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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  
 PROVIDER FUNDING  
 18 CORPORATION VI; SIDNEY M.  
 FIELD; and JOSEPH J.  
 19 LAMPARIELLO,

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

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

1 Thomas A. Seaman (the "Receiver"), the court-appointed Permanent Receiver  
2 for 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 ninth interim application for approval and  
5 payment of fees. This application covers the period November 1, 2011 through  
6 January 31, 2012 (the "Ninth Application Period").

7 During the Ninth Application Period, the Receiver and his staff spent 2,006.9  
8 hours executing the duties set forth in the Temporary Restraining Order and Order  
9 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 \$2,859,168.72 in gross receipts for the  
12 receivership estate. By this Ninth Interim Fee Application, Thomas Seaman seeks  
13 approval of \$333,109.00 in fees which were incurred at a weighted average hourly  
14 rate of \$166 per hour. The Receiver seeks approval to pay 90% of this amount, or  
15 \$299,798.10. 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 Ex  
21 Parte Application for Temporary Restraining Order ("TRO") and Orders: (1)  
22 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 (the "Appointment Date"), the Court entered  
2 the 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 nonperforming 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 over transactions totaling over \$20  
27 billion of 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 Ninth Application Period the  
5 forensic accounting was completed 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 Ninth  
9 Application Period the Receiver and his agents incurred fees of \$76,916.00 working  
10 on the forensic accounting. The Receiver's Forensic Accounting Report was filed  
11 on December 20, 2011. The cost through completion was \$487,897.50.

12 The Receiver's Forensic Accounting Report clearly indicates that the  
13 Receivership Entities' lending and investing activities were not profitable,  
14 notwithstanding that the Receivership Entities were showing a profit in their  
15 financial statements and income tax returns. Moreover, the Receivership Entities  
16 paid the income taxes on their overstated income. The Receiver has filed amended  
17 tax returns for 2005, 2006, 2007 and 2008, as well as the pre-receiver 2009 return,  
18 which the Receiver is hopeful will result in significant income tax refunds. During  
19 the fee application period the Receiver supported the IRS field agents' review of  
20 amended returns. To date, the Receiver has recovered approximately \$1,627,111.78  
21 million in state income tax refunds. If the IRS refunds are approved by a  
22 congressional review committee the total refunds are expected to be approximately  
23 \$120 million.

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

- 26 • Collection efforts
- 27 ♦ Foreclosure actions

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- ◆ Actions to enforce personal guarantees
- ◆ Discounted pay-off negotiations
- ◆ Forbearance negotiations
- Claims against Receivership Entities, not all of which were covered by the stay imposed by the Preliminary Injunction
- Lawsuits and other claims of lender breach relative to the collection of accounts receivable that had not been financed (in at least one case, the borrower had paid its debt in full and MCC continued to collect the underlying accounts receivable), or Medical Capital's failure to perform lending commitments
- Asset sales
- Management or oversight of operating businesses owned or otherwise controlled by Receivership Entities:
- Marketing and sale of all real property owned by the Receivership Entities, some by virtue of foreclosure
- Marketing of notes
- Marketing, maintenance and sale of the Home Stretch (luxury yacht)
- Disposition of personal property
- Forensic accounting based on daily cash receipts and disbursements covering nearly six years and approximately \$20 billion of transactions in 258 bank accounts. Approximately 15,000 bank statements were input and reconciled.
- Accounting for receivership receipts and disbursements segregated by MP and business operating entities
- Preparation of monthly reports filed with Court
- Handling of investor relations and communications

- 1           ♦     Establish and maintain website, with all pleadings promptly
- 2                     posted there ([www.medicalcapitalreceivership.com](http://www.medicalcapitalreceivership.com))
- 3           ♦     Establish and effectuate investor claim process
- 4           •     Evaluate potential causes of actions for recovery of funds for benefit
- 5                     of investors
- 6           •     Investigated claims against professionals and sought *in camera*
- 7                     approval to proceed
- 8           •     Sought and was granted approval to bring action against the bond
- 9                     indenture trustees
- 10          •     Execute tolling agreements and initiated pre-litigation settlement
- 11                     discussions with bond indenture trustees
- 12          •     Conducted damage and causation analysis for bond indenture
- 13                     litigation and potential settlement discussions
- 14          •     Issuance of subpoenas for banking records and then review and
- 15                     investigation of materials obtained to determine possible sources of
- 16                     recovery
- 17          •     Responded to subpoenas and inquiries of several federal agencies
- 18                     with interest in the underlying civil litigation
- 19          •     Assisted with providing a mechanism which supports various
- 20                     discovery requests and subpoenas of the Receiver
- 21          •     Analyzed payments invested by noteholders and compared that to
- 22                     the principal and interest paid to investors for the purpose of
- 23                     establishing a basis for a plan of distribution

24           The Receiver's efforts resulted in gross receipts to the receivership estate in  
25           the amount of \$2,859,168.72 during the Ninth Application Period and can be broken  
26           down into the following categories:

- 27                     •     Accounts Receivable Collection:         \$         4,594.21

1	• Income Tax Refunds:	\$	1,517.38
2	• Loan Collections:	\$	803,666.66
3	o Transfac	\$	53,666.66
4	o Lavipharm	\$	750,000.00
5	• NHBC revenue:	\$	1,520,060.47
6	• Perfect Game Revenue:	\$	37,330.00
7	• Rental Income:	\$	132,000.00
8	• Settlement Proceeds:	\$	360,000.00
9	Total	\$	<u>2,859,168.72</u>

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

	<u>Ninth Fee Application</u>	<u>Inception To Date</u>
14 Gross Receipts	\$ 2,859,168.72	\$ 135,717,997.77
15 Receiver's Fees	\$ 333,109.00	\$ 2,859,168.72
16 Receiver's Fees as % of Receipts	11.7%	2.42%

17           The receiver's fees were 11.7% of funds recovered during this fee application  
 18 period, and are just over 2.42% inception to date. During the fee application period  
 19 the receiver devoted a significant amount of the work to asset sales which will not  
 20 result in recovery to the estate until the sales are closed in future periods. For  
 21 example, the Receiver spent time on the Southwest Atlanta Hospital sale and the  
 22 Parkway note sale, both of which have been problematic and time consuming to  
 23 administer. On January 30, 2012, the Receiver accepted a purchase offer for the  
 24 Parkway Hospital note. The sale closed May 8, 2012. The Receiver also prepared  
 25 NHBC for disposition by assisting potential buyers with their extensive due  
 26 diligence.



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

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

13 As of January 31, 2012, the Receiver was holding cash in the amount of  
14 \$100,542,539.13.

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

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

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1           **A. Charges by Timekeeper**

2           Exhibit B provides a breakdown by timekeeper setting forth the amount of  
3 time spent by the Receiver and his agents at their respective hourly rates. The  
4 Receiver personally expended 197.3 hours for the Ninth Application Period for a  
5 total cost of \$78,920.00. During the Ninth Application Period the Receiver  
6 expended 41% of his time working on the Medical Capital receivership.

7           In order to manage the Receivership in a cost effective manner, the Receiver  
8 delegates some assignments to agents who are billed at hourly rates ranging from  
9 \$45 to \$320 per hour. These agents perform accounting, financial analysis, business  
10 management, forensic accounting, investor relations and claims management, debt  
11 collection, litigation support, real estate management, management of asset  
12 disposition and other services required by the receivership estate. During the Ninth  
13 Application Period, the Receiver's agents expended 1,809.6 hours at an average  
14 hourly rate of \$140 per hour. The Receiver expects the number of hours necessary  
15 to administer the receivership estate to continue to remain stable in the near term as  
16 the Receiver's investigation and recovery efforts proceed, and for the fees to then  
17 decline once the Forensic Account Report is filed and the plan of distribution are  
18 approved.

19           By using qualified agents at significantly lower hourly rates than the  
20 Receiver, the Receiver was able to achieve a weighted average hourly (blended) rate  
21 of \$166 per hour for the Ninth Application Period and \$157 per hour from inception  
22 to date. The Receiver believes that the hourly rates charged by the Receiver are fair  
23 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	103.2	\$161	\$16,597.00
7	Accounting and Reporting	51.1	\$145	\$7,409.50
8	Bookkeeping	110.0	\$123	\$13,571.00
9	Books & Records Administration	125.5	\$59	\$7,422.50
10	Forensic Accounting	327.3	\$235	\$76,916.00
11	Investor Relations	715.2	\$101	\$72,438.00
12	Litigation & Support	41.6	\$311	\$12,936.00
13	Manage Business	58.8	\$295	\$17,372.00
14	Paralegal	68.6	\$130	\$8,918.00
15	Project Management	75.7	\$194	\$14,652.00
16	Receiver	32.0	\$400	\$12,800.00
17	Receivership Administration	21.6	\$87	\$1,869.00
18	Sell Liquidate Assets	276.3	\$254	\$70,208.00
19	<b>Totals</b>	<b>2,006.9</b>	<b>\$166</b>	<b>\$333,109.00</b>

20           The Receiver did not charge for the cost of preparing the fee  
 21 applications, which took 15.8 hours to prepare during the Ninth Application Period  
 22 at a cost savings to the receivership estate of \$2182.00.  
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1           **C.    Charges by Asset**

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

11				% of Referenced Assets Costs
12	Asset	Hours	Rate	Cost
13	Castle Hill	0.7	\$211	\$148.00
14	Edge	7.8	\$315	\$2,458.00
15	Gulf Pines	187.3	\$6	\$1,116.40
16	Home Stretch	0.3	\$320	\$96.00
17	Lavipharm	5.2	\$109	\$567.00
18	NHBC	328.4	\$238	\$78,216.50
19	Parkway Hospital	78.0	\$258	\$20,096.00
20	Perfect Game	9.2	\$141	\$1,295.50
21	Pyramid	0.3	\$320	\$96.00
22	Southwest Atlanta Hospital	37.8	\$258	\$9,762.00
23	TEEM, Macaluso	15.6	\$120	\$1,871.00
	TRACE	1.5	\$190	\$285.00
24	Total Referenced Asset			
25	Categories (Excludes work			
26	not related to specific			
	assets)	672.1	\$173	\$116,007.40
27	Non-Categorized	1,334.8	\$163	\$217,101.60
28	Totals	2,006.9	\$166	\$333,109.00

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CONCLUSION.

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

Approving fees totaling \$333,109.00 for the Ninth Application Period;

1. Authorizing the Receiver to pay 90% of such sum, or \$299,798.10, out of assets of the receivership estate; and
2. For other and further relief as is appropriate.

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

Executed this 11<sup>th</sup> day of June, 2012, at Irvine, California.

  
THOMAS A. SEAMAN