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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE
COMMISSION,

Case No. SA CV09-0818 DOC (RNBx)

13 Plaintiff,

FOURTH INTERIM FEE
APPLICATION OF THOMAS
SEAMAN, RECEIVER

14 v.

March 21, 2011
8:30 a.m.
9D

15 MEDICAL CAPITAL
16 INC.; MEDICAL CAP
CORPORATION; ME
17 PROVIDER FUNDIN
CORPORATION VI;
18 FIELD; and JOSEPH
LAMPARIELLO,

Sherley

: Hon. David O. Carter

19 Defendants.
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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"), submits this fourth interim application for approval and
5 payment of fees. This application covers the period August 1, 2010 through October
6 31, 2010 (the "Fourth Application Period").

7 During the Fourth Application Period, the Receiver and his staff spent 2,435.7
8 hours executing the duties set forth in the Temporary Restraining Order and Order
9 Appointing Receiver and the subsequent Preliminary Injunction and Order
10 Appointing Permanent Receiver, and subsequent orders of the Court. By this Fourth
11 Interim Fee Application, Thomas Seaman seeks approval of \$319,154.00 in fees
12 which were incurred at a weighted average hourly rate of \$131 per hour. The
13 Receiver seeks approval to pay 90% of this amount, or \$287,238.60.

14 The Receiver does not seek reimbursement of any expenses.

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

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

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

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

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

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

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

24 The high risk nature of the loans made by the Receivership Entities is
25 confirmed by the Receiver's preliminary investigation of the sources and uses of
26 investor cash, which demonstrates that the Receivership Entities did not operate
27 their lending business profitably. In fact, leaving aside that the Receiver has learned
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1 that many of the accounts receivable do not exist, it appears that the vast majority of
2 the real unpaid loans are non-performing. Notwithstanding the unprofitability of the
3 Receivership Entities' money lending activities, the money raising entities paid
4 administrative fees in excess of \$324 million to MCC.

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

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

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

23 In addition, because the Defendants did not keep accurate books and records,
24 the Receiver is conducting a forensic accounting of the sources and uses of investor
25 funds which is expected to be completed in the next 45 days. The forensic
26 accounting entails entering over transactions totaling \$10 billion of into a relational
27 database designed to identify assets of the company and recipients of ill-gotten
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1 gains, as well as allow the Court to make determinations as to the nature of the fraud
2 including a likely finding that Medical Capital affiliates and subsidiaries operated a
3 unitary enterprise in a Ponzi-like manner in order to defraud investors and enrich the
4 Defendants. The forensic accounting is being performed by the Receiver and his
5 staff along with certain former employees of Medical Capital (who are paid from the
6 estate thereby greatly reducing the cost of performing the forensic accounting),
7 which would have been massively expensive if performed by an outside accounting
8 firm. During the Fourth Application Period the Receiver and his agents incurred
9 fees of \$113,121.50 working on the forensic accounting. The cost of the forensic
10 accounting from inception of the receivership through October 31, 2010 has been
11 approximately \$257,878.50.

12 The preliminary forensic accounting clearly indicates that the Receivership
13 Entities' lending and investing activities were not profitable, notwithstanding that
14 the Receivership Entities were showing a profit in their financial statements and
15 income tax returns. Moreover, the Receivership Entities paid the income taxes on
16 their non-existent income. The Receiver has filed amended tax returns for 2005 and
17 2006, as well as the pre-receiver 2009 return, which the Receiver is hopeful will
18 result in significant income tax refunds.

19 Administration of the receivership estate therefore involved or continues to
20 involve a multiplicity of activities in the following varied functional areas:

- 21 • Collection efforts
 - 22 ♦ Foreclosure actions
 - 23 ♦ Actions to enforce personal guarantees
 - 24 ♦ Discounted pay-off negotiations
 - 25 ♦ Forbearance negotiations
- 26 • Claims against Receivership Entities, not all of which were covered by
27 the stay imposed by the Preliminary Injunction

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- Lawsuits and other claims of lender breach relative to the collection of accounts receivable that had not been financed (in at least one case, the borrower had paid its debt in full and MCC continued to collect the underlying accounts receivable), or Medical Capital's failure to perform lending commitments
- 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 in 258 bank accounts. Approximately 15,000 bank statements have been input and reconciled.
 - 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
- Investigated claims against professionals and sought *in camera* approval to proceed

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- Sought and was granted approval to bring action against the bond indenture trustees
- 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
- Assist with providing a mechanism which supports various discovery requests and subpoenas of the Receiver
- 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

The Receiver's efforts resulted in gross receipts to the receivership estate in the amount of \$13,480,772.03 during the Fourth Application Period and can be broken down into the following categories:

• Sale and disposition of assets:	\$10,113,917.30
• NHBC revenue:	\$1,534,645.77
• Viva-Vision Revenue	\$3,436.64
• Loan payments:	\$1,785,437.50
• Accounts receivable payments:	\$46,904.45
• Seizure of funds:	(\$9,959.63)
• Rental income:	<u>\$6,390.00</u>
Total	<u>\$13,480,772.03</u>

The sales and disposition of assets were comprised of:

- Sale of Viva-Vision: \$1,000,917.30

- 1 • Sale of Velocity Services \$9,113,000.00
- 2 Significant loan collections included:
- 3 • Lavipharm: \$1,500,000.00
- 4 • Velocity: \$164,687.50
- 5 • Transfac: \$120,750.00

6 The gross receipts of the receivership estate, the Receiver's fees and the
7 Receiver's fees as a percentage of gross receipts are summarized below.

	<u>Fourth Fee Application</u>	<u>Inception To Date</u>
9 Gross Receipts	\$ 13,480,772.03	\$ 117,930,789.04
10 Receiver's Fees	\$ 319,154.00	\$ 1,679,521.50
11 Receiver's Fees as % of Receipts	2.37%	1.42%

12 As of October 31, 2010, the Receiver was holding cash in the amount of
13 \$98,212,438.69. More currently, the receivership's gross receipts have increased
14 since that time by \$2,143,594.94 million to \$120,074,383.98 and the Receiver is
15 holding cash in the amount of \$98,545,214.07 as of January 9, 2011.

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

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

1 **A. Charges by Timekeeper**

2 Exhibit B provides a breakdown by timekeeper setting forth the amount of
3 time spent by the Receiver and his agents at their respective hourly rates. The
4 Receiver personally expended 133.2 hours for the Fourth Application Period for a
5 total cost of \$49,950.00. During the Fourth Application Period the Receiver
6 expended 35% of his time working on the Medical Capital receivership which has
7 declined considerably as the case progressed and the initial takeover of the
8 Receivership Entities and assets was completed.

9 In order to manage the Receivership in a cost effective manner, the Receiver
10 delegates some assignments to agents who are billed at hourly rates ranging from
11 \$35 to \$300 per hour. These agents perform accounting, financial analysis, business
12 management, forensic accounting, debt collection, real estate management and other
13 services required by the receivership estate. During the Fourth Application Period,
14 the Receiver's agents expended 2,302.5 hours at an average hourly rate of \$117 per
15 hour. The Receiver expects the number of hours necessary to administer the
16 receivership estate to continue to remain stable in subsequent months as the
17 Receiver's investigation and recovery efforts proceed.

18 By using qualified agents at significantly lower hourly rates than the
19 Receiver, the Receiver was able to achieve a weighted average hourly (blended) rate
20 of \$131 per hour for the Fourth Application Period which has declined from an
21 average of \$177 during the First Application Period, \$156 during the Second
22 Application Period and \$151 during the Third Application Period. The Receiver
23 believes that the hourly rates charged by the Receiver are fair and reasonable given
24 the requirements of the receivership estate.

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1 **B. Charges by Task**

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

5	<u>Task</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
6	A/R and other Debt Collections	235.8	\$187	\$44,126.50
7	Accounting and Reporting	48.8	\$145	\$7,098.50
8	Bookkeeping	206.6	\$112	\$23,184.00
9	Forensic Accounting	1,273.0	\$89	\$113,121.50
10	Investor Relations	14.9	\$146	\$2,168.50
11	Litigation & Support	44.6	\$168	\$7,509.00
12	Manage Business	45.2	\$147	\$6,649.00
13	Paralegal	92.2	\$115	\$10,603.00
14	Project Mgmt	202.4	\$192	\$38,941.00
15	Receiver	70.4	\$375	\$26,400.00
16	Receivership Admin	85.4	\$58	\$4,939.00
17	Research Files	2.1	\$150	\$315.00
18	Sell Liquidate Assets	114.3	\$298	\$34,099.00
19	Totals	2,435.7	\$131	\$319,154.00

20 The Receiver did not charge for the cost of preparing the fee applications,
21 which took 41.3 hours to prepare during the Fourth Application Period at a cost
22 savings to the receivership estate of \$5,635.00.

23 **C. Charges by Asset**

24 Exhibit D provides a monthly breakdown by asset of tasks performed by the
25 Receiver and his agents. The Receiver has attempted to categorize costs by
26 significant asset. Most assets can be tied to an MP or MPs, as applicable. The pie
27 chart graph in Exhibit D displays the cost of work performed for each referenced
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1 asset as a percentage of the work performed for all referenced assets during the
 2 Fourth Application Period. Not all of the Receiver's work can be tied to specific
 3 asset and there is a category for this unspecified work. This work is listed in the
 4 table below as Non-Categorized but is not included in the graph. The amount of
 5 time devoted to each asset and the related cost is as follows:

6					% of
7	Asset	Hours	Rate	Cost	Referenced
8					Assets Costs
8	Castle Hill	10.6	\$221	\$2,345	1.7%
9	Concept One	1.5	\$283	\$424	0.3%
10	Edge	28.8	\$134	\$3,867	2.8%
11	Gulf Pines	37.9	\$160	\$6,055	4.4%
12	HCMFA	0.3	\$250	\$75	0.1%
13	Home Stretch	45.1	\$161	\$7,267	5.3%
14	Lavipharm	0.8	\$147	\$118	0.1%
15	MTS	0.2	\$150	\$30	0.0%
16	NHBC	136.8	\$117	\$16,057	11.8%
17	Parkway Hospital	70.2	\$232	\$16,283	11.9%
18	Perfect Game	27.9	\$146	\$4,071	3.0%
19	Red Hill	2.8	\$72	\$203	0.1%
20	Southwest Atlanta Hospital	133.4	\$234	\$31,261	22.9%
21	TEEM, Macaluso	72.6	\$93	\$6,785	5.0%
22	TRACE	113.6	\$256	\$29,119	21.3%
23	Valley Health	0.5	\$375	\$188	0.1%
24	Velocity (mail.com)	21.0	\$360	\$7,562	5.5%
25	Vivavision	44.5	\$105	\$4,684	3.4%

1	Sub-Total Referenced				
2	Asset Categories ¹	748.5	\$182	\$136,389	100.0%
3	Non-Categorized ²	1,687.2	\$108	\$182,765	
4	Totals	2,435.7	\$131	\$319,154	
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¹ Excludes work not related to specific assets.
² Work not directly related to any categorized asset.

1 **IV. CONCLUSION.**

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

- 6 1. Approving fees totaling \$319,154.00 for the Fourth Application
7 Period;
8 2. Authorizing the Receiver to pay 90% of such sum, or
9 \$287,238.60, out of assets of the receivership estate; and
10 3. For other and further relief as is appropriate.

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12 I declare under penalty of perjury under the laws of the United States that the
13 foregoing is true and correct.

14 Executed this 18th day of February, 2011, at Irvine, California.

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THOMAS A. SEAMAN

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