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8 THOMAS A. SEAMAN

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

Case No. SA CV09-0818 DOC (RNBx)

SECOND INTERIM FEE
APPLICATION OF THOMAS
SEAMAN, RECEIVER

Date: August 23, 2010
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 Thomas A. Seaman (the "Receiver"), the court-appointed Permanent Receiver
2 for Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Provider
3 Funding Corporation VI, and their subsidiaries and affiliates (collectively the
4 "Receivership Entities"),¹ submits this second interim application for approval and
5 payment of fees. This application covers the period November 1, 2009 through
6 April 30, 2010 (the "Second Application Period").

7 During the Second Application Period, the Receiver and his staff spent
8 4,463.50 hours executing the duties set forth in the Temporary Restraining Order
9 and Order Appointing Receiver and the subsequent Preliminary Injunction and
10 Order Appointing Permanent Receiver, and subsequent orders of the Court. By this
11 Second Interim Fee Application, Thomas Seaman seeks approval of \$698,250.50 in
12 fees which were incurred at a weighted average hourly rate of \$156 per hour. The
13 Receiver seeks approval to pay 90% of this amount, or \$628,424.00. When
14 combined with the 10% "holdback" from the First Application Period, the
15 cumulative holdback of Receiver's fees, if approved, will be \$105,872.50.

16 The Receiver does not seek reimbursement of any expenses.

17 **I. PROCEDURAL OVERVIEW OF THE RECEIVERSHIP CASE.**

18 On July 16, 2009, the SEC commenced an enforcement action against
19 Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Provider
20 Funding Corporation VI, Sidney M. Field and Joseph J. Lampariello ("Defendants"),
21 alleging various violations of securities laws. On the same day, the SEC filed an Ex
22 Parte Application for Temporary Restraining Order ("TRO") and Orders:
23 (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting the
24 Destruction of Documents; (4) Granting Expedited Discovery, and (5) Requiring
25 Accountings; and Order to Show Cause Re: Preliminary Injunction and
26 Appointment of a Permanent Receiver. On July 20, 2009, the Court granted the
27

28 ¹ In fact, there are dozens of Receivership Entities including six offering entities
that issued eight series of promissory notes.

1 TRO, however, the TRO was vacated the following day at the request of the
2 Defendants, and further briefing was submitted.

3 Thereafter, on August 3, 2009 (the "Appointment Date"), the Court entered
4 the TRO, appointing Thomas A. Seaman as temporary receiver for the Receivership
5 Entities. On August 17, 2009, the Court confirmed the appointment of the Receiver
6 and entered the Preliminary Injunction and Order Appointing a Permanent Receiver
7 ("Appointment Order"), by which Mr. Seaman was appointed as the Permanent
8 Receiver for the Receivership Entities.

9 **II. SCOPE OF THE RECEIVERSHIP CASE.**

10 The Receivership Entities were in the business of raising money through
11 broker dealers purportedly to fund lending activities which entailed making loans to
12 medical providers secured by medical accounts receivable, as well as making other
13 loans and investments, and then managing the collection of such loans and
14 investments through an operating company called Medical Capital Corporation
15 ("MCC"), a wholly owned subsidiary of Medical Capital Holdings Corporation
16 ("MCH"), defendants herein.

17 Although a billion dollars in loans were allegedly outstanding at the time of
18 the Receiver's appointment, the Defendants' accounts receivable factoring business
19 had essentially ceased and collections had slowed to a trickle. During July 2009, the
20 month prior to the appointment of the Receiver, the Defendants only collected
21 approximately \$317,000.

22 It is quite clear to the Receiver based on interviews with company personnel,
23 review of books and records of the company, review of borrowers' loan documents,
24 payment histories, security agreements and modifications thereto, and meeting with
25 borrowers, that loans were made to risky borrowers of low or poor credit quality.

26 The high risk nature of the loans made by the Receivership Entities is
27 confirmed by the Receiver's preliminary investigation of the sources and uses of
28 investor cash, which demonstrates that the Receivership Entities did not operate

1 their lending business profitably. In fact, leaving aside that the Receiver has learned
2 that many of the accounts receivable do not exist, in fact it appears that the vast
3 majority of the unpaid loans are non-performing. Notwithstanding the
4 unprofitability of the Receivership Entities' money lending activities, the money
5 raising entities paid administrative fees in excess of \$324 million to MCC.

6 The funds used to make investments were raised through the sale of
7 promissory notes to investors from Special Purpose Corporations ("SPC's"), referred
8 to as Medical Provider Financial Corporations ("MPs")². MCC was very successful
9 in attracting investors, apparently raising over \$1.7 billion from investors in the
10 MPs. At the time of the Receiver's appointment investors were owed \$1.079 billion.

11 The history of making poor credit decisions resulted in numerous foreclosure
12 actions and the Receivership Entities took possession of collateral securing many of
13 its loans. Other non-performing notes were restructured or converted to equity. The
14 consequence has been that the Receivership Entities now own a variety of assets
15 completely unrelated to its core medical accounts receivable business. The range of
16 assets includes non-operating hospitals, a feature film, a non-operating radio
17 pharmaceutical manufacturer, a wireless entertainment company, a 118 foot luxury
18 yacht, among others, in addition to numerous nonperforming notes, and a handful of
19 performing loans.

20 Following the Appointment Date, the Receiver had to analyze, investigate and
21 preserve the value of dozens of assets with a stated value of over \$1.1 billion which
22 quickly revealed that many of the loans were fictional while others were subject to
23 immediate potential impairment.

24

25

26 ² In total there are 6 SPCs including Medical Provider Financial Corporation I
27 ("MP I:"); Medical provider, Financial Corporation II ("MP II"), Medical
28 Provider Financial Corporation III (MP III", which is divided into Series 1 ("MP
IIT.1 ") and Series 2 (MP III.2")), Medical Provider Financial Corporation IV
("MP IV", which is divided into Series 1 ("MP IV.I and Series 2 MP IV.2
Medical Provider Financial Corporation V ("MP V") and Medical Provider
Financial Corporation VI (MP VI").

1 In addition, because the Defendants did not keep accurate books and records,
2 it is necessary for the Receiver to conduct a forensic accounting of the sources and
3 uses of investor funds, which is in process. The forensic accounting entails entering
4 over \$10 billion of transactions into a relational database designed to identify assets
5 of the company and recipients of ill-gotten gains, as well as allow the Court to make
6 determinations as to the nature of the fraud including a likely finding that Medical
7 Capital affiliates and subsidiaries operated a unitary enterprise in a Ponzi-like
8 manner in order to defraud investors and enrich the Defendants. The forensic
9 accounting is being performed by the Receiver and his staff along with certain
10 former employees of Medical Capital (who are paid from the estate thereby greatly
11 reducing the cost of performing the forensic accounting), which would have been
12 massively expensive if performed by an outside accounting firm. During the
13 Second Application Period the Receiver and his agents incurred fees of \$55,516
14 working on the forensic accounting.

15 Administration of the Receivership Estate therefore involved or continues to
16 involve a multiplicity of activities in the following varied functional areas:

- 17 • Collection efforts
 - 18 ♦ Foreclosure actions
 - 19 ♦ Actions to enforce personal guarantees
 - 20 ♦ Discounted pay-off negotiations
 - 21 ♦ Forbearance negotiations
- 22 • Claims against Receivership Entities, not all of which were covered
23 by the stay imposed by the Preliminary Injunction
- 24 • Lawsuits and other claims of lender breach relative to the collection
25 of accounts receivable that had not been financed (in at least one
26 case, the borrower had paid its debt in full and MCC continued to
27 collect the underlying accounts receivable), or Medical Capital's
28 failure to perform lending commitments

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- Asset Sales
- Management or oversight of operating businesses owned or otherwise controlled by Receivership Entities:
- Marketing and sale of all real property owned by the Receivership Entities, some by virtue of foreclosure
- Marketing of notes
- Marketing and maintenance of the Home Stretch (luxury yacht)
- Disposition of personal property
- Forensic accounting based on daily cash receipts and disbursements covering nearly six years and approximately \$10 billion of transactions
- Accounting for receivership receipts and disbursements segregated by MP and business operating entities
- Preparation of monthly reports filed with Court
- Handling of investor relations and communications
 - ◆ Establish and maintain website, with all pleadings promptly posted there (www.medicalcapitalreceivership.com)
- Evaluate potential causes of actions for recovery of funds for benefit of investors
- Issuance of subpoenas for banking records and then review and investigation of materials obtained to determine possible sources of recovery
- Respond to subpoenas and inquiries of several federal agencies with interest in the underlying civil litigation.
- Analyze payments made by investors compared to principal and purported interest paid to investors for the purpose of establishing a possible basis for a plan of distribution now that cash in the estate is accruing to a sizable number.

1 The Receiver's efforts resulted in gross receipts to the receivership estate in
2 the amount of \$78,813,533.53 during the Second Application Period and can be
3 broken down into the following categories:

4	Sale and disposition of assets:	\$70,277,659.48
5	NHBC revenue:	\$3,756,857.83
6	Loan payments:	\$1,983,750.00
7	Accounts receivable payments:	\$1,644,012.26
8	Seizure of funds:	\$1,105,449.92
9	Royalties:	\$27,057.39
10	Rental income:	<u>\$18,746.65</u>
11	Total	\$78,813,533.53

12 The sales and disposition of assets were primarily comprised of:

13	IHHI note sale:	\$69,530,000.00
14	Newport Beach land:	\$658,333.78
15	Auction proceeds:	\$118,121.70

16 Significant loan collections included:

17	Lavipharm:	\$750,000.00
18	Velocity:	\$966,875.00
19	Transfac:	\$208,875.00
20	Spherios:	\$18,000.00

21 The Receiver's fees as a percentage of the gross receipts for the Second
22 Application Period were less than .9%. Inception-to-date through April 30, 2010,
23 the total gross receipts are \$98,536,765.77 and the total fees requested in the First
24 and Second Fee Applications together is \$1,058,710.50, or less than 1.1% of the
25 total gross receipts. As of April 30, 2010 the Receiver was holding cash in the
26 amount of \$88,827,992.83. More currently as of June 30, 2010 the receivership's
27 gross receipts were \$101,926,186.23 and the Receiver was holding cash in the
28 amount of \$90,605,759.31.

1 **III. ANALYSIS OF RECEIVER'S FEES AND RELATED METRICS.**

2 Exhibit A provides a detailed listing of each and every time entry comprising
3 the Receiver's fees. In order to assist the Court in its review and analysis of the
4 Receiver's fees, the Receiver has prepared three separate analyses. The first is a
5 breakdown by timekeeper setting forth the amount of time spent by the Receiver and
6 his agents at their respective hourly rate. The next summary is a breakdown of work
7 by functional area including debt collection, accounting, forensic accounting,
8 business management, asset sales, and investor relations, among others. The third
9 breakdown is by significant asset or loan.

10 **A. Charges by Timekeeper**

11 Exhibit B provides a breakdown by timekeeper setting forth the amount of
12 time spent by the Receiver and his agents at their respective hourly rates. The
13 Receiver personally expended 351.3 hours for the Second Application Period for a
14 total cost of \$128,615.00. During the Second Application Period the Receiver
15 expended 34% of his time working on the Medical Capital receivership which was
16 declined considerably as the case progressed and the initial takeover of the
17 Receivership Entities and assets was completed.

18 In order to manage the Receivership in a cost effective manner, the Receiver
19 delegates some assignments to agents who are billed at hourly rates ranging from
20 \$45 to \$300 per hour. These agents perform accounting, financial analysis, business
21 management, forensic accounting, debt collection, real estate management and other
22 services required by the receivership estate. During the First Application Period, the
23 Receiver's agents expended 4,112.2 hours at an average hourly rate of \$139 per
24 hour. The Receiver expects the number of hours necessary to administer the
25 Receivership Estate to remain stable in the near term and only slightly decline in
26 subsequent months as the Receiver's investigation, recovery efforts, and the forensic
27 accounting proceed.

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1 By using qualified agents at significantly lower hourly rates than the
 2 Receiver, the Receiver was able to achieve a weighted average hourly (blended) rate
 3 of \$156 per hour for the Second Application Period which has declined from an
 4 average of \$177 during the First Application Period. The Receiver believes that the
 5 hourly rates charged by the Receiver are fair and reasonable given the requirements
 6 of the receivership estate.

7 **B. Charges by Task**

8 Exhibit C provides a monthly breakdown by tasks performed by the Receiver
 9 and his agents, including graphs for total costs for each task by month. The total
 10 hours and cost by task for the billing period are as follows:

11 Task	Hours	Rate	Amount
12 A/R and other Debt	175.7	\$197	\$34,543
13 Collections			
14 Accounting and	170.0	\$129	\$21,910
15 Reporting			
16 Bookkeeping	764.3	\$105	\$80,276
17 Forensic	419.3	\$132	\$55,516
18 Accounting			
19 Investor Relations	108.9	\$155	\$16,830
20 Litigation &	38.6	\$291	\$11,251
21 Support			
22 Manage Business	334.2	\$147	\$49,196
23 Paralegal	147.9	\$115	\$17,009
24 Project Mgmt	834.2	\$163	\$135,793
25 Receiver	151.7	\$367	\$55,608
26 Receivership	489.9	\$73	\$35,561
27 Admin			
28 Research Files	58.6	\$140	\$8,204

1	Sell Liquidate	753.1	\$233	\$175,279
2	Assets			
3	Takeover Property	17.1	\$75	\$1,277

4
5 The Receiver did not charge for the cost of preparing the fee applications,
6 which took 60.3 hours to prepare during the Second Application Period at a cost
7 savings to the receivership estate of \$10,313.00.

8 **C. Charges by Asset**

9 Exhibit D provides a monthly breakdown by asset of tasks performed by the
10 Receiver and his agents. The Receiver has attempted to categorize costs by
11 significant asset. Most assets can be tied to an MP or MPs, as applicable. The pie
12 chart graph in Exhibit D displays the cost of work performed for each referenced
13 asset as a percentage of the work performed for all referenced assets during the
14 Second Application Period. Not all of the Receiver's work can be tied to specific
15 asset and there is a category for this unspecified work. This work is listed in the
16 table below as Non-Categorized but is not included in the graph. The amount of
17 time devoted to each asset and the related cost is as follows:

18	Asset	Hours	Rate	Amount
19	118 39 th St	68.0	\$162	\$11,407.00
20	Castle Hill	30.0	\$250	\$7,505.00
21	Edge	17.0	\$106	\$1,809.50
22	Emark	10.4	\$125	\$1,301.00
23	Gulf Pines	93.3	\$164	\$15,339.00
24	HCMFA	3.3	\$114	\$377.50
25	Home Stretch	95.5	\$156	\$14,877.50
26	IHHI	235.4	\$249	\$58,592.50
27	Lavapharm	16.6	\$327	\$5,420.00

1	MTS	9.9	\$69	\$685.00
2	NHBC	561.6	\$118	\$66,309.50
3	Parkway Hospital	24.6	\$244	\$5,999.50
4	Perfect Game	74.8	\$168	\$12,590.00
5	Pyramid	3.1	\$278	\$862.50
6	Red Hill	68.3	\$130	\$8,889.00
7	Southwest Atlanta Hospital	435.6	\$225	\$97,908.50
8	TRACE	264.4	\$221	\$58,446.50
9	Valley Health	14.2	\$145	\$2,055.00
10	Velocity (mail.com)	15.2	\$274	\$4,159.50
11	Vivavision	266.3	\$148	\$39,408.00
12	Total Referenced Asset	2,344.4	\$179	\$420,108.50
13	Categories (Excludes work			
14	not related to specific			
15	assets)			
16	Non-Categorized	2,119.1	\$131	\$278,232.00

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18 **IV. CONCLUSION.**

19 The Receiver believes his fees are fair and reasonable in view of the
20 circumstances encountered by the Receiver.. The Receiver has worked diligently to
21 perform his duties in an efficient and cost effective manner. Therefore, the Receiver
22 respectfully requests an order:

- 23 1. Approving fees totaling \$698,250.50 for the Second Application
24 Period;

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2. Authorizing the Receiver to pay 90% of such sum, or \$628,424.50, out
of assets of the Receivership estate; and
3. For other and further relief as is appropriate.
Executed this ~~20th~~ day of July, 2010, at Los Angeles, California.

Respectfully submitted,

Dated: July 20, 2010



THOMAS A. SEAMAN, Receiver