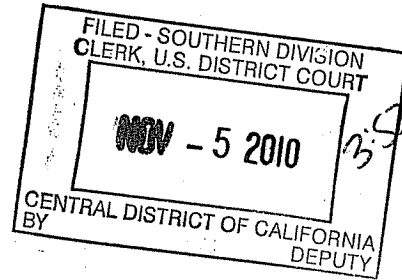


1 DAVID R. ZARO (BAR NO. 124334)
MICHAEL R. FARRELL (BAR NO. 173831)
EDWARD G. FATES (BAR NO. 227809)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 515 South Figueroa Street, Ninth Floor
Los Angeles, California 90071-3309
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
mfarrell@allenmatkins.com
6 tfates@allenmatkins.com



7 Attorneys for Receiver
THOMAS A. SEAMAN
8

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

19 Defendants.
20

Case No. SA CV09-0818 DOC (RNBx)

THIRD INTERIM FEE APPLICATION
OF THOMAS SEAMAN, RECEIVER

Date: December 6, 2010

Time: 8:30 a.m.

Ctrm: 9D

Judge: Hon. David O. Carter

1 Thomas A. Seaman (the "Receiver"), the court-appointed Permanent Receiver
2 for Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Provider
3 Funding Corporation VI, and their subsidiaries and affiliates (collectively the
4 "Receivership Entities"), submits this third interim application for approval and
5 payment of fees. This application covers the period May 1, 2010 through July 31,
6 2010 (the "Third Application Period").

7 During the Third Application Period, the Receiver and his staff spent 2,011.2
8 hours executing the duties set forth in the Temporary Restraining Order and Order
9 Appointing Receiver and the subsequent Preliminary Injunction and Order
10 Appointing Permanent Receiver, and subsequent orders of the Court. By this Third
11 Interim Fee Application, Thomas Seaman seeks approval of \$303,789.00 in fees
12 which were incurred at a weighted average hourly rate of \$151 per hour. The
13 Receiver seeks approval to pay 90% of this amount, or \$273,410.10.

14 The Receiver does not seek reimbursement of any expenses.

15 **I. PROCEDURAL OVERVIEW OF THE RECEIVERSHIP CASE.**

16 On July 16, 2009, the SEC commenced an enforcement action against
17 Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Provider
18 Funding Corporation VI, Sidney M. Field and Joseph J. Lampariello ("Defendants"),
19 alleging various violations of securities laws. On the same day, the SEC filed an Ex
20 Parte Application for Temporary Restraining Order ("TRO") and Orders: (1)
21 Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting the
22 Destruction of Documents; (4) Granting Expedited Discovery, and (5) Requiring
23 Accountings; and Order to Show Cause Re: Preliminary Injunction and
24 Appointment of a Permanent Receiver. On July 20, 2009, the Court granted the
25 TRO, however, the TRO was vacated the following day at the request of the
26 Defendants, and further briefing was submitted.

27 Thereafter, on August 3, 2009 (the "Appointment Date"), the Court entered
28 the TRO, appointing Thomas A. Seaman as temporary receiver for the Receivership

1 Entities. On August 17, 2009, the Court confirmed the appointment of the Receiver
2 and entered the Preliminary Injunction and Order Appointing a Permanent Receiver
3 ("Appointment Order"), by which Mr. Seaman was appointed as the Permanent
4 Receiver for the Receivership Entities.

5 **II. SCOPE OF THE RECEIVERSHIP CASE.**

6 The Receivership Entities were in the business of raising money through
7 broker dealers purportedly to fund lending activities which entailed making loans to
8 medical providers secured by medical accounts receivable, as well as making other
9 loans and investments, and then managing the collection of such loans and
10 investments through an operating company called Medical Capital Corporation
11 ("MCC"), a wholly owned subsidiary of Medical Capital Holdings Corporation
12 ("MCH"), defendants herein.

13 Although a billion dollars in loans were allegedly outstanding at the time of
14 the Receiver's appointment, the Defendants' accounts receivable factoring business
15 had essentially ceased and collections had slowed to a trickle. During July 2009, the
16 month prior to the appointment of the Receiver, the Defendants only collected
17 approximately \$317,000.

18 It is quite clear to the Receiver based on interviews with company personnel,
19 review of books and records of the company, review of borrowers' loan documents,
20 payment histories, security agreements and modifications thereto, and meeting with
21 borrowers, that loans were made to risky borrowers of low or poor credit quality.

22 The high risk nature of the loans made by the Receivership Entities is
23 confirmed by the Receiver's preliminary investigation of the sources and uses of
24 investor cash, which demonstrates that the Receivership Entities did not operate
25 their lending business profitably. In fact, leaving aside that the Receiver has learned
26 that many of the accounts receivable do not exist, it appears that the vast majority of
27 the real unpaid loans are non-performing. Notwithstanding the unprofitability of the

28

1 Receivership Entities' money lending activities, the money raising entities paid
2 administrative fees in excess of \$324 million to MCC.

3 The funds used to make investments were raised through the sale of
4 promissory notes to investors from Special Purpose Corporations ("SPC's"), referred
5 to as Medical Provider Financial Corporations ("MPs"). MCC was very successful
6 in attracting investors, apparently raising over \$1.7 billion from investors in the
7 MPs. At the time of the Receiver's appointment investors were owed \$1.079 billion.

8 The history of making poor credit decisions resulted in numerous foreclosure
9 actions and the Receivership Entities took possession of collateral securing many of
10 its loans. Other non-performing notes were restructured or converted to equity. The
11 consequence has been that the Receivership Entities now own a variety of assets
12 completely unrelated to its core medical accounts receivable business. The range of
13 assets includes non-operating hospitals, a feature film, a non-operating radio
14 pharmaceutical manufacturer, a wireless entertainment company, a 118 foot luxury
15 yacht, among others, in addition to numerous nonperforming notes, and a handful of
16 performing loans.

17 Following the Appointment Date, the Receiver had to analyze, investigate and
18 preserve the value of dozens of assets with a stated value of over \$1.1 billion which
19 quickly revealed that many of the loans were fictional while others were subject to
20 immediate potential impairment.

21 In addition, because the Defendants did not keep accurate books and records,
22 the Receiver is conducting a forensic accounting of the sources and uses of investor
23 funds which is expected to be completed in the next 45 days. The forensic
24 accounting entails entering transactions totaling over \$10 billion into a relational
25 database designed to identify assets of the company and recipients of ill-gotten
26 gains, as well as allow the Court to make determinations as to the nature of the fraud
27 including a likely finding that Medical Capital affiliates and subsidiaries operated a
28 unitary enterprise in a Ponzi-like manner in order to defraud investors and enrich the

1 Defendants. The forensic accounting is being performed by the Receiver and his
2 staff along with certain former employees of Medical Capital (who are paid from the
3 estate thereby greatly reducing the cost of performing the forensic accounting),
4 which would have been massively expensive if performed by an outside accounting
5 firm. During the Third Application Period the Receiver and his agents incurred fees
6 of \$51,912.50 working on the forensic accounting.

7 The preliminary forensic accounting clearly indicates that the Receivership
8 Entities' lending and investing activities were not profitable, notwithstanding that
9 the Receivership Entities were showing a profit in their financial statements and
10 income tax returns. Moreover, the Receivership Entities paid the income taxes on
11 their non-existent income. The Receiver has filed amended tax returns for 2005 and
12 2006, as well as the pre-receiver 2009 return, which the Receiver is hopeful will
13 result in significant income tax refunds.

14 Administration of the receivership estate therefore involved or continues to
15 involve a multiplicity of activities in the following varied functional areas:

- 16 • Collection efforts
 - 17 ♦ Foreclosure actions
 - 18 ♦ Actions to enforce personal guarantees
 - 19 ♦ Discounted pay-off negotiations
 - 20 ♦ Forbearance negotiations
- 21 • Claims against Receivership Entities, not all of which were covered
22 by the stay imposed by the Preliminary Injunction
- 23 • Lawsuits and other claims of lender breach relative to the collection
24 of accounts receivable that had not been financed (in at least one case,
25 the borrower had paid its debt in full and MCC continued to collect the
26 underlying accounts receivable), or Medical Capital's failure to perform
27 lending commitments
- 28 • Asset sales

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Management or oversight of operating businesses owned or otherwise controlled by Receivership Entities:
- Marketing and sale of all real property owned by the Receivership Entities, some by virtue of foreclosure
- Marketing of notes
- Marketing and maintenance of the Home Stretch (luxury yacht)
- Disposition of personal property
- Forensic accounting based on daily cash receipts and disbursements covering nearly six years and approximately \$10 billion of transactions
- Accounting for receivership receipts and disbursements segregated by MP and business operating entities
- Preparation of monthly reports filed with Court
- Handling of investor relations and communications
 - ◆ Establish and maintain website, with all pleadings promptly posted there (www.medicalcapitalreceivership.com)
- Evaluate potential causes of actions for recovery of funds for benefit of investors
- Issuance of subpoenas for banking records and then review and investigation of materials obtained to determine possible sources of recovery
- Respond to subpoenas and inquiries of several federal agencies with interest in the underlying civil litigation.
- Analyze payments made by investors compared to principal and purported interest paid to investors for the purpose of establishing a possible basis for a plan of distribution now that cash in the estate is accruing to a sizable number.

1 The Receiver's efforts resulted in gross receipts to the receivership estate in
 2 the amount of \$5,913,251.24 during the Third Application Period and can be broken
 3 down into the following categories:

4	• Sale and disposition of assets:	\$250,000.00
5	• NHBC revenue:	\$1,667,271.26
6	• Viva-Vision Revenue	\$717,802.83
7	• Loan payments:	\$2,902,875.00
8	• Accounts receivable payments:	\$42,628.04
9	• Seizure of funds:	\$152,050.47
10	• Misc. Receipts:	\$155,219.17
11	• Rental income:	<u>\$25,404.47</u>
12	Total	<u>\$5,913,251.24</u>

13 The sales and disposition of assets were solely comprised of:

14	• Deposit on Sale of Viva-Vision:	\$250,000.00
----	-----------------------------------	--------------

15 Significant loan collections included:

16	• Lavipharm:	\$2,250,000.00
17	• Velocity:	\$508,437.50
18	• Transfac:	\$119,437.50
19	• Bioquest International:	\$25,000.00

20 The gross receipts of the receivership estate, the Receiver's fees and the
 21 Receiver's fees as a percentage of gross receipts are summarized below.

22	<u>Third Fee Application</u>	<u>Inception To Date</u>
23	Gross Receipts \$ 5,913,251.24	\$ 104,450,017.01
24	Receiver's Fees \$ 303,789.00	\$ 1,360,367.50
25	Receiver's Fees as % of Receipts 5.2%	1.3%

26 As of July 31, 2010, the Receiver was holding cash in the amount of
 27 \$91,483,750.26. More currently, the receivership's gross receipts have increased
 28 since that time by nearly \$12.5 million to \$116,898,803.26, due, in large part, to the

1 efforts made during the Third Application Period. The Receiver is holding cash in
2 the amount of \$102,322,815.18 as of September 16, 2010.

3 **III. ANALYSIS OF RECEIVER'S FEES AND RELATED METRICS.**

4 Exhibit A provides a detailed listing of each and every time entry comprising
5 the Receiver's fees. In order to assist the Court in its review and analysis of the
6 Receiver's fees, the Receiver has prepared three separate analyses. The first is a
7 breakdown by timekeeper setting forth the amount of time spent by the Receiver and
8 his agents at their respective hourly rate. The next summary is a breakdown of work
9 by functional area including debt collection, accounting, forensic accounting,
10 business management, asset sales, and investor relations, among others. The third
11 breakdown is by significant asset or loan.

12 **A. Charges by Timekeeper**

13 Exhibit B provides a breakdown by timekeeper setting forth the amount of
14 time spent by the Receiver and his agents at their respective hourly rates. The
15 Receiver personally expended 129.5 hours for the Third Application Period for a
16 total cost of \$48,562.50. During the Third Application Period the Receiver expended
17 39% of his time working on the Medical Capital receivership which has declined
18 considerably as the case progressed and the initial takeover of the Receivership
19 Entities and assets was completed.

20 In order to manage the Receivership in a cost effective manner, the Receiver
21 delegates some assignments to agents who are billed at hourly rates ranging from
22 \$35 to \$300 per hour. These agents perform accounting, financial analysis, business
23 management, forensic accounting, debt collection, real estate management and other
24 services required by the receivership estate. During the Third Application Period,
25 the Receiver's agents expended 1,881.7 hours at an average hourly rate of \$136 per
26 hour. The Receiver expects the number of hours necessary to administer the
27 receivership estate to continue to gradually decline in subsequent months as the

28

1 Receiver's investigation and recovery efforts proceed, and the forensic accounting is
2 concluded.

3 By using qualified agents at significantly lower hourly rates than the
4 Receiver, the Receiver was able to achieve a weighted average hourly (blended) rate
5 of \$151 per hour for the Third Application Period which has declined from an
6 average of \$177 during the First Application Period and \$156 during the Second
7 Application Period. The Receiver believes that the hourly rates charged by the
8 Receiver are fair and reasonable given the requirements of the receivership estate.

9 **B. Charges by Task**

10 Exhibit C provides a monthly breakdown by tasks performed by the Receiver
11 and his agents, including graphs for total costs for each task by month. The total
12 hours and cost by task for the billing period are as follows:

<u>Task</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
A/R and other Debt Collections	212.6	\$175	\$37,251
Accounting and Reporting	17.1	\$148	\$2,528
Bookkeeping	287.9	\$112	\$32,221
Forensic Accounting	584.1	\$89	\$51,913
Investor Relations	27.5	\$151	\$4,166
Litigation & Support	107.4	\$199	\$21,421
Manage Business	76.4	\$148	\$11,302
Paralegal	57.9	\$115	\$6,659
Project Mgmt	317.7	\$185	\$58,803
Receiver	54.1	\$372	\$20,108
Receivership Admin	88.6	\$50	\$4,416
Research Files	15.5	\$150	\$2,325
<u>Sell Liquidate Assets</u>	<u>164.4</u>	<u>\$308</u>	<u>\$50,680</u>
Totals	2011.2	\$151	\$303,789

1 The Receiver did not charge for the cost of preparing the fee applications,
2 which took 39.9 hours to prepare during the Third Application Period at a cost
3 savings to the receivership estate of \$6,531.50.

4 **C. Charges by Asset**

5 Exhibit D provides a monthly breakdown by asset of tasks performed by the
6 Receiver and his agents. The Receiver has attempted to categorize costs by
7 significant asset. Most assets can be tied to an MP or MPs, as applicable. The pie
8 chart graph in Exhibit D displays the cost of work performed for each referenced
9 asset as a percentage of the work performed for all referenced assets during the
10 Third Application Period. Not all of the Receiver's work can be tied to specific asset
11 and there is a category for this unspecified work. This work is listed in the table
12 below as Non-Categorized but is not included in the graph. The amount of time
13 devoted to each asset and the related cost is as follows:

14 <u>Asset</u>	<u>Hours</u>	<u>Rate</u>	<u>Cost</u>
15 Castle Hill	10.9	\$272	\$2,963
16 Concept One	54.3	\$264	\$14,355
17 Edge	50.7	\$112	\$5,696
18 Emark	20.0	\$132	\$2,633
19 Gulf Pines	36.7	\$234	\$8,599
20 HCMFA	5.4	\$210	\$1,137
21 Home Stretch	73.4	\$161	\$11,832
22 IHHI	0.7	\$125	\$88
23 Lavipharm	1.9	\$129	\$245
24 NHBC	186.0	\$124	\$23,052
25 Parkway Hospital	53.5	\$227	\$12,139
26 Perfect Game	61.7	\$155	\$9,559
27 Pyramid	2.0	\$375	\$750
28 Red Hill	1.7	\$73	\$124

1	Southwest Atlanta Hospital	133.5	\$261	\$34,905
2	TEEM, Macaluso	28.7	\$82	\$2,349
3	TRACE	105.2	\$283	\$29,722
4	Valley Health	1.5	\$188	\$282
5	Velocity (mail.com)	12.6	\$338	\$4,264
6	<u>Vivavision</u>	<u>96.2</u>	<u>\$129</u>	<u>\$12,373</u>
7				
8	Total Referenced Categories (Excludes			
9	work not related to specific assets)	936.6	\$189	\$177,063
10	<u>Non-Categorized</u>	<u>1,074.6</u>	<u>\$118</u>	<u>\$126,726</u>
11				
12	Totals	2,011.2	\$151	\$303,789

13 **IV. CONCLUSION.**

14 The Receiver believes his fees are fair and reasonable in view of the
15 circumstances encountered by the Receiver. The Receiver has worked diligently to
16 perform his duties in an efficient and cost effective manner. Therefore, the Receiver
17 respectfully requests an order:

- 18 1. Approving fees totaling \$303,789.00 for the Third Application
- 19 Period;
- 20 2. Authorizing the Receiver to pay 90% of such sum, or
- 21 \$273,410.10, out of assets of the receivership estate; and
- 22 3. For other and further relief as is appropriate.

23 I declare under penalty of perjury under the laws of the United States that the
24 foregoing is true and correct.

25 Executed this 5th day of November, 2010, at Los Angeles, California.

26
27
28



THOMAS SEAMAN

THIRD INTERIM FEE APPLICATION OF
RECEIVER