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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
21

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

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT
WITH CROWN PLAZA
DEVELOPMENT, LLC;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 17, 2012
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on December 17, 2012, 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 Medical Provider
8 Financial Corporation II (collectively, "Medical Capital" or the "Receivership
9 Entities"), for approval of a settlement agreement with Crown Plaza
10 Development, LLC ("Motion").

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

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

21 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the
22 above date, the Court may grant the requested relief without further notice. This
23 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.

3
4 Dated: November 16, 2012

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 This motion involves the settlement of pending litigation involving Medical
3 Capital, Edge Capital, Inc. ("Edge") and Crown Plaza Development, LLC
4 ("Crown") and recovery on loans made by Medical Capital to Edge, which loan
5 proceeds were used to fund loans made by Edge to Crown. Crown, which filed
6 bankruptcy in 2008, has agreed to sell three of the four properties it owns (its only
7 assets) and to pay to the Receiver the net sale proceeds from those three properties.
8 The Receiver requests approval of the settlement agreement.

9 **I. FACTS**

10 **A. The Edge Loan**

11 In August 2006, Medical Capital made a multi-million dollar line of credit
12 available to Edge, a California corporation (the "Edge Loan"). Edge used the
13 proceeds of the Edge Loan to make third party loans, including the loans to Crown
14 discussed below. Edge, which no longer conducts any business, was owned by
15 Joseph Menez. Matthew Nunez, who received personal loans from Medical Capital
16 and was a personal friend of Defendant Joseph Lampariello, was affiliated with
17 Edge when the Edge Loan was made. Seaman Declaration, ¶ 2.

18 **B. Crown Plaza Development**

19 Crown is a California limited liability company. Its managing member is
20 Cynthia Gomez. Gomez was a personal friend of Mr. Nunez at the time Edge made
21 loans to Crown. The other two members of Crown are Jesus and Lorena Magana.

22 Crown's only assets are the following four real properties:

23 (1) 11215 Lakewood Boulevard and 11214 Nash Avenue in Downey,
24 California (the "Lakewood Property"). The Lakewood Property is undeveloped.

25 (2) 8803, 8811 and 8813 Imperial Highway, Downey, California (the
26 "Imperial Property"). There is a small retail center located on the Imperial Highway
27 Property.

28

1 (3) 9536 Long Beach Blvd., South Gate, California (the "South Gate
2 Property"). There is a Mexican restaurant located on the South Gate Property.

3 (4) 4773 and 4777 Gage Ave., Bell, California (the "Bell Property"). The Bell
4 Property is undeveloped. Seaman Declaration, ¶ 3.

5 Prior to 2007, all four Crown properties were encumbered by a deed of trust
6 in favor of the Lantzman Family Trust. Crown defaulted on the loan owed to the
7 Lantzman Family Trust. The Lantzman Family Trust recorded Notices of Default
8 and issued Notices of Sale. Crown then sought financing to pay off the Lantzman
9 Family Trust loan. Seaman Declaration, ¶ 4.

10 **C. The Crown Loans**

11 With funds obtained from Medical Capital, Edge made loans secured by real
12 estate to third parties, including three loans to Crown. The initial loan, which was in
13 the amount of \$450,000, was made in December 2006. Crown used the loan
14 proceeds to make a partial payment to the Lantzman Family Trust to delay the
15 pending foreclosure sales while it obtained additional financing from Edge. The
16 additional financing, which paid off the Lantzman Family Trust loan and the initial
17 \$450,000 loan from Edge, came in two transactions:

18 (a) a \$4.5 million loan executed on December 28, 2007, secured by a first
19 priority deed of trust on all four Crown properties ("First Loan"); and

20 (b) a \$4.2 million loan executed on February 22, 2008, secured by a second
21 priority deed of trust on all four Crown properties ("Second Loan," and together
22 with the First Loan, the "Crown Loans"). Seaman Declaration, ¶ 5.

23 The principal balance owed on the First Loan is \$3,350,000. As of
24 September 30, 2012, including accrued interest, a total of \$5,781,101.04 was owed
25 on the First Loan. The principal balance owed on the Second Loan is \$4,200,000.
26 As of September 30, 2012, including accrued interest, a total of \$7,560,094.69 was
27 owed on the Second Loan. The total owed on the First and Second Loan combined
28 is \$13,341,195.73. Seaman Declaration, ¶ 6.

1 Although Crown disputes that it defaulted on the Crown Loans, Edge declared
2 Crown in default and commenced foreclosure proceedings. The foreclosure sales
3 were scheduled for February 21, 2008. Crown filed a petition for relief under
4 chapter 11 of the Bankruptcy Code on February 20, 2008. The bankruptcy case,
5 Case No. 8:08-bk-10776 CB, is pending in the United States Bankruptcy Court for
6 the Central District of California, the Honorable Catherine E. Bauer presiding. In
7 April 2008, Edge assigned the Crown Loans and related deeds of trust to Medical
8 Capital. Seaman Declaration, ¶ 7.

9 **D. The Adversary Proceeding**

10 On March 23, 2009, Crown commenced an adversary proceeding in
11 bankruptcy court against Edge, Joseph Menez, Matthew Nunez and Medical Capital
12 Corporation. The Complaint, a true and correct copy of which is attached to the
13 Seaman Declaration as Exhibit A, asserts eighteen causes of action, including Quiet
14 Title, Breach of Contract, Fraud, Avoidance of Fraudulent Transfers, RICO,
15 Subordination, Conversion, Turnover of Property of the Estate and Recoupment.
16 Seaman Declaration, ¶ 8 and Exhibit A.

17 Crown makes the following allegations in the Complaint, among others:

18 (a) The property descriptions set forth in the deeds of trust securing the Crown
19 Loans describe only two of the eleven parcels that make up the Lakewood Property,
20 and therefore the remaining nine parcels are owned by Crown Plaza outright;

21 (b) Edge, Menez and Nunez breached the loan agreements and
22 misappropriated and converted funds by:

23 (i) Taking \$560,000 from an interest reserve account established in
24 connection with the Edge Loans;

25 (ii) Requiring that Crown pay off a fictitious note in favor of Edge in
26 the amount of \$1,150,000;

27 (iii) Charging excessive loan fees in the amount of \$575,000; and

28 (iv) Charging interest on monies never advanced.

1 Seaman Declaration, ¶ 9 and Exhibit A.

2 The Complaint seeks quiet title to nine of the eleven parcels that make up the
3 Lakewood Property, avoidance of the deeds of trust on all of the properties,
4 equitable subordination of Medical Capital claims, compensatory damages in an
5 amount exceeding \$2 million, and punitive damages. Seaman Declaration, ¶ 10 and
6 Exhibit A.

7 Medical Capital retained attorney Lazaro Fernandez to represent it and Edge.
8 On May 25, 2009, Mr. Fernandez filed answers to the complaint on behalf of
9 Medical Capital and Edge. Menez and Nunez did not answer the complaint and
10 their defaults were entered. Nunez later hired counsel and moved to set aside the
11 default, which motion was granted. Nunez then filed a third party complaint against
12 Crown principal, Cynthia Gomez. Seaman Declaration, ¶ 11.

13 **E. The Receiver's Appointment**

14 The Court's Preliminary Injunction and Order Appointing A Permanent
15 Receiver, entered on August 18, 2009, enjoins and restrains the adversary
16 proceeding as it pertains to Medical Capital. The Receiver filed notice of the
17 Preliminary Injunction and his appointment in the adversary proceeding. Counsel
18 for the Receiver discussed the adversary proceeding with Mr. Fernandez. The
19 Receiver took control of the litigation as it pertains to Medical Capital. Seaman
20 Declaration, ¶ 12.

21 **F. Analysis of Claims & Settlement Discussions**

22 The Receiver and his counsel have reviewed and evaluated the claims in the
23 complaint, as well as the answer filed by Medical Capital prior to the Receiver's
24 appointment. The Receiver determined that the answer should be amended to,
25 among other things, assert the affirmative defense of reformation of the deeds of
26 trust, the evidence indicating that the defective property descriptions were a mistake,
27 and that the parties' mutual intention was that all parcels of all four Crown
28

1 properties would serve as security for the Crown Loans. The Receiver amended
2 Medical Capital's answer accordingly. Seaman Declaration, ¶ 13.

3 Although the adversary proceeding is enjoined and restrained as it pertains to
4 Medical Capital, the Court's orders do not prevent Crown from proceeding against
5 Edge, Menez or Nunez, or Nunez from proceeding against Cynthia Gomez. Since
6 the Receiver's appointment, Crown conducted a deposition of Nunez, and Nunez
7 conducted depositions of Jesus Magana, Lorena Magana, and Cynthia Gomez. As
8 part of the Receiver's evaluation of Crown's claims, the Receiver had his counsel
9 attend these depositions. Seaman Declaration, ¶ 14.

10 Having reviewed Crown's claims and the evidence, some of which tends to
11 support and some of which tends to negate the claims, and having consulted with
12 counsel, the Receiver believes that if the claims in the adversary proceeding were
13 adjudicated, there is considerable risk that the principal balance due on the Crown
14 Loans, and the accrued interest thereon, would be reduced. The Receiver believes it
15 is less likely, although still possible, that the total amount owed on the Crown Loans
16 would be reduced to an amount less than the aggregate value of the four Crown
17 properties (discussed below). However, there is also considerable risk that due to
18 the defective property descriptions in the deeds of trust recorded on the Lakewood
19 Property, the most valuable of the four properties, Crown Plaza could be determined
20 to own nine of the eleven parcels outright. Seaman Declaration, ¶ 15.

21 In addition, litigating the claims would be expensive and at the conclusion of
22 the litigation, assuming the Receiver prevailed, he would still need to (a) obtain
23 relief from the automatic stay in Crown's bankruptcy case and (b) conduct foreclosure
24 sales. The costs associated with litigation and these additional proceedings would
25 be substantial. The delay associated with litigation would also have a significant
26 economic impact. Crown has not been paying property taxes on the Lakewood or
27 Bell properties. As such property taxes accrue, the amount the Receiver would be
28 able to obtain through foreclosure is diminished. Seaman Declaration, ¶ 16.

1 The Receiver reviewed information about the four Crown properties,
2 including broker price opinions obtained by Crown. The Receiver conducted his
3 own investigation and consulted three separate brokers regarding estimated values
4 for the properties. The Receiver is also aware of purchase offers received for the
5 properties since they have been marketed by Crown's broker. Based on his
6 investigation, the Receiver estimates that the four Crown properties have current
7 values in the following ranges:

- 8 (1) Lakewood Property – between \$1,620,000 and \$2,100,000;
- 9 (2) Imperial Property – between \$950,000 and \$1,250,000;
- 10 (3) South Gate Property – between \$550,000 and \$675,000; and
- 11 (4) Bell Property – between \$150,000 and \$225,000.

12 This valuation does not take into account the possible negative effect of the
13 underground storage tank issues regarding the Bell Property discussed below.

14 Seaman Declaration, ¶ 17.

15 **G. La Perla Restaurant**

16 As noted above, two of the three members of Crown are Jesus and Lorena
17 Magana. The Maganas own and manage a Mexican restaurant located on the South
18 Gate property called La Perla Del Mar. Seaman Declaration, ¶ 18.

19 **H. The Bell Property**

20 In July 2011, the Receiver learned that the Bell Property is on a list
21 maintained by the California Regional Water Quality Control Board of sites
22 containing leaking underground storage tanks. Although the Bell Property is
23 currently undeveloped, at one point in time, a gas station was located on it. Seaman
24 Declaration, ¶ 19.

25 In October 2011, Crown Plaza engaged Ocean Blue Engineers, Inc. to inspect
26 the Bell Property, the property records, and draft a work plan to assess and
27 remediate any soil contamination. The work plan was submitted to the California
28

1 Regional Water Quality Control Board in June 2012. The Board has recently stated
2 that it is prepared to close its case on the Bell Property. Seaman Declaration, ¶ 20.

3 **II. THE PROPOSED SETTLEMENT**

4 Starting in 2010, the Receiver and Crown engaged in settlement discussions
5 and exchanged various offers. Crown attempted to obtain financing to make a cash
6 payment to the Receiver in lieu of selling the South Gate Property. Ultimately,
7 those efforts were unsuccessful. The underground storage tank issues regarding the
8 Bell Property were then discovered, causing further delay. Ultimately, the parties
9 agreed on the terms and conditions of the proposed settlement agreement
10 ("Settlement Agreement"). Seaman Declaration, ¶ 21. The Settlement Agreement is
11 attached to the Seaman Declaration as Exhibit B.

12 Subject to approval by both this Court and the Bankruptcy Court, the parties
13 agreed to a settlement on the following terms and conditions:¹

14 (a) All claims against Medical Capital and Edge in the adversary proceeding
15 will be dismissed;

16 (b) The Receiver, on behalf of Medical Capital and the receivership estate,
17 and Crown will release all claims against one another;

18 (c) Crown will sell the Lakewood, South Gate and Bell Properties as follows:

19 (i) The Lakewood Property will be sold for at least \$2,000,000, subject
20 to overbid and Bankruptcy Court approval.

21 (ii) The South Gate Property will be sold for at least \$650,000, subject
22 to overbid and Bankruptcy Court approval.²

23 (iii) The Bell Property will be sold for at least \$118,000, subject to
24 overbid and Bankruptcy Court approval.

25

26

27 ¹ The Settlement Agreement is summarized herein for ease of reference only. In
the event of a conflict between the summary provided herein and the Settlement
Agreement, the Settlement Agreement controls and governs.

28 ² As part of the South Gate sale, Crown Plaza will execute a new lease with the
La Perla Del Mar restaurant and the property will be sold subject to the lease.

1 (d) Once the properties are sold, Crown will pay the costs of sale, including
2 the broker's commissions, title and escrow fees, and unpaid property taxes. The sale
3 proceeds remaining after payment of such costs will be turned over to the Receiver.

4 (e) When the net sale proceeds from the Lakewood and South Gate Properties
5 are turned over to the Receiver, the Receiver will release/reconvey the deed of trust
6 on the Imperial Property to Crown. It is anticipated that the Bell Property will take
7 longer to sell due to the underground storage tank issues discussed above.

8 Accordingly, turnover of the net sale proceeds from the Lakewood and South Gate
9 Properties and release of the deed of trust on the Imperial Property will not be
10 delayed.

11 (f) If orders approving sales of the Lakewood, South Gate and Bell properties
12 have not been entered by January 1, 2013, or have not become final by March 5,
13 2013, the Settlement Agreement shall have no force or effect, and the Parties shall
14 be as they were before the Settlement Agreement was signed. Seaman
15 Declaration, ¶ 22.

16 III. ARGUMENT

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

26 Federal courts of equity often look to bankruptcy law for guidance in the
27 administration of receivership estates. *See SEC v. Capital Consultants, LLC*, 397
28 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*, 98 F.3d

1 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d
2 657, 665 (6th Cir. 2001); *see also* Local Civil Rule 66-8 ("a receiver shall
3 administer the estate as nearly as possible in accordance with the practice in the
4 administration of estates in bankruptcy"). A bankruptcy court may approve a
5 compromise of claims asserted by or against the estate if the compromise is "fair
6 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839
7 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise negotiated
8 by a court-appointed fiduciary "is an exercise of discretion that should not be
9 overturned except in cases of abuse leading to a result that is neither in the best
10 interest of the estate nor fair and equitable for the creditors." *In re MGS Marketing*,
11 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

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

- 14 a. The probability of success in litigation;
- 15 b. The difficulties, if any, to be encountered in the matter of
16 collection;
- 17 c. The complexity of the litigation involved and the expense,
18 inconvenience, and delay necessarily attending; and
- 19 d. The paramount interest of the creditors and a proper
20 deference to their reasonable views in the premises.

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

22 Here, if the Settlement Agreement is approved, the receivership estate will
23 receive the net sale proceeds from three of the four Crown properties. Assuming the
24 Lakewood, South Gate and Bell Properties are sold at the prices set in the
25 Settlement Agreement, the Receiver estimates that the aggregate sale proceeds, after
26 payment of costs of sale, broker commissions, and outstanding property taxes, will
27 be approximately \$2,185,000. Seaman Declaration, ¶ 23.

28 If the Settlement Agreement is not approved, Crown's claims and Medical
Capital's defenses will have to be resolved through litigation. As discussed above,

1 the litigation would involve considerable risk, expense and delay. Among other
2 things, there is risk that nine of the eleven parcels that make up the Lakewood
3 Property would be determined to be owned by Crown outright. The Receiver
4 estimates that the nine parcels at risk have roughly the same value as the Imperial
5 Property (estimated to be between \$950,000 and \$1,250,000). Furthermore, the
6 delay associated with litigation has a substantial economic impact because Crown is
7 not paying property taxes on the Lakewood or Bell properties. Because such
8 property taxes accrue at approximately \$4,000 per month, the amount the Receiver
9 would be able to obtain through foreclosure is diminished. Seaman
10 Declaration, ¶ 24.

11 Furthermore, the only asset Crown retains under the Agreement is the
12 Imperial Property, which, as noted above, has an estimated value of between
13 \$950,000 and \$1,250,000. Even if the Receiver were to prevail on all issues after a
14 full trial, the attorney fees associated with litigation, the costs of foreclosing on the
15 four properties, and the property taxes that would accrue in the meantime would
16 substantially negate the recovery from the Imperial Property. Accordingly, the
17 Receiver believes that the Agreement is in the best interests of the receivership
18 estate and asks that it be approved. Seaman Declaration, ¶ 25.

19 IV. CONCLUSION

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

22
23 Dated: November 16, 2012

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

24
25 By: /s/ Ted Fates

26 TED FATES
Attorneys for Receiver
Thomas A. Seaman
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