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13 Attorneys for Receiver Thomas A. Seaman

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

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 v.

21 MEDICAL CAPITAL HOLDINGS,
INC.; MEDICAL CAPITAL
CORPORATION; MEDICAL
22 PROVIDER FUNDING
CORPORATION VI; SIDNEY M.
23 FIELD; and JOSEPH J.
LAMPARIELLO,

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

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
STIPULATION BETWEEN THE
RECEIVER AND LONE OAK
FUND, LLC**

Date: December 28, 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 28, 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. ("MCH"), Medical Capital Corporation ("MCC"), and Medical
7 Provider Funding Corporation VI ("MP VI"), and their subsidiaries and affiliates
8 (collectively, the "Receivership Entities"), for an Order Approving Stipulation
9 Between the Receiver and Lone Oak Fund, LLC ("Motion").

10 The Motion is based on the Memorandum of Points and Authorities below,
11 and the Declaration of Thomas A. Seaman ("Seaman Declaration") filed herewith.
12 The Motion and 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 fourteen (14) 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.

22 This Motion is made following the conference of counsel pursuant to
23 L.R. 7-3.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receivership Entities purchased the office building and land located at
4 15101 Red Hill Avenue, Tustin, California ("Property") in May 2008, and moved
5 their headquarters (previously located in Anaheim) to the Property. The purchase
6 price was \$15.5 million, which was financed in part by a \$7.75 million loan from
7 Lone Oak Fund, LLC ("Lone Oak"). Lone Oak holds a first priority deed of trust on
8 the Property. The Receivership Entities created 15101 Red Hill Holdings, Inc.
9 ("15101 Red Hill") to hold title to the Property, and had MCC lease the Property
10 from 15101 Red Hill. Seaman Declaration ¶ 2.

11 The Receivership Entities defaulted on the loan from Lone Oak prior to the
12 Receiver's appointment. Lone Oak filed an action in Orange County Superior Court
13 and obtained an order appointing a receiver on the same day the Receiver was
14 appointed in this action (August 3, 2009). The state court action is enjoined and
15 restrained by the Temporary Restraining Order and Preliminary Injunction issued by
16 the Court. Seaman Declaration ¶ 3.

17 The Receiver obtained an appraisal, which estimates the market value of the
18 Property at \$9.65 million. The Receiver also received several broker's opinions of
19 value which estimate the Property's value at between \$7 and \$8.5 million. The
20 Receiver has had the Property listed for sale for the last approximately 45 days. The
21 highest offer received to date is for \$7.35 million. Seaman Declaration ¶ 4.

22 Lone Oak is currently owed more than \$8.5 million by the Receivership
23 Entities. Interest on the loan continues to accrue at the rate of approximately
24 \$155,000 per month. Additionally, there is approximately \$200,000 in unpaid
25 property taxes that would have to be paid from the proceeds of a sale. Seaman
26 Declaration ¶ 5.

27 Factoring in the time required to find a buyer and close a sale, and the costs
28 associated with a sale, including the broker's commission, there is very likely no

1 value in the Property that could be realized for the receivership estate through a sale.
2 The Receiver believes that a purchase price of \$9.75 million or higher would be
3 required on or before December 31, 2010 for the receivership estate to receive any
4 significant benefit from the sale. Seaman Declaration ¶ 6.

5 Accordingly, the Receiver has entered into a stipulation with Lone Oak,
6 subject to Court Approval, providing Lone Oak relief from the Preliminary
7 Injunction to foreclose on the Property as of January 11, 2010, provided that the
8 Receiver and a prospective buyer have not executed a purchase and sale agreement
9 for the Property on or before December 31, 2009 at a purchase price of \$9.75
10 million or higher ("Stipulation"), that closes on or before February 1, 2010. The
11 Stipulation, which is attached hereto as Exhibit A, provides that, in the event a
12 purchase and sale agreement at the required purchase price is executed, Lone Oak
13 shall not have relief from the Preliminary Injunction until February 2, 2010. The
14 Receiver will immediately notify Lone Oak of the execution of a purchase and sale
15 agreement. In the event that the Receiver does not execute a purchase and sale
16 agreement, he may remain in possession and use of the Property until January 31,
17 2010. During all periods in which the Receiver remains in possession of the
18 Property, he will continue to insure and maintain the Property in its current
19 condition. It is also understood between the parties that, subject to Court approval,
20 the Receiver will conduct an auction of personal property at the Property (separate
21 motion for authority to conduct the auction filed separately).

22 II. ARGUMENT

23 "The power of a district court to impose a receivership or grant other forms of
24 ancillary relief does not in the first instance depend on a statutory grant of power
25 from the securities laws. Rather, the authority derives from the inherent power of a
26 court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369
27 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
28 and efficient administration of the estate by the district court for the benefit of

1 creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
2 of a receiver is authorized by the broad equitable powers of the court, any
3 distribution of assets must also be done equitably and fairly. See S.E.C. v. Elliot,
4 953 F.2d 1560, 1569 (11th Cir. 1992).

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

9 A district court's power to supervise an equity receivership and
10 to determine the appropriate action to be taken in the
11 administration of the receivership is extremely broad. The
12 district court has broad powers and wide discretion to determine
13 the appropriate relief in an equity receivership. The basis for
14 this broad deference to the district court's supervisory role in
15 equity receiverships arises out of the fact that most
16 receiverships involve multiple parties and complex transactions.
17 A district court's decision concerning the supervision of an
18 equitable receivership is reviewed for abuse of discretion.

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

26 Here, the Stipulation was negotiated at arm's length with Lone Oak. It strikes
27 a fair balance between the Receiver's efforts to maximize the value of the Property
28 for the benefit of the receivership estate, with the rights and interests of Lone Oak as
secured lender. Additionally, the window of time the Receiver has to market the
Property also allows for the Receiver to conduct an auction of the personal property

1 at the Property, subject to Court approval. Accordingly, the Stipulation is in the best
2 interests of the receivership estate, and the Receiver requests that it be approved.

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Dated: December 4, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates
TED FATES
Attorneys for Receiver
Thomas A. Seaman

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

17 SECURITIES AND EXCHANGE
COMMISSION,

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19 v.

20 MEDICAL CAPITAL HOLDINGS,
21 INC.; MEDICAL CAPITAL
CORPORATION; MEDICAL
22 PROVIDER FUNDING
CORPORATION VI; SIDNEY M.
23 FIELD; and JOSEPH J.
LAMPARIELLO,
24

25 Defendants.

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

**STIPULATION BETWEEN THE
RECEIVER AND LONE OAK
FUND, LLC**

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

1 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for
2 Medical Capital Holdings, Inc. ("MCH"), Medical Capital Corporation ("MCC"),
3 and Medical Provider Funding Corporation VI ("MP VI"), and their subsidiaries and
4 affiliates (collectively, the "Receivership Entities") and Lone Oak Fund, LLC
5 ("Lone Oak") hereby stipulate as follows:

6 **I. RECITALS**

7 This stipulation is made with respect to the following recitals:

8 1. The Receivership Entities purchased the office building and land
9 located at 15101 Red Hill Avenue, Tustin, California ("Property") in May 2008 and
10 moved their headquarters (previously located in Anaheim) to the Property. The
11 purchase price was \$15.5 million, which was financed in part by a \$7.75 million
12 loan from Lone Oak, which holds a first priority deed of trust on the Property. The
13 Receivership Entities created 15101 Red Hill Holdings, Inc. ("15101 Red Hill") to
14 hold title to the Property, and had MCC lease the Property from 15101 Red Hill.

15 2. The Receivership Entities defaulted on the loan from Lone Oak prior to
16 the Receiver's appointment. Lone Oak filed an action in Orange County Superior
17 Court and obtained an order appointing a receiver on the same day the Receiver was
18 appointed in this action (August 3, 2009). The state court action is enjoined and
19 restrained by the Temporary Restraining Order and Preliminary Injunction issued by
20 the Court.

21 3. The Receiver obtained an appraisal, which estimates the market value
22 of the Property at \$9.65 million. The Receiver also received several broker's
23 opinions of value which estimate the Property's value at between \$7 and
24 \$8.5 million. The Receiver has listed the Property for sale for the last approximately
25 45 days. The highest offer received to date is for \$7.35 million.

26 4. Lone Oak is currently owed more than \$8.5 million by the Receivership
27 Entities. Interest on the loan continues to accrue at the rate of approximately
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1 \$155,000 per month. Additionally, there is approximately \$200,000 in unpaid
2 property taxes that would have to be paid from the proceeds of a sale.

3 5. Factoring in the time required to find a buyer and close a sale, and the
4 costs associated with a sale, including the broker's commission, there is very likely
5 no value in the Property that could be realized for the receivership estate through a
6 sale. The Property would need to be sold in the next

7 II. STIPULATION

8 Based on the foregoing recitals, and subject to Court approval, it is stipulated
9 and agreed as follows:

10 A. Except as provided below, as of January 11, 2010, Lone Oak shall have
11 relief from the Preliminary Injunction entered by the Court on August 18, 2009 to
12 record a Notice of Sale and foreclose on the Property. The Receiver may continue
13 to possess and use the Property until January 31, 2010.

14 B. If, on or before December 31, 2009, the Receiver and a prospective
15 buyer execute a purchase and sale agreement for the Property, subject to Court
16 approval, at a purchase price of \$9.75 million¹ or higher, which is scheduled to close
17 and actually closes on or before February 1, 2010, Lone Oak shall not have relief
18 from the Preliminary Injunction until February 2, 2010. The Receiver shall
19 immediately notify Lone Oak of the execution of a purchase and sale agreement.

20 C. As long as the Receiver remains in possession of the Property, the
21 Receiver shall continue to insure and maintain the Property in its current condition.

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¹ The Receiver believes that a purchase price of \$9.75 million or higher would have to be obtained on or before December 31, 2009 for the receivership estate to receive any significant benefit from the sale.

1 Dated: November __, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
Thomas A. Seaman

Dated: November 25, 2009

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: 

SIMON ARON
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LONE OAK FUND, LLC