

1 DAVID R. ZARO (BAR NO. 124334)
MICHAEL R. FARRELL (BAR NO. 173831)
2 TED FATES (BAR NO. 227809)
ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP
515 South Figueroa Street, Ninth Floor
4 Los Angeles, California 90071-3309
Phone: (213) 622-5555
5 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
6 mfarrell@allenmatkins.com
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,
16 INC.; MEDICAL CAPITAL
CORPORATION; MEDICAL
17 PROVIDER FUNDING
CORPORATION VI; SIDNEY M.
18 FIELD; and JOSEPH J.
LAMPARIELLO,

19 Defendants.
20

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

**DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF MOTION
FOR ORDER APPROVING (A) SALE
OF LOANS MADE TO TRACE LIFE
SCIENCES, INC. AND (B)
BROKER'S FEE**

Date: May 2, 2011
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

21
22 I, Thomas A. Seaman, declare as follows:

23 1. I am the Court-appointed permanent receiver for Medical Capital
24 Holdings, Inc., Medical Capital Corporation, and Medical Provider Funding
25 Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital"
26 or the "Receivership Entities"). The following facts are within my knowledge and if
27 called as a witness I would testify to them under oath.
28

1 2. On November 10, 2006, Medical Capital (Medical Provider Financial
2 Corporation III) issued two loans to Trace and executed an accounts receivable
3 purchase agreement with Trace. The Loans, which were amended by Medical
4 Capital and Trace a total of four times to, among other things, increase the available
5 amount of credit and extend the maturity dates, consist of a term loan, the principal
6 balance of which is \$9.8 million, a non-revolving line of credit, under which a total
7 of \$18.7 million was advanced, and an accounts receivable purchase agreement,
8 under which Medical Capital advanced \$3.48 million, collected \$2.94 million, and is
9 owed \$536,000 from Trace.¹ The Loans, which matured and became due in full on
10 March 2, 2009, are secured by the real property and improvements located at the
11 two Trace facilities in Denton, Texas, all personal property of Trace, including a
12 linear accelerator, two cyclotrons, and all of Trace's intellectual property rights
13 (collectively, the "Collateral"). The aggregate amount due under the term loan, line
14 of credit and accounts receivable purchase agreement, including accrued interest, is
15 approximately \$40.5 million.

16 3. Trace is owned 70% by AMBO99, Inc. ("AMB099") and 30% by
17 Medical Capital. AMBO99 is owned 100% by Trace Holdings (US), Inc. ("Trace
18 Holdings"), which in turn is owned 100% by Darren Brown. AMBO99, Trace
19

20 ¹ Under the Purchase Agreement, each batch of accounts receivable was assigned
21 an Estimated Net Receivable or "ENR" value that Medical Capital expected to
22 collect. Medical Capital advanced a percentage of the ENR and retained a
23 reserve balance. The amount owed (\$536,000) is not the result of lower than
24 expected collections. Instead, it appears that all accounts receivable were
25 collected to at least their ENR, but Medical Capital made advances to Trace in
26 excess of accounts receivable purchases. These over-advances were made
27 between December 2008 and March 2009, and were described as "reserve
28 releases" on Medical Capital's books. Therefore, it appears that Medical Capital
was providing funding to Trace during this period under the guise of releasing
reserves. In reality, the entire reserve balance had been released as of early
December 2008. My investigation also indicates, as the SEC alleges in its
Second Amended Complaint, that Medical Capital, while under the control of
Defendants Field and Lampariello, fabricated accounts receivable purchases
from Trace, listed the fabricated receivables on collateral coverage reports, and
sold them from Medical Provider Financial Corporation IV ("MPFC VI") and
MPFC V to MPFC VI in order to move MPFC VI investor funds to earlier
MPFC offerings.

1 Holdings and Darren Brown executed guarantees for the Loans and pledged their
2 interests in Trace as additional security. My investigation indicates that Darren
3 Brown, AMBO99 and Trace Holdings do not have any assets of value other than
4 their interests in Trace.

5 4. In April 2008, Trace defaulted, failing to pay interest due on the Loans.
6 In May 2008, Trace and Medical Capital executed a forbearance agreement, under
7 which Medical Capital made an emergency loan to Trace in the amount of \$300,000
8 for the purpose of allowing Trace time to find new investors or a purchaser.

9 5. In September 2008, Trace defaulted again. Trace had exhausted the
10 funds advanced by Medical Capital and was unable to obtain other funding.
11 Medical Capital exercised proxy rights over Trace's stock under the pledge
12 agreement, and elected new officers of Trace, AMBO99 and Trace Holdings. The
13 new officers retained NuView Life Sciences ("NuView") to replace Trace's existing
14 management and manage the two facilities. Medical Capital agreed to indemnify
15 NuView and its officers from any and all liabilities arising from their management
16 of the Trace facilities, unless such actions or omissions were negligent or willful.²

17 6. In addition to exercising the proxy rights discussed above, on
18 September 19, 2008, Medical Capital sued Trace, AMBO99, Trace Holdings and
19 Darren Brown to collect the amounts owed under the Loans. The action was filed in
20 Nevada, the forum specified under the loan documents (the "Nevada Action").

21 7. After Medical Capital caused Trace to elect new officers, and NuView
22 had been retained, Darren Brown and certain other employees of Trace refused to
23 allow NuView to enter the Trace premises and manage the facilities. Therefore, on
24 the same day as the Nevada Action was filed, Medical Capital filed an emergency
25 petition in Texas state court to obtain immediate injunctive relief necessary to secure
26 the Collateral and protect Trace's operations (the "Texas Action"). The requested
27

28 ² I have found no evidence linking NuView or its principal Paul Crowe to Trace or
Medical Capital prior to NuView's engagement as manager of the facilities.

1 Temporary Restraining Order was entered by the Texas court on the same day the
2 emergency petition was filed, and Darren Brown was ordered not to interfere with
3 NuView's management and operation of Trace. Darren Brown contested the
4 validity of the Loan default and the actions taken by Medical Capital, among other
5 things, and asserted counterclaims in the Texas Action against Medical Capital,
6 NuView and NuView's principal Paul Crowe.

7 8. Trace was unable to operate on a cash positive basis. Accordingly,
8 with NuView managing the facilities, Trace's staff and operations were scaled back
9 to four scientists who maintain the facility, and keep the license in compliance with
10 the DSHS. As a result, the license was amended by the DSHS from permitting
11 production of radiochemicals and radiopharmaceuticals to simply allowing storage
12 of existing hazardous waste and maintenance of the linear accelerator, cyclotrons
13 and other equipment in an inactive state.

14 9. After my appointment, I was promptly contacted by NuView and
15 advised that Trace had failed to pay, and was unable to pay its power bills, and that
16 Trace had been warned that power to the facilities would soon be shut off. Loss of
17 power to the facilities would likely result in loss of Trace's license, triggering a
18 "decommissioning" requirement (discussed further below), and posing a potential
19 public safety issue. NuView also advised that the four scientists maintaining the
20 facilities had not been paid by Trace for several pay periods and would likely resign
21 if they were not promptly paid. The lack of qualified scientists to maintain the
22 facilities would also likely have resulted in a loss of the license.

23 10. After several meetings with NuView, the four scientists at the facilities,
24 and conversations with authorities from the City of Denton and DSHS, and having
25 visited and toured the facilities in person, I agreed to pay the power bills and payroll
26 for the four scientists from the receivership estate in order to preserve the value of
27 the Collateral. I have continued to pay utility bills, payroll and other bills necessary
28

1 to maintain the facilities and preserve the value of the Collateral while pursuing
2 options for maximizing the recovery for the receivership estate.

3 11. The Court's Preliminary Injunction enjoins and restrains the
4 counterclaims asserted by Darren Brown in the Texas Action. That action remains
5 open, but has been inactive since the my appointment. The Nevada Action only
6 involved claims asserted by Medical Capital; no claims were asserted against the
7 receivership entities. Darren Brown moved to dismiss the Nevada Action. The
8 motion was granted, and the Nevada Action was dismissed without prejudice.

9 12. Trace owes more than \$1.1 million in unpaid property taxes, and has
10 accounts payable of approximately \$2.1 million.

11 13. I contacted two real estate brokers in the Denton, Texas area. Based on
12 my discussions with these brokers, I believe that the combined value of the two
13 facilities is in the \$1.25 million to \$2.2 million range. These estimated values
14 assume that the facilities are in a fully decommissioned state, which they are not.

15 14. Based on these estimates, and the estimates from Dr. Arno for the cost
16 to decommissioning the facilities and the value of the equipment at the facilities, and
17 considering the broker commissions and other costs of sale that would have to be
18 paid, I determined that foreclosure was unlikely to generate a recovery for the
19 receivership estate, and could well result in a significant loss.

20 15. In September 2009, NuView Molecular Pharmaceuticals ("Purchaser"),
21 a wholly owned subsidiary of NuView, made an offer to purchase the Loans. Over
22 the course of several months, I evaluated the offer and the parties negotiated sale
23 terms. In April 2010, subject to Court approval, the parties executed a Purchase and
24 Sale Agreement with a purchase price of \$2.5 million. The sale was subject to
25 overbid by qualified bidders. Purchaser was required to deposit \$250,000 within 30
26 days of executing the agreement, upon receipt of which, I would seek Court
27 approval of the sale.

28

1 16. At the same time as the agreement with NuView and Purchaser was
2 executed, I retained Broker to market the Loans. At that time, the sale agreement
3 with Purchaser was subject to overbid. Accordingly, the marketing agreement with
4 Broker provided that, subject to Court approval, Broker would be paid a flat fee of
5 \$29,000 as consideration for its marketing efforts to potential overbidders if the
6 Loans were sold to NuView/Purchaser. If the Loans were sold to an overbidder,
7 Broker would be paid a commission equal to fifteen (15%) percent of the portion of
8 the purchase price that exceeded \$2.5 million, up to a maximum of \$200,000. This
9 provided a significant financial incentive for Broker to generate offers for the Loans.

10 17. Purchaser did not make the \$250,000 deposit within the 30-day period
11 required under the agreement, and explained that it was unable to obtain necessary
12 financing. Purchaser requested and I granted two extensions of Purchaser's deadline
13 to make the deposit. When Purchaser still did not make the deposit, I decided not to
14 further extend the deadline.

15 18. Despite Broker's efforts to market the Loans, no one other than
16 NuView/Purchaser signed a letter of intent or made an offer for the Loans.
17 Purchaser had not demonstrated the ability to close a sale at \$2.5 million. The costs
18 to maintain the Trace facilities continued to be borne by the receivership estate.

19 19. Therefore, on December 8, 2010, pursuant to my instructions, Trace
20 issued NuView a 90-day notice of termination of the NuView management
21 agreement. At the same time, I told NuView/Purchaser that I would, subject to
22 Court approval, reduce the price for the Loans to \$1.5 million, provided
23 (a) Purchaser was able to close the sale within the 90-day period before the
24 management agreement terminated,³ and (b) NuView and Purchaser released
25 Medical Capital from any and all indemnity claims, and indemnified Medical
26

27 _____
28 ³ Although the sale did not close within the 90-day window, I agreed to instruct
Trace to extend the termination of the management agreement until this motion
could be heard, and if approved, until after the closing date.

1 Capital from all litigation with Darren Brown.⁴ Purchaser expressed its continued
2 desire and intention to purchase the Loans, but stated that it would not be able to
3 obtain necessary financing if the sale were subject to overbid. The parties continued
4 to discuss terms. On March 4, 2011, Purchaser made a \$250,000 deposit. NuView,
5 Purchaser and I then executed an Amended and Restated Purchase and Sale
6 Agreement ("Agreement"), a copy of which is attached hereto as Exhibit A.

7 20. Under the Agreement, Medical Capital's rights as lender to receive
8 insurance payments resulting from damage or loss to the Collateral will be assigned
9 to Purchaser. Certain insurance claims arising from water damage to the facilities
10 are pending. In addition, Purchaser will receive a credit against the purchase price
11 in the amount of an insurance payment I previously received as a result of theft of
12 certain equipment from the Trace facilities. The scientists at the Trace facilities
13 advised that the theft and other damages sustained at the facilities do not pose any
14 threat to the safe storage of hazardous waste or the maintenance of the linear
15 accelerator, cyclotrons and other equipment at the facilities in compliance with
16 Trace's license.

17 21. Medical Capital will suffer a direct loss of approximately \$39 million
18 as a result of the Loans made to Trace. I believe that the loss is attributable to the
19 lack of adequate collateral and the high level of risk associated with the Loans.
20 Trace never generated a profit and never operated on cash positive basis. According
21 to reports provided by Trace, in its biggest month in terms of gross revenue, it
22 generated less than \$150,000. Trace's monthly gross revenue when it was
23 manufacturing products was generally in the \$50,000 range. Therefore, the value of
24 Trace as a business, if it had any value, was highly speculative. The value of the
25

26 ⁴ The original purchase and sale agreement with Purchaser at the \$2.5 million
27 purchase price did not include a release of the Medical Capital indemnity of
28 NuView and its officers, or an indemnity in favor of Medical Capital. Therefore,
had the original sale been approved and closed, it is very possible that NuView
and its principal Paul Crowe would have asserted indemnity claims against the
receivership estate as a result of having to defend Darren Brown's claims.

1 real estate and equipment was impaired as a result of Trace's use and storage of
2 hazardous materials, and even if the real estate and equipment were not so impaired,
3 they would be inadequate security for loans in the principal amount of
4 \$28.5 million.

5 22. The loss is exacerbated by Medical Capital's decisions to advance
6 additional funds. As noted above, the Loans were amended by Medical Capital and
7 Trace a total of four times to, among other things, increase the amount of credit and
8 extend the maturity dates. Moreover, beginning with the first interest payment in
9 January 2007, in lieu of receipt of an actual payment from Trace, Medical Capital
10 would at times capitalize the interest payment due on the term loan (adding the
11 interest payment to the principal balance), or draw down the line of credit and
12 record a payment of interest on the term loan in the same amount. In these
13 instances, the funds never actually left Medical Capital and were simply accounting
14 entries on the books.

15 23. I have investigated the history and status of the Loans, reviewed
16 financial statements and reports for Trace, toured the Trace facilities, reviewed the
17 status of Trace's license, had conversations with representatives of the DSHS, and
18 reviewed the litigation with Darren Brown. In considering options for maximizing
19 the recovery for the receivership estate, I have consulted with two real estate brokers
20 and a nuclear engineer in Texas regarding the value of the Collateral and potential
21 decommissioning costs, and considered the substantial ongoing costs to maintain the
22 facilities and the license. Based on all of these factors, the extensive marketing
23 efforts by Broker, and the lack of other offers for the Loans, I believe that the
24 proposed sale is in the best interests of the receivership estate.

25 24. If the sale is not approved, the prospects of a recovery from Medical
26 Capital's interests in Trace are low. Even if the high end of estimated values of the
27 Collateral and the low end of estimated decommissioning costs are attained, there
28 would likely be no recovery for the receivership estate. Considering the costs to

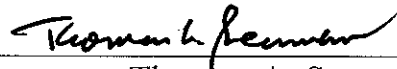
1 foreclose on the Collateral, broker commission and other costs of selling the real
2 estate, auctioneer commission and other costs of selling the equipment, and the
3 ongoing costs to maintain the facilities until they could be sold, the receivership
4 estate would most likely bear a significant loss.

5 25. The receivership estate will receive a five (5%) percent interest in
6 Purchaser. In the event that Purchaser successfully revives Trace, makes it a
7 profitable business, and either goes public, sells it or recapitalizes it, the receivership
8 estate stands to recover from the redemption/repurchase of its interest in Purchaser.

9 26. Broker has invested substantial time into locating potential purchasers
10 and providing them with due diligence materials. Although Broker was not able to
11 locate any other parties willing to make an offer for the Loans, I believe this is not a
12 reflection of Broker's skill or effort in marketing the Loans, but rather the unusual
13 nature of Trace's business, concerns regarding hazardous waste at the facilities, and
14 the pending litigation with Darren Brown. Based on my experience with similar
15 transactions, I believe that the proposed \$29,000 fee is commercially reasonable,
16 and consistent with what brokers with similar experience and expertise would
17 charge for the same services.

18
19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on April 1, 2011, at Irvine, California.

21
22 

23 Thomas A. Seaman