

1 DAVID R. ZARO (BAR NO. 124334)
2 MICHAEL R. FARRELL (BAR NO. 173831)
3 EDWARD G. FATES (BAR NO. 227809)
4 ALLEN MATKINS LECK GAMBLE
5 MALLORY & NATSIS LLP
6 515 South Figueroa Street, Ninth Floor
7 Los Angeles, California 90071-3309
8 Phone: (213) 622-5555
9 Fax: (213) 620-8816
10 E-Mail: dzaro@allenmatkins.com
11 mfarrell@allenmatkins.com
12 tfates@allenmatkins.com

13 Attorneys for Receiver
14 THOMAS A. SEAMAN

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 v.

22 MEDICAL CAPITAL HOLDINGS,
23 INC.; MEDICAL CAPITAL
24 CORPORATION; MEDICAL
25 PROVIDER FUNDING
26 CORPORATION VI; SIDNEY M.
27 FIELD; and JOSEPH J.
28 LAMPARIELLO,

Defendants.

Case No. SA CV09-0818 DOC (RNBx)

TENTH INTERIM FEE APPLICATION
OF THOMAS SEAMAN, RECEIVER

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D Judge: Hon. David O. Carter

Judge: Hon. David O. Carter

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 tenth interim application for approval and
5 payment of fees. This application covers the period February 1, 2011, through April
6 30, 2012 (the "Tenth Application Period").

7 During the Tenth Application Period, the Receiver and his staff spent 1,661.4
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. During this
11 period the Receiver recovered \$2,463,898.22 in gross receipts for the receivership
12 estate. By this Tenth Interim Fee Application, Thomas Seaman seeks approval of
13 \$278,934.50 in fees which were incurred at a weighted average hourly rate of \$168
14 per hour. The Receiver seeks approval to pay 90% of this amount, or \$251,041.05.
15 The Receiver does not seek reimbursement of any expenses.

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

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

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 investigation of the sources and uses of investor cash,
26 which demonstrates that the Receivership Entities did not operate their lending
27 business profitably. In fact, leaving aside that the Receiver has learned that many of
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1 the accounts receivable do not exist, it appears that the vast majority of the real
2 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 principal of
10 \$1.079 billion.

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

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

24 In addition, because the Defendants did not keep accurate books and records,
25 the Receiver conducted a forensic accounting of the sources and uses of investor
26 funds. The forensic accounting entailed entering over transactions totaling over \$20
27 billion of transactions into a relational database designed to identify assets of the
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1 company and recipients of ill-gotten gains, establish investor claims, assess damages
2 caused by third parties, as well as allow the Court to make determinations as to the
3 nature of the fraud including a likely finding that Medical Capital affiliates and
4 subsidiaries operated a unitary enterprise in a Ponzi-like manner in order to defraud
5 investors and enrich the Defendants. The Receiver's Forensic Accounting Report
6 was filed on December 20, 2011. The cost through completion was \$487,897.50.
7 During the Tenth Application Period the Receiver and his agents incurred no fees on
8 forensic accounting.

9 The Receiver's Forensic Accounting Report clearly indicates that the
10 Receivership Entities' lending and investing activities were not profitable,
11 notwithstanding that the Receivership Entities were showing a reporting profit on
12 their financial statements and income tax returns. Moreover, the Receivership
13 Entities paid the income taxes on their overstated income. The Receiver has filed
14 amended tax returns for 2005, 2006, 2007 and 2008, as well as the pre-receiver 2009
15 return, which if approved by the IRS and a congressional review committee would
16 result in refunds of \$9.5 million before interest. Additional refunds from state
17 taxing authorities are expected. During the fee application period the Receiver
18 supported the IRS field agents' review of amended returns. To date, the Receiver
19 has recovered approximately \$1,628,782.53 in state and federal income tax refunds.
20 The Receiver has also administered Qualified Settlement Fund ("QSF") tax returns
21 for the receivership estate.

22 In addition to the foregoing, the receivership continues to involve a
23 multiplicity of activities in the following varied functional areas:

- 24 • Collections
 - 25 ♦ Foreclosure actions
 - 26 ♦ Actions to enforce personal guarantees
 - 27 ♦ Discounted pay-off negotiations

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- 1 ♦ Forbearance negotiations
- 2 • Claims against Receivership Entities, not all of which were covered
- 3 by the stay imposed by the Preliminary Injunction
- 4 • Lawsuits and other claims of lender breach relative to the collection
- 5 of accounts receivable that had not been financed (in at least one case,
- 6 the borrower had paid its debt in full and MCC continued to collect the
- 7 underlying accounts receivable), or Medical Capital's failure to perform
- 8 lending commitments
- 9 • Asset sales
- 10 • Management or oversight of operating businesses owned or
- 11 otherwise controlled by Receivership Entities:
- 12 • Marketing and sale of all real property owned by the Receivership
- 13 Entities, some by virtue of foreclosure
- 14 • Marketing of notes
- 15 • Marketing, maintenance and sale of the Home Stretch (luxury yacht)
- 16 • Disposition of personal property
- 17 • Forensic accounting based on daily cash receipts and disbursements
- 18 covering nearly six years and approximately \$20 billion of transactions
- 19 in 258 bank accounts. Approximately 15,000 bank statements were
- 20 input and reconciled.
- 21 • Accounting for receivership receipts and disbursements segregated
- 22 by MP and business operating entities
- 23 • Preparation of monthly reports filed with Court
- 24 • Handling of investor relations and communications
- 25 ♦ Establish and maintain website, with all pleadings promptly
- 26 posted there (www.medicalcapitalreceivership.com)
- 27 ♦ Establish and effectuate investor claim process
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- 1 • Evaluate potential causes of actions for recovery of funds for benefit
- 2 of investors
- 3 • Investigated claims against professionals and sought *in camera*
- 4 approval to proceed
- 5 • Sought and was granted approval to bring action against the bond
- 6 indenture trustees
- 7 • Execute tolling agreements and initiated pre-litigation settlement
- 8 discussions with bond indenture trustees; participate in mediation with
- 9 trustees
- 10 • Conducted damage and causation analysis for bond indenture
- 11 litigation and potential settlement discussions
- 12 • Issuance of subpoenas for banking records and then review and
- 13 investigation of materials obtained to determine possible sources of
- 14 recovery
- 15 • Responded to subpoenas and inquiries of several federal agencies
- 16 with interest in the underlying civil litigation
- 17 • Assisted with providing a mechanism which supports various
- 18 discovery requests and subpoenas of the Receiver
- 19 • Analyzed payments invested by noteholders and compared that to
- 20 the principal and interest paid to investors for the purpose of
- 21 establishing a basis for a plan of distribution

22 The Receiver's efforts resulted in gross receipts to the receivership estate in
23 the amount of \$ 2,463,898.22 during the Tenth Application Period and can be
24 broken down into the following categories:

- 25 • Accounts Receivable Collection: \$ 32,014.83
- 26 • Income Tax Refunds: \$ 1,670.75
- 27 • Loan Collections: \$ 118,083.33

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1	• NHBC revenue:	\$ 1,294,853.65
2	• Perfect Game Revenue:	\$ 17,275.66
3	• Sale of Assets/Disposition:	\$ 1,000,000.00
4	Total	<u>\$ 2,463,898.22</u>

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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>Tenth Fee Application</u>	<u>Inception To Date</u>
9 Gross Receipts	\$ 2,463,898.22	\$ 138,181,895.99
10 Receiver's Fees	\$ 278,934.50	\$ 3,563,576.00
11 Receiver's Fees as % of Receipts	11.3%	2.58%

12 The receiver's fees were 11.3% of funds recovered during this fee application
13 period, and are just over 2.58% inception to date. The receiver's fees declined
14 16.3% from the ninth fee application. During the fee application period the receiver
15 devoted a significant amount of the work to asset sales which will not result in
16 recovery to the estate until the sales are closed in future periods, some of which have
17 been problematic and time consuming. For example, the Receiver spent time on the
18 Southwest Atlanta Hospital sale, which is currently in escrow expected close in
19 December, 2012. Similarly, the Parkway note sale closed in May, 2012.

20 The Receiver and his agents had previously worked to prepare NHBC for
21 disposition. During the Tenth Application Period the Receiver continued the
22 production of due diligence materials for the proposed purchaser and reached an
23 agreement on price, subject to court approval and overbid. The Receiver continued
24 negotiations with the proposed purchaser in order to bring about an acceptable offer
25 for assets of NHBC. Negotiations included several meetings with the purchaser and
26 officers of NHBC. A finalized Asset Purchase and Sale Agreement was completed
27 after the Tenth Fee Application Period. In addition, the Receiver developed an
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1 aggressive overbid marketing plan and brokers were interviewed. The Receiver
2 selected The Independence Group, Inc. to market the NHBC assets to overbidders.
3 The Independence Group created a targeted list of potential buyers, which included
4 (1) interested parties who previously contacted the Receiver; (2) strategic acquirers
5 in the healthcare industry; (3) private equity groups with platform companies or an
6 expressed interest in healthcare services; and (4) private equity groups interested in
7 businesses of NHBC's size. In total, over 200 entities were targeted and contacted
8 via e-mail and direct phone contact. Those who expressed interest were instructed
9 to sign a Non-Disclosure Agreement. Twenty-four (24) Non-Disclosure
10 Agreements were signed, fifteen (15) of which came from parties determined to be
11 financially qualified. Each of the financially qualified potential overbidders were
12 given access to the same due diligence materials provided to the proposed
13 purchaser. That due diligence disclosure and negotiation process continued
14 throughout the Tenth Application Period. This work ultimately resulted in a bidding
15 war for the assets and a price of \$7.050. The Receiver's highest appraisal was \$3.2
16 million and the broker was instrumental in educating the prospective purchaser and
17 over bidders of the intangible value of the company.

18 The Receiver, his agents and counsel gathered bank statements related to the
19 production account of the movie, The Perfect Game, in order to determine the
20 appropriate payment due to the Receivership Estate. This financial information was
21 also used by the Receiver to evaluate numerous claims brought by various unions
22 which had performed work on the movie and who had lodged claims against the
23 movie. The Receiver later submitted his objections to the Court in a subsequent Fee
24 Application Period.

25 Similarly, the Receiver also expended time and resources investigating and
26 seeking approval to bring actions against former counsel and the indenture trustees
27 as well as preparing for settlement discussions and damage analysis which did not
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1 have a direct monetary benefit to the receivership estate during the fee application
2 period and will only result in recoveries if the Receiver prevails in, or settles these
3 matters.

4 In addition, administration of the investor claims process, one of the primary
5 functions of the receivership estate, does not produce revenue to the estate but
6 consumed estate resources. So, while many of the Receiver's activities, like
7 effectuating the investor claims process, reconciling and consenting or objecting to
8 the over 12,000 claims may not produce immediate returns or any returns, they are
9 necessary to administer this complex estate.

10 As of April 30, 2012, the Receiver was holding cash in the amount of
11 \$99,822,936.91.

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

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

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23 **A. Charges by Timekeeper**

24 Exhibit B provides a breakdown by timekeeper setting forth the amount of
25 time spent by the Receiver and his agents at their respective hourly rates. The
26 Receiver personally expended 95.6 hours for the Tenth Application Period for a

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1 total cost of \$38,240.00. During the Tenth Application Period the Receiver
2 expended 20% of his time working on the Medical Capital receivership.

3 In order to manage the Receivership in a cost effective manner, the Receiver
4 delegates some assignments to agents who are billed at hourly rates ranging from
5 \$45 to \$320 per hour. These agents perform accounting, financial analysis, business
6 management, forensic accounting, investor relations and claims management, debt
7 collection, litigation support, real estate management, management of asset
8 disposition and other services required by the receivership estate. During the Tenth
9 Application Period, the Receiver's agents expended 1,565.8 hours at an average
10 hourly rate of \$154 per hour. The Receiver expects the number of hours necessary
11 to administer the receivership estate decline once the plan of distribution is approved
12 and the Receiver works his way through the remaining assets and litigation.

13 By using qualified agents at significantly lower hourly rates than the
14 Receiver, the Receiver was able to achieve a weighted average hourly (blended) rate
15 of \$168 per hour for the Tenth Application Period and \$158 per hour from inception
16 to date. The Receiver believes that the hourly rates charged by the Receiver are fair
17 and reasonable given the requirements of the receivership estate.

18 **B. Charges by Task**

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

<u>Task</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
A/R and other Debt Collections	86.7	\$131	\$11,372.00
Accounting and Reporting	40.5	\$147	\$5,945.50
Bookkeeping	218.8	\$112	\$24,565.00
Investor Relations	668.1	\$121	\$81,160.50
Litigation & Support	62.3	\$229	\$14,290.00
Manage Business	58.1	\$284	\$16,524.50

1	Paralegal	50.8	\$130	\$6,604.00
2	Project Management	76.0	\$192	\$14,616.00
3	Receiver	36.4	\$400	\$14,560.00
4	Receivership Administration	41.6	\$56	\$2,346.50
4	Sell Liquidate Assets	322.1	\$270	\$86,950.50
5	Totals	1,661.4	\$168	\$278,934.50

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7 The Receiver did not charge for the cost of preparing the fee
8 applications, which took at least 18.9 hours to prepare during the Tenth Application
9 Period at a cost savings to the receivership estate of at least \$3,092.00.

10 **C. Charges by Asset**

11 Exhibit D provides a monthly breakdown by asset of tasks performed by the
12 Receiver and his agents. The Receiver has attempted to categorize costs by
13 significant asset. Most assets can be tied to an MP or MPs, as applicable. The pie
14 chart graph in Exhibit D displays the cost of work performed for each referenced
15 asset as a percentage of the work performed for all referenced assets during the
16 Tenth Application Period. Not all of the Receiver's work can be tied to specific asset
17 and there is a category for this unspecified work. This work is listed in the table
18 below as Non-Categorized but is not included in the graph. The amount of time
19 devoted to each asset and the related cost is as follows:

20				% of
21	Asset	Hours	Rate	Referenced
			Cost	Assets Costs
22	Castle Hill	0.1	\$320	\$32.00 0.0%
23	Concept One	0.5	\$244	\$122.00 0.1%
24	Edge	14.7	\$173	\$2,538.00 1.7%
25	Home Stretch	0.5	\$130	\$65.00 0.0%
26	Lavipharm	11.6	\$289	\$3,354.00 2.3%
27	MTS	1.4	\$161	\$225.00 0.2%
27	NHBC	406.2	\$236	\$95,806.50 65.3%
28	Parkway Hospital	86.0	\$262	\$22,509.50 15.4%

1	Perfect Game	127.3	\$122	\$15,584.00	10.6%
2	Pyramid	0.3	\$400	\$120.00	0.1%
3	Southwest Atlanta Hospital	22.4	\$267	\$5,985.00	4.1%
3	TRACE	0.6	\$238	\$143.00	0.1%
4	Valley Health	0.6	\$77	\$46.00	0.0%
5	Velocity (mail.com)	0.3	\$320	\$96.00	0.1%
6	Sub-Total Referenced Asset				
7	Categories (Excludes work not related to specific assets)	672.5	\$218	\$146,626.00	100.0%
8	Non-Categorized	988.9	\$134	\$132,308.50	
9	Totals	1,661.4	\$168	\$278,934.50	

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1 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 Approving fees totaling \$278,934.50 for the Tenth Application Period;

- 7 1. Authorizing the Receiver to pay 90% of such sum, or
8 \$251,041.05, out of assets of the receivership estate; and
9 2. For other and further relief as is appropriate.

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

12 Executed this 15th day of November, 2012, at Irvine, California.

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16 THOMAS A. SEAMAN
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