

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
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

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

20 Defendants.
21

Case No. SA CV09-0818 DOC (RNBx)
EIGHTH INTERIM FEE APPLICATION
OF THOMAS SEAMAN, RECEIVER

Date: May 7, 2012
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 Thomas A. Seaman ("Receiver"), the court-appointed Permanent Receiver for
2 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 eighth interim application for approval and
5 payment of fees. This application covers the period August 1, 2011 through
6 October 31, 2011 ("Eighth Application Period").

7 During the Eighth Application Period, the Receiver and his staff spent
8 2,002 hours executing the duties set forth in the Temporary Restraining Order and
9 Order Appointing Receiver and the subsequent Preliminary Injunction and Order
10 Appointing Permanent Receiver and subsequent orders of the Court. During this
11 period the Receiver has recovered \$3,116,980.57 in gross receipts for the
12 receivership estate. By this Eighth Interim Fee Application, Thomas Seaman seeks
13 approval of \$310,770.50 in fees which were incurred at a weighted average hourly
14 rate of \$155 per hour. The Receiver seeks approval to pay 90% of this amount, or
15 \$279,693.50. The Receiver does not seek reimbursement of any expenses.

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

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

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1 Thereafter, on August 3, 2009 ("Appointment Date"), the Court entered the
2 TRO, appointing Thomas A. Seaman as temporary receiver for the Receivership
3 Entities. On August 17, 2009, the Court confirmed the appointment of the Receiver
4 and entered the Preliminary Injunction and Order Appointing a Permanent Receiver
5 ("Appointment Order"), by which Mr. Seaman was appointed as the Permanent
6 Receiver for the Receivership Entities.

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

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

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

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

24 The high risk nature of the loans made by the Receivership Entities is
25 confirmed by the Receiver's investigation of the sources and uses of investor cash,
26 which demonstrates that the Receivership Entities did not operate their lending
27 business profitably. In fact, leaving aside that the Receiver has learned that many of

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1 the accounts receivable do not exist, it appears that the vast majority of the real
2 unpaid loans are non-performing. Notwithstanding the unprofitability of the
3 Receivership Entities' money lending activities, the money raising entities paid
4 administrative fees in excess of \$324 million to MCC.

5 The funds used to make investments were raised through the sale of
6 promissory notes to investors from Special Purpose Corporations ("SPC's"), referred
7 to as Medical Provider Financial Corporations ("MPs"). MCC was very successful
8 in attracting investors, apparently raising over \$1.7 billion from investors in the
9 MPs. At the time of the Receiver's appointment investors were owed principal of
10 \$1.079 billion.

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

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

24 In addition, because the Defendants did not keep accurate books and records,
25 the Receiver is conducting a forensic accounting of the sources and uses of investor
26 funds. The forensic accounting entails entering transactions totaling over
27 \$20 billion into a relational database designed to identify assets of the company and
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1 recipients of ill-gotten gains, as well as allow the Court to make determinations as to
2 the nature of the fraud, including a likely finding that Medical Capital affiliates and
3 subsidiaries operated a unitary enterprise in a Ponzi-like manner in order to defraud
4 investors and enrich the Defendants. During the Eighth Application Period the
5 forensic accounting was performed by the Receiver and his staff along with certain
6 former employees of Medical Capital (who are paid from the estate thereby greatly
7 reducing the cost of performing the forensic accounting), which would have been
8 massively expensive if performed by an outside accounting firm. During the Eighth
9 Application Period the Receiver and his agents incurred fees of \$24,284.00 working
10 on the forensic accounting. The cost of the forensic accounting from inception of
11 the receivership through October 31, 2011, has been approximately \$410,981.50.
12 The Receiver's Forensic Accounting Report was filed on December 20, 2011. The
13 cost through completion was \$479,327.50.

14 The Receiver's Forensic Accounting Report clearly indicates that the
15 Receivership Entities' lending and investing activities were not profitable,
16 notwithstanding that the Receivership Entities were showing a profit in their
17 financial statements and income tax returns. Moreover, the Receivership Entities
18 paid the income taxes on their overstated income. The Receiver has filed amended
19 tax returns for 2005, 2006, 2007 and 2008, as well as the pre-receiver 2009 return,
20 which the Receiver is hopeful will result in significant income tax refunds. To date,
21 the Receiver has recovered approximately \$1.1 million in income tax refunds.

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

- 24 • Collection efforts:
 - 25 ♦ Foreclosure actions;
 - 26 ♦ Actions to enforce personal guarantees;
 - 27 ♦ Discounted pay-off negotiations; and

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- 1 ♦ Forbearance negotiations.
- 2 • Claims against Receivership Entities, not all of which were covered by
- 3 the stay imposed by the Preliminary Injunction.
- 4 • Lawsuits and other claims of lender breach relative to the collection of
- 5 accounts receivable that had not been financed (in at least one case, the
- 6 borrower had paid its debt in full and MCC continued to collect the
- 7 underlying accounts receivable), or Medical Capital's failure to perform
- 8 lending commitments.
- 9 • Asset sales.
- 10 • Management or oversight of operating businesses owned or otherwise
- 11 controlled by Receivership Entities.
- 12 • Marketing and sale of all real property owned by the Receivership
- 13 Entities, some by virtue of foreclosure.
- 14 • Marketing of notes.
- 15 • Marketing, maintenance and sale of Home Stretch (luxury yacht).
- 16 • Disposition of personal property.
- 17 • Forensic accounting based on daily cash receipts and disbursements
- 18 covering nearly six years and approximately \$20 billion of transactions
- 19 in 258 bank accounts. Approximately 15,000 bank statements were
- 20 input and reconciled.
- 21 • Accounting for receivership receipts and disbursements segregated by
- 22 MP and business operating entities.
- 23 • Preparation of monthly reports filed with the Court.
- 24 • Handling of investor relations and communications:
 - 25 ♦ Establish and maintain website, with all pleadings promptly posted
 - 26 (www.medicalcapitalreceivership.com); and
 - 27 ♦ Establish and effectuate investor claim process.
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- 1 • Evaluate potential causes of actions for recovery of funds for benefit of
- 2 investors.
- 3 • Investigated claims against professionals and sought *in camera*
- 4 approval to proceed.
- 5 • Sought and was granted approval to bring action against the bond
- 6 indenture trustees.
- 7 • Execute tolling agreements and initiated pre-litigation settlement
- 8 discussions with bond indenture trustees.
- 9 • Conducted damage and causation analysis for bond indenture
- 10 litigation and potential settlement discussions.
- 11 • Issuance of subpoenas for banking records and then review and
- 12 investigation of materials obtained to determine possible sources of
- 13 recovery.
- 14 • Respond to subpoenas and inquiries of several federal agencies with
- 15 interest in the underlying civil litigation.
- 16 • Assist with providing a mechanism which supports various
- 17 discovery requests and subpoenas of the Receiver.
- 18 • Analyze payments made by investors compared to principal and
- 19 purported interest paid to investors for the purpose of establishing a
- 20 basis for a plan of distribution now that cash in the estate is accruing to
- 21 a sizable number.

22 The Receiver's efforts resulted in gross receipts to the receivership estate in
23 the amount of \$3,116,980.57 during the Eighth Application Period and can be
24 broken down into the following categories:

- 25 • Accounts Receivable Collection: \$ 6,096.39
- 26 • Income Tax Refunds: \$ 102.40
- 27 • Loan Collections: \$1,454,029.17

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1	○ Transfac	\$ 952,729.17
2	○ Capital Health	\$ 501,300.00
3	● NHBC revenue:	\$1,389,552.84
4	● Perfect Game Revenue:	\$ 103,920.00
5	● Property Tax Refunds:	\$ 83,279.77
6	● Settlement Proceeds:	\$ 80,000.00
7	Total	<u>\$3,116,980.57</u>

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

	<u>Eighth Fee Application</u>	<u>Inception To Date</u>
11		
12	Gross Receipts	\$3,116,980.57
13	Receiver's Fees	\$ 310,770.50
14	Receiver's Fees as % of Receipts	10.0%
15		2.22%

16 The receiver's fees were 10.0% of funds recovered during this fee application
 17 period, and are just over 2.22% inception to date. During the fee application period
 18 the receiver devoted a significant amount of the work to asset sales which will not
 19 result in recovery to the estate until the sales are closed in future periods. For
 20 example, the Receiver spent time on the Southwest Atlanta Hospital sale and the
 21 Parkway note sale, both of which have been problematic and time consuming to
 22 administer. The Receiver also prepared NHBC for disposition.

23 Similarly, the Receiver also expended time and resources investigating and
 24 seeking approval to bring actions against former counsel and the indenture trustees
 25 as well as preparing for settlement discussions and damage analysis which did not
 26 have a direct monetary benefit to the receivership estate during the fee application
 27 period and will only result in recoveries if the Receiver prevails in, or settles these
 28 matters.

1 In addition, administration of the investor claims process, one of the primary
2 functions of the receivership estate, does not produce revenue to the estate but
3 consumed estate resources. So, while many of the Receiver's activities, such as the
4 forensic accounting necessary to find assets and sources of recovery and
5 effectuating the investor claims process, may not produce immediate returns or any
6 returns, they are necessary to administer this complex estate.

7 As of October 31, 2011, the Receiver was holding cash in the amount of
8 \$99,560,404.52.

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

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

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20 **A. Charges by Timekeeper**

21 Exhibit B provides a breakdown by timekeeper setting forth the amount of
22 time spent by the Receiver and his agents at their respective hourly rates. The
23 Receiver personally expended 124 hours for the Eighth Application Period for a
24 total cost of \$49,600.00. During the Eighth Application Period the Receiver
25 expended 26% of his time working on the Medical Capital receivership.

26 In order to manage the Receivership in a cost effective manner, the Receiver
27 delegates some assignments to agents who are billed at hourly rates ranging from
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1 \$35 to \$320 per hour. These agents perform accounting, financial analysis, business
2 management, forensic accounting, investor relations and claims management, debt
3 collection, litigation support, real estate management, management of asset
4 disposition and other services required by the receivership estate. During the Eighth
5 Application Period, the Receiver's agents expended 1,878.0 hours at an average
6 hourly rate of \$139 per hour. The Receiver expects the number of hours necessary
7 to administer the receivership estate to continue to remain stable in the near term as
8 the Receiver's investigation and recovery efforts proceed and for the fees to then
9 decline once the Forensic Account Report is filed and the plan of distribution are
10 approved.

11 By using qualified agents at significantly lower hourly rates than the
12 Receiver, the Receiver was able to achieve a weighted average hourly (blended) rate
13 of \$155 per hour for the Eighth Application Period and \$156 per hour from
14 inception to date. The Receiver believes that the hourly rates charged by the
15 Receiver are fair and reasonable given the requirements of the receivership estate.

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1 **B. Charges by Task**

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

5	<u>Task</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
6	A/R and other Debt Collections	76.7	\$235	\$18,011.00
7	Accounting and Reporting	83.7	\$158	\$13,195.00
8	Bookkeeping	156.6	\$116	\$18,105.00
9	Forensic Accounting	112.1	\$217	\$24,284.00
10	Investor Relations	843.8	\$81	\$68,541.50
11	Litigation & Support	144.9	\$194	\$28,099.00
12	Manage Business	95.3	\$299	\$28,453.00
13	Paralegal	116.6	\$130	\$15,158.00
14	Project Mgmt	123.0	\$205	\$25,171.00
15	Receiver	26.3	\$400	\$10,520.00
16	Receivership Admin	18.0	\$61	\$1,099.50
17	Sell Liquidate Assets	205.0	\$293	\$60,133.50
18	Totals	2,002.0	\$155	\$310,770.50

19 The Receiver did not charge for the cost of preparing the fee applications,
 20 which took 29.50 hours to prepare during the Eighth Application Period at a cost
 21 savings to the receivership estate of \$4,361.00.
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C. Charges by Asset

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

Asset	Hours	Rate	Cost	% of Referenced Assets Costs
Edge	9.0	\$269	\$2,421.00	1.8%
Gulf Pines	5.5	\$277	\$1,525.50	1.1%
Home Stretch	4.5	\$143	\$645.50	0.5%
NHBC	287.7	\$256	\$73,557.00	54.0%
Parkway Hospital	57.3	\$261	\$14,938.00	11.0%
Perfect Game	22.4	\$140	\$3,126.50	2.3%
Pyramid	1.6	\$205	\$328.00	0.2%
S.W. Atlanta Hospital	118.6	\$235	\$27,883.00	20.5%
TEEM, Macaluso	1.9	\$387	\$736.00	0.5%
TRACE	16.7	\$215	\$3,597.00	2.6%
Valley Health	19.8	\$331	\$6,546.00	4.8%
Velocity (mail.com)	2.8	\$313	\$876.00	0.6%
Total Referenced Asset Categories (Excludes work not related to specific assets)	547.8	\$249	\$136,179.50	100.0%
Non-Categorized	1,454.2	\$120	\$174,591.00	
Totals	2,002.0	\$155	\$310,770.50	

1 CONCLUSION.

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

6 Approving fees totaling \$310,770.50 for the Eighth Application Period;

- 7 1. Authorizing the Receiver to pay 90% of such sum, or
8 \$279,693.45, out of assets of the receivership estate; and
9 2. For other and further relief as is appropriate.

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

12 Executed this 16th day of March, 2012, at Irvine, California.

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17 THOMAS A. SEAMAN
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