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

12 SECURITIES AND EXCHANGE
COMMISSION,
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Plaintiff,
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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)

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH
ADDISON LARREAU;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: March 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 March 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 Medical Provider
8 Financial Corporation II (collectively, "Medical Capital" or the "Receivership
9 Entities"), for approval of a settlement agreement with Addison Larreau ("Motion").

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

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

20 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
21 above date, the Court may grant the requested relief without further notice. This
22 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: February 3, 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 September 1, 2005, Medical Capital (Medical Provider Financial
4 Corporation II) and New Life Centers, LLC ("New Life") executed a Purchase
5 Agreement ("Purchase Agreement"), under which Medical Capital had the right to
6 purchase accounts receivable from New Life for a one-year period. If New Life
7 failed to collect on the purchased accounts receivable, causing them to not reach a
8 prior agreed upon "Adjusted Value", New Life would be liable to Medical Capital
9 for the difference between the amount collected and the Adjusted Value.

10 Addison Larreau ("Larreau") and Illya Gonta ("Gonta"), the principals of New
11 Life, guaranteed the obligations of New Life under the Purchase Agreement
12 pursuant to the Guaranties executed on August 26, 2005.

13 New Life failed to collect on the initial batch of purchased accounts
14 receivable sufficient to reach the agreed upon Adjusted Value. Accordingly, on
15 November 8, 2005, New Life executed a Promissory Note in favor of Medical
16 Capital (MPFC II) in the amount of \$42,822.27, payable in 24 months with an
17 annual interest rate of eighteen (18%) percent ("Note"). Larreau and Gonta
18 guaranteed New Life's obligations under the Note.

19 On December 4, 2007, Medical Capital and MPFC II commenced an action in
20 United States District Court for the District of Nevada entitled *Medical Provider*
21 *Financial Corporation II v. New Life Centers, LLC*, Case No. 2:07-cv-01618-KJD-
22 PAL (the "Nevada Action"). The Complaint names New Life, Larreau and Gonta
23 ("Defendants") and seeks damages in the amount of \$352,043.24. Medical Capital
24 alleged that (a) New Life breached the Purchase Agreement by diverting amounts
25 collected on purchased receivables and failing to pay Plaintiffs the difference
26 between the amount received by Plaintiffs and the Adjusted Value of the
27 receivables, (b) New Life defaulted on the Note by failing to make the required
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1 payments, and (c) Larreau and Gonta breached their personal guaranties by failing
2 to satisfy New Life's obligations under the Purchase Agreement and Note.

3 On February 8, 2008, Defendants filed an Answer and asserted counterclaims
4 against MPFC II and MCC. Defendants allege that MPFC II and MCC breached the
5 Purchase Agreement by (a) failing to provide agreed upon sums in exchange for
6 accounts receivable, (b) collecting monies on accounts receivable for which they
7 never provided monies, (c) improperly rejecting certain accounts receivable, and
8 (d) intentionally and fraudulently collecting monies from third party insurance
9 companies on accounts receivable to which they had no right by impersonating New
10 Life.

11 With the assistance of counsel, the Receiver has considered the relative
12 strengths and weaknesses of the parties positions in the Nevada Action and believes
13 that Medical Capital will likely prevail. The Receiver filed a motion for summary
14 judgment in the Nevada Action, which motion is pending. In the meantime,
15 however, Larreau has stated that he will be forced to file bankruptcy if the Receiver
16 continues to pursue him on his personal guaranty. With the assistance of a
17 bankruptcy lawyer, Larreau prepared a bankruptcy petition and the required
18 bankruptcy schedules listing his assets and liabilities. Larreau provided the petition
19 and schedules to the Receiver. Larreau has stated that he will file the bankruptcy
20 petition and schedules, which must be done under penalty of perjury, if he is unable
21 to reach a settlement with the Receiver.

22 Subject to Court approval, the Receiver and Larreau have negotiated a
23 Settlement Agreement and Mutual Release ("Agreement"), under which Larreau has
24 signed a stipulated judgment in the amount of \$352,043.24. The Receiver will not
25 file or enforce the stipulated judgment provided Larreau makes a one-time, lump
26 sum cash payment to the Receiver in the amount \$26,500. The payment must be
27 made within five business days of entry of an order approving the Agreement. If the
28 Agreement is approved and the settlement payment is timely made by Larreau, then

1 the parties release all claims against one another and the Receiver will cause the
2 Nevada Action, as it pertains to Larreau, to be dismissed with prejudice. The
3 Agreement is attached to the Seaman Declaration as Exhibit A.

4 If the Agreement is not approved, the Receiver will incur additional expense
5 in pursuing Larreau and Larreau will likely file bankruptcy. The bankruptcy will
6 involve additional expense and delay for the receivership estate, and likely result in
7 a recovery smaller than the proposed settlement payment. The Receiver believes
8 that the Agreement is in the best interests of the receivership estate, and therefore
9 requests that it be approved.

10 II. ARGUMENT

11 A federal equity receiver's power to compromise claims is subject to court
12 approval. As noted by the Ninth Circuit Court of Appeals in *S.E.C. v. Hardy*, 803
13 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity
14 receivership and to determine the appropriate action to be taken in the
15 administration of the receivership is extremely broad." With regard to settlements
16 entered into by a federal equity receiver, the Court's supervisory role includes
17 reviewing and approving those settlements in light of federal court policy to
18 promote settlements before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee
19 Notes.

20 Federal courts of equity often look to bankruptcy law for guidance in the
21 administration of receivership estates. *See SEC v. Capital Consultants, LLC*, 397
22 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*, 98 F.3d
23 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d
24 657, 665 (6th Cir. 2001); *see also* Local Civil Rule 66-8 ("a receiver shall
25 administer the estate as nearly as possible in accordance with the practice in the
26 administration of estates in bankruptcy"). A bankruptcy court may approve a
27 compromise of claims asserted by or against the estate if the compromise is "fair
28 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839

1 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise negotiated
2 by a court-appointed fiduciary "is an exercise of discretion that should not be
3 overturned except in cases of abuse leading to a result that is neither in the best
4 interest of the estate nor fair and equitable for the creditors." *In re MGS Marketing*,
5 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

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

- 8 a. The probability of success in litigation;
- 9 b. The difficulties, if any, to be encountered in the matter of
10 collection;
- 11 c. The complexity of the litigation involved and the expense,
inconvenience, and delay necessarily attending; and
- 12 d. The paramount interest of the creditors and a proper
13 deference to their reasonable views in the premises.

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

15 Here, the Receiver has considered the relative strengths and weaknesses of
16 the parties positions in the Nevada Action and believes that Medical Capital will
17 likely prevail. However, it is very unlikely that the Receiver would be able to
18 enforce a judgment against Larreau. Further litigation against Larreau would likely
19 result in Larreau filing bankruptcy. A bankruptcy would delay recovery on the
20 claims against Larreau and would involve additional legal expense. Based on his
21 review of Larreau's bankruptcy schedules, the Receiver believes that the recovery in
22 a bankruptcy case would be less than the proposed settlement payment. The
23 Agreement does not affect the receivership estate's claims against New Life or
24 Gonta, and the Receiver will continue to pursue these claims. Therefore, the
25 Agreement is in the best interests of the receivership estate and should be approved.

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III. CONCLUSION

WHEREFORE, the Receiver requests entry of an order granting the Motion and approving the Agreement.

Dated: February 3, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
Thomas A. Seaman