

1 DAVID R. ZARO (BAR NO. 124334)
MICHAEL R. FARRELL (BAR NO. 173831)
2 TED FATES (BAR NO. 227809)
ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP
515 South Figueroa Street, Ninth Floor
4 Los Angeles, California 90071-3309
Phone: (213) 622-5555
5 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
6 mfarrell@allenmatkins.com
tfates@allenmatkins.com

7 Attorneys for Receiver Thomas A. Seaman
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

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. 8:09-cv-0818-DOC (RNBx)

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH
VINCENT A. MALLON;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: September 12, 2011
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on September 12, 2011, at 8:30 a.m., in
3 Courtroom 9D of the above-entitled Court located at 411 West Fourth Street,
4 Santa Ana, California 92701, a hearing will be held on the motion of Thomas A.
5 Seaman ("Receiver"), Court-appointed permanent receiver for Medical Capital
6 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding
7 Corporation VI, and their subsidiaries and affiliates, including Carlmont Capital
8 Special Purpose Corporation II (collectively, "Medical Capital" or the "Receivership
9 Entities"), for approval of a settlement agreement with Vincent Mallon ("Motion").

10 The Motion is based on the Memorandum of Points and Authorities below,
11 and the Declaration of Thomas A. Seaman filed herewith. The Motion and
12 supporting papers are available at the Receiver's website,
13 <http://www.medicalcapitalreceivership.com>, or may be reviewed at the Clerk's
14 Office during normal business hours at 411 West Fourth Street, Santa Ana,
15 California 92701.

16 **Procedural Requirements:** If you oppose this Motion, you are required to
17 file your written opposition with the Office of the Clerk, United States District
18 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on
19 the undersigned not later than twenty-one (21) calendar days prior to the hearing.

20 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
21 above date, the Court may grant the requested relief without further notice. This
22 Motion is made following the conference of counsel pursuant to L.R. 7-3.

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1 WHEREFORE, the Receiver requests that the Court grant the relief requested
2 herein and such other relief as may be appropriate under the circumstances.

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4 Dated: August 19, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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6 By: /s/ Ted Fates

7 TED FATES
8 Attorneys for Receiver
9 Thomas A. Seaman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS**

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

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

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

25 The parties negotiated a settlement agreement under which Mallon agreed to
26 market and sell the Property within 180 days, and to pay \$100,000 to the Receiver
27 directly from escrow at closing in exchange for a full release of claims ("Settlement
28 Agreement"). If the Property is not sold within 180 days or the net sale proceeds are

1 insufficient to make the \$100,000 settlement payment, the Settlement Agreement,
2 including the release of claims, has no force or effect. Mallon has represented that
3 the only lien on the Property is a mortgage under which \$334,000 is owed. Based
4 on the Receiver's preliminary investigation of the Property, he estimates that it is
5 worth between \$700,000 and \$750,000.

6 Although the Settlement Agreement does not release any claims against
7 Vantage, the Receiver's investigation indicates that Vantage ceased operations in
8 2003 and has no assets. McDonald has stated that Mallon will file bankruptcy if his
9 obligations to Medical Capital cannot be consensually resolved.

10 II. ARGUMENT

11 A federal equity receiver's power to compromise claims is subject to court
12 approval. As noted by the Ninth Circuit Court of Appeals in *S.E.C. v. Hardy*,
13 803 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an
14 equity receivership and to determine the appropriate action to be taken in the
15 administration of the receivership is extremely broad." With regard to settlements
16 entered into by a federal equity receiver, the Court's supervisory role includes
17 reviewing and approving those settlements in light of federal court policy to
18 promote settlements before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee
19 Notes.

20 Federal courts of equity often look to bankruptcy law for guidance in the
21 administration of receivership estates. *See SEC v. Capital Consultants, LLC*,
22 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*,
23 98 F.3d 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*,
24 273 F.3d 657, 665 (6th Cir. 2001); *see also* Local Civil Rule 66-8 ("a receiver shall
25 administer the estate as nearly as possible in accordance with the practice in the
26 administration of estates in bankruptcy"). A bankruptcy court may approve a
27 compromise of claims asserted by or against the estate if the compromise is "fair
28 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*,

1 839 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise
2 negotiated by a court-appointed fiduciary "is an exercise of discretion that should
3 not be overturned except in cases of abuse leading to a result that is neither in the
4 best interest of the estate nor fair and equitable for the creditors." *In re MGS*
5 *Marketing*, 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

6 The Court has great latitude in approving compromises. In passing on the
7 proposed compromise, the Court should consider the following:

- 8 a. The probability of success in litigation;
- 9 b. The difficulties, if any, to be encountered in the matter of
10 collection;
- 11 c. The complexity of the litigation involved and the expense,
12 inconvenience, and delay necessarily attending; and
- 13 d. The paramount interest of the creditors and a proper
14 deference to their reasonable views in the premises.

15 *Woodson*, 839 F.2d at 620.

16 Here, there is a judgment against Mallon in the amount of \$336,857.47.
17 However, it is unlikely that the Receiver could enforce the judgment without Mallon
18 filing bankruptcy. A bankruptcy would delay recovery and involve additional legal
19 expense. The Property would likely be sold in the bankruptcy, but the
20 administrative expenses of the bankruptcy would be paid first, then the mortgage
21 obligation, unpaid property taxes, title and escrow fees, and the broker's
22 commission. The net recovery for the receivership estate from a bankruptcy is
23 unknown, and could well be less than \$100,000. The Settlement Agreement, on the
24 other hand, generates \$100,000 cash for the receivership estate in 180 days or less.
25 If the Property is not sold within 180 days, or the net sale proceeds are insufficient
26 to make the \$100,000 settlement payment, the Settlement Agreement, including the
27 release of claims against Mallon, has no force or effect. Therefore, the Settlement
28 Agreement is in the best interests of the receivership estate and should be approved.

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III. CONCLUSION

WHEREFORE, the Receiver requests entry of an order granting the Motion and approving the Agreement.

Dated: August 19, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
Thomas A. Seaman