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

11
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. SACV 09-818 DOC (RNBx)

**DECLARATION OF FRANK A.
CIALONE IN SUPPORT OF
AMENDED THIRD INTERIM FEE
APPLICATION OF SHARTSIS
FRIESE LLP, CONFLICTS
COUNSEL TO THE RECEIVER**

Date: May 7, 2012
Time: 8:30 a.m.
Judge: Hon. David O. Carter
Court Room: 9D

21
22 I, FRANK A. CIALONE, declare as follows:

23 1. I am an attorney admitted to practice law in the State of California and
24 in this District. I am a partner at Shartsis Friese LLP (“Shartsis Friese”), counsel
25 for Thomas A. Seaman (the “Receiver”), the court-appointed Permanent Receiver
26 for Medical Capital Holdings, Medical Capital Corporation, Medical Provider
27 Funding Corporation VI and their subsidiaries and affiliates (collectively, the
28 “Receivership Entities”) in this matter. I make this declaration in support of the

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1 Amended Third Interim Fee Application of Shartsis Friese LLP, Conflicts Counsel
2 for the Receiver (“Third Interim Application”), filed concurrently herewith. I make
3 the following declaration of my own personal knowledge, and if called to testify,
4 could and would testify truthfully thereto.

5 2. Attached hereto as Exhibit A are true and correct copies of the billing
6 invoices generated by Shartsis Friese in its representation of the Receiver from May
7 1, 2011 through December 31, 2011 (the “Third Interim Period”) with respect to the
8 Receiver’s potential claims against the Trustees.

9 3. During the Third Interim Period, Shartsis Friese’s efforts were focused
10 on continuing the settlement discussions that had been initiated with the Trustees,
11 with the goal of obtaining a recovery for the Receivership Estate without incurring
12 the costs, risks, and delay of formal litigation. The Receiver and the Trustees have
13 had numerous meetings, substantive telephone discussions, and exchanges of
14 written information and documentation. Shartsis Friese also prepared objections to
15 the claims filed against the Receivership Estate by the Trustees.

16 4. Shartsis Friese’s invoices reflect a total of 1084.80 hours of work
17 performed during the Third Interim Period. That work has included a detailed
18 review and analysis of extensive documentation (including documentation provided
19 by the Trustees to facilitate further discussions), review of documents and
20 information in the Receiver’s possession in order to respond to contentions by the
21 Trustees, legal research regarding defenses raised by the Trustees, review of the
22 relevant portions of the Receiver’s Reports to the Court and the pleadings and
23 motions in the *Masonek* litigation; and review concerning transactions by the
24 Medical Capital entities that give rise to the Receiver’s potential claims. Shartsis
25 Friese has worked closely with the Receiver’s staff in order to maximize efficiency
26 in performing these tasks. Shartsis Friese has also sought and obtained voluntary
27 production of documents from the Trustees so as to avoid the costs of litigation
28 over discovery issues.

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1 5. The Receiver negotiated a discounted fee arrangement with Shartsis
2 Friese wherein associate attorneys and paralegals are billed at a ten percent discount
3 and partners at an approximate twelve percent discount, and travel time to Southern
4 California is not charged.

5 6. Under these reduced rates, during the Third Interim Period Shartsis
6 Friese has incurred a total \$340,313.10 in fees and \$13,665.42 in costs in the course
7 of its representation of the Receiver. The total fees reflect a 10% discount to all
8 non-partner time, representing a discount of \$20,670.90. The majority of the
9 \$13,665.42 in costs are travel-related, primarily for travel to meetings with counsel
10 for the Trustees and/or with the Receiver and his staff. Shartsis Friese charges costs
11 at actual or estimated cost, including charges of \$.08 per page for in-house copying.

12 7. In March 2012, Shartsis Friese will adjust its billing rates. Shartsis
13 Friese requests authority to apply current non-partner billing rates for all fees
14 incurred from March 2012 forward (subject to the 10% discount for non-partner
15 time that is already in place). This would result in hourly rate increases for
16 associates Simone Katz-O'Neill (from \$320 to \$350, prior to application of the
17 10% discount), Joseph Mauch (from \$310 to \$340, prior to the application of the
18 10% discount), and Roni Pomerantz (from \$290 to \$320, prior to the discount), and
19 paralegal Shepherd Smith (from \$180 to \$195, prior to the discount). Shartsis
20 Friese believes that the undiscounted rates for these timekeepers are comparable to
21 or less than rates for professionals at similar levels doing legal work of this kind.

22 8. The Court has previously approved fees to Shartsis Friese in the
23 amount of \$520,607.75 and costs in the amount of \$18,648.33, and authorized the
24 Receiver to pay 80% of the fees and 100% of the costs. *See* Doc. Nos. 549, 595.
25 With the instant Application, the total amount of fees for which Shartsis Friese has
26 sought approval is \$860,920.85, and the total amount of costs is \$32,313.75. Those
27 amounts cover services provided by Shartsis Friese on all matters (including claims
28

1 against the Trustees and discovery in other litigation) for the 22-month period from
2 March 2010 through December 2011.

3 9. The SEC has reviewed this Third Interim Fee Application and did not
4 have any comments regarding the Fee Application. The SEC does not intend to
5 oppose the Fee Application. The Receiver also supports approval of Shartsis
6 Friese's application.

7 10. By the Third Interim Application, Shartsis Friese seeks an order:

- 8 a. Approving and allowing fees to Shartsis Friese totaling
- 9 \$340,313.10 for the Third Interim Period;
- 10 b. Approving and awarding Shartsis Friese reimbursement of costs
- 11 totaling \$13,665.42 for the Third Interim Period;
- 12 c. Authorizing Shartsis Friese to apply current rates for non-partner
- 13 timekeepers, subject to a 10% discount, beginning in March
- 14 2012;
- 15 d. Authorizing the Receiver to pay 80 percent of the allowed fees to
- 16 Shartsis Friese, which amount is \$272,250.48, out of the assets of
- 17 the Receivership Estate;
- 18 e. Authorizing the Receiver to pay 100 percent of the allowed
- 19 amount of Shartsis Friese's costs, which amount is \$13,665.42;
- 20 and
- 21 f. For other and further relief as is appropriate.

22 I declare under the penalty of perjury that the foregoing is true. Executed at
23 San Francisco, California on March 27th, 2012.

24
25 /s/ Frank A. Cialone

26 FRANK A. CIALONE

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