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

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Receiver,

15 v.

16 MEDICAL CAPITAL HOLDINGS,
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)

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

Date: August 15, 2011
Time: 8:30 a.m.
Ctmm: 9D
Judge: Hon. David O. Carter

21 PLEASE TAKE NOTICE that on August 15, 2011, at 8:30 a.m., or as soon
22 thereafter as this matter may be heard, before the Honorable David O. Carter, in
23 Courtroom 9D of the United States District Court for the Central District of
24 California, Southern Division, located at 411 W. Fourth Street, Santa Ana,
25 California 92701, Thomas A. Seaman ("Receiver"), will move ("Motion") this Court
26 for an Order expanding the Receiver's employment of Forman Holt Eliades &
27 Ravin, LLC, special New York counsel ("Forman Holt"), to include five judgment
28 collection matters and one potential legal action on behalf of Medical Capital

1 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding
2 Corporation VI, and their subsidiaries and affiliates ("Receivership Entities").

3 On February 8, 2011, the Receiver moved for authorization to employ
4 Forman Holt as special New York counsel to evaluate and, as appropriate, pursue
5 collection actions relating to Dr. Robert Schepp and his medical practices
6 ("Employment Motion"). Docket No. 475. In the Employment Motion, the
7 Receiver explained that his general counsel, Allen Matkins Leck Gamble Mallory &
8 Natsis, LLP, is a California firm with no offices outside the state. The collection
9 actions relating to Dr. Schepp potentially involved New York law, the primary
10 parties are located in and around New York, and collection efforts would be carried
11 out in and around New York. Therefore, in order to determine the appropriate
12 course of action, the Receiver required experienced New York counsel to assist him.
13 The Employment Motion also discusses the Receiver's selection of Forman Holt,
14 including their relevant experience and expertise, and competitive billing rates.
15 Finally, the Receiver noted that there was a possibility that he would need special
16 counsel for other collection-related matters in the New York area. The Court
17 granted the Employment Motion for authority to employ Forman Holt on March 9,
18 2011. Docket No. 489.

19 The Receiver now seeks to expand the scope of Forman Holt's employment to
20 include five judgment collection matters and one potential action against a borrower.
21 The five judgment debtors and the one borrower are located in the New York area.
22 For the reasons discussed above and in the Employment Motion, the Receiver
23 requires experienced New York area counsel to assist him. The six matters, and the
24 proposed Forman Holt fee structure for each of them, are discussed further below.

25 This Motion is based on the attached Memorandum of Points and Authorities,
26 the Declarations filed concurrently herewith, and such other papers and pleadings
27 and arguments of counsel as may be presented to the Court at or before the hearing
28 on the motion. PLEASE TAKE FURTHER NOTICE any objecting party may file a

1 response not later than twenty-one (21) days prior to the hearing date, pursuant to
2 Local Rule 7-9. Failure to file a response may be deemed a waiver of any
3 opposition to the Motion.

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

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7 Dated: July 14, 2011

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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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND FACTS**

3 On February 8, 2011, the Receiver moved for authorization to employ
4 Forman Holt as special New York area counsel to evaluate and, as appropriate,
5 pursue collection actions relating to Dr. Robert Schepp and his medical practices
6 ("Employment Motion"). Docket No. 475. In the Employment Motion, the
7 Receiver explained that his general counsel, Allen Matkins Leck Gamble Mallory &
8 Natsis, LLP, is a California firm with no offices outside the state. The collection
9 actions relating to Dr. Schepp potentially involved New York law, the primary
10 parties are located in and around New York, and collection efforts would be carried
11 out in and around New York. Therefore, in order to determine the appropriate
12 course of action, the Receiver required experienced counsel to assist him in that
13 geographic region.

14 The Employment Motion also discusses the Receiver's selection of Forman
15 Holt, including their relevant experience and expertise, and competitive billing rates.
16 Finally, the Receiver noted that there was a possibility that he would need special
17 counsel for other collection-related matters in and around New York. The Court
18 granted the Employment Motion on March 9, 2011. Docket No 489.

19 **A. The Additional Collection Matters**

20 The Receiver seeks to expand Forman Holt's employment to include the
21 following collection matters ("Additional Collection Matters"):

22 A. Access Medical Associates, LLC and Lon Goldberg: On March 1,
23 2005, Medical Capital Corporation Special Purpose Corporation VIII
24 ("MCC SPC VIII") entered into a Purchase Agreement with Access
25 Medical Associates, LLC ("Access"), under which MCC SPC VIII
26 acquired the right to purchase Access's accounts receivable. Lon
27 Goldberg guaranteed Access's obligations under the Purchase
28 Agreement. On November 20, 2008, MCC SPC VIII obtained a

1 judgment in Nevada state court against Access and Mr. Goldberg,
2 jointly and severally, in the amount of \$108,261.12, plus attorney fees
3 of \$65,977.70 and costs of \$6,245.17. Access and Goldberg are located
4 in the New York area.

5 B. Capitoline Advisory Group, Inc.: On or about January 29, 2007,
6 Medical Provider Financial Corporation III ("MPFC III") issued a loan
7 in the amount of \$300,000 to Capitoline Advisory Group, Inc.
8 ("Capitoline"). On or about February 5, 2009, MPFC III obtained a
9 judgment against Capitoline in New York state court in the amount of
10 \$300,000 plus interest at the rate of twelve (12%) percent per annum.
11 Capitoline is located in the New York area.

12 C. Quality Care, LLC and John Breining: On October 24, 2003, Carlmont
13 Capital Special Purpose Corporation II and Medical Capital
14 Corporation entered into a Purchase Agreement with Quality
15 Care, LLC ("Quality Care"). Fred Walters and John Breining
16 guaranteed the obligations. Fred Walters filed bankruptcy in
17 October 2005, and received a discharge in January 2006. On or about
18 October 12, 2006, Medical Capital obtained a judgment in Nevada
19 federal court against Quality Care and Mr. Breining in the amount of
20 \$396,679.90, plus attorney fees and costs of \$3,729, plus interest at the
21 rate of eighteen (18%) percent per annum. Mr. Breining is located in
22 the New York area.

23 D. Vantage Services Corp. and Vincent Mallon: On May 2, 2002,
24 Carlmont Capital Special Purpose Corporation II entered into a
25 Purchase Agreement with Vantage Services Corp. ("Vantage").
26 Vincent Mallon guaranteed Vantage's obligations under the Purchase
27 Agreement. On or about April 5, 2005, Medical Capital obtained a
28 judgment in New York state court against Vantage and Mr. Mallon,

1 jointly and severally, in the amount of \$336,857.47. Mr. Mallon is
2 located in the New York area.

3 E. Ilya Gonta. On or about September 1, 2005, MPFC II entered into a
4 Purchase Agreement with New Life Centers, LLC ("New Life"). On or
5 about November 8, 2005, New Life executed a Promissory Note in
6 favor of MPFC II in the amount of \$42,822.27. Addison Larreau and
7 Ilya Gonta guaranteed New Life's obligations under the Purchase
8 Agreement and Promissory Note. On March 4, 2011, the Receiver
9 obtained a judgment against New Life, Mr. Larreau and Mr. Gonta in
10 the amount of \$427,811.10. Mr. Gonta is located in the New York
11 area.

12 F. Kathryn Calabria, D.O., P.C. On or about June 15, 2007, MPFC IV
13 entered in to a Loan and Security Agreement with Kathryn E.
14 Calabria, D.O., P.C., a New York professional corporation
15 ("Calabria"), under which MPFC IV agreed to make available a
16 revolving line of credit up to \$1,500,000. The agreement grants a
17 security interest in all preexisting and after acquired collateral, which
18 term is broadly defined. On or about March 7, 2008, MPFC IV
19 increased the available credit limit to \$1,625,000. Calabria is in default
20 under the Loan and Security Agreement, but no action was filed to
21 enforce Calabria's obligations or foreclose on the collateral. As of
22 April 30, 2011, the total outstanding balance was \$2,320,005.77.
23 Calabria is located in the New York area.

24 **B. Terms of Forman Holt's Expanded Employment**

25 The proposed Retainer Agreement for Forman Holt's work on the Additional
26 Collection Matters is attached to the Seaman Declaration as Exhibit A. Forman Holt
27 has agreed to take on the Additional Collection Matters under the following fee
28 structure:

1 1. For each of the matters A through E above, Forman Holt will bill at the
2 reduced hourly rates provided in the Retainer Agreement up to a
3 maximum of \$10,000. The firm will also receive in each matter a
4 contingent fee equal to thirty (30%) percent of all amounts above
5 \$10,000 that are recovered.

6 2. For matter F above, Forman Holt will bill at the reduced hourly rates
7 provided in the Retainer Agreement up to a maximum of \$25,000. The
8 firm will also receive a contingent fee equal to twenty-five (25%)
9 percent of all amounts above \$25,000 that are recovered.

10 *See* Seaman Declaration, Exhibit A. As the Retainer Agreement reflects, the billing
11 rates for the attorneys at Forman Holt range from \$200 to \$500 per hour, which are
12 reduced from the firm's general billing rates.

13 **II. ARGUMENT**

14 Pursuant to Section VI of the Receiver Order, the Receiver requests that the
15 Court approve the expanded employment of Forman Holt for the Additional
16 Collection Matters. As with their initial employment, the Receiver's selection of
17 Forman Holt for the Additional Collection Matters is based upon the location of its
18 office in the New York area, its favorable billing rates as a medium-sized law firm
19 (approximately 18 attorneys), and its general expertise in handling creditors' rights,
20 bankruptcy, and collection matters. The Additional Collection Matters will involve
21 the enforcement of judgments and, potentially, the filing of an action in the
22 New York area, and therefore will require knowledge of local law and procedure.

23 The receivership estate will also benefit from having Forman Holt handle the
24 Additional Collection Matters in that the Receiver and his staff, and his general
25 counsel, are already familiar with the firm. Likewise, Forman Holt is familiar with
26 this case and the receivership. The Receiver believes that the proposed fee structure
27 in the Retainer Agreement is fair and reasonable, comparable to what firms with
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1 similar expertise would charge, and will allow the Receiver to maximize the
2 recovery for the receivership estate from the Additional Collection Matters.

3 **III. CONCLUSION**

4 Based on the foregoing, the Receiver respectfully requests that the Court
5 grant this Motion and approve the Retainer Agreement.

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Dated: July 14, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates
TED FATES
Attorneys for Receiver
THOMAS A. SEAMAN