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

12 SECURITIES AND EXCHANGE
 COMMISSION,
 13 Receiver,
 14 v.
 15 MEDICAL CAPITAL HOLDINGS,
 16 INC.; MEDICAL CAPITAL
 CORPORATION; MEDICAL
 17 PROVIDER FUNDING
 CORPORAITON VI; SIDNEY M.
 18 FIELD; and JOSEPH J.
 LAMPARIELLO,
 19 Defendants.
 20

Case No. SA CV09-0818 DOC (RNBx)

EX PARTE APPLICATION FOR
 ORDER SHORTENING TIME OF
 NOTICE FOR HEARING ON THE
 RECEIVER'S RENEWED
 APPLICATION FOR APPROVAL OF
 APPOINTMENT OF CONFLICTS
 COUNSEL

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

21 Thomas A. Seaman, Receiver ("Receiver") hereby applies to this Court for an
 22 Order shortening time of notice for the hearing on the Receiver's Renewed
 23 Application for Approval of Appointment of Conflicts Counsel, which was filed on
 24 May 6, 2010 and is currently set for hearing on June 7, 2010. By this Ex Parte
 25 Application, the Receiver seeks to have said Application set for hearing on the first
 26 date available for the Court.

27 An Order Shortening Time is necessary because, as described more fully in
 28 the Renewed Application for Approval of Appointment of Conflicts Counsel

1 ("Renewed Application"), certain potential issues between the Receiver and Wells
2 Fargo Bank, Bank of New York Mellon, and/or their affiliates (collectively, the
3 "Trustees") have arisen, and the Receiver's general counsel, Allen Matkins, has a
4 conflict of interest that prevents them from investigating or litigating claims against
5 Wells Fargo. Accordingly, it is imperative that the Renewed Application be heard
6 on shortened notice and that conflicts counsel be immediately appointed to represent
7 the Receiver's interests on pressing discovery issues.

8 Pursuant to Local Rule 7-19.1, the Receiver circulated this Application by
9 email to counsel for the Securities and Exchange Commission ("SEC") and
10 Defendants Field and Lampariello before filing. Counsel for the SEC stated that the
11 SEC does not oppose the Application. Counsel for Defendants Field and
12 Lampariello stated that Defendants Field and Lampariello do not object to the
13 Application.

14 This ex parte application is based upon the accompanying Memorandum of
15 Points and Authorities, the Renewed Application and supporting declarations filed
16 on May 6, 2010, the Declaration of Michael R. Farrell filed concurrently herewith,
17 the complete records and files for this action, and any arguments and evidence
18 presented at the time of hearing.

19
20 Dated: May 6, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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22 By: /s/ Michael R. Farrell
23 MICHAEL R. FARRELL
24 Attorneys for Receiver
25 THOMAS A. SEAMAN
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this *ex parte* application, the Receiver seeks an Order shortening
4 time of notice for the hearing on the Receiver's Renewed Application for Approval
5 of Appointment of Conflicts Counsel, which was filed on May 6, 2010 and set for
6 hearing on June 7, 2010 ("Renewed Application"). The Renewed Application
7 requests that the Court approve the appointment of the law firm of Shartsis Friese as
8 conflicts counsel for the Receiver. As discussed in further detail below, good cause
9 exists for an Order shortening time for the hearing on the Renewed Application
10 because the immediate appointment of conflicts counsel is necessary so that the
11 Receiver may be properly represented by counsel in imminent and ongoing matters
12 involving the Trustees, as to which the Receiver's general counsel cannot advise due
13 to a conflict of interest with Wells Fargo Bank.

14 **II. THE COURT HAS DISCRETION TO ORDER THAT THE RENEWED**
15 **APPLICATION BE HEARD ON SHORTENED NOTICE BECAUSE**
16 **GOOD CAUSE EXISTS FOR THE GRANTING OF THE EX PARTE**
17 **APPLICATION.**

18 The Court has full discretion to grant the Receiver's *ex parte* application for
19 an Order shortening time on the hearing for the Application. *Professional Programs*
20 *Group v. Department of Commerce*, 29 F.3d 1349, 1352-53 (9th Cir. 1994).

21 Issues have arisen in connection with discovery in related actions (*Masonek v.*
22 *Wells Fargo Bank*, Case No. 8:09-cv-01048-DOC-RNB and consolidated actions
23 ("*Masonek*"); *Abbate v. Wells Fargo Bank*, Case No. 09-62047, S.D. Fla.
24 ("*Abbate*")) involving the Receivership Entities which potentially require the
25 Receiver to take positions adverse to the Trustees, including Wells Fargo Bank. The
26 Receiver's general counsel, Allen Matkins, is unable to provide legal advice adverse
27 to Wells Fargo Bank due to a conflict of interest. Declaration of Michael R. Farrell
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1 ("Farrell Dec."), ¶ 2. However, the Receiver requires immediate advice and
2 representation by counsel in matters concerning the Trustees. *Id.*

3 A significant issue has recently arisen concerning a document production by
4 The Waverton Group, LLC ("Waverton"), in response to a subpoena from counsel
5 for the plaintiff class in the *Masonek* action. Shortly before production was due,
6 counsel for Waverton informed Allen Matkins that the documents responsive to the
7 subpoena included materials that were potentially subject to claims of
8 confidentiality and attorney-client privilege *by the Receiver*. Because the Trustees
9 might have objected (and ultimately did object) to any assertion of confidentiality or
10 privilege by the Receiver, Allen Matkins requested that Shartsis Friese address these
11 issues. Shartsis Friese did so, devoting significant time to that work, including a
12 review of the Waverton documents to determine whether to assert confidentiality or
13 privilege on the Receiver's behalf. However, the review of the Waverton
14 documents is not yet complete, and in light of the Court's Minute Order denying the
15 Receiver's request to appoint conflicts counsel ("Denial Order," Docket # 240),
16 Shartsis Friese has stopped that work. Farrell Dec., ¶ 5, Exh. B. Conflicts counsel
17 must be appointed to protect the Receiver's interests as to such document
18 production.

19 In addition, in the few days since the Court issued the Denial Order, counsel
20 for the plaintiffs in the *Abbate* action pending in the Southern District of Florida
21 have contacted Shartsis Friese to discuss extensive discovery requests that they
22 intend to serve on the Receiver in that action next week. Farrell Dec., ¶ 5, Exh. B.
23 Such discovery processes may result in disputes between the Receiver and Wells
24 Fargo regarding the scope of discovery, objections, assertions of privilege, and other
25 similar issues. In light of Allen Matkins' ongoing representation of Wells Fargo in
26 other matters, it would be inappropriate for Allen Matkins to represent the Receiver
27 in connection with proceedings where the potential of such disputes is present. The
28 Receiver and his team must address this request quickly, given its scope and the

1 complexity of the issues involved, but is impeded from doing so until he has counsel
2 to provide appropriate legal advice.

3 Due to these currently pressing discovery issues and the need to address them
4 immediately, the Receiver faces significant prejudice if the Renewed Application is
5 heard on a regularly noticed schedule.

6 Good cause exists for this *ex parte* application. As set forth in the Renewed
7 Application and supporting declarations, this Application and the supporting
8 Declaration of Michael R. Farrell, it is imperative that conflicts counsel is appointed
9 as soon as possible to address the pending discovery issues.

10 **III. CONCLUSION.**

11 For the foregoing reasons, the Receiver respectfully requests that this Court
12 grant its *ex parte* application and issue an order shortening time on its Renewed
13 Application for Approval of Appointment of Conflicts Counsel, which is currently
14 set for hearing on June 7, 2010.

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16 Dated: May 6, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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18 By: _____ /s/ Michael R. Farrell
19 MICHAEL R. FARRELL
20 Attorneys for Receiver
21 THOMAS A. SEAMAN
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