

1 DAVID R. ZARO (BAR NO. 124334)
MICHAEL R. FARRELL (BAR NO. 173831)
2 EDWARD G. FATES (BAR NO. 227809)
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
8

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
22
23
24
25
26
27
28

Case No. SA CV09-0818 DOC (RNBx)

SIXTH INTERIM FEE APPLICATION
OF THOMAS SEAMAN, RECEIVER

Date: September 12, 2011

Time: 8:30 a.m.

Ctrm: 9D

Judge: Hon. David O. Carter

BY _____
2011 AUG 11 PM 3:35
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

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 sixth interim application for approval and
5 payment of fees. This application covers the period February 1, 2011 through April
6 30, 2011 (the "Sixth Application Period").

7 During the Sixth Application Period, the Receiver and his staff spent 2,213.2
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 \$6,059,892.96 in gross receipts for the
12 receivership estate. By this Sixth Interim Fee Application, Thomas Seaman seeks
13 approval of \$336,867.50 in fees which were incurred at a weighted average hourly
14 rate of \$152 per hour. The Receiver seeks approval to pay 90% of this amount, or
15 \$303,180.75.

16 The Receiver does not seek reimbursement of any expenses.

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

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

27
28

1 TRO, however, the TRO was vacated the following day at the request of the
2 Defendants, and further briefing was submitted.

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

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

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

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

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

26 The high risk nature of the loans made by the Receivership Entities is
27 confirmed by the Receiver's investigation of the sources and uses of investor cash,
28

1 which demonstrates that the Receivership Entities did not operate their lending
2 business profitably. In fact, leaving aside that the Receiver has learned that many of
3 the accounts receivable do not exist, it appears that the vast majority of the real
4 unpaid loans are non-performing. Notwithstanding the unprofitability of the
5 Receivership Entities' money lending activities, the money raising entities paid
6 administrative fees in excess of \$324 million to MCC.

7 The funds used to make investments were raised through the sale of
8 promissory notes to investors from Special Purpose Corporations ("SPC's"), referred
9 to as Medical Provider Financial Corporations ("MPs"). MCC was very successful
10 in attracting investors, apparently raising over \$1.7 billion from investors in the
11 MPs. At the time of the Receiver's appointment investors were owed principal of
12 \$1.079 billion.

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

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

26 In addition, because the Defendants did not keep accurate books and records,
27 the Receiver is conducting a forensic accounting of the sources and uses of investor
28

1 funds. The forensic accounting entails entering over transactions totaling \$10
2 billion of into a relational database designed to identify assets of the company and
3 recipients of ill-gotten gains, as well as allow the Court to make determinations as to
4 the nature of the fraud including a likely finding that Medical Capital affiliates and
5 subsidiaries operated a unitary enterprise in a Ponzi-like manner in order to defraud
6 investors and enrich the Defendants. The forensic accounting is being performed by
7 the Receiver and his staff along with certain former employees of Medical Capital
8 (who are paid from the estate thereby greatly reducing the cost of performing the
9 forensic accounting), which would have been massively expensive if performed by
10 an outside accounting firm. During the Sixth Application Period the Receiver and
11 his agents incurred fees of \$39,783.00 working on the forensic accounting. The cost
12 of the forensic accounting from inception of the receivership through April 30,
13 2011, has been approximately \$369,729.50.

14 The preliminary forensic accounting clearly indicates that the Receivership
15 Entities' lending and investing activities were not profitable, notwithstanding that
16 the Receivership Entities were showing a profit in their financial statements and
17 income tax returns. Moreover, the Receivership Entities paid the income taxes on
18 their overstated income. The Receiver has filed amended tax returns for 2005, 2006,
19 2007 and 2008, as well as the pre-receiver 2009 return, which the Receiver is
20 hopeful will result in significant income tax refunds.

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

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

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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 and maintenance 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 \$10 billion of transactions in 258 bank accounts. Approximately 15,000 bank statements have been 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
 - ◆ Establish and maintain website, with all pleadings promptly posted there (www.medicalcapitalreceivership.com)
 - ◆ Establish and effectuate investor claim process

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Evaluate potential causes of actions for recovery of funds for benefit of investors
- Investigated claims against professionals and sought *in camera* approval to proceed
- Sought and was granted approval to bring action against the bond indenture trustees
- Issuance of subpoenas for banking records and then review and investigation of materials obtained to determine possible sources of recovery
- Respond to subpoenas and inquiries of several federal agencies with interest in the underlying civil litigation
- Assist with providing a mechanism which supports various discovery requests and subpoenas of the Receiver
- Analyze payments made by investors compared to principal and purported interest paid to investors for the purpose of establishing a possible basis for a plan of distribution now that cash in the estate is accruing to a sizable number

The Receiver's efforts resulted in gross receipts to the receivership estate in the amount of \$6,059,892.96 during the Sixth Application Period and can be broken down into the following categories:

- Accounts receivable payments: \$ 60,556.18
- Income Tax Refunds: \$1,462,258.78
- Loan payments: \$ 118,125.00
- NHBC revenue: \$1,502,060.36
- Perfect Game Revenue: \$ 111,560.01
- Viva-Vision Revenue: \$ 1,126.52
- Rental income: \$ 4,950.00

1	• Sale of Home Stretch:	\$ 1,452,133.31
2	• Sale and TRACE asset:	\$1,245,465.85
3	• Non-refundable deposit on	
4	proposed sale of Southwest	
5	Atlanta Hospital:	\$ 100,000.00
6	• Other:	\$ 1,656.95
7	Total	<u>\$6,059,892.96</u>

8

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>Sixth Fee Application</u>	<u>Inception To Date</u>
12 Gross Receipts	\$ 6,059,892.96	\$ 126,692,939.45
13 Receiver's Fees	\$ 336,867.50	\$ 2,310,936.50
14 Receiver's Fees as % of Receipts	5.6%	1.82%

15 One reason that the receiver's fees as a percent of funds recovered are higher

16 during this fee application period than in many of the previous fee applications is

17 that a significant amount of the work performed by the Receiver will result in future

18 recovery to the estate in future periods. For example, the Receiver spent time on the

19 Southwest Atlanta Hospital sale and the Parkway note sale, both of which have been

20 problematic and time consuming to administer. The Receiver also prepared NHBC

21 for disposition. The Receiver also expended time and resources investigating and

22 seeking approval to bring actions against former counsel and the indenture trustees.

23 Administration of the investor claims process, one of the primary functions of the

24 receivership estate does not produce revenue to the estate but consumed estate

25 resources. During the fee application period, the cost for investor relations,

26 including claims process administration, increased significantly to \$48,150.00 and

27 more than fully explains the increase receiver's fees over the last fee application

1 period which otherwise would have declined slightly. So, while many of the
2 Receiver's activities, such as the forensic accounting, necessary to find assets and
3 sources of recovery, and effectuating the investor claims process, may not produce
4 immediate returns or any returns, they are necessary to administer this complex
5 estate.

6 As of April 30, 2011, the Receiver was holding cash in the amount of
7 \$100,780,338.83.
8

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

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

18 **A. Charges by Timekeeper**

19 Exhibit B provides a breakdown by timekeeper setting forth the amount of
20 time spent by the Receiver and his agents at their respective hourly rates. The
21 Receiver personally expended 115.4 hours for the Sixth Application Period for a
22 total cost of \$43,267.50. During the Sixth Application Period the Receiver expended
23 24% of his time working on the Medical Capital receivership.

24 In order to manage the Receivership in a cost effective manner, the Receiver
25 delegates some assignments to agents who are billed at hourly rates ranging from
26 \$35 to \$300 per hour. These agents perform accounting, financial analysis, business
27 management, forensic accounting, investor relations and claims management, debt
28

1 collection, litigation support, real estate management, management of asset
 2 disposition and other services required by the receivership estate. During the Sixth
 3 Application Period, the Receiver's agents expended 2,097.8 hours at an average
 4 hourly rate of \$140 per hour. The Receiver expects the number of hours necessary
 5 to administer the receivership estate to continue to remain stable in subsequent
 6 months as the Receiver's investigation and recovery efforts proceed.

7 By using qualified agents at significantly lower hourly rates than the
 8 Receiver, the Receiver was able to achieve a weighted average hourly (blended) rate
 9 of \$152 per hour for the Sixth Application Period and \$154 per hour from inception
 10 to date. The Receiver believes that the hourly rates charged by the Receiver are fair
 11 and reasonable given the requirements of the receivership estate.

12 **B. Charges by Task**

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

<u>Task</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
A/R and other Debt Collections	214.8	\$163	\$34,959.50
Accounting and Reporting	64.0	\$130	\$8,311.00
Bookkeeping	259.9	\$117	\$30,448.50
Forensic Accounting	353.9	\$112	\$39,783.00
Investor Relations	451.8	\$107	\$48,150.00
Litigation & Support	44.6	\$263	\$11,715.00
Manage Business	80.0	\$238	\$19,011.00
Paralegal	66.5	\$120	\$7,980.00
Project Mgmt	328.0	\$195	\$63,849.00
Receiver	33.3	\$375	\$12,487.50
Receivership Admin	44.1	\$54	\$2,393.50
Sell Liquidate Assets	272.3	\$212	\$57,779.50

1 Totals 2,213.2 \$152 \$336,867.50

2
3 The Receiver did not charge for the cost of preparing the fee applications,
4 which took 37.3 hours to prepare during the Sixth Application Period at a cost
5 savings to the receivership estate of \$5,819.50.

6 **C. Charges by Asset**

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

17				% of Referenced Assets Costs
18	Asset	Hours	Rate	Cost
19	Castle Hill	5.7	\$193	\$1,102.50 0.6%
20	Concept One	0.5	\$300	\$150.00 0.1%
21	Edge	119.1	\$126	\$14,948.00 8.1%
22	Gulf Pines	4.6	\$283	\$1,302.00 0.7%
23	Home Stretch	25.5	\$150	\$3,834.00 2.1%
24	Lavipharm	1.3	\$172	\$223.50 0.1%
25	NHBC	293.7	\$157	\$45,994.50 25.0%
26	Parkway Hospital	134.7	\$222	\$29,914.00 16.3%
27	Perfect Game	45.4	\$169	\$7,673.00 4.2%
28	Pyramid	11.6	\$307	\$3,562.50 1.9%
	Southwest Atlanta Hospital	93.6	\$231	\$21,610.50 11.8%
	TEEM, Macaluso	0.3	\$375	\$112.50 0.1%
	TRACE	203.7	\$229	\$46,678.00 25.4%

1	Velocity (mail.com)	29.8	\$207	\$6,166.00	3.4%
2	Vivavision	3.5	\$182	\$636.00	0.3%
3	Total of Referenced Asset Categories)	973.0	\$189	\$183,907.00	100.0%
4	Non-Categorized ¹	1,240.2	\$123	\$152,960.50	
5	Totals	2,213.2	\$152	\$336,867.50	
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28	¹ Work not directly related to any categorized asset.				

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 1. Approving fees totaling \$336,867.50 for the Sixth Application
7 Period;
8 2. Authorizing the Receiver to pay 90% of such sum, or
9 \$303,180.75, out of assets of the receivership estate; and
10 3. For other and further relief as is appropriate.

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

13 Executed this 11th day of August, 2011, at Irvine, California.

14
15
16 
17 _____
18 THOMAS A. SEAMAN
19
20
21
22
23
24
25
26
27
28

EXHIBIT A