

1 DAVID R. ZARO (BAR NO. 124334)  
MICHAEL R. FARRELL (BAR NO. 173831)  
2 EDWARD G. 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  
8 THOMAS A. SEAMAN

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.

Case No. SA CV09-0818 DOC (RNBx)

DECLARATION OF RICHARD B.  
HERZOG, JR., IN SUPPORT OF FIRST  
INTERIM FEE APPLICATION OF  
NELSON MULLINS RILEY &  
SCARBOROUGH LLP, FOR  
RECEIVERSHIP ENTITY GEORGIA  
MEDICAL PROVIDER FUNDING  
CORPORATION

Date: June 13, 2011  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

1 Richard B. Herzog, Jr. (Ga. Bar No. 349508)  
2 NELSON MULLINS RILEY  
& SCARBOROUGH LLP  
3 201 17<sup>th</sup> Street, N.W., Suite 1700  
Atlanta, Georgia 30363  
4 Telephone: (404) 322-6000  
Facsimile: (404) 322-6050

5 Attorneys for  
6 GEORGIA MEDICAL PROVIDER FUNDING CORPORATION

7 UNITED STATES DISTRICT COURT FOR THE  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 SOUTHERN DIVISION

10 SECURITIES AND EXCHANGE  
11 COMMISSION,

12 Plaintiff,

13 v.

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

18 Defendants.

Case No.: SA CV09-0818 DOC (RNBx)

DECLARATION OF RICHARD B.  
HERZOG, JR., IN SUPPORT OF FIRST  
INTERIM FEE APPLICATION OF  
NELSON MULLINS RILEY &  
SCARBOROUGH LLP FOR  
RECEIVERSHIP ENTITY GEORGIA  
MEDICAL PROVIDER FUNDING  
CORPORATION

Date: June 13, 2011

Time: 8:30 a.m.

Ctrm: 9D

Judge: Hon. David O. Carter

19  
20 I, Richard B. Herzog, Jr., declare as follows:

21  
22 1. I am a partner with the law firm Nelson Mullins Riley & Scarborough LLP  
23 ("NMRS") in its Atlanta, Georgia, office. NMRS has been retained by Thomas A.  
24 Seaman ("Receiver") to act as, and currently serve as, counsel for Georgia Medical  
25 Provider Funding Corporation ("GMPFC"), an affiliate of one or more of the  
26 Receivership entities. I submit this declaration in support of NMRS's First Interim Fee  
27 Application, filed contemporaneously herewith.  
28

1 2. In September 2009, the Receiver contacted NMRS and sought legal assistance  
2 and advice with respect to a proposed sale of the Southwest Atlanta Medical Center  
3 ("Property"), a hospital facility in Atlanta, Georgia, owned by GMPFC. Following  
4 substantive discussions, the Receiver engaged NMRS in October 2009 to represent  
5 GMPFC with respect to legal matters regarding the proposed sale of the Property. The  
6 Receiver selected NMRS because of its familiarity with the Property and the  
7 receivership entities because NMRS had represented Medical Provider Funding  
8 Corporation II and GMPFC with respect to the Property in 2007. NMRS also  
9 represented GMPFC in two separate bankruptcy cases with respect to matters  
10 involving patient files located on the Property premises.

11 3. I am the lead counsel for NMRS and GMPFC with respect to the foregoing  
12 matters ("GMPFC Matters") and the attorney primarily responsible for the supervision  
13 of the legal work performed in connection therewith. I have personally reviewed the  
14 billings in these matters and, therefore, have personal knowledge of the facts stated in  
15 this declaration, which I would testify to if called upon to do so.

16 4. Attached hereto as Exhibit A is a detail of the fees and expenses generated by  
17 NMRS in the course of its representation of GMPFC from September 1, 2009, through  
18 May 31, 2010 ("First Interim Fee Period") with respect to the GMPFC Matters.

19 5. I have practiced law in the State of Georgia for over thirty years and have  
20 extensive experience in, among other areas of law, real estate workouts, foreclosures,  
21 real estate purchases and sales, and bankruptcy. I earned my law degree from the  
22 University of Georgia in 1979 and have held numerous posts in the Georgia Bar  
23 Association and Atlanta Bar Association, including President of the Atlanta Bar  
24 Association. I am admitted to practice in all Georgia state trial courts; the United  
25 States District Courts for the Northern and Middle Districts of Georgia, and the United  
26 States Supreme Court.

27 6. Bradley Denson, a partner at NMRS, also provided legal services related to the  
28 GMPFC Matters during the First Interim Fee Period. Mr. Denson has practiced law

1 since 1993 and has practiced law in the State of Georgia since 1994. Mr. Denson  
2 earned a Master of Laws in Taxation from New York University School of Law in  
3 1995 and is admitted to practice in the trial courts in the State of Georgia. Mr. Denson  
4 is counsel to developers and several national financial institutions in the areas of  
5 commercial real estate lending, acquisition, and development of commercial real  
6 property, as well as foreclosure and workouts involving commercial real property.

7 7. James Holmes, of counsel to NMRS, also provided legal services related to the  
8 GMPFC Matters during the First Interim Fee Period. Mr. Holmes has practiced law  
9 since 1993 and has practiced law in the State of Georgia since 1998. Mr. Holmes  
10 obtained a Bachelor of Science in Civil Engineering and, prior to practicing law, was a  
11 civil engineer for nine years. Mr. Holmes is admitted to practice in the trial courts in  
12 the State of Georgia. Mr. Holmes has extensive experience in negotiating commercial  
13 real estate transactions, real estate finance and development, landlord/tenant law, and  
14 foreclosures.

15 8. Byron Starcher, an associate at NMRS, also provided legal services related to  
16 the GMPFC Matters during the First Interim Fee Period. Mr. Starcher has practiced  
17 law in the State of Georgia since 2001. Mr. Starcher is admitted to practice in all  
18 Courts in the State of Florida, all Georgia state trial courts; the United States District  
19 Courts for the Northern, Middle, and Southern Districts of Georgia, and the United  
20 States Supreme Court. Mr. Starcher has extensive experience in bankruptcy matters,  
21 commercial litigation, and real estate foreclosures. Mr. Starcher also represented  
22 Medical Provider Funding Corporation II and GMPFC with respect to matters touching  
23 upon the Property in 2007.

24 9. NMRS worked diligently in representing the interests of the Receiver and  
25 GMPFC during the First Interim Fee Period, and I staffed the various tasks to be  
26 performed as efficiently as possible. During the First Interim Fee Period, NMRS spent  
27 37.7 hours in connection with the GMPFC Matters, totaling \$16,823.00 in fees.

28

1 10. During the First Interim Fee Period, NMRS also incurred \$4,202.44 in out-of-  
2 pocket expenses related to the GMPFC Matters, of which \$4,186.75 were related to  
3 real estate title research and title insurance commitments performed by or obtained  
4 from a title insurance company in contemplation of the sale of the Property. Of this  
5 amount, \$1,281.00 in expenses are expenses related to title work performed by an  
6 outside title insurance company that have been billed to NMRS for work actually  
7 performed but have not yet been paid. The balance of expenses incurred of \$15.69  
8 consist of \$11.00 in parking expenses related to hearing attendance, \$2.85 in telephone  
9 charges, and \$1.84 in ECM/ECF charges.

10 11. In its First Interim Fee Application, NMRS seeks reimbursement of fees in the  
11 amount of \$16,823.00 and expenses in the amount of \$4,202.44. The work for which  
12 NMRS was engaged to perform has been largely completed (NMRS has not performed  
13 legal services for GMPFC since September 2010), though NMRS may be requested to  
14 perform additional legal services in the future. Accordingly, NMRS requests that the  
15 Court authorize the Receiver to pay 100% of NMRS's requested fees and 100% of  
16 NMRS's requested reimbursement of expenses.

17 12. I believe NMRS's request for reimbursement of fees and expenses as set forth  
18 above are fair and reasonable and were necessarily incurred in the representation of  
19 GMPFC to accomplish the goals for which NMRS was engaged. The fees charged by  
20 NMRS for its attorneys are charged at the rate normally charged NMRS's clients by the  
21 attorneys involved on similar matters and are rates comparable to those charged in  
22 Atlanta, Georgia, by firms of the size of NMRS's Atlanta office for matters of similar  
23 complexity.

24

25

26

27

28

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

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

This 12 day of May, 2011.


  
Richard B. Herzog, Jr.

EXHIBIT A

09/16/09	Conference with Mr. Farrell regarding litigation, trustee funds and real estate; forward litigation covers to Mr. Farrell. R.B. HERZOG	0.50 hrs.	\$250.00
10/22/09	Conference with Mr. Choi and Mr. Massinga regarding title, survey, PSA, CON, claims, environmental, property taxes and related issues. R.B. HERZOG	0.80 hrs.	\$420.00
10/23/09	Review tax register spreadsheet; conference with Mr. Starcher. R.B. HERZOG	0.50 hrs.	\$262.50
10/26/09	Review and revise form purchase and sale agreement. B.J. DENSON	1.80 hrs.	\$810.00
10/26/09	Conference with Ms. Vavak regarding tax parcels; telephone conference with Surveyor regarding same; review PSA; conference with Mr. Denson; memo to Mr. Denson. R.B. HERZOG	1.30 hrs.	\$682.50
10/27/09	Revise purchase and sale agreement, send email to Rick regarding changes. B.J. DENSON	2.80 hrs.	\$1,260.00
10/27/09	Draft request for title review; review redline and comments; conference with Mr. Denson; draft memo to Mr. Masenga. R.B. HERZOG	0.70 hrs.	\$367.50
10/27/09	Initiate title search with Ray Zemanek. S. DAYA	0.50 hrs.	\$87.50
10/28/09	Check on timing of title searches; draft memo to Ms. Vavak. R.B. HERZOG	0.30 hrs.	\$157.50
10/29/09	Conference with Mr. Cranshaw regarding medical records and \$50k; review and respond to memos from Ms. Vavak regarding property, medical records and cash. R.B. HERZOG	0.70 hrs.	\$367.50
11/02/09	Review timing on bankruptcy auction and bid price; memo to Ms. Vavak; conference with Ms. Daya regarding title searches; draft memo to Ms. Vavak. R.B. HERZOG	0.50 hrs.	\$262.50
11/02/09	Located MedCap purchase documents and orders from bankruptcy sale and summarized for Attorney Herzog. B.C. STARCHER	0.50 hrs.	\$147.50

EXHIBIT A Page 2 of 5

11/03/09	Review title reports; draft memo to Ms. Vavak; review response; draft memo to Ms. Daya regarding matching suits to liens. R.B. HERZOG	0.60 hrs.	\$315.00
11/09/09	Review title reports; draft memo to Ms. Vavak; telephone conference with surveyor. R.B. HERZOG	0.60 hrs.	\$315.00
11/11/09	Review title reports, exception documents, deed records and tax maps; correlate parcels listed in spreadsheet with ownership. J.E. HOLMES	4.10 hrs.	\$1,783.50
11/12/09	Telephone conference with Mr. Marshall regarding title matters. J.E. HOLMES	1.10 hrs.	\$478.50
11/13/09	Revise and circulate spread sheet for Fulton County properties. J.E. HOLMES	1.50 hrs.	\$652.50
11/16/09	Telephone conferences with Mr. Marshall and Mr. Zemanek regarding title report for Overall Hospital Site. J.E. HOLMES	0.30 hrs.	\$130.50
11/16/09	Calls and e-mails to various courts to update status of litigation against MedCap entities. B.C. STARCHER	0.60 hrs.	\$177.00
11/18/09	Review lawsuits and judgments; telephone conferences with Herzog regarding same. J.E. HOLMES	0.90 hrs.	\$391.50
11/18/09	Calls to courts and plaintiffs to update status of litigation against MedCap entities; updated our information sheet and forwarded to Attorney Herzog. B.C. STARCHER	0.40 hrs.	\$118.00
11/19/09	Review of proposed sale motions and orders for receiver. B.C. STARCHER	0.50 hrs.	\$147.50
11/20/09	Review motions; draft comment memo; conference with Mr. Holmes regarding judgments and rights of SEC receiver. R.B. HERZOG	0.60 hrs.	\$315.00
11/20/09	Telephone conferences with Mr. Fates, Ms. Vavak, Mr. Zemanek and Mr. Herzog regarding sale of property and transfer of lien to proceeds; review purchase and sale agreement.		



EXHIBIT A Page 3 of 5

	J.E. HOLMES	1.60 hrs.	\$696.00
11/25/09	Memo to Ms. Vasak regarding medical records; telephone conference with Mr. Faile regarding deficiency; draft memo to Mr. Holmes regarding same.		
	R.B. HERZOG	0.50 hrs.	\$262.50
11/30/09	Review title; discuss liens with Ms. Daya and Ms. Vavak.		
	J.E. HOLMES	0.80 hrs.	\$348.00
11/30/09	Review title work for monetary liens and prepare checklist.		
	S. DAYA	2.00 hrs.	\$350.00
12/01/09	Conference with Mr. Holmes regarding liens and related issues; telephone conference with Mr. Cranshaw regarding Trustee funds and medical records; conference with Ms. Vavak regarding same.		
	R.B. HERZOG	0.80 hrs.	\$420.00
12/03/09	Review Cranshaw memo; draft memo to Ms. Vavak.		
	R.B. HERZOG	0.30 hrs.	\$157.50
12/07/09	Prepare checklist and time line for closing deliveries.		
	S. DAYA	1.00 hrs.	\$175.00
01/19/10	Review and forward notice to Ms. Vavak.		
	R.B. HERZOG	0.20 hrs.	\$105.00
01/29/10	Telephone conference with Mr. Cranshaw regarding medical records and dismissal of bankruptcy.		
	R.B. HERZOG	0.30 hrs.	\$157.50
02/15/10	Telephone conference with Mr. Cranshaw regarding dismissal of case; draft memo to Ms. Vavak regards medical records, sale and related issues; review Vavak response; draft follow up to Mr. Cranshaw; telephone conference with Ms. Vavak.		
	R.B. HERZOG	1.00 hrs.	\$525.00
03/11/10	Review memo from Ms. Vavak regarding medical records; draft memo to Mr. Cranshaw regarding same and dismissal; review Cranshaw response; draft update to Ms. Vavak.		
	R.B. HERZOG	0.50 hrs.	\$262.50
03/31/10	Review memo from Ms. Vavak; telephone conference with Mr. Cranshaw regarding excess proceeds and contract; draft memos to Ms. Vavak; review replies.		
	R.B. HERZOG	0.60 hrs.	\$315.00

EXHIBIT A Page 4 of 5

04/01/10	Draft memo to Ms. Vavak regarding records location; review contract; review response; draft memo to Mr. Cranshaw regarding records retention. R.B. HERZOG	1.00 hrs.	\$525.00
04/05/10	Review executed agreement; draft memo to Mr. Cranshaw regarding records retention and dismissal of case; draft memo to Ms. Vavak regarding prospective buyer. R.B. HERZOG	0.50 hrs.	\$262.50
05/12/10	Telephone conference with Ms. Vavak; telephone conference with Mr. Cranshaw regarding dismissal. R.B. HERZOG	0.40 hrs.	\$210.00
05/27/10	Draft memo to Mr. Cranshaw; review and forward response. R.B. HERZOG	0.20 hrs.	\$105.00
06/11/10	Conference with Mr. Cranshaw regarding hearing, dismissal and funds. R.B. HERZOG	0.30 hrs.	\$157.50
06/17/10	Review consent Order; draft memo to Ms Vavak; review response. R.B. HERZOG	0.50 hrs.	\$262.50
06/21/10	Conference with Mr. Cranshaw regarding hearing preparation; draft memo to Ms. Vavak. R.B. HERZOG	0.40 hrs.	\$210.00
06/22/10	Prepare for and attend dismissal hearing; conference with Ms. Parks regarding balance. R.B. HERZOG	2.00 hrs.	\$1,050.00
06/23/10	Review memo from Ms Vavak and continuance of sale hearing; draft report to Ms. Vavak. R.B. HERZOG	0.40 hrs.	\$210.00
09/21/10	Review request for production of medical records; draft memo to Ms. Savak. R.B. HERZOG	0.30 hrs.	\$157.50

Fees for Legal Services ..... \$16,823.00

Other charges:

11/13/2009	Metropolitan Title Agency, Inc.; Invoice #4249; Title Examinations	702.00
11/13/2009	Metropolitan Title Agency, Inc.; Invoice #4261; Title Examinations	944.00

EXHIBIT A Page 5 of 5

11/13/2009	Metropolitan Title Agency, Inc.; Invoice #4262; Title Examinations	1,254.00
11/16/2009	Telephone 1-913-715-3300	0.15
11/18/2009	Telephone 1-913-715-3810	0.10
11/18/2009	Telephone 1-913-715-3400	0.10
11/20/2009	Telephone 1-619-233-1155	0.75
11/20/2009	Telephone 1-949-265-8414	0.40
12/07/2009	Telephone 1-949-265-8414	0.10
12/08/2009	Telephone 1-949-265-8414	0.40
12/17/2009	Bank of America; Invoice#122209; Library Purchases GSCCCA Invoice 10/01/09 - 10/31/09 (real property/lien records search fee)	1.75
01/15/2010	Bank of America; Invoice#: 011810; Library Purchases GSCCCA Invoice 12/01/09 - 12/31/09 (real property/lien records search fee)	4.00
01/21/2010	PACER Service Center; Invoice#: 01062010; Online Quarterly Billing (10/01/09 - 12/31/09).	1.84
07/07/10	Richard B. Herzog, Jr.; Invoice#: 063010; Courthouse parking for Bankruptcy Hearing	11.00
12/18/2010	Telephone 1-949-222-0551	0.10
12/18/2010	Telephone 1-213-622-5555	0.15
12/22/2010	Telephone 1-213-622-5555	0.05
2/14/2010	Telephone 1-213-622-5555	0.55
11/19/2009	Bill of Metropolitan Title Agency, Inc. (real property title examiner) to Nelson Mullins for title examination fees and expenses related to GMPFC property sale. This bill has not been paid by Nelson Mullins but remains an obligation incurred by Nelson Mullins on behalf of GMPFC. See Exhibit C.	1,281.00
<b>Total Charges for Other Services Provided/Expenses Incurred.....</b>		<b>\$4,202.44</b>
<b>Total Amount Due.....</b>		<b>\$21,025.44</b>