

1 DAVID R. ZARO (BAR NO. 124334)
MICHAEL R. FARRELL (BAR NO. 173831)
2 EDWARD G. FATES (BAR NO. 227809)
ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP
865 South Figueroa Street, Suite 2800
4 Los Angeles, California 90017-2543
Phone: (213) 622-5555
5 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
6 mfarrell@allenmatkins.com
tfates@allenmatkins.com

7 Attorneys for Receiver
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

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

20 Defendants.
21

Case No. SA CV09-0818 DOC (RNBx)

DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF MOTION
FOR: (1) APPROVAL OF FINAL
ACCOUNT AND REPORT; (2)
AUTHORIZATION OF FINAL
DISTRIBUTIONS; (3)
AUTHORIZATION TO DESTROY
BOOKS AND RECORDS; AND (4)
DISCHARGE OF RECEIVER

Date: November 7, 2016
Time: 8:30 a.m.
Ctrm: 9C
Judge: Hon. David O. Carter

22
23
24
25
26
27
28

DECLARATION OF THOMAS A. SEAMAN

I, Thomas A. Seaman, declare as follows:

1. I am the Court-appointed permanent receiver for Medical Capital Holdings, Inc., Medical Capital Corporation, and Medical Provider Funding Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital" or the "Receivership Entities"). I make this declaration in support of the Notice of Motion and Motion for (1) Approval of Final Accounting and Report, (2) Authorization of Final Distributions, (3) Authorization to Destroy Books and Records, and (4) Discharge of Receiver ("Motion"). The following facts are within my knowledge and if called as a witness, I could and would testify to them under oath.

2. I was appointed in the Securities and Exchange Commission enforcement action brought July 2009 against Medical Capital Holdings, Inc. ("MCH"), Medical Capital Corporation ("MCC"), Medical Provider Funding Corporation VI ("MPFC VI") and their subsidiaries and affiliates are sometimes collectively referred to herein as "Medical Capital," and together with Sidney M. Field, and Joseph J. Lampariello "Defendants." Medical Capital raised approximately \$1.76 billion from investors since November 2003 through special purpose entities known as MPFC I through MPFC VI. At the time of my appointment, approximately 9,000 MPFC noteholders were owed approximately \$1.079 billion, while the collective cash on hand was approximately \$2.9 million. Under the direction and supervision of the Court, I recovered gross receipts in excess of \$210 million and will have distributed over \$151 million to noteholders and claimants. Noteholders also received over \$180 million from the bond indenture trustees, and over \$101 million from broker dealers.

3. Upon my appointment, I encountered multifaceted variables attendant to the demise of a Ponzi-like scheme. The MPFCs' purported loan portfolio of \$500,000,000 was not performing and loan collateral was at risk. Medical Capital

1 had ceased funding obligations to borrowers. Debt assets requiring immediate
2 attention included loans on four Orange County hospitals at risk of failing, a credit
3 facility to an internet email provider that Medical Capital could not fund, a nuclear
4 accelerator in Texas the borrower had abandoned, a nearly completed feature film
5 that could not be distributed, a defunct hospital in Georgia whose Certificate of
6 Need was in jeopardy, a failed hospital in Queens, New York and dozens of other
7 loans requiring collection and resolution.

8 4. Immediately upon my appointment I also faced the pending sale of a
9 large assisted living facility to which Medical Capital had taken title through
10 foreclosure, and whose operator appeared to be misappropriating operating income.

11 5. Medical Capital owned operating companies that had been damaged by
12 the Ponzi-like behavior of their owners, who had stripped the companies of needed
13 working capital. The companies required immediate management and turnaround
14 expertise in order keep them in business and preserve their value. One of the
15 companies, National Health Care Benefit Systems, was a medical claims repricing
16 company, and the other, Vivavision, provided visual entertainment programming to
17 mobile devices. There were also equity interests in companies such as Single Touch
18 Interactive Technology and the Denton nuclear accelerator facility, among others.

19 6. In reviewing Medical Capital's books and records, it became clear that
20 the financial statements were not reliable or accurate and a forensic accounting of
21 sources and uses of investor funds would be required. My staff and I conducted the
22 accounting, which entailed over twenty billion dollars of transactions in 258
23 separate bank accounts, covering the period from November 2003 through the time
24 of my appointment. My forensic accounting clearly indicated that the Receivership
25 Entities had engaged in Ponzi-like behavior by transferring cash from newer MPFCs
26 in exchange for the assets of earlier MPFCs, which assets were either non-
27 performing, overvalued, or fake. But for these transfers, the earlier MPFCs would
28

1 not have had liquidity sufficient to pay returns, much less return principal, to note
2 holders.

3 7. The claims on the receivership estate were voluminous and diverse.
4 The estate received claims from the investors, as well as claims from employees,
5 contractors, judgment creditors, borrowers, insiders, and taxing authorities, among
6 others. I established a claims process and my team received and processed over
7 8,000 claims. In November 2011, I filed my Proposed Plan of Distribution (the
8 "Plan"). A number of objections were filed, many of which related to the Plan's
9 provision to reduce noteholder claims by any payments the noteholder may have
10 received from Medical Capital, as well as the provision reducing claims by amounts
11 received from third parties, such as broker-dealers, FINRA, or the bond indenture
12 trustees.

13 8. In September 2012, the Court entered an order approving an Amended
14 Distribution Plan based on the MIMO claim calculations. In February 2014, the I
15 made the first interim distribution. The total amount distributed was
16 \$117,432,579.46 and can be broken down by the type of claim as follows:

17

18	Priority wage claims	\$271,621.74
19	Priority creditor claims	\$1,015,664.42
20	Noteholders	\$114,508,255.28
21	Non-priority wage claims	\$38,058.34
22	<u>Non-priority creditor claims</u>	<u>\$1,626,581.83</u>
23	Total	\$117,432,579.46

24 9. Exhibit A to the Motion provides financial statements for the duration
25 of the receivership.

26 Sources of recovery. The gross receipts to the receivership estate were
27 \$210,719,093.30 and can be summarized as follows.

28

Asset sales	\$118,668,893.60
-------------	------------------

1	Litigation settlement proceeds	\$32,106,572.50 ¹
2	Operating company revenues	\$23,430,825.80
3	Loan collections	\$15,755,763.32
4	Income tax refunds	\$11,606,480.30
5	Funds seized	\$4,559,300.37
6	Accounts receivable collections	\$2,718,122.60
7	Rental income	\$561,519.34
8	Property tax refunds	\$501,184.58
9	Disgorgement proceeds	\$400,000.00
10	Interest income	\$209,026.51
11	Insurance proceeds	\$201,404.38

12 A narrative discussion of the some of the more significant recoveries follows.

13 Asset sales. I recovered \$118,668,893.60 from the sale of assets, comprised
14 primarily of loans, operating companies, real estate, and other assets. Noteworthy
15 among the asset sales was the sale of the IHHI loans for \$70,000,000. At the time of
16 the my appointment, IHHI was threatening litigation against Medical Capital
17 alleging Medical Capital failed to fund credit facilities and collected accounts
18 receivable it had not advanced. I negotiated a discounted pay-off of the loan and
19 mutual releases, but structured the discounted pay-off as a sale and subject to over
20 bidding. I agreed to sell the loans for \$55,000,000 subject to Court approval and
21 overbid. I then identified over- bidders and, with the Court's assistance, created a
22 sense of urgency which culminated in the Court conducting on overbid process that
23 resulted in a final sales price of \$70,000,000. Other noteworthy sales included the
24 Homestretch, then the largest yacht in Newport Beach, for \$1.6 million, TRACE
25 Life Sciences (the nuclear accelerator in Denton, Texas) for \$1.375 million;
26 Vivavision for \$1 million; the Parkway Hospital note for \$5.39 million, Castle Hill

27
28

¹ Net of contingent legal fees

1 retirement home for \$13.753 million, and Southwest Atlanta hospital for \$5.1
2 million.

3 10. I also sought and received Court approval to sue the banks that acted as
4 bond indenture trustees for Medical Capital. I sued Bank of New York Mellon
5 ("BNY") and Wells Fargo Bank ("Wells") (collectively the "Banks") for breach of
6 contract, breach of their duties as bond indenture trustees, and aiding and abetting
7 breaches of fiduciary duty in connection with their roles as bond indenture trustees
8 for the MPFCs. I engaged in substantive settlement discussions with Wells prior to
9 filing the complaint, which took place over the course of many months. My office's
10 forensic accounting gave me the ability to quantify the damages arising from the
11 alleged breaches and provided a framework for a resolution. The parties engaged in
12 mediation and ultimately I reached an agreement to settle the matter with Wells for
13 \$49 million. With the Wells settlement in hand, I then engaged BNY in a mediation
14 that resulted in a settlement of \$57 million, for a combined total of \$106 million.
15 Both settlements were subject to Court approval.

16 11. The Court considered my proposed settlements with the indenture
17 trustees in December, 2012. At the hearing to approve the settlements, Bank of
18 New York Mellon announced a proposed separate settlement with the class and
19 mass action plaintiffs that fully released BNY, and BNY withdrew its joinder of the
20 Receiver's motion to approve the settlements. At the same time, the Court denied
21 Wells' summary judgment motion, effectively denying approval of the Receiver's
22 settlements. Ultimately, the noteholder plaintiffs settled with both Banks for an
23 aggregate of approximately \$219 million, of which the noteholders received
24 approximately \$180 million after attorneys' fees. While my proposed settlement
25 was not the one ultimately implemented, the process I initiated narrowed the legal
26 arguments and gave the noteholders a meaningful starting point for discussions that
27 ultimately lead to very significant settlements.

28

1 12. I collected \$15.75 million from the loans made by Medical Capital,
2 only two of which were not in monetary default at the time of the Receiver's
3 appointment. The balance of the loans required aggressive collection efforts,
4 including the filing of a number of collection actions. Some of the larger and more
5 complex problem loans administered by the Receiver include Lavipharm, a
6 pharmaceutical company to whom Medical Capital lent \$46 million. Medical
7 Capital had forgiven \$16 million of debt prior to the Receiver's appointment. Of the
8 remaining \$30 million, I collected \$5.635 million before the FDA denied approval
9 of Lavipharm's product and the borrower stopped making payments. The note
10 recently sold for \$140,000. Other larger and more complex loans include
11 TEEM/Anthony Macaluso and Pyramid Technologies/Mavusi.

12 13. Through the forensic accounting discussed above, I also found that
13 Medical Capital's investing and lending activities were not profitable, contrary to
14 the Entities' reporting of profits on their financial statements and income tax returns.
15 Moreover, the Entities had paid the income taxes on their overstated income. I used
16 the forensic accounting to prepare and file amended tax returns for 2004, 2005,
17 2006, 2007 and 2008, as well as the pre-receiver 2009 return. These amended
18 returns resulted in tax refunds of \$11.6 million, including interest of approximately
19 \$266,000 on the refunds. The refunds were paid only after a year-long IRS audit
20 and the approval of a congressional oversight committee.

21 14. I collected \$2.7 million from medical accounts receivable Medical
22 Capital had purchased from medical providers and others. I learned that many of
23 Medical Capital's purported accounts receivable were owed by defunct companies
24 or were bogus, or were overvalued.

25 15. I collected rental income of \$561,519.34 primarily from the Southwest
26 Atlanta hospital property prior to its sale.

27 16. Defendant Sid Field paid the receivership \$400,000 in connection with
28 his consent to the SEC's final judgment.

1 17. The Profit & Loss statement provided as Exhibit A to the Motion sets
2 forth the disbursements of the Receivership. Total disbursements were
3 \$172,723,666.21 and may be summarized as follows:

4 Distributions to noteholders and claimants	\$117,432,579.46
5 NHBC, Vivavision, Perfect Game expenses	\$22,868,133.67
6 Operating expenses	\$12,688,681.17
7 Professional fees and expenses	\$15,077,942.69
8 <u>Receivers' fees</u>	<u>\$4,656,329.22</u>
9 Total disbursements	\$172,723,666.21

10 18. I will continue to incur certain operating expenses after the filing of this
11 final account and report. These expenses are for the storage warehouse, as well as
12 the cost to destroy books & records and digital records. I anticipate the need for an
13 operating expense reserve of \$20,021.77 which is comprised of:

14 Storage fees	\$5,950.20
15 Utilities, alarm	\$1,395.00
16 Document destruction	\$3,150.00
17 Postage	\$4,230.00
18 Bank charges	\$600.00
19 Payroll service fees	\$500.00
20 Payroll taxes on employee dist.	\$996.57
21 Computer destruction	\$2,000.00
22 <u>Contingency</u>	<u>\$1,200.00</u>
23 Total expense reserve	\$20,021.77

24 If the costs are less than the reserve, I will turn over the unused portion to the
25 Securities and Exchange Commission for turnover to the United States Treasury.

26 19. I am holding cash in the amount of \$37,995,427.09. If the Court
27 approves the Receiver's, his counsel's, and the tax accountant's fee applications as
28 submitted, and allows the receiver a reserve of \$45,000 to administer investor

1 inquiries after the final distribution, and allows a reserve of \$5,000 for additional
 2 legal fees, and allows an expense reserve of \$20,021.77 to close the receivership,
 3 there will be \$34,200,867.99 available for distribution to claimants. The foregoing
 4 may be summarized as follows:

5	Cash on hand	\$37,995,427.09
6	Pay agent distributions	\$95,090.67
7	Crowe Horwath fee app	\$412,974.21
8	Receiver 23 rd fee app	\$283,180.00
9	Receiver's holdback	\$517,628.95
10	Allen Matkins 23 rd fee app	\$403,083.60
11	Allen Matkins holdback	\$2,012,579.90
12	Allen Matkins fee reserve	\$5,000.00
13	Receiver fee reserve for final dist.	\$45,000.00
14	<u>Expense reserve</u>	<u>\$20,021.77</u>
15	Final distribution	\$34,200,867.99

16 20. I have previously distributed \$117,432,579.46. As a result, and in
 17 accordance with the Plan of Distribution, final distributions to claimants will be
 18 made *in pari passu*, with all claimants receiving the same pro rata share of the final
 19 distribution, whether they were an employee, noteholder, priority creditor, or non-
 20 priority creditor. The claims of each of these categories and their respective
 21 collective pro rata share and total amount to be distributed can be summarized as
 22 follows:

	Net Claims	Pro rata share	Final distribution
24 Noteholders	\$546,138,809.38	98.6%	\$33,750,473.57
25 Creditors	\$7,295,937.59	1.3%	\$439,137.05
26 <u>Employees</u>	<u>\$181,892.55</u>	<u><0.1%</u>	<u>\$11,257.37</u>
27 Total	\$553,616,639.52	100.0%	\$34,200,867.99

28

1 21. The total of all MIMO investor claims is \$831,130,893. Investors
 2 received payments from broker-dealers, the bond indenture trustees, and from my
 3 office. Investor recoveries can be summarized as follows:

4	Gross MIMO claims before 3 rd party recoveries	\$831,130,893
5	Third party recoveries ² :	
6	Net amount recovered from broker-dealers	\$102,035,159
7	Net amount recovered from Trustees	\$180,921,848
8	Disallowed claims ³	
9	Net MIMO claims of the receivership	\$546,267,859
10	Funds distributed to investors by the Receiver:	
11	First distribution	\$117,432,579
12	Final distribution	\$34,200,868
13	Total paid by the Receiver	\$151,633,447
14		
15	% of gross MIMO claims	18.2%
16	% of net MIMO claims	27.7%
17		
18	Total funds recovered from all sources	\$434,590,454
19	% of gross MIMO claims	52.3%

20 22. I am currently in possession of voluminous books and records that are
 21 stored at a warehouse in Santa Ana. I am also in possession of Medical Capital's
 22 digital records. I am seeking authority to destroy all the books and records of
 23 Medical Capital. I will continue to maintain my work product files for a period of
 24 seven years following conclusion of the receivership.

25 _____
 26 ² These amounts are understated to the extent that a claimant received more than
 their claim from third parties

27 ³ The claims of investors who did not return a third party recovery certification form
 or did not cash their first distribution checks have been deemed disallowed in
 28 accordance with the Plan of Distribution. The Receiver made exhaustive efforts
 to contact these claimants with limited success.

