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8 THOMAS A. SEAMAN

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

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Receiver,

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. SA CV09-0818 DOC (RNBx)

**DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF MOTION
TO EXPAND EMPLOYMENT OF
SPECIAL NEW YORK COUNSEL
(FORMAN HOLT ELIADES &
RAVIN LLC)**

Date: June 4, 2012
Time: 8:30 a.m.
Ctm: 9D
Judge: Hon. David O. Carter

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

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

27 2. Before this action was commenced by the Securities and Exchange
28 Commission, Medical Capital obtained a judgment against Vincent A. Mallon

1 ("Mallon") in New York in the amount of \$336,857.47 ("Mallon Judgment"). On
2 August 19, 2011, I moved for Court approval of a settlement agreement with
3 Mallon. Under the settlement agreement, Mallon agreed to market and sell his
4 home located at 102 Barry Lane, Syosset, New York 11791 ("Property") and to pay
5 me \$100,000 directly from escrow in exchange for a full release of claims
6 ("Settlement Agreement"). Mallon was required to sell the Property within
7 180 days of entry of the order approving the Settlement Agreement. If the Property
8 was not sold within 180 days, or the net sale proceeds were insufficient to make the
9 \$100,000 settlement payment, the Settlement Agreement, including the release of
10 claims, is of no force or effect. The Court approved the Settlement Agreement on
11 September 30, 2011.

12 3. The 180-day period for Mallon to sell the Property concluded on
13 March 29, 2012. Mallon has not sold the Property nor has he demonstrated that the
14 Property is under contract to be sold. Accordingly, the Settlement Agreement is of
15 no force or effect, and I intend to enforce the Mallon Judgment.

16 4. Mallon is located in New York. Accordingly, I now seek to expand the
17 employment of the Forman Holt firm (which is located in the New York
18 metropolitan area) to include enforcement of the Mallon Judgment on the same
19 terms previously approved for other judgment collection matters, *i.e.*, hourly fees
20 capped at \$10,000, plus 20% of all amounts above \$10,000 that are recovered.

21 **PRIOR FORMAN HOLT EMPLOYMENT**

22 5. On February 8, 2011, I moved for authorization to employ Forman Holt
23 as special New York counsel to evaluate and, as appropriate, pursue collection
24 actions relating to Dr. Robert Schepp and his medical practices ("Employment
25 Motion"). In the Employment Motion, I explained that my general counsel, Allen
26 Matkins Leck Gamble Mallory & Natsis, LLP, is a California firm with no offices
27 outside the state. The collection actions relating to Dr. Schepp potentially involved
28 New York law, the primary parties are located in and around New York, and

1 collection efforts would be carried out in and around New York. Therefore, in order
2 to determine the appropriate course of action, I required experienced New York
3 counsel to assist me. The Employment Motion also discussed my selection of
4 Forman Holt, including their relevant experience and expertise and competitive
5 billing rates. Finally, I noted the possibility that I would need special counsel for
6 other collection-related matters in the New York area. The Court granted the
7 Employment Motion on March 9, 2011.

8 6. On July 14, 2011, I moved to expand the scope of Forman Holt's
9 employment to include five judgment collection matters and one potential action
10 against a borrower ("Expanded Employment Motion"). The five judgment debtors,
11 one of whom was Mallon, and one borrower are located in the New York area. The
12 proposed employment terms for the potential action against the borrower were
13 hourly fees capped at \$25,000, plus 25% of all amounts above \$25,000 that are
14 recovered. The proposed employment terms for the five judgment collection
15 matters were hourly fees capped at \$10,000, plus 30% of all amounts above \$10,000
16 that are recovered.

17 7. The Expanded Employment Motion was granted in part and denied in
18 part. The Court approved the proposed employment terms with respect to the one
19 potential action against the borrower, but with respect to the five judgment
20 collection matters, the Court stated that "[g]iven the comparatively small amount of
21 work required to collect on the judgments, the Court finds that a contingent fee
22 arrangement of 30% is excessively high. The Court would be more inclined to
23 approve a contingent fee arrangement of 20%."

24 8. On August 25, 2011, I filed an Ex Parte Application seeking approval
25 of a revised engagement letter with Forman Holt, under which Forman Holt agreed
26 to handle four of the five judgment collection matters on the terms the Court
27 indicated it would approve, *i.e.*, hourly fees capped at \$10,000, plus 20% of all
28 amounts above \$10,000 that are recovered. The Mallon Judgment collection matter

1 was removed from the list because of the Settlement Agreement. The Ex Parte
2 Application was approved on August 26, 2011.

3 9. On December 9, 2011, I sought to further expand Forman Holt's
4 employment to include enforcement and collection of a judgment obtained by me
5 against Dr. Robert J. Aquino ("Aquino") in the United States District Court for the
6 District of Nevada ("Aquino Judgment"). The Court approved the further expanded
7 employment on January 5, 2012.

8 **THE MALLON JUDGMENT AND SETTLEMENT AGREEMENT**

9 10. On May 2, 2002, Medical Capital (Carlmont Capital Special Purpose
10 Corporation II) entered into an Account Purchase Agreement ("Purchase
11 Agreement") with Vantage Services Corporation ("Vantage"). Pursuant to a
12 Guaranty executed in connection with the Purchase Agreement ("Guaranty"),
13 Vantage's obligations under the Purchase Agreement were guaranteed by its
14 principal, Vincent A. Mallon ("Mallon"). Mallon owns real property located at
15 102 Barry Lane, Syosset, New York 11791 ("Property").

16 11. Vantage defaulted under the Purchase Agreement and Medical Capital
17 commenced an action in the Supreme Court of the State of New York, County of
18 Nassau entitled *Carlmont Capital Special Purpose Corporation II v. Vincent A.*
19 *Mallon and Vantage Services Corp.*, Case No. 3940-04. On April 5, 2005, the
20 New York court entered an order awarding Medical Capital judgment in the amount
21 of \$336,857.47 jointly and severally against Vantage and Mallon ("Judgment").

22 12. I was contacted by Robert McDonald, an investment banker and friend
23 of Mallon ("McDonald"), about resolving Mallon's obligations under the Purchase
24 Agreement, Guaranty and Judgment. McDonald stated that Mallon has very little
25 income and no assets of value other than equity in the Property. Mallon provided
26 his federal and state tax returns for the years 2008, 2009 and 2010, which confirmed
27 Mallon's statements regarding his income. Mallon has stated that he owes
28 approximately \$70,000 in payroll taxes. I also conducted a preliminary

1 investigation of Mallon's assets, which did not reveal any assets of significant value
2 other than the Property.

3 13. As noted above, the parties negotiated the Settlement Agreement under
4 which Mallon agreed to market and sell the Property within 180 days and to pay
5 \$100,000 to me directly from escrow at closing in exchange for a full release of
6 claims. The 180-day period for Mallon to sell the Property concluded on March 29,
7 2012. Mallon failed to sell the Property. Accordingly, the Settlement Agreement is
8 of no force or effect, and I intend to enforce the Judgment against Mallon. I now
9 seek to further expand the employment of Forman Holt to include enforcement of
10 the Mallon Judgment on the same terms previously approved for other judgment
11 collection matters, *i.e.*, hourly fees capped at \$10,000, plus 20% of all amounts
12 above \$10,000 that are recovered.

13 14. I believe that firms with skill and expertise comparable to Forman Holt
14 are unlikely to agree to employment terms better than those offered by Forman Holt.
15 As noted above, Mallon's tax returns reflect very little income and my preliminary
16 investigation has not revealed any assets of value other than the Property. Although
17 Mallon has not filed personal bankruptcy, there is considerable risk he will.

18 15. I also believe Forman Holt will produce the best outcome for the
19 receivership estate. Forman Holt has diligently pursued the collection matters
20 already assigned to it and has been responsive to me and my staff. The proposed fee
21 structure is fair and reasonable under the circumstances, comparable to what firms
22 with similar expertise would charge, and will allow me to maximize the recovery
23 from the Mallon Judgment.

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

26 Executed this 25th day of April, 2011, at Irvine, California.

27 

28 THOMAS A. SEAMAN