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

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

18 Defendants.

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

[PROPOSED] ORDER AUTHORIZING
SALE OF REMAINING
RECEIVERSHIP ASSETS

Date: October 26, 2015
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

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20 In connection with the Receiver's Motion For Order Approving Sales
21 Procedures For Remaining Receivership Assets; Authorizing Retention of
22 GlassRatner To Market The Assets filed on June 10, 2015 (the "Motion"), the
23 Receiver's Report Re: Asset Sale Motion filed on October 9, 2015 (the "Receiver's
24 Report"), and pursuant to this Court's Order approving the Motion entered on July
25 13, 2015, the Receiver's request for authorization to sell remaining assets out of the
26 receivership came on for hearing on October 26, 2015, the Honorable David O.
27 Carter presiding. After consideration of the Motion, the Receiver's Report, and all
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1 other documents and other evidence filed in support thereof, oppositions, responses
2 and comments filed in response thereto, the entire record in this case, and after due
3 deliberation and good cause appearing therefor:

4 **IT IS HEREBY FOUND AND DETERMINED THAT:¹**

5 A. Proper, timely, adequate, and sufficient notice of the Motion and the
6 Receiver's Report, and of the proposed relief described therein, was given by the
7 Receiver and such notice was reasonable and appropriate under the circumstances
8 and comports in all regards with the requirements of due process and no further
9 notice is appropriate or necessary.

10 B. The Receiver has taken commercially reasonable steps to communicate
11 to the applicable market that the assets (the "Assets"), as more fully described in the
12 Receiver's Report and defined in the Asset Purchase and Sale Agreement between
13 the Receiver and E.D.S. Financial Services, Inc. ("Purchaser") entered into in
14 connection with the contemplated sale (the "Agreement"), a copy of which is
15 attached hereto as Exhibit 1, were available for sale, and to facilitate and encourage
16 commercially reasonable expressions of interest in the Assets. As a consequence,
17 the Receiver adequately marketed the Assets for sale.

18 C. Adequate notice and a reasonable opportunity to object or be heard
19 regarding the relief requested in the Motion and the Receiver's Report has been
20 afforded to all interested persons and entities, including all holders of Liens (as
21 defined below) with respect to the Assets.

22 D. The Receiver having determined that the bid submitted by Purchaser
23 for \$225,000.00, with a deposit of \$25,000.00 and break-up fee of \$7,500.00 on
24 terms and conditions set forth in the Agreement as amended and/or supplemented
25 was the highest and best offer submitted for the Assets.

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28 ¹ When appropriate herein, findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact.

1 E. The Receiver has all requisite power and authority necessary to enter
2 into the Agreement and all other documents contemplated thereby, and the
3 transactions provided for therein have been duly and validly authorized by all
4 necessary action(s) of the Receiver. No consents or approvals other than those
5 expressly provided for in the Agreement are required for the Receiver to
6 consummate such transactions.

7 F. The execution and delivery of the Agreement by Purchaser and by the
8 Receiver, and the consummation of the transactions contemplated thereby, including
9 the provisions thereof with respect to the conveyance and assignment of the Assets
10 free and clear of Liens (as defined below), reflects the exercise of sound business
11 judgment by the Receiver, is a proper exercises of his fiduciary duties, is fair and
12 reasonable, and is in the best interests of the Receiver, the receivership estate, and
13 its creditors. The total consideration to be realized by the Receiver under the
14 Agreement represents fair consideration and reasonably equivalent value in the
15 context of any state or federal law governing the rights of creditors. As a result,
16 there exists good and sufficient business justification to consummate the
17 transactions contemplated by the Agreement.

18 G. The transactions contemplated under the Agreement are exempt from
19 the purview of all laws protecting the rights of creditors, including, without
20 limitation, fraudulent transfer, fraudulent conveyance, preference, and bulk sale
21 laws. The conveyance and assignment of the Assets pursuant to the Agreement will
22 be legal, valid, and effective transfers, and will vest Purchaser with all right, title
23 and interest of the Receiver in and to the Assets free and clear of all mortgages,
24 deeds of trust, security interests, conditional sale or other title retention agreements,
25 pledges, liens, mechanics', materialmens' and other consensual and non-consensual
26 liens and statutory liens, claims, reclamation claims, covenants, restrictions,
27 hypothecations, charges, indentures, loan agreements, instruments, contracts, leases,
28 licenses, options, rights of first refusal, offsets, recoupment, rights of recovery,

1 orders and decrees of any court or foreign or domestic governmental entity, claims
2 for reimbursement, contribution, indemnity or exoneration, assignment, preferences,
3 debts, charges, suits, rights of recovery, interests, alter-ego, environmental,
4 successor liability, judgments, demands, encumbrances, constructive or resulting
5 trusts, or other claims, interests, encumbrances or charges of any kind or nature, if
6 any, including but not limited to any restriction on the use, transfer, receipt of
7 income, or other exercise of any attributes of ownership (collectively, "Liens").

8 H. All holders of any Liens shall be forever barred from asserting their
9 Liens against Purchaser or its nominees, designees, successors or assigns, or against
10 the Assets. Specifically the Bank of New York Mellon and Wells Fargo Bank,
11 N.A., as trustees of certain of the Assets ("Trustees") have agreed to the release of
12 any Liens they, or the trusts for which they act as trustee, may have with respect to
13 the Assets.

14 I. The Agreement was negotiated, proposed, and entered into by the
15 parties without collusion, in good faith, and from arm's-length bargaining positions.
16 Purchaser is not an insider, relative or affiliate of the Receiver. As a result, upon
17 consummation of the transactions contemplated by the Agreement, Purchaser will
18 be deemed a purchaser in "good faith" and is entitled to the protections afforded
19 thereby. Neither the Receiver nor Purchaser has engaged in any conduct that would
20 cause or permit the Agreement, or the transfers contemplated thereby, to be avoided
21 or set aside under any state or federal law.

22 J. Absent a stay pending appeal of this Order, the reversal or modification
23 on appeal of this Order (or any other challenge to this Order including any motions
24 for reconsideration) shall not affect the validity or enforceability of actions taken in
25 reliance on this Order, including the contemplated transactions.

26 K. All objections, if any, to the Motion or the Receiver's Report have been
27 withdrawn, resolved or overruled with prejudice.

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1 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

2 1. The Receiver's request for authorization to sell the Assets out of
3 receivership, as more fully described in the Motion and the Receiver's Report is
4 GRANTED.

5 2. Subject to release of the same by Trustees, the Receivership Entities
6 hold title to the Assets, as specifically defined in the Agreement, including the
7 Lavipharm Loan, the TPG Loan, the TPG Corporate Interest, the Atlanta Property,
8 the NMPI Stock, the Kroop Note and the Judgments, together with their related
9 rights. The Trustees are hereby directed to release any interest they hold in the
10 Assets and transfer the same to the Receiver.

11 3. The terms and conditions of, and the transactions contemplated by, the
12 Agreement are hereby authorized and approved in all respects; and the Receiver is
13 fully authorized and empowered and directed to (a) execute, deliver, perform under,
14 consummate, and implement the Agreement, (b) execute all additional instruments
15 and documents that may be reasonably necessary or desirable to implement the
16 Agreement and the transactions contemplated thereby, (c) take all further actions as
17 may be necessary or appropriate for the purpose of assigning, transferring, granting
18 or conveying Assets as contemplated by the Agreement, and (d) take such other and
19 further steps as are contemplated thereby to fulfill his obligations thereunder or as
20 may be necessary to effectuate the terms of this Order.

21 4. The Assets shall be sold, transferred, and assigned to Purchaser free
22 and clear of all Liens, with such Liens to attach to the sale proceeds with the same
23 validity, amount and priority as they had with respect to the Loans.

24 5. Each and every federal, state and local governmental agency or
25 department is hereby directed to accept any and all documents and instruments
26 necessary and appropriate to consummate the transactions contemplated by the
27 Agreement. A certified copy of this Order shall be accepted by any federal, state or
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1 local recording or filing authority as evidence of the discharge of all Liens against
2 the Assets.

3 6. All persons or entities, including any governmental unit, holding any
4 Lien(s) against the Assets, or asserting any claims against the Receiver are forever
5 barred and estopped from asserting any such Liens or claims against Purchaser and
6 its respective successors and assigns.

7 7. Subject to the provisions of this Order, holders of Liens are directed to
8 execute such documents and take all other actions as may be reasonably necessary
9 to terminate and expunge such Liens against the Assets as such Liens may have
10 been recorded or may otherwise exist. To the extent that any holder of Liens refuses
11 to execute such documents as may be necessary to terminate and expunge any Liens
12 against the Assets, the Receiver and Purchaser are authorized to take such actions
13 unilaterally, including without limitation, filing UCC-3 Termination Statements to
14 release any Lien.

15 8. The consideration provided by Purchaser for the Assets constitutes
16 reasonably equivalent value and fair consideration under the laws of the United
17 States, any state, territory or the District of Columbia.

18 9. The failure, specifically, to include any particular provisions of the
19 Agreement in this Order shall not diminish or impair the efficacy of such provisions,
20 it being the intent of the Court that the Agreement be approved in its entirety and
21 further that each of the terms and conditions of the Agreement are hereby
22 incorporated in their entirety as if fully set forth herein.

23 10. The Agreement and any related agreements, documents, or other
24 instruments may be modified, amended, or supplemented by the parties thereto in
25 accordance with the terms thereof without further order of the Court, provided that
26 any such modification, amendment, or supplement is not material. The Agreement
27 and all transactions contemplated thereby, shall be binding upon any successors in
28 interest.

1 11. GlassRatner's fees and commissions are approved and the Receiver is
2 authorized to pay GlassRatner a consulting fee of \$40,000 and total commission of
3 \$40,000.00 to GlassRatner from the sale proceeds.

4 12. This Court hereafter shall and does retain exclusive jurisdiction: (a) to
5 interpret, construe, enforce and implement the terms and provisions of the
6 Agreement and this Order, all amendments thereto, any waivers and consents
7 thereunder, any agreements executed in connection therewith, and any and all
8 disputes that may arise under the Agreement or this Order; (b) to hear and determine
9 any and all disputes between the Receiver and/or Purchaser, as the case may be, and
10 any third parties relating to the Agreement; (c) compel delivery and payment of the
11 consideration provided for under the Agreement; (d) resolve any disputes,
12 controversies or claims arising out of or relating to the Agreement; and (e) interpret,
13 implement, and enforce the provisions of this Order; provided, however, that in the
14 event that this Court abstains from exercising or declines to exercise jurisdiction
15 with respect to any matter provided for in this clause, or is without jurisdiction, such
16 abstention, refusal or lack of jurisdiction shall have no effect upon and shall not
17 control, prohibit or limit the exercise of jurisdiction of any other court having
18 competent jurisdiction with respect to any such matter.

19 13. Notwithstanding anything contained in Federal Rule of Civil Procedure
20 62, Local Rule of Civil Procedure 66-8, or any other statute, regulation, or rule to
21 the contrary, this Order shall be effective immediately and not subject to any stay of
22 its effectiveness. The Receiver and Purchaser are authorized to consummate the
23 transactions contemplated in the Agreement (and rely upon the effectiveness of this
24 Order) immediately.

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26 Dated: _____, 2015

27 Hon. David O. Carter
28 Judge, United States District Court