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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. 8:09-cv-0818-DOC (RNBx)

**NOTICE OF MOTION AND  
MOTION FOR APPROVAL OF  
FIFTH AMENDMENT TO LOAN  
AND SECURITY AGREEMENT  
WITH TRANSFAC, LLC AND  
AMENDMENT TO CALVERT  
LETTER AGREEMENT;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

Date: August 8, 2011  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

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1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on August 8, 2011, at 8:30 a.m., in  
3 Courtroom 9D of the above-entitled Court located at 411 West Fourth Street,  
4 Santa Ana, California 92701, a hearing will be held on the motion of Thomas A.  
5 Seaman ("Receiver"), Court-appointed permanent receiver for Medical Capital  
6 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding  
7 Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital"  
8 or the "Receivership Entities"), for approval of a fifth amendment to the loan and  
9 security agreement with Transfac, LLC ("Motion").

10 The Motion is based on the Memorandum of Points and Authorities below,  
11 and the Declaration of Thomas A. Seaman filed herewith. The Motion and  
12 supporting papers are available at the Receiver's website,  
13 <http://www.medicalcapitalreceivership.com>, or may be reviewed at the Clerk's  
14 Office during normal business hours at 411 West Fourth Street, Santa Ana,  
15 California 92701.

16 **Procedural Requirements:** If you oppose this Motion, you are required to  
17 file your written opposition with the Office of the Clerk, United States District  
18 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on  
19 the undersigned not later than twenty-one (21) calendar days prior to the hearing.

20 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the  
21 above date, the Court may grant the requested relief without further notice. This  
22 Motion is made following the conference of counsel pursuant to L.R. 7-3.

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1           WHEREFORE, the Receiver requests that the Court grant the relief requested  
2 herein and such other relief as may be appropriate under the circumstances.

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Dated: July 8, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: /s/ Ted Fates  
TED FATES  
Attorneys for Receiver  
Thomas A. Seaman

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to a Loan and Security Agreement dated October 25, 2005, and  
4 amendments thereto ("Credit Agreement"), Medical Capital made a loan to  
5 Transfac, LLC ("Borrower"). The Credit Agreement, as amended, provides for a  
6 \$5 million revolving line of credit with a fixed interest rate of 18% per annum  
7 ("Loan"). The Loan is secured by a lien on all of the Borrower's assets which is  
8 junior in priority to a lien securing the Borrower's obligations under a credit facility  
9 issued by Proficio Bank ("Proficio Loan"). On or about June 30, 2008, the  
10 Borrower used the Proficio Loan to make a payment of \$11,561,672.98 to Medical  
11 Capital, reducing the principal balance of the Loan to \$2,625,000. Since the  
12 Receiver's appointment, the Borrower has made all payments due under the Loan,  
13 which payments were interest only.

14 Medical Capital also acquired a fifty-one (51%) percent ownership interest in  
15 Transfac Capital, LLC, an affiliate of the Borrower. On or about June 17, 2009,  
16 Medical Capital sold its 51% interest in Transfac Capital to The Calvert Company  
17 ("Calvert") for \$750,000. Under the agreement with Calvert ("Calvert Agreement"),  
18 Medical Capital agreed, among other things, to guaranty the Proficio Loan  
19 ("Guaranty") in exchange for which Medical Capital received the right to purchase  
20 stock warrants ("Stock Warrants") in Transfac Capital equal to 10% of the equity in  
21 Transfac Capital for \$150,000.

22 The Loan matured on June 30, 2011. The current principal balance is  
23 \$2,625,000.00. As represented by Borrower, the current balance of the Proficio  
24 Loan is \$9,804,067. The Borrower has stated that it is unable to pay the full balance  
25 due to Medical Capital at this time, but that it can make a substantial payment now  
26 and will pay the balance over the next year, and in no event later than a year from  
27 now. Alternatively, if the Receiver declines to grant the extension and to proceed  
28 with foreclosure, he believes that, if the Borrower's assets were sold, there is a

1 significant risk that the net proceeds would not be sufficient to pay off the Proficio  
2 Loan and the Loan. Moreover, due to the Guaranty, if the net proceeds were not  
3 sufficient to pay off the Proficio Loan, Proficio would have a claim against the  
4 estate for the remainder it is owed.

5 The Receiver and the Borrower have negotiated a proposed Fifth Amendment  
6 to Loan and Security Agreement ("Fifth Amendment"), a true and correct copy of  
7 which is attached as Exhibit 1 to the Declaration of Thomas Seaman ("Seaman  
8 Declaration") filed herewith. The Fifth Amendment contains the following key  
9 terms:

10 1. Borrower must make a principal payment in the amount of \$875,000.00,  
11 resulting in a reduced principal balance of \$1,750,000.

12 2. The maturity date of the Loan is extended for one year to June 30, 2012.

13 3. The interest rate is reduced from 18% per annum to 12% per annum.

14 4. To induce the Borrower to make additional principal payments during the  
15 one year extension period, the interest rate is reduced further by one percentage  
16 point for each principal payment of \$250,000 made by Borrower on the Loan (not  
17 including the \$875,000 principal payment).

18 5. The Loan is converted from a revolving credit facility to a term loan, thus  
19 eliminating any obligation to make further advances under the Loan.

20 6. The Guaranty will be released.

21 7. The proposed Amendment to the Calvert Agreement ("Calvert  
22 Amendment") will be executed and delivered. The Calvert Amendment, a copy of  
23 which is attached to the Seaman Declaration as Exhibit 2, terminates, among other  
24 things, (a) Medical Capital's covenant with Calvert to keep the Guaranty in place  
25 until the Loan is repaid, and (b) the Stock Warrants.

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**II. BACKGROUND FACTS**

**A. The Borrower**

The Borrower is a Nevada limited liability company formed in April 2005. The Borrower operates an accounts receivable factoring business. The Borrower's offices are in Salt Lake City, Utah.

**B. The Loan**

On October 25, 2005, Medical Capital and the Borrower entered into the Credit Agreement, which was amended by that certain Amendment to Loan and Security Agreement dated November 15, 2005, that certain Second Amendment to Loan and Security Agreement dated August 22, 2006, that certain Third Amendment to Loan and Security Agreement dated as of February 20, 2008, and that certain Fourth Amendment to Loan and Security Agreement dated June 30, 2008. The Credit Agreement, as amended, provides for a \$5 million revolving line of credit with a current fixed interest rate of 18% per annum. The Loan is secured by a lien on all of the Borrower's assets which is junior in priority to a lien securing the Borrower's obligations under the Proficio Loan. A total of \$2,625,000 is owed under the Credit Agreement. The Loan matured on June 30, 2011.

**C. The Proficio Loan**

The Proficio Loan is evidenced by a Financing Agreement dated June 30, 2008, as amended by a First Amendment dated December 31, 2009, and by a Second Amendment dated April 29, 2011. The Second Amendment, among other things, increased the credit limit from \$11,000,000 to \$20,250,000. The outstanding principal balance of the Proficio Loan, as represented by the Borrower, is currently \$9,804,067. As noted above, the Proficio Loan is senior in priority to the Loan. The Proficio Loan, including increases and amendments thereto, was also guaranteed by Medical Capital.

1           **D. Calvert Letter Agreement.**

2           On June 17, 2009, Medical Capital and The Calvert Company ("Calvert")  
3 entered into a letter agreement ("Calvert Agreement") in connection with the sale of  
4 Medical Capital's fifty-one (51%) percent interest in Transfac Capital to Calvert. A  
5 copy of the Calvert Agreement is attached as Exhibit A to the Calvert Amendment,  
6 which is attached as Exhibit 2 to the Seaman Declaration. The Calvert Agreement  
7 was consented to by the then members of Transfac Capital. Among other things,  
8 pursuant to the Calvert Agreement, Medical Capital agreed (a) to guaranty the  
9 Proficio Loan in exchange for which Medical Capital received the right to purchase  
10 the Stock Warrants; (b) to keep the Loan in place on its then current terms and at its  
11 then current level; and (c) not to call the Loan without giving at least 120 days prior  
12 written notice.

13           **E. The Proposed Fifth Amendment and Calvert Amendment**

14           As noted above, the Fifth Amendment contains the following key terms:

- 15           1. The Borrower must make a principal payment in the amount of \$875,000,  
16 resulting in a reduced principal balance of \$1,750,000.
- 17           2. The maturity date of the Loan is extended for one year to June 30, 2012.
- 18           3. The interest rate is reduced from 18% per annum to 12% per annum.
- 19           4. To induce the Borrower to make additional principal payments during the  
20 one year extension period, the interest rate is reduced further by one percentage  
21 point for each principal payment of \$250,000 made by the Borrower on the Loan  
22 (not including the \$875,000 principal payment).
- 23           5. The Loan is converted from a revolving credit facility to a term loan,  
24 eliminating any obligation to make further advances.
- 25           6. The Guaranty will be released.
- 26           7. The proposed Amendment to the Calvert Agreement ("Calvert  
27 Amendment") will be executed and delivered. The Calvert Amendment terminates  
28 (a) Medical Capital's covenant with Calvert to keep the Guaranty in place until the

1 Loan is repaid, (b) the Stock Warrants, (c) Medical Capital's obligation to keep the  
2 Loan in place on its then current terms and at its then current level; and (d) Medical  
3 Capital's obligation not to call the Loan due on less than 120 days written notice.  
4 The Calvert Amendment, therefore, allows the Receiver to enter into the Fifth  
5 Amendment without breaching the Calvert Agreement.

### 6 III. ARGUMENT

#### 7 A. Broad Equitable Powers of the Court

8 "The power of a district court to impose a receivership or grant other forms of  
9 ancillary relief does not in the first instance depend on a statutory grant of power  
10 from the securities laws. Rather, the authority derives from the inherent power of a  
11 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
12 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
13 and efficient administration of the estate by the district court for the benefit of  
14 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
15 of a receiver is authorized by the broad equitable powers of the court, any  
16 distribution of assets must also be done equitably and fairly. *See S.E.C. v. Elliot*,  
17 953 F.2d 1560, 1569 (11th Cir. 1992).

18 District courts have the broad power of a court of equity to determine the  
19 appropriate action in the administration and supervision of an equity receivership.  
20 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
21 Circuit explained:

22 A district court's power to supervise an equity receivership  
23 and to determine the appropriate action to be taken in the  
24 administration of the receivership is extremely broad. The  
25 district court has broad powers and wide discretion to  
26 determine the appropriate relief in an equity receivership.  
27 The basis for this broad deference to the district court's  
28 supervisory role in equity receiverships arises out of the  
fact that most receiverships involve multiple parties and  
complex transactions. A district court's decision  
concerning the supervision of an equitable receivership is  
reviewed for abuse of discretion.



1 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth*  
2 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'  
3 to the court's supervisory role, and 'we generally uphold reasonable procedures  
4 instituted by the district court that serve th[e] purpose' of orderly and efficient  
5 administration of the receivership for the benefit of creditors."). Accordingly, the  
6 Court has broad equitable powers and discretion in the administration of the  
7 receivership estate and disposition of receivership assets.

8 **B. The Fifth Amendment and Calvert Amendment Should Be**  
9 **Approved**

10 Here, the Receiver believes that, if the Borrower's assets were sold, there is  
11 considerable risk that the net proceeds would be insufficient to pay off the Proficio  
12 Loan and the Loan. Moreover, if the sale did not generate enough to pay off the  
13 Proficio Loan, Proficio would have a claim against the receivership estate based on  
14 the Guaranty.

15 Under the proposed Fifth Amendment, the Borrower will make an immediate  
16 \$875,000 payment, and the full remaining balance (\$1,750,000) will be due on  
17 June 30, 2012. The proposed transaction has the additional benefit of terminating  
18 the Guaranty, the restriction on modifying the Loan, and the requirement to give  
19 120 days notice before calling the Loan. Furthermore, the Receiver believes that the  
20 Stock Warrants, which will be terminated, have little value, if any, given the  
21 financial condition of Transfac Capital. The Receiver also believes that the Fifth  
22 Amendment and Calvert Amendment will result in a higher and better recovery on  
23 the Loan than enforcing the Loan through litigation and foreclosure. Accordingly,  
24 the Fifth Amendment and Calvert Amendment should be approved.

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**IV. CONCLUSION**

WHEREFORE, the Receiver requests entry of an order granting the Motion and approving the Fifth Amendment and Calvert Amendment.

Dated: July 8, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: /s/ Ted Fates

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TED FATES  
Attorneys for Receiver  
Thomas A. Seaman