

1 DAVID R. ZARO (BAR NO. 124334)
MICHAEL R. FARRELL (BAR NO. 173831)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 515 South Figueroa Street, Ninth Floor
Los Angeles, California 90071-3309
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
mfarrell@allenmatkins.com

6 Attorneys for Receiver
7 THOMAS A. SEAMAN

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 MEDICAL CAPITAL HOLDINGS,
INC.; MEDICAL CAPITAL
15 CORPORATION; MEDICAL
PROVIDER FUNDING
16 CORPORATION VI; SIDNEY M.
FIELD; and JOSEPH J.
17 LAMPARIELLO,

18 Defendants.

Case No. 8:09-cv-0818-DOC (RNBx)
RECEIVER'S REPORT RE: ASSET
SALE MOTION

Date: October 26, 2015
Time: 8:30 a.m.
Ctvm: 9(D)
Judge: Hon. David O. Carter

19
20 **I. INTRODUCTION**

21 Pursuant to the Court's orders dated July 13, 2015 (Dkt. #1292) and August
22 19, 2015 (Dkt. #1300) (collectively, the "Orders"), Thomas A. Seaman as
23 Permanent Receiver for Medical Capital Holdings, Inc. and its subsidiaries and
24 affiliates ("Receiver"), hereby provides his report concerning the sale of assets, as
25 described in Receiver's Motion for Order Approving Sales Procedures for
26 Remaining Receivership Assets (Dkt. #1271) ("Motion").
27
28

1 **II. ASSET BACKGROUND/MARKETING**

2 **A. Asset Background**

3 As described in the Receiver's Motion, there remains only a limited number of
4 assets with value in the estate of the Receivership (the "Receivership Estate"), and
5 the Receiver proposes a sale of each of these Assets.¹ The backgrounds and brief
6 descriptions of the Assets proposed for sale are as follows:

7 Lavipharm. The Lavipharm asset consists of a loan secured by various assets
8 primarily consisting of intellectual property associated with a transdermal severe
9 pain medication patch/drug.

10 The Perfect Game. Receivership entities hold interests a company that owns
11 a movie, *The Perfect Game*, including certain ownership and voting rights in the
12 company, as well as rights relating to a loan to the company.

13 Land in Atlanta, Georgia. A receivership entity owns two parcels of raw land
14 constituting, in the aggregate, approximately 3 acres located in Atlanta, Georgia.

15 Portfolio of Loans and Judgments.²

16 ➤ Kroop Note/Judgment. The Receiver holds a \$500,000 note
17 from Dr. Jeffrey Kroop and Valley Health Care Medical Group, Inc. requiring
18 monthly payments plus an annual \$30,000 payment. The Receiver has
19 alleged a default under the note and has requested entry of judgment for
20 \$2,500,000 pursuant to a stipulation.

21 ➤ Macaluso and TEEM, LLC Judgment. The Receiver holds a
22 judgment against Anthony Macaluso and TEEM, LLC, a Nevada limited
23 liability company, with an unpaid balance of just under \$8,00,000.00.

24
25
26 ¹ Defined terms have the meanings set forth in the Purchase Agreement discussed
below.

27 ² In the Motion, the Receiver listed as an asset a judgment against Tony and Silva
28 Mavusi. After the Motion was filed, the Receiver reached a settlement that
included a release of claims and resolved the only known asset relating to this
debt. Accordingly, this judgment is no longer included in the proposed sale.

1 ➤ Roselyn Baxter-Jones Judgment. The Receiver holds a judgment
2 against Ms. Baxter-Jones in the principal amount of \$88,444.99. With
3 accrued interest of 18% plus attorney's fees, the amount presently due is
4 approximately \$348,175.

5 Nuview Molecular Pharmaceuticals, Inc. In connection with a prior sale of
6 the Receivership Estate's interest in Trace Life Sciences to NuView Molecular
7 Pharmaceuticals, Inc. ("Nuview"), the Receiver received a 5% interest in the fair
8 market value of NuView if is sold or recapitalized.

9 **B. The Receiver's Marketing Efforts**

10 In order to obtain the highest and best price in a sale of the Assets, and
11 pursuant to this Court's prior authorization, the Receiver engaged the services of
12 GlassRatner to assist the Receiver in the marketing and sale of the Assets.

13 Since their engagement, GlassRatner marketed the Assets and developed a list
14 of parties that may have interest in acquiring the Assets. After compiling this list,
15 GlassRatner contacted over 100 such potentially interested parties to provide
16 introductory packages describing the sale process, which is subject to Court
17 approval. The introductory packages also included a "Deal Profile," which provided
18 a brief summary and description of the Assets to be sold and access to an online data
19 room with diligence documents for each for the Assets.

20 The parties who received introductory packages include: sixty-one (61)
21 financial buyers who typically purchase distressed notes; twenty-eight (28) strategic
22 companies in the medical device space; and seven (7) financial buyers who
23 specialize in purchasing judgments. In addition to contacting interested third-party
24 purchasers, GlassRatner also held discussions with parties-in-interest for each Asset
25 to gauge their willingness to purchase any of the Assets. All such parties declined to
26 make an offer on any of the Assets.

27 In addition to the above, notice of the proposed sale has been posted on a
28 website commonly used in the industry to feature the sale of judgments. The two

1 parcels of land in Atlanta, Georgia were listed on CoStar and Loopnet, which are
2 multiple listing services commonly used in the industry for the marketing and sale
3 of commercial real property. Physical signs for sale of property were also put up on
4 the parcels of land. The postings have generated multiple inquiries but no firm
5 offers were presented.

6 In response to GlassRatner's efforts, several parties have requested access to
7 the data room and GlassRatner helped to coordinate their access and performance of
8 due diligence for the Assets. As of the date of this Report, five (5) prospective
9 purchasers have had access to the data room to conduct meaningful due diligence.

10 III. SUMMARY OF PROPOSAL

11 The Receiver has executed an Asset Purchase and Sale Agreement ("Purchase
12 Agreement") with E.D.S. Financial Services, Inc. ("Purchaser"), pursuant to which
13 Purchaser will acquire all of the Assets. The total purchase price for the Assets is
14 \$225,000.00, with a deposit of \$25,000.00 and break-up fee of \$7,500.00.³ The
15 Purchase Agreement is subject to overbidding and Court approval. A true and
16 correct copy of the Purchase Agreement is attached to this Report as Exhibit "A."
17 Purchaser has submitted the Deposit to the Receiver.

18 IV. RECEIVER'S RECOMMENDATION

19 The Receiver's goal in pursuing the Motion is to maximize the total monetary
20 return to the Receivership Estate. The critical factors considered by the Receiver in
21 this analysis include the total purchase price for the Asset or Assets, the likelihood
22 of closing the transaction, and the cost of pursuing the transaction through Court
23 approval and closing.

24

25

26 ³ Note, this fee is higher than the 1% fee contemplated in the Motion, but the
27 Receiver believes the higher fee of approximately 3.5% is warranted given the
28 complexity of the Assets and the transaction, which increased the cost to conduct
due diligence and negotiate the Purchase Agreement. The incremental bid
amount contemplated by the Purchase Agreement also higher than discussed in
the Motion, but the Receiver believes it is warranted under the circumstances
given the proposed purchase price.

1 No other interested party submitted a written offer to purchase any of the
2 Assets, much less all of the Assets.⁴ While a number of parties expressed interest in
3 individual Assets and/or the package of Assets, including one party recently
4 expressing an interest solely in the Lavipharm Asset, the Receiver determined that
5 moving forward with Purchaser provided the best opportunity to achieve the highest
6 net return for the Receivership Estate.

7 While it is possible that the party who expressed interest in the Lavipharm
8 Asset would participate in overbidding if it were permitted on an Asset-specific
9 basis, the Receiver believes that limiting overbids to the full Asset package is the
10 most cost-effective approach. Preparation and negotiation of a separate contract for
11 the Lavipharm (or any specific) Asset would cause the Receiver to incur substantial
12 attorneys' fees, and it is speculative whether such fees would be recovered through a
13 higher net sale return.

14 Based on the foregoing, the Receiver recommends that the Court provide
15 interested parties with an opportunity to submit overbids for the full package of
16 Assets identified in the Purchase Agreement, and if no overbids are received, that
17 the Court approve the sale to Purchaser pursuant to the Purchase Agreement. If one
18 or more Qualified Bidders submits a bid at or above the Minimum Overbid Amount,
19 the Receiver requests that the Court conduct an auction and approve the resulting
20 transaction. A proposed sale confirmation order has been attached hereto as Exhibit
21 "B" and will also be lodged with the Court.

22 **V. RECOMMENDATION FOR APPROVAL OF BROKER FEE**

23 Pursuant to the Receiver's Agreement with GlassRatner, which was attached
24 to the Seaman Declaration in Support of the Motion as Exhibit "A," the Receiver
25

26 _____
27 ⁴ In the past few years, a number of parties have expressed interest in purchasing
28 the Lavipharm Asset, and in connection therewith, have been granted access to
relevant records and performed diligence reviews. Despite having received
expressions of interest for the Lavipharm Asset, no firm offers have been
received.

1 recommends and requests that the Court approve a fee to GlassRatner in the amount
2 of \$80,000.00. The foregoing amount is comprised of a flat fee of \$40,000.00, a
3 transaction fee of \$35,000.00 (20% of the non-real estate Assets), and a commission
4 of \$5,000.00 (10% of estimated value) on the sale of the Atlanta Property.

5 **VI. CONCLUSION**

6 Based on the foregoing, the Receiver recommends that the Court proceed
7 with the sale of the Assets to Purchaser pursuant to the Purchase Agreement, subject
8 to qualified overbids as to the full package of Assets, that the Court conduct an
9 auction on October 26, 2015 if one or more qualified overbids are received, and that
10 the Court approve the sale of Assets to either Purchaser or the highest bidder at the
11 auction, if any.

12
13 Dated: October 9, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

14
15
16 By: /s/ Michael R. Farrell
MICHAEL R. FARRELL
Attorneys for Receiver
Thomas A. Seaman

17
18
19
20
21
22
23
24
25
26
27
28