and a second distribution of \$120,000.00 to Class 16 unsecured creditors only after NHC is paid \$3,600,000.00 on its secured claim ("Unsecured Carve-Out") (collectively, the "Carve-Outs"). If, for any reason, the administrative expense claims are less than \$1,000,000.00 when the Real Property is sold then the Administrative Claim Carve Out shall be reduced and in no event shall the administrative claim carve out be greater than \$1,000,000.00.
- J. In the event NHC receives \$3,600,000.00 towards its pre-petition secured claim, then the Class 16 unsecured creditors will receive the next \$120,000.00 in proceeds of the sale. Thereafter, NHC shall receive the

next \$225,768.00 in sale proceeds for Real Property, after which time any remaining funds shall be distributed to the Class 16 Unsecured Creditors.

21. In addition to NHC's pre-petition allowed \$3,825,768.00 secured claim and the allowed \$1,580,000.00 Administrative Claim discussed above, NHC will be allowed an unsecured claim in the amount of \$805,997.67, which claim shall be subordinated to all other Class 16 claimants. That is, NHC will receive no distribution on its unsecured claim until all other Class 16 unsecured creditors are paid in full. It is not anticipated that Class 16 will be paid in full; therefore, it is not anticipated that NHC will receive a distribution from the Estate on account of its unsecured claim.

22. In addition, NHC shall retain its lien on the Hospital's pre-petition accounts (those generated prior to July 8, 2008) ("Pre-Petition Accounts"). At NHC's request, (and after Court approval of this settlement) the Debtor shall convey ownership of the Pre-Petition Accounts "as is, where is" and without any representation to NHC and shall take such actions as NHC may reasonably request, at NHC's cost, to assist NHC regarding possible limitation impediments to the collection of the Pre-Petition Accounts. Collections on the Pre-Petition Accounts, if any, shall not reduce NHC's entitlement to any other proceeds described herein. The Debtor and Buyer shall provide reasonable access to any and all information, supporting documentation and data relating to the Pre-Petition Accounts.

23. The Hospital and NHC recognize that this settlement has risks that are out of either parties' controls. For example, in the event the Buyer i) offsets (either with or without justification) lease payments or the purchase price; ii) fails or refuses to make timely payments; or iii) disrupts the flow of anticipated funds, the ultimate return to NHC as well as to other administrative claimants may be adversely effected. Once the Buyer pays the Real Estate

Purchase Price and makes all the required payments under the lease (collectively the “Consideration”) to or for the benefit of the Hospital’s bankruptcy estate, and NHC receives from the Consideration, all amounts it is entitled to receive attributable to its secured claim and administrative claim based on the priority of NHC’s lien, NHC shall release its lien against the Real Estate. Until NHC receives its portion of the Consideration, NHC, subject to the, Carve-Outs shall retain a lien (with all rights as provided for in NHC’s deed of trust, subject to the Plan) in and to the Real Property. NHC’s lien shall be junior only to the real property ad valorem tax liens of the San Patricio Taxing Authorities and their assigns and the Carve Outs. However, any and all other liens or claims of NHC (other than the Pre-petition Accounts) shall be released upon the receipt of the initial two payments on NHC’s administrative claims to be paid on the Pay Date. So long as the Buyer is complying with the Lease and Sale Documents and Distributions are being made under the Plan, NHC shall not exercise its remedies under the deed of trust and its loan documents.

24. NHC and the Hospital will exchange mutual releases thereby releasing each other together with their respective officers, employees, agents, attorneys and representatives. NHC will release any and all claims it may have against NTime, LLC, its principals, employees, agents, attorneys and representatives. Likewise, NTime will release any and all claims it may have against NHC, its principals, employees, agents, attorneys and representatives. Provided, however, that NHC shall retain any and all rights, claims and causes of action against Thomas McNaull pursuant to the Guaranty Agreement or otherwise.

25. It is believed that for NHC’s secured claim to be paid in full, the Hospital would need to experience a net recovery from the avoidance actions of approximately \$400,000.00. While this is certainly within the realm of possibilities, it is not presently anticipated.

26. This settlement resolves what in all likelihood will be expensive and protracted litigation. It affords the parties certainty with regards to hotly contested causes of action and allows administrative claims to be paid and for a recovery to unsecured creditors.

27. The benefit to the Hospital is that it quantifies the recovery to unsecured creditors to between 2% and 5%; it allows a mechanism to pay all administrative claimants in full, and avoids costly litigation that would only increase the administrative costs and inject material uncertainty to most classes of creditors regarding their likely recovery.

28. NHC, which denies any and all liability, will receive a Release from the Hospital; and NHC will execute a release releasing the Hospital, NTime LLC (the Hospital's management company), and the Estate, and the Adversary will be dismissed with prejudice to refilling.

Merits of Compromise

29. The merits of a proposed compromise should be judged under the criteria set forth in the Supreme Court decision of *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S.414 (1968). The Supreme Court's opinion of *TMT Trailer* requires that a compromise must be "fair and equitable." *TMT Trailer*, 390 U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir.), *cert. denied*, 469 U.S. 880 (1984). The terms "fair and equitable" mean that (i) senior interests are entitled to full priority over junior interests; and (ii) the settlement is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

30. In determining whether a proposed compromise is fair and equitable, a Court should consider the following factors:

- (a) the probabilities of ultimate success should the claim be litigated;
- (b) the complexity, expense, and likely duration of litigating the claim;

- (c) the difficulties of collecting a judgment rendered from such litigation; and,
- (d) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

TMT Trailer, 390 U.S. at 424. Under the first factor, the Court does not conduct a mini-trial, but must apprise itself of the relevant facts and law to make an informed decision. *In re Imperial Tooling and Mfg., Inc.*, 314 B.R. 340, 342 (Bankr. N.D. Tex 2004). The Court should consider what is in the best interest of creditors under the fourth factor, with proper deference to their reasonable views. *Cajun Elec.*, 119 F.3d at 356. The Hospital believes that the proposed settlement satisfies the requirements established by the Supreme Court in *TMT Trailer*.

Analysis of Proposed Compromise

31. Probabilities of Ultimate Success. While parties are always proud of their pleadings and the positions taken therein, litigation is fraught with risks and expense. The Parties to this litigation each genuinely believe in their respective factual and legal positions. North Bay feels that its claims are meritorious, as well as, factually and legally supported. NHC believes, just as adamantly, that no wrongdoing or actionable misconduct occurred, and that the Hospital's claims should be denied. Each respective Party believes that if the Adversary is tried that they will prevail at trial. The purpose in North Bay bringing the Adversary was to augment the bankruptcy estate. The continued prosecution of the Adversary will require protracted discovery and extremely costly litigation with no guaranty of success. Accordingly, North Bay, in the exercise of its business judgment, prudently determined to eliminate the risks, costs and the uncertainty of litigation by reaching the decision to settle in accordance with the Agreement. It is unknown whether continuing to litigate the Adversary might result in a larger recovery or if that recovery, once and if collected, would offset the additional litigation expenses and delay in ultimate recovery. The claims asserted by North Bay are not covered by insurance.

32. Complexity, Expense and Duration. The Hospital has propounded extensive requests for the production of documents upon NHC. Discovery has not begun in earnest in the Adversary, but would be extremely expensive and time consuming for the Parties. The Hospital has prepared a partial motion for summary judgment which has not been filed. The Hospital, since it is being sold, does not have the ability to continue to fund the litigation expenses. The issues presented in the Adversary are complex. To try the Adversary from either side is going to cost each side several hundred thousand dollars. Discovery would require parties to research and produce numerous years of electronically stored data, which would be extremely costly. This will be difficult for the Hospital after the sale. Further, it is anticipated that there would be disputes regarding which party would bear the cost to obtain that information. It is also anticipated that the location of depositions would be contested. The Estate is not in a position to bear significant costs in connection with discovery matters. The duration of the litigation is likely to take at least another six (6) months with any appeal taking many additional months. The losing party in all likelihood would appeal any decision rendered to the District Court and ultimately to the Fifth Circuit. Further, settlement allows the Hospital to confirm its Plan of Liquidation and consummate the sale to the Buyer.

33. Difficulty of Collecting a Judgment. North Bay does not know, with any degree of certainty, of the ability of NHC to pay any judgment that might ultimately be awarded; however, the Hospital believes that NHC is being liquidated. The Hospital believes that if it were successful, it could offset its damages against NHC's claims; however, in the event that the Hospital is only partly successful, the result may not accomplish what the settlement does. The Hospital believes it would not be able to collect any affirmative relief beyond the value of NHC's collateral.

34. Other Factors. The Hospital believes that the proposed settlement is equitable and in the best interest of the bankruptcy estate. During the settlement discussions, each of the parties had an opportunity to and did fully present its explanation regarding the allegations made against that party and North Bay fully considered NHC's explanation in reaching the decision to settle the dispute for the amounts set forth in the Exhibit "A." Given the certainty and timeliness of this settlement, it is in the best interest of creditors because it allows for the funds to be distributed to creditors promptly upon confirmation of the Plan instead of the creditors having to wait for a distribution in the event of a successful verdict and after the conclusion of the anticipated appeals. As part of this settlement, the Hospital and the IRS reached an agreement pursuant to which the IRS will waive the penalties on unpaid post-petition payroll taxes. Without the settlement with NHC, the IRS penalties would continue to accrue and would exceed \$100,000.00. Any party that is ultimately successful could "win the battle, only to lose the war." That is, the expense and duration of the litigation of the Adversary is overwhelming and the reasonable economic reward at the end of the litigation does not justify the risks attached to such litigation.

Accordingly, the Hospital requests that this Court approve the proposed settlement and compromise set forth above and for such other relief as is just.

Respectfully submitted,

HIRSCH & WESTHEIMER, P.C.

By: /s/ Michael J. Durrschmidt

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ATTORNEYS FOR NORTH BAY GENERAL
HOSPITAL, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2010, a copy of the Motion to Compromise Controversy Under Bankruptcy Rule 9019 was sent via first class mail, postage prepaid, and/or via the Clerk of the Court through ECF, to the parties as listed on the attached service list.

/s/ Michael J. Durrschmidt
Michael J. Durrschmidt

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: §
§
NORTH BAY GENERAL HOSPITAL, INC. § **CASE NO. 08-20368-11**
Hospital. §

ORDER APPROVING COMPROMISE AND SETTLEMENT
(North Bay General Hospital, Inc.'s Adversary Against Northern Healthcare Capital, LLC.
Adversary No. 09-2047)

The Court has considered North Bay General Hospital, Inc.'s (the "Hospital") Motion to Compromise Controversy under Bankruptcy Rule 9019. The proposed compromise meets the requirements for a compromise as outlined in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968) and should be approved. The Court finds that the proposed settlement is fair and equitable. The Court further finds that adequate notice of the motion and the hearing on the motion has been given to the all creditors and parties-in-interest. Accordingly, it is therefore

ORDERED THAT:

1. The Motion to Compromise Controversy under Bankruptcy Rule 9019 is **GRANTED**.
2. The Settlement Agreement between the Hospital and Northern Healthcare Capital, LLC ("NHC") as contained in the February 24, 2010 letter, attached hereto as **Exhibit A** and the Settlement Agreement between the Hospital and the Internal Revenue Service attached hereto as **Exhibit B**, are approved in all respects. The Hospital, NHC and the IRS are authorized to take all actions necessary to consummate their respective settlements.
3. All parties to these compromises and settlements shall execute and deliver all documents reasonably necessary to effectuate the intent of these compromises and settlements.

4. This order shall be deemed to be i) the filing and allowance of NHC's administrative proof of claim in the amount of \$1,580,000.00 (and shall relieve the Hospital from augmenting the NHC Escrow as previously ordered in Order Authorizing the Hospital to Substitute Care Holdings, LLC as Lender (Docket No. 439); and ii) constitute an amendment of NHC's claim (Claim No. 92) to an allowed secured claim in the amount of \$3,825,768.00 and an allowed unsecured claim in the amount of \$805,997.67. NHC's unsecured claim is subordinated to all other unsecured claims allowed in this case.

SIGNED this _____ day of _____, 2010.

JEFF BOHM
UNITED STATES BANKRUPTCY JUDGE

AGREED, APPROVED AND ENTRY REQUESTED:

HIRSCH & WESTHEIMER, P.C.

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