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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 MEDICAL CAPITAL HOLDINGS,  
16 INC.; MEDICAL CAPITAL  
CORPORATION; MEDICAL  
17 PROVIDER FUNDING  
CORPORATION VI; SIDNEY M.  
18 FIELD; and JOSEPH J.  
LAMPARIELLO,

19 Defendants.  
20  
21

Case No. 8:09-cv-0818-DOC (RNBx)

**NOTICE OF MOTION AND  
MOTION FOR APPROVAL OF  
SETTLEMENT WITH COALITION  
AMERICA, INC. REGARDING  
ATTORNEY FEES AND COSTS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: February 14, 2011  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on February 14, 2011, at 8:30 a.m., in  
3 Courtroom 9D of the above-entitled Court located at 411 West Fourth Street,  
4 Santa Ana, California 92701, a hearing will be held on the motion of Thomas A.  
5 Seaman ("Receiver"), Court-appointed permanent receiver for Medical Capital  
6 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding  
7 Corporation VI, and their subsidiaries and affiliates, including National Health  
8 Benefits Corporation (collectively, "Medical Capital" or the "Receivership  
9 Entities"), for approval of a settlement with Coalition America, Inc. regarding  
10 attorney fees and costs ("Motion").

11 The Motion is based on the Memorandum of Points and Authorities below,  
12 and the Declaration of Thomas A. Seaman filed herewith. The Motion and  
13 supporting papers are available at the Receiver's website,  
14 <http://www.medicalcapitalreceivership.com>, or may be reviewed at the Clerk's  
15 Office during normal business hours at 411 West Fourth Street, Santa Ana,  
16 California 92701.

17 **Procedural Requirements:** If you oppose this Motion, you are required to  
18 file your written opposition with the Office of the Clerk, United States District  
19 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on  
20 the undersigned not later than twenty-one (21) calendar days prior to the hearing.

21 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the  
22 above date, the Court may grant the requested relief without further notice. This  
23 Motion is made following the conference of counsel pursuant to L.R. 7-3.

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1           WHEREFORE, the Receiver requests that the Court grant the relief requested  
2 herein and such other relief as may be appropriate under the circumstances.

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4 Dated: January 14, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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6 By: /s/ Ted Fates  
7       TED FATES  
8       Attorneys for Receiver  
9       Thomas A. Seaman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS**

3 On August 5, 2009, two days after the Receiver's appointment, the United  
4 States District Court for the Northern District of Georgia ("Georgia District Court")  
5 entered a judgment against receivership entity National Health Benefits Corporation  
6 ("NHBC") in favor of Coalition America, Inc. ("Coalition") in the total amount of  
7 \$2,692,169 ("Judgment").<sup>1</sup> In December 2003, Coalition had sued NHBC and three  
8 of its officers asserting various causes of action, including that NHBC  
9 misappropriated certain Coalition trade secrets. NHBC and its officers asserted  
10 various counterclaims. The case proceeded to trial in May 2009 on Coalition's trade  
11 secret misappropriation claim against NHBC, and NHBC's counterclaim against  
12 Coalition, the other claims and counterclaims having been dismissed prior to trial.

13 On June 1, 2009, the jury's verdict was entered in favor of Coalition in the  
14 amount of \$2,192,169 and against NHBC on the counterclaim. By order entered  
15 July 29, 2009, the Georgia District Court awarded Coalition \$500,000 in exemplary  
16 damages, bringing the total Judgment to \$2,692,169.

17 Because the jury found that NHBC's misappropriation of Coalition's trade  
18 secrets was willful and malicious, Coalition asserts the right to recover its attorney  
19 fees under O.C.G.A. § 10-1-764. As the prevailing party at trial, on both the  
20 misappropriation claim and NHBC's counterclaim, Coalition asserts the right to  
21 recover its costs under Federal Rule of Civil Procedure 54(d)(1). Shortly after the  
22 Receiver's appointment, in light of the provisions in this Court's Preliminary  
23 Injunction restraining the continuation of suits against receivership entities,  
24 Coalition requested and the Receiver stipulated to a tolling of Coalition's deadline to  
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26 <sup>1</sup> The Receiver caused the Temporary Restraining Order entered by this Court on  
27 August 3, 2009 ("TRO") to be filed in the Georgia District Court on August 4,  
28 2009. The Georgia District Court acknowledged receiving and reviewing the  
TRO, but determined that its provisions restraining the continuation of litigation  
against the Receivership Entities did not restrain it from instructing its Clerk of  
Court to enter the Judgment.

1 file its post-trial Bill of Costs and motion for attorney fees. The Georgia District  
2 Court approved the stipulation on August 19, 2009.

3 On October 2, 2009, in order to preserve NHBC's right to appeal the  
4 Judgment, the Receiver caused a notice of appeal to be filed with the Eleventh  
5 Circuit Court of Appeals (the "Appeal"). The Receiver engaged counsel located in  
6 Atlanta at the law firm of Kilpatrick Townsend & Stockton LLP ("Kilpatrick") to  
7 conduct a review of the case and advise regarding the merits and likelihood of  
8 success of the Appeal. This was a significant undertaking given the length and  
9 complexity of the litigation. On October 16, 2009, Coalition filed a cross-appeal,  
10 asserting various grounds for appeal, including that the damage award in the  
11 Judgment was based on inaccurate accounting information presented by NHBC, and  
12 therefore should have been greater.

13 During the review of the litigation by the Receiver's counsel at Kilpatrick, it  
14 was discovered that NHBC failed to renew certain Motions for Judgment as a  
15 Matter of Law ("JMOL") after trial, the effect of which would be a failure to  
16 preserve certain issues for appeal. If the issues raised in the JMOL motions could  
17 not be argued on appeal, the Receiver's assessment, after consulting with counsel,  
18 was that the appeal was unlikely to be successful. Therefore, on the advice of  
19 counsel, the Receiver caused NHBC to file a motion under Fed. R. Civ. Proc. 62.1  
20 asking the Georgia District Court to request that the Eleventh Circuit remand the  
21 matter for the limited purpose of allowing NHBC to renew the JMOL motions, and  
22 thereby preserve the relevant issues for appeal. The Rule 62.1 motion was filed on  
23 December 16, 2009. The Eleventh Circuit stayed the briefing schedule in the  
24 Appeal, pending the Georgia District Court's decision. On September 27, 2010, the  
25 Georgia District Court denied the motion.

26 Since that time, the parties have stipulated on three occasions to extend the  
27 briefing schedule in the Appeal in order to explore settlement. Pursuant to those  
28 discussions, Coalition's trial counsel provided its bills for recoverable attorney fees

1 and costs for the Receiver's review. Coalition asserted that it was entitled to recover  
2 \$1,367,795 in attorney fees, and \$81,093 in costs; for a total of \$1,448,888. With  
3 the assistance of counsel, the Receiver reviewed the bills and advised Coalition that  
4 he believes the recoverable amounts are \$1,300,000 in fees and \$50,000 in costs, for  
5 a total of \$1,350,000. Coalition agreed to the Receiver's reduction and to dismiss its  
6 cross-appeal, provided the Receiver files this Motion and dismisses the Appeal.

7 Accordingly, subject to approval by this Court and the Georgia District Court,  
8 NHBC and Coalition have agreed on the terms of a Stipulation as to Award of  
9 Attorney Fees and Costs, providing that Coalition should be awarded a total of  
10 \$1,350,000 in attorney fees and costs as the prevailing party ("Stipulation"). The  
11 Stipulation is attached as Exhibit A to the Declaration of Thomas A. Seaman filed  
12 herewith. In connection with the Stipulation and the filing of this motion, the parties  
13 have agreed to dismiss the Appeal, including Coalition's cross-appeal.

14 The Receiver requests approval of the agreement memorialized in the  
15 Stipulation and relief from the Preliminary Injunction to permit Coalition to present  
16 the Stipulation to the Georgia District Court. Such relief will end the lengthy  
17 litigation between NHBC and Coalition, as well as the attendant legal fees, and give  
18 Coalition a fully liquidated claim for \$2,692,169 in damages, and, provided the  
19 Georgia District Court agrees, \$1,350,000 in fees and costs, for a total claim of  
20 \$4,042,169. How Coalition's claim will be treated and what amount(s) Coalition  
21 will receive in distributions will be determined at a later date and in due course as  
22 the receivership progresses.

## 23 II. ARGUMENT

24 A federal equity receiver's power to compromise claims is subject to court  
25 approval. As noted by the Ninth Circuit Court of Appeals in *S.E.C. v. Hardy*, 803  
26 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity  
27 receivership and to determine the appropriate action to be taken in the  
28 administration of the receivership is extremely broad." With regard to settlements

1 entered into by a federal equity receiver, the Court's supervisory role includes  
2 reviewing and approving those settlements in light of federal court policy to  
3 promote settlements before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee  
4 Notes.

5 Federal courts of equity often look to bankruptcy law for guidance in the  
6 administration of receivership estates. *See SEC v. Capital Consultants, LLC*, 397  
7 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*, 98 F.3d  
8 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d  
9 657, 665 (6th Cir. 2001); *see also* Local Civil Rule 66-8 ("a receiver shall  
10 administer the estate as nearly as possible in accordance with the practice in the  
11 administration of estates in bankruptcy"). A bankruptcy court may approve a  
12 compromise of claims asserted by or against the estate if the compromise is "fair  
13 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839  
14 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise negotiated  
15 by a court-appointed fiduciary "is an exercise of discretion that should not be  
16 overturned except in cases of abuse leading to a result that is neither in the best  
17 interest of the estate nor fair and equitable for the creditors." *In re MGS Marketing*,  
18 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

19 The Court has great latitude in approving compromises. In passing on the  
20 proposed compromise, the Court should consider the following:

- 21 a. The probability of success in litigation;
- 22 b. The difficulties, if any, to be encountered in the matter of  
23 collection;
- 24 c. The complexity of the litigation involved and the expense,  
25 inconvenience, and delay necessarily attending; and
- 26 d. The paramount interest of the creditors and a proper  
27 deference to their reasonable views in the premises.

28 *Woodson*, 839 F.2d at 620.

1 Here, the Receiver believes that, without the ability to argue the issues raised  
2 in the JMOL motions, the Appeal is unlikely to result in reversal of the Judgment or  
3 significant reduction of the damage award. Therefore, the expenditure of further  
4 receivership estate assets in prosecuting NHBC's appeal and defending against  
5 Coalition's cross-appeal is not advisable.

6 With the assistance of counsel, the Receiver has reviewed the relevant legal  
7 authority regarding Coalition's right to recover fees and costs, as well as the bills  
8 from Coalition's trial counsel. The Receiver believes that Coalition would likely be  
9 able to recover at least \$1,300,000 in fees and \$50,000 in costs. There is also some  
10 risk that Coalition's cross-appeal will be successful in increasing the damage award  
11 in the Judgment. Although the Receiver has not conducted an audit of the financial  
12 statements NHBC presented to the Georgia District Court, it is possible that some of  
13 the figures were inaccurate.

14 At this point, continuing the litigation with Coalition is not a productive use  
15 of receivership estate resources. Agreeing to file this Motion enabled the Receiver  
16 to conclude the litigation, i.e., the Appeal and cross-appeal. Accordingly, the  
17 Receiver believes that the Stipulation is in the best interests of the receivership  
18 estate, requests that it be approved, and asks that Coalition have relief from the  
19 Preliminary Injunction to present it to the Georgia District Court.

### 20 III. CONCLUSION

21 WHEREFORE, the Receiver requests entry of an order granting the Motion  
22 and approving the settlement.

23  
24 Dated: January 14, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

25  
26 By: /s/ Ted Fates

27 TED FATES  
Attorneys for Receiver  
Thomas A. Seaman

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