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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.
20
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Case No. 8:09-cv-0818-DOC (RNBx)

**DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF MOTION
FOR APPROVAL OF SETTLEMENT
AGREEMENT WITH VINCENT A.
MALLON**

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

1 I, Thomas A. Seaman, declare:

2 1. I am the duly Court-appointed receiver for Medical Capital
3 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding
4 Corporation VI, and their subsidiaries and affiliates. I submit this declaration in
5 support of my Motion for Approval of Settlement Agreement with Vincent A.
6 Mallon ("Motion"). I have personal knowledge of the facts stated herein, and if
7 called upon to do so, I could and would personally and competently testify to them.

8 2. On May 2, 2002, Medical Capital (Carlmont Capital Special Purpose
9 Corporation II) entered into an Account Purchase Agreement ("Purchase
10 Agreement") with Vantage Services Corporation ("Vantage"). Pursuant to a
11 Guaranty executed in connection with the Purchase Agreement ("Guaranty"),
12 Vantage's obligations under the Purchase Agreement were guaranteed by its
13 principal, Vincent A. Mallon ("Mallon"). Mallon owns real property located at
14 102 Barry Lane, Syosset, New York 11791 (the "Property").

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

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

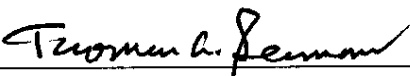
3 5. The parties negotiated a settlement agreement under which Mallon
4 agreed to market and sell the Property within 180 days, and to pay \$100,000 to the
5 receivership estate directly from escrow at closing in exchange for a full release of
6 claims ("Settlement Agreement"). If the Property is not sold within 180 days or the
7 net sale proceeds are insufficient to make the \$100,000 settlement payment, the
8 Settlement Agreement, including the release of claims, has no force or effect.
9 Mallon has represented that the only lien on the Property is a mortgage under which
10 \$334,000 is owed. Based on my preliminary investigation of the Property, I
11 estimate that it is worth between \$700,000 and \$750,000.

12 6. Although the Settlement Agreement does not release any claims against
13 Vantage, the Receiver's investigation indicates that Vantage ceased operations in
14 2003 and has no assets. McDonald has stated that Mallon will file bankruptcy if his
15 obligations to Medical Capital cannot be consensually resolved.

16 7. I believe that the Settlement Agreement is in the best interests of the
17 receivership estate, and therefore request that it be approved.

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19 I declare under penalty of perjury under the laws of the State of California
20 that the foregoing is true and correct.

21 Executed this 1st day of August, 2011, at Irvine, California.

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24 THOMAS A. SEAMAN
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EXHIBIT A

SETTLEMENT AGREEMENT & MUTUAL RELEASE

This SETTLEMENT AGREEMENT & MUTUAL RELEASE ("Agreement"), dated for reference purposes only as of July 15, 2011, is made by and among THOMAS A. SEAMAN ("Receiver"), in his capacity as court-appointed receiver for MEDICAL CAPITAL HOLDINGS ("MCH") and CARLMONT CAPITAL SPECIAL PURPOSE CORPORATION II ("CCSPC II"), and VINCENT MALLON ("Mallon").

RECITALS

- A. CCSPC II, Mallon and Vantage Services Corp ("Vantage") are parties to that certain Purchase Agreement dated May 2, 2002 ("Purchase Agreement").
- B. Mallon, who owns real property located at 102 Barry Lane, Syosset, New York 11791 (the "Property"), guaranteed the obligations under the Purchase Agreement pursuant to the Guaranty executed with the Purchase Agreement (the "Guaranty").
- C. Vantage defaulted under the terms of the Purchase Agreement and CCSPC II commenced an action on the Purchase Agreement and Guaranty in the Supreme Court of the State of New York, County of Nassau entitled *Carlmont Capital Special Purpose Corporation II v. Vincent A. Mallon and Vantage Services Corp.*, Case No. 3940-04.
- C. On April 5, 2005, the court entered an order awarding CCSPC II a judgment in the amount of \$336,857.47 joint and severally against Vantage and Mallon (the "Judgment").
- D. On August 18, 2009, the United States District Court for the Central District of California ("California District Court") appointed Thomas A. Seaman as permanent receiver for MCH and its subsidiaries and affiliates, including CCSPC II.
- E. Subject to Court approval, the Receiver and Mallon have agreed to settle all disputes relating to the Purchase Agreement, the Guaranty and the Judgment under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged the undersigned agree as follows:

- 1. **Court Approval.** All covenants, terms and conditions of this Agreement are subject to approval of the California District Court. This Agreement shall have no force or effect unless and until it is approved by the California District Court in a written order. The Receiver shall promptly move for approval of this Agreement in the California District Court.

2. Immediate Marketing of Property; No Additional Liens or Encumbrances. Upon execution of this Agreement, Mallon shall promptly market the Property for sale and undertake the usual and customary steps for marketing and selling similar properties. Mallon acknowledges and agrees that as of the date of this Agreement the only lien or encumbrance against the Property is in favor of the lender New Century Mortgage Company, or its successors in interest or assigns, recorded on or about October 17, 2003 in the current amount of \$334,000. As of the date of this Agreement, Mallon agrees that he and his wife Linda shall not consent to, permit, facilitate, approve, grant or in any other way agree to any other liens, encumbrances, pledges or mortgages of any kind related to the Property, and shall timely satisfy all financial and other obligations, which, if not timely satisfied, could lead to a lien or encumbrance on the Property.

3. Closing Date and Settlement Payment from Proceeds of Sale. Mallon shall have one hundred and eighty (180) days from the date an order approving this Agreement is entered by the California District Court ("Order") to pay to the Receiver, directly from the escrow set up for the sale of the Property, by cashier's check or wire transfer in immediately available funds, the amount of ONE HUNDRED THOUSAND and 00/100 DOLLARS (\$100,000.00) (the "Settlement Payment"). Mallon shall instruct the escrow set up in connection with any sale of the Property to make the Settlement Payment immediately upon closing of the sale.

3.1. Failure to Close Sale within 180 Days; Insufficient Sale Proceeds. In the event that (a) Mallon is unable to close a sale of the Property within 180 days of entry of the Order, or (b) the liens and encumbrances on the Property, when sold, are such that the sale proceeds available after payment of liens and encumbrances on the Property are insufficient to make the Settlement Payment, then this Agreement, including all releases provided for herein, shall be null, void and of no effect, and the Receiver shall retain all rights and remedies to enforce the Judgment. The parties, however, may enter into a written agreement to amend the 180 day period to close set forth in this section 3.1 in the event that a qualified buyer has been found but closing has not yet occurred and each party determines in their sole discretion that extending the 180 day period is in their best interests.

4. Mutual Release. Provided that the California District Court approves this Agreement and the full Settlement Payment is timely made by Mallon, CCSPC II and MCH, on the one hand, and Mallon on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release and discharge one another, and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys and employees, of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments of any kind or character whatsoever, all of which are hereinafter called, "Released Claims."

The Released Claims include, but are not limited to, any and all claims arising out of the Purchase Agreement, Guaranty and Judgment, and any other claims that CCSPC II and MCH on the one hand, and Mallon on the other hand, had, have, or may have against one another prior to court approval of this Agreement.

Each of CCSPC II, MCH and Mallon acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

CCSPC II, MCH and Mallon expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the parties through this Agreement and with the advice of counsel to fully, finally and forever settle and release the claims and disputes existing between them as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

5. Voluntary Signing. Each of the Parties to this Agreement has executed this Agreement without any duress or undue influence.

6. Independent Counsel. Each of the Parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such Party did not have the advice of legal counsel.

7. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and Federal Equity Receivership law, and subject to the exclusive jurisdiction of the United States District Court for the Central District of California.

8. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the Parties who are affected by the Amendment.


9. Fax and Counterparts. This Agreement may be executed by fax and/or in counterparts and, if so executed, each fax and/or counterpart shall have the full force and effect of an original.

10. Attorneys' Fees and Costs. The Parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the parties efforts to obtain court approval thereof. If any proceeding, action, suit or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

VINCENT A. MALLON

By: 
VINCENT A. MALLON

MEDICAL CAPITAL HOLDINGS and
CARLMONT CAPITAL SPECIAL PURPOSE
CORPORATION II

By: 
THOMAS A. SEAMAN, Court-appointed
Receiver for MCH and CCSPC II