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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION
17

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 v.

22 MEDICAL CAPITAL HOLDINGS,
23 INC.; MEDICAL CAPITAL
CORPORATION; MEDICAL
24 PROVIDER FUNDING
CORPORATION VI; SIDNEY M.
25 FIELD; and JOSEPH J.
LAMPARIELLO,

26 Defendants.
27
28

Case No. SACV 09-818 DOC (RNBx)

**RECEIVER'S EX PARTE
APPLICATION FOR EXTENSION
OF PERIOD TO FILE
EVIDENTIARY SUPPORT FOR
CLAIMS, AND SETTING
FURTHER BRIEFING AND
HEARING SCHEDULE**

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1 Thomas A. Seaman, Court-Appointed permanent Receiver for Medical
2 Capital Holdings, Inc., Medical Capital Corporation, Medical Provider Funding
3 Corporation VI, and their subsidiaries and affiliates ("Receiver"), hereby applies for
4 an extension of the period for claimants to file evidentiary support for the claims
5 submitted by the Employees, Trade Creditors, Wells Fargo Bank, N.A. ("Wells
6 Fargo") and The Bank of New York Mellon ("BONY") (collectively, the claims
7 submitted by Wells Fargo and BONY are referred to as the "Trustee Claims"), and
8 Noteholders ("Application").¹

9 On December 21, 2010, the Receiver filed his Motion for Order: (1) Setting
10 Claims Bar Date; (2) Approving Proof of Claim and Claim Information Forms; and
11 (3) Establishing Summary Procedures for Claim Administration ("Claim
12 Procedures Motion"). There was no opposition to the Claim Procedures Motion,
13 and on January 31, 2011, the Court entered the order granting the motion ("Claim
14 Procedures Order"). The Claim Procedures Order set the deadline to submit claims
15 as May 1, 2011 ("Claims Bar Date"), approved the proof of claim and claim
16 information forms proposed by the Receiver, and provided that disputes regarding
17 claims will be determined by the Court using summary procedures. Pursuant to the
18 Claims Procedures Order, the Receiver will initiate the process by filing a claim
19 objection. The burden of proof will then shift to the claimant to submit evidence
20 and declarations sufficient to overcome the objection.

21 The approved claim forms and instructions were mailed to all known
22 investors, trade creditors and former employees between February 18 and March 1,
23

24 ¹ As to Noteholders, the Receiver has proposed that Noteholders who oppose, in
25 general, the Receiver's use of a money-in/money-out (MIMO) calculation, file and
26 serve opposition papers on the same schedule that applies to the Employee and
27 Trade Creditors claim objections. That timeline would be revised if the Application
28 is granted. The Receiver proposed a separate procedure to address the claims of
Noteholders who disputed the principal or interest figures used to calculate their
proposed allowed claim amount. See Amended Receiver's Omnibus Objection to
Noteholder Claims (Docket #599), p. 10. The latter procedure is not affected by the
Application.

1 2011. On April 14, 2011, the Receiver applied for an order extending the Claims
2 Bar Date because, among other things, many investors had not maintained updated
3 addresses with the Receiver, and as a result, many of the claim information forms
4 the Receiver mailed out were returned. On April 18, 2011, the Court entered an
5 order extending the Claims Bar Date to June 15, 2011.

6 In the Claims Procedure Motion, the Receiver stated that he anticipated filing
7 all objections to claims within 120 days of the Claims Bar Date. The Receiver also
8 stated he would request additional time to respond to claims if significant disputes
9 arose as to claims. With the bar date extended to June 15, 2011, the 120-day
10 objection period was set to end on October 13, 2011. On October 7, 2011, the
11 Receiver filed an Ex Parte Application for Extension of Period to File Objections to
12 Claims (the "Ex Parte Application"), requesting that the Court extend the deadline
13 for the Receiver to file and serve his claim objections. On October 13, 2011, the
14 Court approved the Ex Parte Application and ordered that the Receiver file and
15 serve his objections by November 14, 2011. On November 14, 2011, the Receiver
16 filed and served his objections (the "Objections") to the Employee Claims, the
17 Trade Creditor Claims,² the Trustee Claims, and Noteholder Claims (including the
18 Noteholder Claims submitted by Wells Fargo on behalf of noteholders)
19 (collectively, the Employee Claims, Trade Creditor Claims, Trustee Claims and all
20 Noteholder Claims are referred to as the "Claims"). On November 28, 2011,
21 following entry of the Court's order extending the time to file objections to the
22 Claims by two weeks, the Receiver filed amended objections to the Employee
23 Claims, Trade Creditor Claims, and Noteholder Claims, as well as a Declaration
24 from the Receiver. In each of the objections, the Receiver gave notice that a
25 hearing on all objections would take place on January 23, 2012.³

26 ² The Receiver and the Internal Revenue Service (the "IRS") are separately filing a
27 stipulation regarding the Receiver's objection to the claim of the IRS, which
28 stipulation sets forth a different schedule for the claim of the IRS.

³ As to the Receiver's objections to the Employee Claims, Trade Creditor Claims

1 Per the objections, based on the hearing date of January 23, 2012, the
2 Employees, Trade Creditors, Wells Fargo and BONY (collectively, Wells Fargo
3 and BONY are referred to as the "Trustees"), and the Noteholders (including Wells
4 Fargo on behalf of certain noteholders) must file and serve evidence and
5 declarations sufficient to overcome the Objections by December 30, 2011.

6 Counsel for the Receiver has been informed by counsel for the Securities and
7 Exchange Commission ("SEC") that he will be out of the town and unavailable the
8 week of January 23, 2012. Given the scope and complexity of the claims
9 objections, and the potential impact of the Court's rulings thereon, the Receiver
10 believes it would be appropriate for the SEC's counsel to attend the hearing.

11 Further, the Receiver's team has been contacted by numerous Noteholders
12 and their representatives concerning objections to the use of a MIMO calculation in
13 the claims process. Based on the volume of such contacts, the Receiver expects
14 that a significant number of Noteholders will file, or attempt to file, opposition
15 papers. Given the filing difficulties experienced in the past by Noteholders who are
16 not represented by counsel, and the additional time that the Receiver will require to
17 address the expected volume of oppositions, the Receiver believes that an extended
18 filing and briefing schedule would ensure that all voices are heard and all issues are
19 fully briefed before the Court decides this important issue.

20 Additionally, and as previously communicated to the Court by the Receiver's
21 conflicts counsel, the Receiver's conflicts counsel has engaged in discussions with
22 the Trustees' counsel concerning the Receiver's investigation and potential claims
23 against the Trustees. Those discussions are continuing, and may obviate or narrow
24 disputes between the Receiver and the Trustees regarding the Trustee Claims.

25 In light of these developments, the Receiver believes that a brief extension of
26
27 and Noteholder Claims, the Receiver has become aware that, although each
28 objection included notice of a January 23, 2012 hearing, a request for hearing was
inadvertently omitted during the electronic filing of the objections. The Receiver
therefore seeks herein to formally set such objections for hearing.

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1 the time within which the Employees, Trade Creditors, Trustees and Noteholders
2 must file and serve their evidentiary support, and the setting of a further briefing
3 and hearing schedule, is warranted under the circumstances. A short extension of
4 this timeline will not impede the Receiver making timely distributions.
5 Additionally, the Receiver's conflicts counsel has communicated with the Trustees'
6 counsel who agree that a brief continuance on the claims process is appropriate in
7 light of their ongoing discussions.

8 Accordingly, the Receiver requests a short extension of the period for the
9 Employees, Trade Creditors, Trustees and Noteholders to file and serve their
10 evidence and declarations sufficient to overcome the Receiver's Objections to their
11 Claims to January 30, 2012. The Receiver proposes that he file and serve responses
12 to the evidence in support of the Claims by no later than February 27, 2012 and that
13 a hearing on all Claims be set for March 12, 2012 at 8:30 a.m., or the first available
14 hearing date thereafter.

15 Pursuant to Local Rule 7-19.1, the Receiver circulated the Application by e-
16 mail to counsel for the SEC. Counsel for the SEC supports the request. The
17 Receiver also e-mailed the Application to counsel for Defendants Sidney Field and
18 Joseph Lampariello prior to filing. No response was received from counsel for
19 Defendants Field and Lampariello.

20
21 DATED: December 19, 2011

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23
24 By: /s/ Michael R. Farrell
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DATED: December 19, 2011

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Ex Parte Application

8:09-cv-00818-DOC-RNB Securities and Exchange Commission v. Medical Capital Holdings Inc et al
(RNBx), DISCOVERY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Cialone, Frank on 12/19/2011 at 3:11 PM PST and filed on 12/19/2011

Case Name: Securities and Exchange Commission v. Medical Capital Holdings Inc et al

Case Number: 8:09-cv-00818-DOC-RNB

Filer: Thomas A Seaman

Document Number: 606

Docket Text:

EXPARTE APPLICATION for Extension of Time to File Evidentiary Support for Claims, and Setting Further Briefing and Hearing Schedule filed by Receiver Thomas A Seaman. (Attachments: # (1) Proposed Order [Proposed] Order Approving Receiver's Ex Parte Application for Extension of Period to File Evidentiary Support for Claims, and Setting Further Briefing and Hearing Schedule)(Cialone, Frank)

8:09-cv-00818-DOC-RNB Notice has been electronically mailed to:

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[STAMP cacdStamp_ID=1020290914 [Date=12/19/2011] [FileNumber=12804555-0] [7554ecba2e58a7dbfddd173403626d6721222bd3045e118b04b4af43aa86d7c2e81ee4d992844ed66fa10099ec026f5bdfbfc736baa7cf14ddb1ecd385be276]]

Document description:Proposed Order [Proposed] Order Approving Receiver's Ex Parte Application for Extension of Period to File Evidentiary Support for Claims, and Setting Further Briefing and Hearing Schedule

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