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

**DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF MOTION
FOR APPROVAL OF SETTLEMENT
WITH COALITION AMERICA, INC.
REGARDING ATTORNEY FEES
AND COSTS**

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

1 I, Thomas A. Seaman, declare as follows:

2 1. I am the Court-appointed permanent receiver for Medical Capital
3 Holdings, Inc., Medical Capital Corporation, and Medical Provider Funding
4 Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital"
5 or the "Receivership Entities"). The following facts are within my knowledge and if
6 called as a witness I would testify to them under oath.

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

17 3. On June 21, 2009, the jury's verdict was entered in favor of Coalition in
18 the amount of \$2,192,169 and against NHBC on the counterclaim. By order entered
19 July 29, 2009, the Georgia District Court awarded Coalition \$500,000 in exemplary
20 damages, bringing the total Judgment to \$2,692,169.

21 4. Because the jury found that NHBC's misappropriation of Coalition's
22 trade secrets was willful and malicious, Coalition asserts the right to recover its
23 attorney fees under O.C.G.A. § 10-1-764. As the prevailing party at trial, on both
24 the misappropriation claim and NHBC's counterclaim, Coalition asserts the right to
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26 ¹ With the assistance of counsel, I caused the Temporary Restraining Order
27 entered by this Court on August 3, 2009 ("TRO") to be filed in the Georgia
28 District Court on August 4, 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 recover its costs under Federal Rule of Civil Procedure 54(d)(1). Shortly after my
2 appointment, in light of the provisions in this Court's Preliminary Injunction
3 restraining the continuation of suits against receivership entities, Coalition requested
4 and the Receiver stipulated to a tolling of Coalition's deadline to file its post-trial
5 motion for attorney fees and costs. The Georgia District Court approved the
6 stipulation on August 19, 2009.

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

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

3 7. Since that time, the parties have stipulated on three occasions to extend
4 the briefing schedule in the Appeal in order to explore settlement. Pursuant to those
5 discussions, Coalition's trial counsel provided its bills for recoverable attorney fees
6 and costs for the Receiver's review. Coalition asserted that it was entitled to recover
7 \$1,367,795 in attorney fees, and \$81,093 in costs, for a total of \$1,448,888. With
8 the assistance of counsel, I reviewed the bills and advised Coalition that I believe
9 the recoverable amounts are \$1,300,000 in fees and \$50,000 in costs, for a total of
10 \$1,350,000. Coalition agreed to my reduction and to dismiss its cross-appeal,
11 provided that I file the Motion for which this Declaration is offered and that I
12 dismiss the Appeal.

13 Accordingly, subject to approval by this Court and the Georgia District Court,
14 I, on behalf of NHBC, and Coalition have agreed on the terms of a Stipulation as to
15 Award of Attorney Fees and Costs, providing that Coalition shall be awarded a total
16 of \$1,350,000 in attorney fees and costs as the prevailing party ("Stipulation"). A
17 true and correct copy of the Stipulation is attached hereto as Exhibit A.

18 8. At this point, continuing the lengthy litigation between NHBC and
19 Coalition, and the attendant legal fees, is not a productive use of receivership estate
20 resources. Agreeing to file the Motion for which this Declaration is offered, enabled
21 me to conclude the litigation. Provided this Court approves the Stipulation and the
22 Georgia District Court agrees with the Stipulation, Coalition will have a fully
23 liquidated claim for \$2,692,169 in damages, and \$1,350,000 in fees and costs, for a
24 total claim of \$4,042,169. How Coalition's claim will be treated and what
25 amount(s) Coalition will receive in distributions will be determined at a later date
26 and in due course as the receivership progresses.

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1 9. I believe that the Stipulation is in the best interests of the receivership
2 estate, request that it be approved, and ask that Coalition have relief from the
3 Preliminary Injunction to present it to the Georgia District Court.

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5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed on January 14, 2011, at Irvine, California.

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Thomas A. Seaman

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COALITION AMERICA, INC.,)
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Plaintiff,) CIVIL ACTION FILE NO.
)
v.) 1:03-CV4012-CC
)
SCOTT ARLOTTA, MELITTA HAUSER,)
JOHN MORRIS, and NATIONAL)
HEALTH BENEFITS CORPORATION,)
)
Defendants.)

STIPULATION AS TO AWARD OF COSTS AND ATTORNEYS' FEES

COME NOW the Parties, Coalition America, Inc. ("Plaintiff"), and National Health Benefits Corporation, by and through its court-appointed permanent receiver, Thomas A. Seaman ("Defendant" or "NHBC"), and enter this Stipulation agreeing to the amount of taxable costs and attorneys' fees that the Court should award to Plaintiff, pursuant to 28 U.S.C § 1920, Fed. R. Civ. P. 54(d)(1), L.R. 54, and O.C.G.A. § 10-1-764.

Judgment was entered in this case on August 5, 2009, in favor of Plaintiff and against Defendant, with Plaintiff being awarded \$2,192,169.00 in

Exhibit A
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compensatory damages and \$500,000.00 in exemplary damages, along with costs and interest as provided by law. [Doc. No. 669].

On August 3, 2009, the United States District Court for the Central District of California (the "Receivership Court") appointed a temporary receiver and entered a temporary restraining order in an action filed by the Securities and Exchange Commission against NHBC's parent companies and affiliated individuals and entities. SEC v. Medical Capital Holdings, Inc., et al; Case No. SA CV09-0818 DOC (RNBx). On August 17, 2009, the Receivership Court entered a permanent injunction and appointed Thomas A. Seaman as the Permanent Receiver for Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Provider Funding Corporation VI, and their subsidiaries and affiliates, including NHBC.

The temporary restraining order and the permanent injunction provide, in relevant part, that "all ... creditors, claimants ... and all other persons or entities seeking relief of any kind" are restrained and enjoined from litigating or enforcing claims against certain "receivership entities," including NHBC.

On August 19, 2009, this Court entered an order, consented to by Defendant (through the Receiver), which tolled the deadlines for Plaintiff to file a bill of costs and motion for attorneys' fees and to seek other applicable post-judgment relief. [Doc. No. 672]. This order was necessary to protect Plaintiff's rights to seek such

Exhibit A
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relief, while still complying with the Receivership Court's restraint on continued litigation against NHBC.

On October 2, 2009, Defendant initiated an appeal to the Eleventh Circuit Court of Appeals from the final judgment entered in this case. [Doc. No. 676]. On October 16, 2009, Plaintiff initiated its cross-appeal. [Doc. No. 679]. On December 16, 2009, Defendant filed a motion for relief from final judgment [Doc. No. 698], which this Court denied on September 27, 2010. [Doc. 704].

In the meantime, briefing in the Eleventh Circuit appeal (the "Appeal") has been stayed, and then continued; initially, briefing was stayed pending this Court's ruling on the Motion for Relief from Final Judgment, and, since the date the Motion was denied, briefing has been continued by stipulation of the parties in order to afford the parties time to explore settlement.

The parties have reached such a resolution, which includes a stipulation as to the amount of taxable costs and reasonable attorneys' fees that this Court should award to Plaintiff, as well as mutual dismissal of the Appeal. The Appeal was dismissed by order entered _____, 2011.

The Receivership Court, by order dated _____, 2011 (a copy of which is attached hereto as Exhibit A), has lifted the permanent injunction for the following limited purpose: allowing the parties to submit this Stipulation; enabling

Exhibit A
Page 3 of 4

this Court to enter an award of taxable costs and attorneys' fees; and enabling this Court to enter an amended final judgment, thereby finally concluding this case.

Wherefore, the parties hereby stipulate that this Court should award Plaintiff **\$50,000** for taxable costs, pursuant to 28 U.S.C § 1920 and Fed. R. Civ. P. 54(d)(1), and **\$1,300,000** for attorneys' fees, pursuant to O.C.G.A. § 10-1-764 and Fed. R. Civ. P. 54(d)(2).

Respectfully submitted, this _____ day of _____, 2011.

For Plaintiff Coalition America, Inc.:

For Defendant National Health Benefits Corporation:

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Exhibit A

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