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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 SECURITIES AND EXCHANGE
COMMISSION,
17 Plaintiff,
18 v.
19 MEDICAL CAPITAL HOLDINGS,
INC.; MEDICAL CAPITAL
20 CORPORATION; MEDICAL
PROVIDER FUNDING
21 CORPORATION VI; SIDNEY M.
FIELD; and JOSEPH J.
22 LAMPARIELLO,
23 Defendants.

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

**NOTICE OF MOTION AND MOTION
FOR ORDER IN AID OF
RECEIVERSHIP:**

**(A) AUTHORIZING RECEIVER TO
MARKET AND SELL RECEIVERSHIP
ASSETS AND TO ESTABLISH
OVERBID PROCEDURES;**

**(B) APPROVING NOTICE ON KNOWN
CREDITORS UNDER LOCAL
RULE 66-7 BY PUBLICATION ON THE
RECEIVER'S WEBSITE; AND**

**(C) EXTENDING DEADLINE UNDER
LOCAL RULE 66-5 TO FILE
SCHEDULE OF KNOWN CREDITORS;**

**MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 14, 2009
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on December 14, 2009, 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, and Medical Provider Funding
7 Corporation VI, and their subsidiaries and affiliates ("Receivership Entities"), for an
8 Order in Aid of Receivership: (a) Authorizing Receiver to Market and Sell
9 Receivership Assets, and to Establish Overbid Procedures in Connection Therewith;
10 (b) Approving Notice on Known Creditors under Local Rule 66-7 by Publication on
11 the Receiver's Website; and (c) Extending Deadline under Local Rule 66-5 for
12 Receiver to file Schedule of Known Creditors ("Motion").

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

19 **Procedural Requirements:** If you oppose this Motion, you are required to
20 file your written opposition with the Office of the Clerk, United States District
21 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on
22 the undersigned not later than fourteen (14) calendar days prior to the hearing.

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

25 This Motion is made following the conference of counsel pursuant to L.R. 7-3
26 which took place on November 6, 2009.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Preliminary Injunction and Order Appointing A Permanent Receiver
4 entered on August 18, 2009 ("Preliminary Injunction Order") gives the Receiver
5 various powers and rights with respect to the assets of the receivership estate,
6 including "full powers of an equity receiver" over receivership assets, "to take
7 custody, control, possession and charge of" such assets, and "to take such action as
8 is necessary and appropriate to preserve and take control of and prevent the
9 dissipation, concealment, or disposition" of such assets. These provisions do not
10 expressly authorize the Receiver to market assets for sale, execute agreements with
11 potential purchasers, or establish overbid procedures to be used in connection with
12 assets sold by auction. Accordingly, in connection with the recent Court-approved
13 sale of the Castle Hill property, the Receiver first sought Court authority to sell the
14 property and approval of overbid procedures to be used in connection with the sale.
15 With the goal of minimizing the costs of administration and maximizing the value of
16 receivership estate assets, the Receiver requests an order granting him authority to
17 take these initial steps toward selling receivership assets such that a preliminary
18 motion or application in advance of the sale motion is not required in each instance.

19 Specifically, the Receiver requests authorization to market and sell
20 receivership assets, to retain appraisers, auctioneers and/or brokers to assist with
21 such sales, and to establish procedures for the submission of overbids for assets that
22 will be sold by way of public or private auction. All sales will be brought before the
23 Court for final approval, as will all proposed payments to appraisers, auctioneers
24 and/or brokers. Where an auction is appropriate, the Receiver will use his business
25 judgment to determine the appropriate procedures for attracting an initial "stalking
26 horse" bidder, and promoting active overbidding.

27 Additionally, and due to the large volume of note holders and other creditors
28 of the Receivership Entities, the Receiver requests approval of the use of his website

1 as the most efficient and effective means of giving notice to known creditors under
2 Local Rule 66-7. There are more than 20,000 note holders and other creditors of the
3 Receivership Entities. Providing notice by mail on each known creditor would
4 impose a substantial financial burden on the receivership estate.¹ Note holders have
5 already been directed to the Receiver's website
6 (www.medicalcapitalreceivership.com) via notices distributed by Wells Fargo Bank
7 and Bank of New York Mellon. The Receiver will continue to direct note holders
8 and other creditors to the website as they become known, and advise them to check
9 the website regularly for new motions, orders and other developments in the case.
10 Once at the website, creditors will have the option of signing up to receive e-mail
11 notifications whenever the website is updated. For those that opt to receive e-mail
12 notices, it will be their obligation to promptly inform the Receiver of any change to
13 their e-mail address. The Receiver will continue to regularly update the website
14 with all motions concerning administration of the receivership estate or receivership
15 assets, orders on such motions, and other relevant case information.

16 To further ensure that all interested parties receive adequate notice, all known
17 creditors have been mailed a copy of this Motion, together with a letter from the
18 Receiver briefly summarizing the status of the case, explaining the relief requested
19 herein, and advising them that they can opt to receive mail service of all significant
20 motions by requesting the same in writing to the Receiver. For those that elect to
21 receive mail service, it will be their obligation to promptly inform the Receiver of
22 any change to their physical address.

23 Finally, the Receiver requests an extension of the five-day deadline under
24 Local Rule 66-5 to file a schedule of known creditors. Again, the volume of note
25 holders and other creditors (landlords, trade creditors, employee creditors, taxing
26 authorities, etc.) is very high. Rather than file a schedule in haste, the Receiver
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28 ¹ This Motion was served on all known creditors by mail at an estimated cost of \$19,370.

1 requests an extension to December 15, 2009, to file a more complete and accurate
2 schedule of known creditors.

3 **II. PROCEDURAL BACKGROUND**

4 On July 16, 2009, the Commission commenced an enforcement action against
5 MCH, MCC, MP VI, Sidney M. Field and Joseph J. Lampariello ("Defendants"),
6 alleging various violations of securities laws. On the same day, the Commission
7 filed an Ex Parte Application for Temporary Restraining Order and Orders:
8 (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting the
9 Destruction of Documents; (4) Granting Expedited Discovery, and (5) Requiring
10 Accountings; and Order to Show Cause Re: Preliminary Injunction and
11 Appointment of a Permanent Receiver.

12 On August 3, 2009, the Court entered the Temporary Restraining Order and
13 Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting
14 the Destruction of Documents; and (4) Requiring Accountings; and Order to Show
15 Cause Re: Preliminary Injunction and Appointment of a Permanent Receiver
16 ("TRO"). The TRO appointed Thomas A. Seaman as temporary receiver for the
17 Receivership Entities. The Receiver filed his 10-Day Report to the Court on
18 August 12, 2009. On August 18, 2009, the Court entered a Preliminary Injunction
19 and Order Appointing A Permanent Receiver, extending the provisions of the TRO
20 and making the Receiver's appointment permanent.

21 On September 8, 2009, the Receiver filed his Second Report to the Court. At
22 a hearing held the same day, the Court denied the motion of Defendants Field and
23 Lampariello to remove the Receiver, appoint a management committee and put the
24 Receivership Entities into bankruptcy.

25 On October 2, 2009, the Receiver filed both (1) an Ex Parte Application for
26 an order (a) authorizing the Receiver to sell the Castle Hill property, (b) approving
27 overbid procedures to be used in connection with the sale, and (c) approving notice
28 of the sale provided by the Receiver ("Castle Hill Ex Parte Application"), and (2) a

1 Motion for Order (a) Approving Sale of the Castle Hill Property Free and Clear of
2 Liens, (b) Authorizing the Receiver to Pay Certain Liens and Claims from the Sale
3 Proceeds, and (c) Approving the Real Estate Broker's Commission ("Castle Hill Sale
4 Motion"). The Castle Hill Ex Parte Application was granted on October 9, 2009.
5 The Castle Hill Sale Motion was granted on October 29, 2009.

6 On October 7, 2009, the Receiver filed a Stipulation Regarding Turnover of
7 Funds and Lien Preservation. An order approving the stipulation was entered the
8 same day. On October 9, 2009, the Receiver filed his Third Interim Report to the
9 Court. On November 10, 2009, the Receiver filed his Fourth Interim Report to the
10 Court. On November 12, 2009, the Commission filed its First Amended Complaint.

11 III. ARGUMENT

12 "The power of a district court to impose a receivership or grant other forms of
13 ancillary relief does not in the first instance depend on a statutory grant of power
14 from the securities laws. Rather, the authority derives from the inherent power of a
15 court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369
16 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
17 and efficient administration of the estate by the district court for the benefit of
18 creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
19 of a receiver is authorized by the broad equitable powers of the court, any
20 distribution of assets must also be done equitably and fairly. See S.E.C. v. Elliot,
21 953 F.2d 1560, 1569 (11th Cir. 1992).

22 District courts have the broad power of a court of equity to determine the
23 appropriate action in the administration and supervision of an equity receivership.
24 See SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
25 Circuit explained:

26 A district court's power to supervise an equity receivership and
27 to determine the appropriate action to be taken in the
28 administration of the receivership is extremely broad. The
district court has broad powers and wide discretion to determine
the appropriate relief in an equity receivership. The basis for
this broad deference to the district court's supervisory role in

1 equity receiverships arises out of the fact that most
2 receiverships involve multiple parties and complex transactions.
3 A district court's decision concerning the supervision of an
4 equitable receivership is reviewed for abuse of discretion.

5 Id. (citations omitted); see also Commodities Futures Trading Comm'n. v.
6 Topworth Int'l, Ltd.; 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad
7 deference' to the court's supervisory role, and 'we generally uphold reasonable
8 procedures instituted by the district court that serve th[e] purpose' of orderly and
9 efficient administration of the receivership for the benefit of creditors.").
10 Accordingly, this Court has broad equitable powers and discretion in formulating
11 procedures, schedules and guidelines for administration of the receivership estate.

12 Here, the receivership estate includes various real properties, non-performing
13 loans and the collateral associated therewith, a large yacht, and other significant
14 assets. In order to minimize administrative expense and maximize value, the
15 Receiver should be authorized to market these assets, negotiate with buyers and,
16 where appropriate, establish overbid procedures designed to obtain the highest and
17 best price. The Receiver anticipates that the overbid procedures used in connection
18 with future asset sales will follow the basic structure and timing approved by the
19 Court in connection with the Castle Hill sale, with minimum overbids, overbid
20 increments and break-up fees in approximately the same percentages of the
21 proposed purchase price, and overbids accepted until shortly before the auction
22 hearing, at which any additional bidding would occur. Some deviation from these
23 exact parameters may be necessary and appropriate in light of asset values, the
24 number of potential purchasers, and other factors.

25 This Motion, however, does not signal that a rapid liquidation or "fire sale" of
26 assets is about to occur – only that, as it becomes appropriate to sell assets in order
27 to preserve value, the Receiver should be authorized to take initial steps to obtain
28 the highest and best prices in sales transactions that will be submitted to the Court
for approval. As discussed in his Third Interim Report filed on October 9, 2009, the

1 Receiver intends to sell certain assets in the short term, including the Castle Hill
2 property (sale approved), the non-operating Southwest Atlanta Medical Center, the
3 yacht, and the office building in Tustin. In the near future, the Receiver also intends
4 to sell the Receivership Estate's interests (a) as lender to Integrated Healthcare
5 Holdings, Inc. ("IHHI"), and (b) in the Trace Life Sciences nuclear facility in Texas.
6 Again, at the appropriate time, each of these proposed transactions will be brought
7 before the Court for approval. Other assets continue to be investigated and
8 strategies for maximizing value considered.

9 The Receiver also requests that notice on known creditors by publication on
10 the Receiver's website be deemed sufficient under Local Rule 66-7. The investment
11 offerings made by the Receivership Entities were limited to accredited investors.
12 Accordingly, the note holders are sophisticated enough to have ready access to the
13 internet and e-mail, such that they can visit the Receiver's website for updates on the
14 case and, if they wish, sign up to receive e-mails whenever the website is updated.
15 The costs of mailing notice to all note holders and other creditors would be
16 substantial. However, known creditors that are directly and uniquely impacted by a
17 particular proposed transaction (e.g. the lender that holds a deed of trust on the
18 Tustin office building, the Texas state regulators that monitor the Trace Life
19 Sciences nuclear facility, etc.) will receive notice by mail of the applicable motion.
20 Additionally, creditors can elect to receive service of all significant motions by mail
21 by sending a written request to the Receiver.

22 Finally, the Receiver requests additional time to file a schedule of known
23 creditors as required under Local Rule 66-5. As noted above, there are more than
24 20,000 creditors of the Receivership Entities, including note holders, employee
25 creditors, trade creditors of all kinds, landlord creditors, and taxing authorities.
26 Rather than file an incomplete and inaccurate list in haste, the Receiver requests that
27 he be given until December 15, 2009 to file a more complete and accurate schedule
28 of known creditors. A claims procedure has yet to be proposed, nor has any

1 distribution of receivership estate assets. Therefore, there is no urgent need to
2 immediately file a schedule of known creditors.

3 **IV. CONCLUSION**

4 Based on the foregoing, the Receiver requests an order (a) authorizing him to
5 market and sell receivership assets, subject to Court approval, to hire appraisers,
6 auctioneers and brokers, and to establish overbid procedures, as appropriate, to
7 obtain the highest and best prices; (b) approving notice on known creditors of the
8 Receivership Entities under Local Rule 66-7 by publication on the Receiver's
9 website, including giving creditors the option of being notified by e-mail when the
10 website is updated or receiving notice by mail upon written request; and
11 (c) extending the deadline under Local Rule 66-5 for the Receiver to file a schedule
12 of known creditors to December 15, 2009.

13
14 Dated: November 17, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

15
16 By: /s/ Ted Fates

17 TED FATES
18 Attorneys for Receiver
19 Thomas A. Seaman
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