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

[AMENDED]
**RECEIVER'S OMNIBUS
OBJECTION TO EMPLOYEE
CLAIMS**

Date: January 23, 2012
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on January 23, 2012, 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 omnibus objection of
5 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for Medical
6 Capital Holdings, Inc., Medical Capital Corporation, Medical Provider Funding
7 Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital"
8 or the "Receivership Entities"), to certain employee claims ("Objection").

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

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

19 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
20 above date, the Court may grant the requested relief without further notice. This
21 Motion is made following the conference of counsel pursuant to L.R. 7-3.

22 **Meet and Confer:** The Receiver met and conferred with counsel for the
23 Securities and Exchange Commission ("SEC") prior to filing this pleading and the
24 SEC does not object to the Receiver's approach to claim objections.

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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: November 28, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Loraine L. Pedowitz

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LORAIN L. PEDOWITZ
Attorneys for Receiver
Thomas A. Seaman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After carefully reviewing all claims and supporting documentation submitted
4 to the Receiver by former employees of the Receivership Entities, and reconciling
5 the claims with the Receivership Entities' books and records, the Receiver objects to
6 certain claims on the grounds that they are invalid and/or overstated. The Receiver
7 proposes that some claims be disallowed in their entirety, and that others be allowed
8 in a reduced amount.

9 Attached hereto as Exhibit A is a spreadsheet listing all employee claims
10 submitted to the Receiver, the amount stated on the proof of claim, and the
11 Receiver's proposed allowed amount. Employee claims to which the Receiver does
12 not object are listed on the spreadsheet with a proposed allowed amount the same as
13 the amount stated on the proof of claim. Employee claims to which the Receiver
14 objects are discussed below.

15 The spreadsheet also reflects the total amount of wages, salaries,
16 commissions, vacation, severance, sick leave, and 401(k) contributions earned by
17 each employee within 180 days of the Receiver's appointment (February 4, 2009 to
18 August 3, 2009) up to a maximum of \$11,725. The remainder of the allowed claim
19 is also listed. The Receiver has divided employee claims in this way because, in his
20 proposed Distribution Plan, he proposes a treatment of employee claims analogous
21 to the treatment provided for employee claims under the Bankruptcy Code. Under
22 the Bankruptcy Code, employee claims that accrued within 180 days of the petition
23 date, up to a maximum of \$11,725, are given priority for purposes of distribution.
24 However, with the exception of the Alan Meister and William Noll claims discussed
25 below, this Objection addresses only the allowed *amount* of employee claims. All
26 issues regarding *priority* of employee claims vis-à-vis other claims and the source of
27 distributions are addressed in the Receiver's proposed Distribution Plan which is
28 attached as Exhibit A to the Declaration of Thomas A Seaman ("Seaman Dec.")

1 concurrently filed. As to the claims of Alan Meister and William Noll, the Receiver
2 objects to those claims and proposes that such claims be subordinated to all other
3 claims on equitable grounds. As to the claims filed by certain employees of High
4 Road Entertainment Group, the Receiver specifically objects to those claims as set
5 out below.

6 II. PROCEDURAL BACKGROUND

7 On December 21, 2010, the Receiver filed his Motion for Order: (1) Setting
8 Claims Bar Date; (2) Approving Proof of Claim and Claim Information Forms; and
9 (3) Establishing Summary Procedures for Claim Administration ("Claim Procedures
10 Motion"). There was no opposition to the Claim Procedure Motion, and on
11 January 31, 2011, the Court entered the order granting the motion ("Claim
12 Procedures Order"). The Claim Procedures Order set the deadline to submit claims
13 as May 1, 2011 ("Claims Bar Date"), approved the proof of claim and claim
14 information forms proposed by the Receiver, and provided that disputes regarding
15 claims will be determined by the Court using summary procedures. The approved
16 claim forms and instructions were mailed to all known Noteholders¹, trade creditors
17 and former employees between February 18 and March 1, 2011.

18 On April 14, 2011, the Receiver applied for an order extending the Claims
19 Bar Date because, among other things, many Noteholders had not maintained
20 updated addresses with the Receiver, and as a result, many of the claim information
21 forms that the Receiver mailed out were returned. On April 18, 2011, the Court
22 entered an order extending the Claims Bar Date to June 15, 2011.

23 The Receiver's office received 57 claims from employees in the aggregate
24 amount of \$1,395,537.16. The Receiver, his staff and his counsel have reviewed
25 each employee claim and supporting documentation, investigated the basis for the
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27 ¹ Individual and entities that invested in the Receivership Entities through the
28 purchase of notes issued by Medical Provider Funding/Financial Corporations
("MP Entities").

1 claim, attempted to reconcile the claims with the Receivership Entities' books and
2 records, and determined the proper amount of the claim. The Receiver's objections
3 to the various employee claims are discussed below.

4 As provided in the Claim Procedures Order, this Objection shifts the burden
5 of proof to the applicable employees to submit evidence sufficient to overcome the
6 Objection. As appropriate, the Court will implement further procedures to resolve
7 specific claim disputes.

8 III. ARGUMENT

9 A. The Court Has Broad Discretion To Do Equity

10 "The power of a district court to impose a receivership or grant other forms of
11 ancillary relief does not in the first instance depend on a statutory grant of power
12 from the securities laws. Rather, the authority derives from the inherent power of a
13 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
14 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
15 and efficient administration of the estate by the district court for the benefit of
16 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
17 of a receiver is authorized by the broad equitable powers of the court, any
18 distribution of assets must also be done equitably and fairly. *See S.E.C. v. Elliot*,
19 953 F.2d 1560, 1569 (11th Cir. 1992).

20 District courts have the broad power of a court of equity to determine the
21 appropriate action in the administration and supervision of an equity receivership.
22 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
23 Circuit explained:

24 A district court's power to supervise an equity receivership and
25 to determine the appropriate action to be taken in the
26 administration of the receivership is extremely broad. The
27 district court has broad powers and wide discretion to determine
28 the appropriate relief in an equity receivership. The basis for
this broad deference to the district court's supervisory role in
equity receiverships arises out of the fact that most
receiverships involve multiple parties and complex transactions.
A district court's decision concerning the supervision of an
equitable receivership is reviewed for abuse of discretion.

1 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth*
2 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
3 to the court's supervisory role, and 'we generally uphold reasonable procedures
4 instituted by the district court that serve th[e] purpose' of orderly and efficient
5 administration of the receivership for the benefit of creditors."). Specifically, where
6 a receivership is initiated under the remedial statutes enacted to protect the public
7 interest, such as the Securities Act or the Commodities Act, a district is afforded
8 broad discretion to fashion appropriate equitable relief. *CFTC v. Muller*, 570 F.2d
9 1296, 1300 (5th Cir. 1978). Accordingly, the Court has broad discretion in
10 determining the allowed amounts of claims.

11 **B. Equitable Subordination**

12 The Court also has broad equitable power to subordinate one claim to another
13 if it finds "that the creditor's claim, while not lacking a lawful basis, nevertheless
14 results from inequitable behavior on the part of that creditor." *SEC v. American*
15 *Board of Trade*, 719 F. Supp 186, 196 (S.D.N.Y. 1989). In *American Board*, the
16 equity receiver moved to equitably subordinate certain creditor claims, including
17 those claims brought by the insiders that had controlled the firm. Because of the
18 insiders' conduct, the court equitably subordinated their claims to the claims of other
19 creditors. The court also equitably subordinated the claims of "member" clients.
20 The receivership company had been organized as a membership corporation without
21 any capital stock. Members were entitled to receive certain discounts and
22 commissions in connection with the firm's investment activities. Although the
23 members may not have exercised any control over the firm as the principals had, the
24 court found that the members ". . . received certain benefits not available to other
25 customers and enjoyed something of an inside position. . . ." such that subordination
26 to the claims of the innocent victims was warranted. *Id.* at 194. *See also, SEC v.*
27 *Basic Energy & Affiliated Res.*, 273 F.3d 657, 660 (6th Cir. 2001) (affirming
28 distribution plan that prohibited defendants from recovering at all, and reduced

1 recovery of employees based on level of involvement in fraudulent scheme); *SEC v.*
2 *Enter. Trust Co.*, No. 08 Civ. 1260, 2008 U.S. Dist. LEXIS 79731, at *10 (N.D. Ill.
3 Oct. 7, 2008) ("Disqualifying those who took the business over the edge is the most
4 common feature, and the least contested aspect, of distribution plans."); *SEC v.*
5 *Merrill Scott & Assocs.*, No. 02 Civ. 39, 2006 U.S. Dist. LEXIS 93248, at **18-19
6 (D. Utah Dec. 21, 2006)

7 In the context of bankruptcy cases, the power to equitably subordinate claims
8 is codified in section 510(c) of the Bankruptcy Code. The basis for the Bankruptcy
9 Court's power to equitably subordinate claims is the Court's duty to "sift the
10 circumstances surrounding any claim to see that injustice or unfairness is not done
11 in administration of the bankrupt estate." *Pepper v. Litton*, 308 U.S. 295, 303
12 (1939).

13 A three-pronged test has developed to determine whether equitable
14 subordination of a claim is proper. Specifically, courts should apply equitable
15 subordination where (1) a claimant has engaged in inequitable conduct; (2) the
16 misconduct caused injury to another creditor or conferred an unfair advantage to the
17 claimant; and (3) equitable subordination of the claim is consistent with Bankruptcy
18 Code provisions. *In re C.P.C. Development Co. No. 5 v. FSLIC*, 113 B.R. 637, 642
19 (C.D. Cal. 1990); *In re Westgate-California-Corp.*, 642 F.2d 1174, 1178 (9th Cir.
20 1981).

21 While the most obvious ground for subordination is outright fraud, fraud is
22 not required to bring the doctrine into play. *In the Matter of Multiponics, Inc.*, 622
23 F. 2d 709, 720 (5th Cir. 1980). For example, the court in *In re Max Sugarman*
24 *Funeral Home, Inc.*, 149 B.R. 274, 278 (Bankr. D. R.I. 1992) subordinated the
25 claims of the debtor's accountant for, inter alia, preparing misleading financial
26 statements in an effort to camouflage the true financial condition of the debtor and
27 failing to disclose a loan agreement to prospective Noteholders. Additionally, in *In*
28 *re Loop Hospital Partnership*, 50 B.R. 565 (Bankr. N.D. Ill. 1985), the claims of the

1 debtor's attorneys, who drafted and took an assignment from the debtor with
2 knowledge that the debtor would later represent to creditors that there were no prior
3 assignments, were also equitably subordinated to the claims of other creditors.

4 Based on these authorities, the Receiver contends that all officer and director
5 claims should be subordinated. Only two officers, however, have actually filed
6 claims; Alan Meister and William Noll.

7 1. Alan Meister

8 Alan Meister, former Chief Financial Officer and/or Treasurer of Medical
9 Capital Corporation and its affiliates ("Meister"), submitted a claim in the amount of
10 \$445,823.04. Meister worked for Medical Capital for 12 years as Vice President of
11 Finance, then Chief Financial Officer. His 2009 salary was \$350,000. Meister's
12 claim includes the following components:

13 Wages for July 1 through July 31, 2009	\$29,166.66
14 Wages for August 1 through August 4, 2009	\$3,888.88
15 Accrued vacation pay	\$28,687.50
16 Automobile allowance for July 2009	\$1,000.00
17 Retirement plan wages owed upon termination	\$350,000.00
18 Automobile allowance owed upon termination	\$12,000.00
19 Bonus wages for 2009	\$20,380.00
20 Personal items sold by the Receiver ²	\$700.00
21 Total	\$445,823.04

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25 ² Meister claims that the Receiver did not allow him to remove certain personal
26 items from his office, forcing Meister to purchase them at the auction
27 subsequently conducted at the Medical Capital offices. The items in question
28 were pieces of office furniture (as opposed to personal effects ordinarily kept in
an office). The Receiver advised Meister that he needed to provide receipts or
other evidence showing that he, as opposed to the company, had purchased them.
Meister failed to do so.

1 Meister was the Chief Financial Officer of Medical Capital Corporation, all of
2 the Medical Provider Financial/Funding Corporations, National Health Benefits
3 Corporation, Healthcare Financial Management & Acquisitions, and Medical
4 Tracking. He was the Chief Accounting Officer and Treasurer of Medical Capital
5 Holdings, and also owned stock in Medical Capital Holdings. Although he
6 professes he knew nothing about any of the fraud and other wrongful conduct of
7 Medical Capital and its principals Joseph Lampariello and Sidney Field, Meister
8 owed a fiduciary duty to the companies, was an integral part of the management
9 team, and had access to information that Noteholders and Creditors did not,
10 including information about the true financial condition of the Receivership Entities.
11 Meister regularly attended and participated in meetings of the board of directors. It
12 is only by choosing to ignore, or being willfully blind to, the numerous red flags
13 indicating that Medical Capital was misrepresenting or failing to disclose the true
14 facts to its Noteholders, that Meister could plausibly lack actual knowledge of the
15 wrongdoing.

16 Moreover, Meister directly benefited from ignoring the wrongful conduct.
17 Meister's \$350,000 salary, large bonuses, and generous automobile allowance were
18 paid using administrative fees Medical Capital Corporation fraudulently obtained
19 from the MPFC funds. Under the circumstances, it would be inequitable for Meister
20 to receive distributions from the receivership estate before Noteholders and creditors
21 are paid in full. Accordingly, the Receiver proposes that Meister's claim be
22 subordinated to the allowed claims of Noteholders, creditors and other employees.

23 2. William Noll

24 William Noll, the former Secretary of Medical Capital Corporation and its
25 affiliates ("Noll"), submitted a claim in the amount of \$81,951.66. The claim is
26 composed of \$24,276.00 in unpaid bonuses, \$15,116.66 in unpaid wages, \$7,702.00
27 in 401(k) contributions that were withheld by Medical Capital Corporation but not
28 paid into the retirement plan, and \$34,857.00 of accrued vacation (428 hours).

1 Noll's 2009 salary was just under \$170,000, with an automobile allowance of
2 \$12,000.

3 Noll was the Secretary of Medical Capital Holdings, Medical Capital
4 Corporation, all of the Medical Provider Financial/Funding Corporations, National
5 Health Benefits Corporation, Healthcare Financial Management & Acquisitions, and
6 Medical Tracking. As an officer, he owed a fiduciary duty to the companies, was an
7 integral part of the management team, and had access to information that outside
8 Noteholders and creditors did not. Noll attended meetings of the board of directors,
9 and kept minutes of the meetings. It is only by choosing to ignore, or being
10 willfully blind to, the numerous red flags indicating that Medical Capital
11 Corporation was misrepresenting or failing to disclose the true facts to its
12 Noteholders, that Noll could plausibly lack actual knowledge of the wrongdoing.

13 Moreover, Noll directly benefited from ignoring the wrongful conduct. Noll's
14 \$170,000 salary, large bonuses, and generous automobile allowance were paid using
15 administrative fees Medical Capital fraudulently obtained from the MPFC funds.
16 Under the circumstances, it would be inequitable for Noll to receive distributions
17 from the receivership estate before Noteholders and creditors are paid in full.
18 Accordingly, the Receiver proposes that Noll's claim be subordinated to the allowed
19 claims of Noteholders, creditors and other employees. Seaman Dec. ¶ 56-58.

20 **C. High Road Employees: David Salzberg, Christian Tureaud, and**
21 **Jason French**

22 Three employees of High Road Entertainment Group ("High Road"), David
23 Salzberg, Christian Tureaud, and Jason French filed proofs of claim for wages and
24 other compensation. High Road is a Receivership Entity in that MCH holds a
25 controlling interest in the company. High Road was formed to produce the feature
26 film *The Perfect Game* which is owned by the Receivership Entity, The Perfect
27 Game, LLC ("TPG"). Each employee submitted claims for wages, health insurance,
28 cell phone allowance, and auto allowance. In addition, both Salzberg and Trueaud,

1 President and Vice President of High Road, respectively have claimed accrued
2 vacation. None of these employees have provided any documents or evidence that
3 support the amounts claimed for health insurance, cell phone, auto allowances, or
4 accrued vacation. Consequently, the Receiver objects to these items in all three
5 claims.

6 In addition, the Receiver is still investigating the sources and use of cash by
7 High Road and the authorization for the salaries paid to the officers. Salzberg and
8 Trueaud, as President and Vice President, respectively, of a company that has yet to
9 generate any income, have drawn annual salaries of \$428,000 and \$320,000 from
10 January 2007 through April 2009. Consequently, the Receiver objects to the claims
11 of Salzberg and Trueaud until further investigation is completed and further
12 documentation is provided by the claimants.

13 **D. Other Employees**

14 The Receiver, his staff and his counsel carefully reviewed each claim and
15 reconciled each claim with the Receivership Entities' books and records. Attached
16 hereto as Exhibit A is a spreadsheet listing all employee claims submitted to the
17 Receiver, the amount stated on the proof of claim, and the Receiver's proposed
18 allowed amount. Where employee claims did not reconcile with the Receivership
19 Entities' books and records, including if the claims were too low, the Receiver has
20 proposed that the claim be allowed in the amount owed according to the books and
21 records. These discrepancies are noted on the spreadsheet and reflected in the
22 Receiver's proposed allowed amount of each claim. Accordingly, the Receiver
23 proposes the employee claims be allowed in the amounts stated as the Receiver's
24 proposed allowed amount for each claim. As noted above, the priority of these
25 claims vis-à-vis other creditors (which is the purpose of the two columns on the far
26 right of the spreadsheet) will be addressed in connection with the Receiver's
27 proposed Distribution Plan.

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IV. CONCLUSION

For the foregoing reasons, the Receiver requests that this Objection be sustained, that the Meister and Noll claims be subordinated, that the claims of Salzberg, Trueaud be disallowed pending further investigation and/or documentation provided by claimants, and that the claim of French for phone, car, and health insurance be disallowed pending the provision of supporting documentation. The Receiver further requests that the remaining employee claims be allowed in the amounts stated as the Receiver's proposed allowed amount for each claim on the attached spreadsheet.

Dated: November 28, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Loraine L. Pedowitz
LORAIN E. PEDOWITZ
Attorneys for Receiver
Thomas A. Seaman