ı	#. 21013	
	DAVID R. ZARO (BAR NO. 124334) MICHAEL R. FARRELL (BAR NO. 17383 TED FATES (BAR NO. 227809) ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP 515 South Figueroa Street, Ninth Floor Los Angeles, California 90071-3309 Phone: (213) 622-5555 Fax: (213) 620-8816 E-Mail: dzaro@allenmatkins.com	
9	UNITED STATES D	DISTRICT COURT
10	CENTRAL DISTRIC	
11	SOUTHERN	
12	SECURITIES AND EXCHANGE	Case No. 8:09-cv-0818-DOC (RNBx)
13	COMMISSION, Plaintiff,	NOTICE OF MOTION AND
14	V.	MOTION FOR ORDER APPROVING (A) SALE OF
15	MEDICAL CAPITAL HOLDINGS, INC.;	SOUTHWEST ATLANTA MEDICAL CENTER PROPERTY
16	MEDICAL CAPITAL CORPORATION; MEDICAL PROVIDER FUNDING	FREE AND CLEAR OF LIENS AND (B) REAL ESTATE BROKER'S
17	CORPORATION VI; SIDNEY M. FIELD; and JOSEPH J. LAMPARIELLO,	COMMISSION; MEMORANDUM OF POINTS AND AUTHORITIES
18	Defendants.	Data: Dagambar 17, 2012
19 20		Date: December 17, 2012 Time: 8:30 a.m. Ctrm: 9D
20		Judge: Hon. David O. Carter
22		
23		
24		
25		
26		
27		
28		
LAW OFFICES Allen Matkins Leck Gamble Mallory & Natsis LLP	732201.03/SD	

TO ALL INTERESTED PARTIES: 1 2 PLEASE TAKE NOTICE that on December 17, 2012, at 8:30 a.m., in Courtroom 9D of the above-entitled Court located at 411 West Fourth Street, Santa Ana, California 92701, a hearing will be held on the motion of Thomas A. 4 Seaman ("Receiver"), Court-appointed permanent receiver for Medical Capital 5 Holdings, Inc., Medical Capital Corporation, and Medical Provider Funding 6 7 Corporation VI, and their subsidiaries and affiliates, including Georgia Medical 8 Provider Financial Corporation (collectively, "Medical Capital" or the "Receivership Entities"), for an Order Approving (a) Sale of the Southwest Atlanta Medical Center Property Free and Clear of Liens, and (b) Real Estate Broker's Commission 10 11 ("Motion"). The Motion is based on the Memorandum of Points and Authorities below 12 and the Declarations of Thomas A. Seaman and Thomas W. Tift, III filed herewith. 13 14 The Motion and supporting papers are available at the Receiver's website, http://www.medicalcapitalreceivership.com, or may be reviewed at the Clerk's 15 Office during normal business hours at 411 West Fourth Street, Santa Ana, 16 California 92701. 17 18 **Procedural Requirements:** If you oppose this Motion, you are required to 19 file your written opposition with the Office of the Clerk, United States District 20 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on 21 the undersigned not later than twenty-one (21) calendar days prior to the hearing. 22 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the 23 above date, the Court may grant the requested relief without further notice. 24 **Requested Relief:** The relief requested is discussed in detail in the 25 Memorandum of Points and Authorities. To summarize, the Receiver requests an 26 order approving a sale of the property located at 501 Fairburn Road SW, Atlanta, 27 Georgia, known as the Southwest Atlanta Medical Center (the "Property"). The 28 purchase price is \$5,000,000, but the sale is subject to overbids by potential

1	purchasers who qualify themselves as bidders pursuant to the overbid procedures
2	discussed in the concurrently filed Ex Parte Application for Order Approving
3	(a) Overbid Procedures, and (b) Notice of Sale. The Receiver requests that the sale
4	be free and clear of all liens, claims and encumbrances, with such liens, claims and
5	encumbrances attaching to the sale proceeds in the same validity and priority they
6	had with respect to the Property. The Receiver also requests authority to pay the
7	real estate broker a commission of 3% of the final purchase price, up to a maximum
8	of \$225,000.
9	This Motion is made following a conference of counsel pursuant to
10	L.R. 7-3.
11	WHEREFORE, the Receiver requests that the Court grant the relief requested
12	herein and such other relief as may be appropriate under the circumstances.
13	
14	Dated: November 16, 2012 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
15	
16	By: /s/ Ted Fates
17	TED FATES Attorneys for Receiver
18	Attorneys for Receiver Thomas A. Seaman
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
mble	

LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

TABLE OF CONTENTS 1 **Page** 2 3 I. INTRODUCTION 1 FACTUAL BACKGROUND1 II. 4 The Property......1 5 A. B. The Loans 2 6 C. 7 The SDG Bankruptcy......2 8 D. 9 1. 10 2. Second Sale Motion4 Appraisals......6 E. 11 F 12 G. Losses Resulting from the Loans......7 13 THE PROPOSED SALE......8 14 Ш. 15 IV. ARGUMENT9 A. The Sale Subject to Overbid10 16 Additional Relief 12 17 В. 18 V. 19 20 21 22 23 24 25 26 27 28

LAW OFFICES
Allen Matkins Leck Gamble
Mallory & Natsis LLP

1	TABLE OF AUTHORITIES
2	Page(s)
3	Cases
4	Beet Growers Sugar Co. v. Columbia Trust Co., 3 F.2d 755 (9th Cir. 1925)
5 6	Blakely Airport Joint Venture II v. Federal Sav. and Loan Ins. Corp., 678 F. Supp. 154 (N.D. Tex. 1988)11
7	Gockstetter v. Williams, 9 F.2d 354 (9th Cir. 1925)11
8	Nat'l Bank v. Shedd, 121 U.S. 74 (1887)10
9	S.E.C. v. American Capital Invest., Inc., 98 F.3d 1133 (9th Cir. 1996)10
10	S.E.C. v. Elliot, 953 F.2d 1560 (11th Cir. 1992)
11	SEC v. Capital Consultants, LLC 397 F.3d 733 (9th Cir. 2005)9
12	SEC v. Hardy, 803 F.2d 1034 (9th Cir 1986)9
13	SEC v. Wencke, 622 F.2d 1363 (9th Cir. 1980)9
14	Trading Comm'n. v. Topworth Int'l, Ltd., 205 F.3d 1107 (9th Cir. 1999)9
15	Wilkes-Barre v. Acker, 66 F.2d 850 (2d Cir. 1933)10
16	<u>Statutes</u>
17	28 U.S.C. § 754
18	<u>Treatises</u>
19	2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 500 (3rd ed. 1992)
20	2 Ralph Ewing Clark, <u>Treatise on Law and Practice of Receivers</u> § 48710
2122	2 Ralph Ewing Clark, <u>Treatise on Law and Practice of</u> <u>Receivers</u> §§ 342, 344, 482(a), 487, 489, 491 (3d ed. 1992)11
23	Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482
24	
25	
26	
27	
28	
Gamble LLP	

LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Southwest Atlanta Medical Center property in Atlanta, Georgia ("Property") has been marketed for sale since April 2009. The Receiver has twice sought approval of a proposed sale of the Property at a purchase price of \$9.5 million. In both instances, the buyer's intended use of the Property was as a hospital, and ultimately both buyers walked away from the transaction. It has been more than two years since the last proposed sale, during which time numerous interested parties have looked at the Property.

The Receiver now seeks Court approval of a sale of the Property to Arberg Properties, LLC ("Buyer")¹ for \$5 million, subject to overbid. Buyer has made a \$262,500 non-refundable deposit. Buyer will use the Property to conduct clinical trials. The transaction is not contingent on Buyer obtaining any licenses. The Purchase and Sale Agreement ("Agreement") is attached as Exhibit 1 to the Declaration of Thomas Seaman ("Seaman Declaration") filed herewith. The Receiver also seeks authority to pay HealthAmerica Realty Group ("Broker") a commission equal to 3% of the final purchase price, up to a maximum of \$225,000.

II. FACTUAL BACKGROUND

A. The Property

The Property is approximately 75 acres located at 501 Fairburn Road SW, Atlanta, Georgia. The developed portion (approximately 17 acres) features a 114,297 square foot, four story, 125-bed acute care hospital building, and a 31,470 square foot, two-story medical office building. Seaman Declaration ¶ 2.

The Purchase and Sale Agreement was executed by 1161 Ridge Avenue, LLC ("1161 Ridge") as buyer. 1161 Ridge then assigned its interests in the Purchase and Sale Agreement, as permitted under Section 14.4 of the Agreement, to Buyer.

B. The Loans

In July 2005, Tracy L. Sayer Investments, LLC ("Sayer Investments") issued a loan in the amount of \$12.85 million, secured by the Property, to Southwest Doctors Group, LLC ("SDG"), which owned the Property at the time. The hospital was leased and operated by Legacy Medical Center ("Legacy"). Seaman Declaration ¶ 3.

In January 2006, Medical Capital, as administrator for Medical Provider Financial Corporation II ("MP II") issued a loan in the amount of \$2.5 million to SDG and took a security interest in the Property junior to that of Sayer Investments. In March 2006, with a foreclosure by Sayer Investments pending, Medical Capital (MP II) purchased the promissory note in favor of Sayer Investments for approximately \$15.5 million. At approximately the same time, Medical Capital (MP IV, Series 1) issued a \$13 million line of credit to Legacy, which continued to lease and operate the hospital. Seaman Declaration ¶ 4.

In October 2006, Medical Capital (MP II) and SDG agreed to increase the amount of the loan purchased from Sayer Investments by \$3 million, bringing the total balance to approximately \$18.8 million.² In December 2006, the line of credit issued to Legacy was increased to \$14 million. Seaman Declaration ¶ 5.

C. The SDG Bankruptcy

In April 2007, SDG filed for relief under chapter 11 of the Bankruptcy Code. The hospital ceased operations at this time. In July 2007, Medical Capital (MP II) purchased the Property via credit bid in a bankruptcy court-approved auction and created Georgia Medical Provider Financial Corporation ("GMPFC") to hold title to the Property. Seaman Declaration ¶ 6.

In August 2007, Medical Capital (MP IV, Series 2) issued a \$500,000 loan to GMPFC, which was later increased to \$2.5 million in November 2007, to \$9 million

LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

In March 2008, MP II sold the original loan purchased from Sayer Investments to MP IV, Series 1 for approximately \$23 million.

in January 2008, to \$15 million in June 2008, and then to \$18 million later the same month. GMPFC hired Alvarez & Marsal ("A&M") in August 2007 to oversee renovations to the Property and operate the hospital, which was reopened in April 2008. A&M operated the hospital until January 16, 2009, when it was closed due to lack of funding. Seaman Declaration ¶ 7.

D. Prior Sale Motions

Beginning in April 2009, prior to the appointment of the Receiver, Medical Capital marketed the Property for sale with the assistance of brokers from Grubb & Ellis and BRE Commercial, an affiliate of Grubb & Ellis ("Prior Brokers"). Prior Brokers advertised the Property for sale through various channels, including the LoopNet listing database of more than three (3) million members, each of whom received an e-mail with the listing. Likewise, the Property was listed in the Real Capital Markets database of more than 14,000 potential buyers, each of whom also received an e-mail with the listing. In addition, a marketing brochure was prepared and e-mailed to all Grubb & Ellis brokers and to a database of clients, brokers and contacts in the healthcare industry maintained by Prior Brokers. Prior Brokers received and responded to more than 300 inquiries. Declaration of Douglas Connell in Support of Second Sale Motion, Docket No. 263-2 ("Connell Declaration"),

1. First Sale Motion

The Receiver met with Brokers shortly after his appointment and instructed them to continue to market the Property and to tell all interested parties to make their highest and best offer no later than October 9, 2009. The best offer received as of that date was from Isaac Organization, LLC. The Receiver executed a purchase and sale agreement with Isaac Organization, subject to overbid, and moved for approval of the agreement. The proposed price was \$9.5 million, and the Receiver explained that it was important to close the sale promptly because the Certificate of Need ("CON") for the hospital issued by the Georgia Department of Community

Health ("DCH") would expire on January 15, 2010, due to the hospital's prior closure on January 16, 2009. Seaman Declaration ¶ 8.

The proposed overbid procedures and notice were approved on December 1, 2009, and the sale hearing was scheduled for December 14, 2009. Unfortunately, no overbids were received, and shortly before the sale hearing, Isaac Organization exercised its right not to pursue the transaction. Seaman Declaration ¶ 8.

2. Second Sale Motion

At approximately the same time as Isaac Organization decided not to pursue the transaction, the Receiver was contacted by affiliates of Southwest Atlanta Healthcare System, LLC ("SAHS"). The Receiver began to negotiate sale terms while working to preserve the CON, which was set to expire on January 15, 2010. The Receiver entered into a short term lease with Intellidyne, LLC, an affiliate of SAHS, and simultaneously, petitioned the DCH to extend the expiration date of the CON. Under the lease, Intellidyne/SAHS took possession of the Property, as required to obtain a provisional license to operate the hospital. Intellidyne also took responsibility for maintaining the Property. Unfortunately, SAHS was unable to obtain a provisional license in time and the DCH did not extend the CON expiration date. Accordingly, the CON expired and SAHS began the process of applying for a new CON. Seaman Declaration ¶ 9.

The Receiver and SAHS continued to negotiate terms and ultimately executed a Purchase and Sale Agreement, subject to overbid and Court approval. The sale price was \$9.5 million, with \$1.5 million to be paid in cash within one day of the sale hearing and \$8 million, secured by a first deed of trust on the Property and an irrevocable letter of credit, to be paid no later than November 1, 2010. Seaman Declaration ¶ 10.

The Receiver moved for approval of the sale. The overbid procedures and notice of sale were approved on June 4, 2010, and the sale hearing was set for June 21, 2010. No overbids were received. Shortly before the hearing, SAHS

advised that it had not yet obtained sufficient financing to make the \$1.5 million payment, but it expected to have the funding once the DCH completed its review of SAHS' application for a CON. The review was scheduled to be completed by August 31, 2010. Accordingly, the parties stipulated to a continuance of the hearing 4 5 to September 13, 2010, which was approved by the Court. Seaman Declaration ¶ 11. 6 7 Shortly before the September 13, 2010, hearing, SAHS informed the Receiver 8 that the DCH's review of its CON application had been unilaterally delayed by the 9 DCH to September 30, 2010. Accordingly, the parties stipulated to a second continuance of the hearing to October 18, 2010, which was approved by the Court. 10 11 Seaman Declaration ¶ 12. 12 On September 30, 2010, the DCH denied SAHS's CON application. At the 13 hearing on October 18, 2010, the Receiver withdrew the sale motion. Intellidyne 14 remained in possession of the Property pursuant to the lease, and SAHS filed an appeal of the denial of its CON application. The appeal was unsuccessful. SAHS 15 terminated the purchase and sale agreement in April 2011. SAHS had made a 16 17 non-refundable \$100,000 deposit, which the Receiver retained. Intellidyne defaulted on the lease by failing to pay rent and certain operating expenses for the 18 19 Property. The Receiver sued Intellidyne in Georgia state court. The parties reached 20 a settlement under which Intellidyne paid the Receiver \$132,000 and the parties 21 agreed to terminate the lease. The receivership estate collected a total of 22 \$564,681.29 from Intellidyne as a result of the lease, not including the forfeited 23 earnest money deposit in the amount of \$100,000. Seaman Declaration ¶ 13. 24 The Receiver then re-evaluated the marketing strategy for the Property and 25 elected to engage a new broker. He interviewed several brokers with expertise in medical and medical office properties. Ultimately, he selected HealthAmerica 26 27 Realty Group ("Broker"). The Receiver and Broker also entered into a management 28 agreement for the Property under which Broker receives \$3,000 per month to

oversee the maintenance of all improvements, security, parking lots and landscaping on the Property. Seaman Declaration ¶ 14.

E. Appraisals

1

2

3

4

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

In October 2009, the Receiver obtained three appraisals of the Property. Factoring in the reduction in value due to expiration of the CON, the appraisals estimated the value at \$8.2 million, \$10.2 million and \$13.4 million, respectively. Declaration of Thomas Seaman filed in support of First Sale Motion, Docket No. 114-3, ¶ 12, Exhibits 2, 3 and 4. As discussed below, however, these appraisals no longer reflect the market value of the Property.

F. Broker Commission

The Receiver requests authority to pay Broker a commission in the amount of 3% of the final purchase price, up to a maximum of \$225,000. Broker has marketed the Property for the last 16 months and has invested substantial time into locating potential purchasers. Specifically, Broker identified approximately 100 potential purchasers of the Property and sent them each a marketing teaser about the opportunity. The Property was also listed on Broker's website, as well as the major nationwide commercial real estate listing services – LoopNet and Costar. Declaration of Thomas W. Tift III filed herewith ("Tift Declaration"), ¶ 4.

Broker received inquiries from approximately 80 potential purchasers, approximately 20 of whom toured the Property. Broker received five purchase offers in the following amounts:

- 1) \$6,000,000
- 23 2) \$2,000,000
- 24 3) \$2,000,000
- 25 4) \$5,000,000
- 26 5) \$5,250,000
- 27 Tift Declaration, ¶ 5.

The Receiver negotiated terms with the potential purchaser who made the \$6,000,000 offer. A dispute between the principals of the potential purchaser ensued, and when the Receiver requested proof of funds to close the transaction, none of the partners were able to provide such proof. Accordingly, the Receiver terminated negotiations. Seaman Declaration ¶ 15.

The potential purchaser who made the \$5,250,000 offer intended to use the Property as a medical facility, and therefore would need a CON. The Receiver determined that it would not be in the best interests of the receivership estate to pursue another sale contingent on the purchaser's receipt of a CON, especially with a CON for the Property having been denied in September 2010. However, if this potential purchaser is willing to purchase the property without a contingency for a CON, it can submit a qualified overbid. The minimum overbid amount is the same as its offer – \$5,250,000. Seaman Declaration ¶ 16.

The Receiver negotiated terms with Buyer, who made the \$5,000,000 offer. Buyer will use the Property to conduct clinical trials. It is already conducting such trials at another location in Atlanta, and therefore there are no licensing contingencies in the Agreement. Seaman Declaration, ¶ 17. Since the Agreement with Buyer was signed, Broker has continued to market the Property in an effort to promote overbidding at the auction. Tift Declaration, ¶ 5.

G. Losses Resulting from the Loans

As discussed above, Medical Capital sunk approximately \$50 million of investor money into the Property. The former owner of the Property, Southwest Doctors Group ("SDG"), which had borrowed approximately \$21.3 million of investor money from the Receivership Entities, was forced to close the hospital and file bankruptcy. SDG then surrendered the Property to the Receivership Entities via credit bid in a bankruptcy court-approved transaction. The Receivership Entities had also loaned approximately \$14 million of investor funds to Legacy Medical Center, the entity that leased the Property from and operated the hospital for SDG.

No amount was ever collected from Legacy Medical Center. Seaman Declaration ¶ 18.

After taking the Property in the bankruptcy sale and creating GMPFC to hold title, the Receivership Entities loaned another approximately \$18 million of investor funds to GMPFC in a failed attempt to transform the facility into a profitable operation. Ultimately, the hospital closed again in January 2009 due to a lack of funding. As a result of Medical Capital's decisions to finance the failing medical center and unsuccessful attempt to revive it post-bankruptcy, in excess of \$48 million of investor funds have been lost. Seaman Declaration ¶ 19.

III. THE PROPOSED SALE

The Agreement is attached to the Seaman Declaration. Its terms are summarized as follows:³

Court approval. All aspects of the Agreement and the sale are subject to approval by the Court.

Purchase Price. \$5 million. Buyer has made a non-refundable deposit of \$262,500. Buyer must deposit another \$300,000 into escrow within three days of entry of an order approving the sale. The remainder of the purchase price must be paid in full at closing.

Closing Date. Closing will occur within sixty-three (63) days following entry of an order confirming the sale. The closing date is discussed further below.

As Is Purchase. Buyer purchases the Property on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and the Receiver makes no representations or warranties regarding the condition of the Property.

Overbid Procedures. The sale is subject to the overbid procedures laid out in Article 15 of the Agreement and summarized in the concurrently filed Ex Parte

LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

The terms of the Agreement are summarized herein for convenience only. In the event of any conflict between the Agreement and the summary provided herein, the Agreement governs and controls.

1 Application. Pursuant to those procedures, if Buyer is not the highest qualified bidder at the auction, Buyer's deposit will be returned to it and Buyer shall be paid a break-up fee in the amount of its actual out of pocket costs paid to third parties, up to \$75,000. 4 IV. **ARGUMENT** 5 "The power of a district court to impose a receivership or grant other forms of 6 ancillary relief does not in the first instance depend on a statutory grant of power 8 from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly 10 and efficient administration of the estate by the district court for the benefit of 11 12 creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment 13 of a receiver is authorized by the broad equitable powers of the court, any 14 distribution of assets must also be done equitably and fairly. See S.E.C. v. Elliot, 953 F.2d 1560, 1569 (11th Cir. 1992). 15 District courts have the broad power of a court of equity to determine the 16 17 appropriate action in the administration and supervision of an equity receivership. See SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth 18 19 Circuit explained: A district court's power to supervise an equity receivership 20 and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The 21 district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. 22 The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the 23 fact that most receiverships involve multiple parties and complex transactions. A district court's decision 24 concerning the supervision of an equitable receivership is reviewed for abuse of discretion. 25 Id (citations omitted); see also Commodities Futures Trading Comm'n. v. Topworth 26 27 Int'l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures 28

instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors.").

Accordingly, the Court has broad equitable powers and discretion in formulating procedures, schedules and guidelines for administration of the receivership estate and disposition of receivership assets.

A. The Sale Subject to Overbid

It is generally conceded that a court of equity having custody and control of property has power to order a sale of the same in its discretion. *See, e.g., S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers and wide discretion to determine relief in an equity receivership). "The power of sale necessarily follows the power to take possession and control of and to preserve property." *See also S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing* 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity orders property in its custody to be sold, the court itself as vendor confirms the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law and Practice of Receivers § 487).

"A court of equity, under proper circumstances, has the power to order a receiver to sell property free and clear of all encumbrances." *Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 500 (3rd ed. 1992). To that end, a federal court is not limited or deprived of any of its equity powers by state statute. *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute allowing time to redeem property after a foreclosure sale not applicable in a receivership sale).

Generally, when a court-appointed receiver is involved, the receiver, as agent for the court, should conduct the sale of the receivership property. *Blakely Airport*

Joint Venture II v. Federal Sav. and Loan Ins. Corp., 678 F. Supp. 154, 156 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an injunction against the owner and against parties to the suit. See 2 Ralph Ewing Clark, Treatise on Law and Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491 4 5 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are vested with broad discretion as to price and terms." Gockstetter v. Williams, 9 F.2d 6 7 354, 357 (9th Cir. 1925). 8 Here, the Property has been extensively advertised and marketed for sale both 9 pre-receivership and by the Receiver. Attempts to sell the Property to a purchaser 10 intending to use it as a hospital have been unsuccessful. Buyer will use the Property 11 to conduct clinical trials. It is already conducting such trials at another location in 12 Atlanta, and therefore there are no licensing contingencies in the Agreement. Buyer 13 has made a non-refundable deposit of \$262,500. 14 The Receiver submits that the appraisals obtained in 2009, which estimate the value at \$8.2 million, \$10.2 million and \$13.4 million, respectively, no longer reflect 15 16 the value of the Property. To begin with, three years have passed since they were 17 issued and commercial real estate has generally declined in value since 2009. Tift Declaration, ¶ 6. Furthermore, the Property was designed and built for use as a 18 19 medical facility. Even though the 2009 appraisals attempted to account for the loss 20 of the CON that existed at the time and expired in January 2010, they do not account 21 for the subsequent denial of a new CON in September 2010 and the resulting 22 improbability that the Property will be able to be used as a hospital again in the 23 future. Accordingly, since the appraisals were issued, the highest and best use of the 24 Property has been effectively eliminated. Potential purchasers must now 25 substantially renovate the Property to fit their intended use which reduces the value of the Property considerably. Finally, the Property has been continuously and 26 27 thoroughly exposed to the marketplace for the last 42 months. The offers received 28 which are listed above do not support the 2009 appraisals. The highest and best

offer at this point is Buyer's offer of \$5,000,000, without contingencies. Therefore, the 2009 appraisals no longer reflect the current market value of the Property.

With regard to the closing date, 63 days is necessary to close the sale because the title company, as a matter of company policy, will not issue a policy of title insurance until the 60-day appeal period under Federal Rule of Appellate Procedure 4(a)(1)(B) has run. The Receiver contacted two other title companies which both stated that they would also require the appeal period to run before issuing a policy. Therefore, this appears to be an industry standard or custom that cannot be avoided by switching title companies. It is reasonable for Buyer to require a title insurance policy before closing. Accordingly, the Receiver requests that the sale to Buyer, or the highest overbidder, be approved.

B. Additional Relief

Pursuant to its broad equitable powers with respect to administration of receivership assets, the Receiver requests that the sale of the Property be free and clear of liens, claims and encumbrances on the Property, and that such liens, claims and encumbrances attach to the sale proceeds in the same validity and priority as they had with respect to the Property. No liens, claims or encumbrances will be paid from the sale proceeds without notice and the opportunity for all interested parties, including all those with liens on the Property, to be heard.

One lienholder, Inamax Medical Staffing, Inc. ("Inamax"), previously filed a motion challenging the liens on the Property in favor of MP IV and Bank of New York Mellon. Docket No. 425. At that time, the Court ruled that the challenge was not ripe for review in that no sale of the Property had occurred. Docket No. 559. The Receiver anticipates that Inamax will renew its challenge if and when the sale is approved. The Receiver proposes that such challenge be resolved after the sale has closed, when it will be ripe. At that time, the Court can address the validity and priority of the respective liens and distribution of the sale proceeds in accordance therewith.

Case 8:09-cv-00818-DOC-RNB Document 912 Filed 11/16/12 Page 18 of 19 Page ID #:21036

1 The title company has also required that the sale order confirm the Receiver's 2 appointment over Receivership Entity GMPFC. GMPFC is not named in the Securities and Exchange Commission's Complaint, or specifically listed as a Receivership Entity in the Temporary Restraining Order ("TRO") or Preliminary 4 Injunction Order. The TRO and Preliminary Injunction Order, however, include in 5 the receivership all subsidiaries and affiliates of Medical Capital Holdings, Inc. 6 7 ("MCH"), Medical Capital Corporation and Medical Provider Funding 8 Corporation VI. GMPFC is a wholly owned subsidiary of MCH. The sale order will be filed in the United States District Court for the Northern District of Georgia 9 pursuant to 28 U.S.C. § 754 to confirm the Court's jurisdiction over the Property and 10 authority to approve the sale. Accordingly, the Receiver requests that the Court 11 12 confirm that his appointment includes GMPFC as a Receivership Entity. 13 Finally, the Receiver requests authority to pay Broker a commission in the amount of 3% of the final purchase price, up to a maximum of \$225,000. Based on 14 15 his extensive experience in real estate transactions, the Receiver believes that such commission is commercially reasonable and consistent with commercial real estate 16 17 industry standards. 18 19 20 21 22 23 24 25 26 27 28

LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

V. **CONCLUSION** 1 WHEREFORE, the Receiver requests entry of an order (a) approving the sale 2 of the Property to Buyer, or the highest bidder, free and clear of liens, claims and encumbrances, with such liens, claims and encumbrances attaching to the sale 4 proceeds in the same validity and priority that they had with respect to the Property, 5 and (b) authorizing the Receiver to pay a commission of 3% of the final purchase 6 price to Broker, up to a maximum of \$225,000. 7 8 Dated: November 16, 2012 9 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP 10 By: /s/ Ted Fates 11 TED FATES 12 Attorneys for Receiver Thomas A. Seaman 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

LAW OFFICES Allen Matkins Leck Gamble Mallory & Natsis LLP