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12 Attorneys for Receiver Thomas A. Seaman

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

23 Defendants.
24

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

**NOTICE OF MOTION AND
MOTION FOR ORDER:
(A) AUTHORIZING RECEIVER TO
AUCTION PERSONAL PROPERTY
LOCATED AT 15101 RED HILL
AVENUE, TUSTIN, CA; AND
(B) APPROVING AGREEMENT
WITH AUCTIONEER;
MEMORANDUM OF POINTS AND
AUTHORITIES**

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: (a) Authorizing Receiver to
9 Auction Personal Property Located at 15101 Red Hill Avenue, Tustin, California;
10 and (b) Approving Agreement with Auctioneer ("Motion").

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

23 This Motion is made following the conference of counsel pursuant to
24 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") on May 28, 2008 and
5 moved their headquarters (previously located in Anaheim) to the Property. The
6 purchase price was \$15.5 million, which was financed in part by a \$7.75 million
7 loan from Loan Oak Fund, LLC ("Loan Oak"). Loan Oak holds a first priority deed
8 of trust on the Property. The Receivership Entities created 15101 Red Hill
9 Holdings, Inc. ("15101 Red Hill") to hold title to the Property, and had MCC lease
10 the Property from 15101 Red Hill. The Receivership Entities defaulted on the loan
11 from Loan Oak prior to the Receiver's appointment. Loan Oak filed an action in
12 Orange County Superior Court and obtained an order appointing a receiver on the
13 same day the Receiver was appointed in this action (August 3, 2009). The state
14 court action is enjoined and restrained under the Temporary Restraining Order and
15 Preliminary Injunction issued by the Court.

16 The Receiver's preliminary investigation indicates that the current market
17 value of the Property is approximately the same as, or only marginally higher than
18 the amounts owed to Loan Oak in principal and accrued interest. The Receiver is
19 currently in discussions with Loan Oak and in the near future will file a motion or
20 stipulation with the Court with his recommended disposition for the Property.
21 Interest on the loan from Loan Oak accrues at the rate of approximately \$155,000
22 per month. It is critical, therefore, that the Property be disposed of, either by sale or
23 agreement with Loan Oak, as soon as reasonably practicable.

24 Regardless of the ultimate disposition of the Property, the Receivership
25 Entities have furniture, fixtures and equipment located at the Property ("Personal
26 Property"), which are not encumbered by the Loan Oak lien on the Property. The
27 Receiver requests permission to auction the Personal Property and to engage
28 Tranzon Asset Strategies ("Tranzon") to advertise and conduct the auction. Tranzon

1 is an experienced and qualified auctioneer, with extensive expertise in auctioning
2 the types of furniture, office accessories, hardware, equipment, artwork and other
3 personal property located at the Property.

4 The auction will be conducted at the Property in mid January 2010. Under
5 the proposed agreement with Tranzon ("Auctioneer Agreement"), a copy of which is
6 attached as Exhibit A to the Seaman Declaration, Tranzon will be reimbursed its
7 costs for advertising and conducting the auction from the proceeds of sale (estimated
8 at \$9,735), and will be paid a 10% premium from the buyers (15% if the buyers pay
9 by credit card). These terms are consistent with the fees and commissions charged
10 by similarly qualified and experienced auctioneers in Southern California. Although
11 exact values of the Personal Property are not known, the Receiver does not
12 anticipate a large net recovery from the auction.

13 II. PROCEDURAL BACKGROUND

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

22 On August 3, 2009, the Court entered the Temporary Restraining Order and
23 Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting
24 the Destruction of Documents; and (4) Requiring Accountings; and Order to Show
25 Cause Re: Preliminary Injunction and Appointment of a Permanent Receiver
26 ("TRO"). The TRO appointed Thomas A. Seaman as temporary receiver for the
27 Receivership Entities. The Receiver filed his 10-Day Report to the Court on
28 August 12, 2009. On August 18, 2009, the Court entered a Preliminary Injunction

1 and Order Appointing A Permanent Receiver, extending the provisions of the TRO
2 and making the Receiver's appointment permanent.

3 On September 8, 2009, the Receiver filed his Second Report to the Court. At
4 a hearing held the same day, the Court denied the motion by Defendants Field and
5 Lampariello to remove the Receiver, appoint a management committee and put the
6 Receivership Entities into bankruptcy. The Court instructed the Receiver to file
7 monthly reports. The Receiver filed his Third Interim Report on October 9, 2009,
8 and his Fourth Interim Report on November 10, 2009. The Commission filed its
9 First Amended Complaint on November 12, 2009.

10 III. ARGUMENT

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

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

25 A district court's power to supervise an equity receivership and
26 to determine the appropriate action to be taken in the
27 administration of the receivership is extremely broad. The
28 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
equity receiverships arises out of the fact that most
receiverships involve multiple parties and complex transactions.

1 A district court's decision concerning the supervision of an
2 equitable receivership is reviewed for abuse of discretion.

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

10 Here, the Personal Property should be sold by auction in order to maximize
11 the recovery for the receivership estate. The Personal Property is no longer
12 necessary to the Receivership Entities' limited operations, and the cost to store it
13 would be substantial.¹ Furthermore, Tranzon is an experienced and qualified
14 auctioneer, with substantial expertise in auctioning the types of furniture, office
15 accessories, hardware, equipment, artwork and other personal property located at the
16 Property. Tranzon will advertise and conduct the auction at the Property. The terms
17 of the proposed Auctioneer Agreement are reasonable, customary and consistent
18 with the fees charged by similarly experienced and qualified auctioneers in the
19 region.

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27 ¹ As noted above, the Receiver will soon file a motion or stipulation with his
28 recommended disposition for the Property. In either event, the Property will not
be available as a space to store the Personal Property for much longer, and, if not
sold by auction, the Personal Property would have to be stored at substantial
expense.

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IV. CONCLUSION

Based on the foregoing, the Receiver requests and order (a) authorizing him to auction the Personal Property; and (b) approving the Auctioneer Agreement.

Dated: November 25, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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