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

**NOTICE OF MOTION AND
MOTION TO EXPAND
EMPLOYMENT OF SPECIAL
NEW YORK COUNSEL (FORMAN
HOLT ELIADES & RAVIN LLC);
MEMORANDUM OF POINTS AND
AUTHORITIES**

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

21
22 **PLEASE TAKE NOTICE** that on June 4, 2012, at 8:30 a.m., or as soon
23 thereafter as this matter may be heard, before the Honorable David O. Carter, in
24 Courtroom 9D of the United States District Court for the Central District of
25 California, Southern Division, located at 411 W. Fourth Street, Santa Ana,
26 California 92701, Thomas A. Seaman ("Receiver"), will move this Court for an
27 order expanding the Receiver's employment of Forman Holt Eliades & Ravin, LLC,
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1 special New York counsel ("Forman Holt"), to include enforcement and collection
2 of a judgment against Vincent A. Mallon ("Motion").

3 This Motion is based on the attached Memorandum of Points and Authorities,
4 the Declaration of Thomas A. Seaman filed concurrently herewith, and such other
5 papers and pleadings and arguments of counsel as may be presented to the Court at
6 or before the hearing on the motion.

7 **PLEASE TAKE FURTHER NOTICE** any objecting party may file a
8 response not later than twenty-one (21) days prior to the hearing date, pursuant to
9 Local Rule 7-9. Failure to file a response may be deemed a waiver of any
10 opposition to the Motion.

11 This Motion is made following the conference of counsel pursuant to Central
12 District of California Local Rule 7-3.

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14 Dated: April 27, 2012

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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16 By: /s/ Ted Fates

17 TED FATES
18 Attorneys for Receiver
19 THOMAS A. SEAMAN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Before this action was commenced by the Securities and Exchange
4 Commission, Medical Capital obtained a judgment against Vincent A. Mallon
5 ("Mallon") in New York in the amount of \$336,857.47 ("Mallon Judgment"). On
6 August 19, 2011, the Receiver moved for Court approval of a settlement agreement
7 with Mallon. Docket No. 569. Under the settlement agreement, Mallon agreed to
8 market and sell his home located at 102 Barry Lane, Syosset, New York 11791
9 ("Property") and to pay the Receiver \$100,000 directly from escrow in exchange for
10 a full release of claims ("Settlement Agreement"). Mallon was required to sell the
11 Property within 180 days of entry of the order approving the Settlement Agreement.
12 If the Property was not sold within 180 days, or the net sale proceeds were
13 insufficient to make the \$100,000 settlement payment, the Settlement Agreement,
14 including the release of claims, is of no force or effect. The Court approved the
15 Settlement Agreement on September 30, 2011. Docket No. 579.

16 The 180-day period for Mallon to sell the Property concluded on March 29,
17 2012. Mallon has not sold the Property nor has he demonstrated that the Property is
18 under contract to be sold. Accordingly, the Settlement Agreement is of no force or
19 effect, and the Receiver intends to enforce the Mallon Judgment.

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

25 **II. PRIOR FORMAN HOLT EMPLOYMENT**

26 On February 8, 2011, the Receiver moved for authorization to employ
27 Forman Holt as special New York counsel to evaluate and, as appropriate, pursue
28 collection actions relating to Dr. Robert Schepp and his medical practices

1 ("Employment Motion"). Docket No. 475. In the Employment Motion, the
2 Receiver explained that his general counsel, Allen Matkins Leck Gamble Mallory &
3 Natsis, LLP, is a California firm with no offices outside the state. The collection
4 actions relating to Dr. Schepp potentially involved New York law, the primary
5 parties are located in and around New York, and collection efforts would be carried
6 out in and around New York. Therefore, in order to determine the appropriate
7 course of action, the Receiver required experienced New York counsel to assist him.
8 The Employment Motion also discussed the Receiver's selection of Forman Holt,
9 including their relevant experience and expertise and competitive billing rates.
10 Finally, the Receiver noted the possibility that he would need special counsel for
11 other collection-related matters in the New York area. The Court granted the
12 Employment Motion on March 9, 2011. Docket No. 489.

13 On July 14, 2011, the Receiver moved to expand the scope of Forman Holt's
14 employment to include five judgment collection matters and one potential action
15 against a borrower ("Expanded Employment Motion"). Docket No. 558. The five
16 judgment debtors, one of whom was Mallon, and one borrower are located in the
17 New York area. The proposed employment terms for the potential action against the
18 borrower were hourly fees capped at \$25,000, plus 25% of all amounts above
19 \$25,000 that are recovered. The proposed employment terms for the five judgment
20 collection matters were hourly fees capped at \$10,000, plus 30% of all amounts
21 above \$10,000 that are recovered.

22 The Expanded Employment Motion was granted in part and denied in part.
23 The Court approved the proposed employment terms with respect to the one
24 potential action against the borrower, but with respect to the five judgment
25 collection matters, the Court stated that "[g]iven the comparatively small amount of
26 work required to collect on the judgments, the Court finds that a contingent fee
27 arrangement of 30% is excessively high. The Court would be more inclined to
28 approve a contingent fee arrangement of 20%." Docket No. 562.

1 On August 25, 2011, the Receiver filed an Ex Parte Application seeking
2 approval of a revised engagement letter with Forman Holt, under which Forman
3 Holt agreed to handle four of the five judgment collection matters on the terms the
4 Court indicated it would approve, *i.e.*, hourly fees capped at \$10,000, plus 20% of
5 all amounts above \$10,000 that are recovered. Docket No. 572. The Mallon
6 Judgment collection matter was removed from the list because of the Settlement
7 Agreement. The Ex Parte Application was approved on August 26, 2011.
8 Docket No. 573.

9 On December 9, 2011, the Receiver sought to further expand Forman Holt's
10 employment to include enforcement and collection of a judgment obtained by the
11 Receiver against Dr. Robert J. Aquino ("Aquino") in the United States District Court
12 for the District of Nevada ("Aquino Judgment"). Docket No. 603. The Court
13 approved the further expanded employment on January 5, 2012. Docket No. 618.

14 **III. THE MALLON JUDGMENT AND SETTLEMENT AGREEMENT**

15 On May 2, 2002, Medical Capital (Carlmont Capital Special Purpose
16 Corporation II) entered into an Account Purchase Agreement ("Purchase
17 Agreement") with Vantage Services Corporation ("Vantage"). Pursuant to a
18 Guaranty executed in connection with the Purchase Agreement ("Guaranty"),
19 Vantage's obligations under the Purchase Agreement were guaranteed by its
20 principal, Vincent A. Mallon ("Mallon"). Mallon owns real property located at
21 102 Barry Lane, Syosset, New York 11791 ("Property").

22 Vantage defaulted under the Purchase Agreement and Medical Capital
23 commenced an action in the Supreme Court of the State of New York, County of
24 Nassau entitled *Carlmont Capital Special Purpose Corporation II v. Vincent A.*
25 *Mallon and Vantage Services Corp.*, Case No. 3940-04. On April 5, 2005, the
26 New York court entered an order awarding Medical Capital judgment in the amount
27 of \$336,857.47 jointly and severally against Vantage and Mallon ("Judgment").
28

1 The Receiver was contacted by Robert McDonald, an investment banker and
2 friend of Mallon ("McDonald"), about resolving Mallon's obligations under the
3 Purchase Agreement, Guaranty and Judgment. McDonald stated that Mallon has
4 very little income and no assets of value other than equity in the Property. Mallon
5 provided his federal and state tax returns for the years 2008, 2009 and 2010, which
6 confirmed Mallon's statements regarding his income. Mallon has stated that he
7 owes approximately \$70,000 in payroll taxes. The Receiver also conducted a
8 preliminary investigation of Mallon's assets, which did not reveal any assets of
9 significant value other than the Property.

10 As noted above, the parties negotiated the Settlement Agreement under which
11 Mallon agreed to market and sell the Property within 180 days and to pay \$100,000
12 to the Receiver directly from escrow at closing in exchange for a full release of
13 claims. The 180-day period for Mallon to sell the Property concluded on March 29,
14 2012. Mallon failed to sell the Property. Accordingly, the Settlement Agreement is
15 of no force or effect, and the Receiver intends to enforce the Judgment against
16 Mallon. The Receiver now seeks to further expand the employment of Forman Holt
17 to include enforcement of the Mallon Judgment on the same terms previously
18 approved for other judgment collection matters, *i.e.*, hourly fees capped at \$10,000,
19 plus 20% of all amounts above \$10,000 that are recovered.

20 IV. ARGUMENT

21 Pursuant to Section VI of the Receiver Order, the Receiver requests that the
22 Court approve the expanded employment of Forman Holt to include enforcement
23 and collection of the Mallon Judgment. As with their initial employment, the
24 Receiver's selection of Forman Holt for the Mallon matter is based upon the location
25 of its office in the New York area, its favorable billing rates as a medium-sized law
26 firm (approximately 18 attorneys), and its general expertise in handling creditors'
27 rights, bankruptcy, and collection matters. The Receiver also noted in making his
28 selection that there is case management efficiency in interfacing with the same firm

1 on similar matters. The expanded employment will involve enforcement of the
2 Mallon Judgment in the New York area, where Mallon resides, and, therefore, will
3 require knowledge of local law and procedure.

4 The Receiver believes that firms with skill and expertise comparable to
5 Forman Holt are unlikely to agree to employment terms better than those offered by
6 Forman Holt. As noted above, Mallon's tax returns reflect very little income and the
7 Receiver's preliminary investigation has not revealed any assets of value other than
8 the Property. Although Mallon has not filed personal bankruptcy, there is
9 considerable risk he will.

10 The Receiver also believes Forman Holt will produce the best outcome for the
11 receivership estate. Forman Holt has diligently pursued the collection matters
12 already assigned to it and has been responsive to the Receiver and his staff. The
13 proposed fee structure is fair and reasonable under the circumstances, comparable to
14 what firms with similar expertise would charge, and will allow the Receiver to
15 maximize the recovery from the Mallon Judgment.

16 **V. CONCLUSION**

17 Based on the foregoing, the Receiver respectfully requests that the Court
18 grant the Motion and approve the Receiver's expanded employment of Forman Holt
19 as provided herein.

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21 Dated: April 27, 2012

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Ted Fates

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TED FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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