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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.
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Case No. 8:09-cv-0818-DOC (RNBx)

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
(A) SALE OF HOME STRETCH
YACHT FREE AND CLEAR OF
LIENS, AND (B) YACHT BROKER'S
COMMISSION; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: October 25, 2010
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on October 25, 2010, 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, and Medical Provider Funding
7 Corporation VI, and their subsidiaries and affiliates, including Corporate
8 Impressions, LLC (collectively, "Medical Capital" or the "Receivership Entities"),
9 for Approval of (a) Sale of Home Stretch Yacht Free and Clear of Liens, and
10 (b) Yacht Broker's Commission ("Motion").

11 The Motion is based on the Memorandum of Points and Authorities below
12 and Declaration of Thomas A. Seaman filed herewith. The Motion and supporting
13 papers are available at the Receiver's website,
14 <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 **Procedural Requirements:** If you oppose this Motion, you are required to
18 file your written opposition with the Office of the Clerk, United States District
19 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on
20 the undersigned not later than twenty-one (21) calendar days prior to the hearing.

21 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
22 above date, the Court may grant the requested relief without further notice.

23 **Requested Relief:** The relief requested is discussed in detail in the
24 Memorandum of Points and Authorities. To summarize, the Receiver requests an
25 order approving a sale of the Home Stretch yacht (the "Yacht"). The purchase price
26 is \$1,800,000, but the sale is subject to overbids by potential purchasers that qualify
27 themselves as bidders pursuant to the overbid procedures discussed in the
28 concurrently filed Ex Parte Application for Order Approving (a) Overbid

1 Procedures, and (b) Notice of Sale ("Ex Parte Application"). The Receiver requests
2 that the sale be free and clear of all liens, claims and encumbrances, with such liens,
3 claims and encumbrances attaching to the sale proceeds in the same validity and
4 priority they had with respect to the Yacht. The Receiver also requests authority to
5 pay the real estate broker a commission of ten (10%) percent of the final purchase
6 price.

7 This Motion is made following the conference of counsel pursuant to
8 L.R. 7-3.

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

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12 Dated: September 23, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Ted Fates

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TED FATES
Attorneys for Receiver
Thomas A. Seaman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On September 5, 2006, Medical Capital purchased a 118-foot yacht called the
4 Home Stretch ("Yacht") for \$3,725,000. The Yacht was kept in a slip in Newport
5 Harbor. Medical Capital employed one full-time captain and two full-time
6 crewmembers for the Yacht.

7 Upon his appointment, the Receiver took possession and control of the Yacht
8 and retained the captain. The Receiver has paid the post-receivership rent for the
9 slip, insurance for the Yacht, and for necessary maintenance and repairs. The
10 Receiver had the Yacht appraised and engaged a broker to broadly market the Yacht
11 for sale. Consistent with industry standards for the sale of a yacht of this size and
12 value, and subject to Court approval, the listing agreement provides for a
13 commission to the broker of ten (10%) percent of the sale price.

14 The highest and best offer received is in the amount of \$1,800,000. Subject to
15 Court approval, the Receiver and the proposed buyer have executed a purchase and
16 sale agreement. The proposed sale, subject to overbid, will maximize the net return
17 to the receivership estate for the Yacht. Accordingly, the Receiver asks that the sale
18 be approved. The Receiver also seeks authority to pay the broker the ten (10%)
19 percent commission contemplated under the listing agreement.

20 **II. FACTUAL BACKGROUND**

21 **A. The Yacht**

22 The Yacht is a 118-foot Tri-Deck Motor Yacht built by Hatteras Yachts in
23 1995. The Receiver had the Yacht surveyed and appraised by Marine Surveyor,
24 Douglas Jones. Mr. Jones' report is attached as Exhibit A to the Declaration of
25 Thomas Seaman filed herewith ("Seaman Declaration"). The appraised "standard
26 market value" is between \$2.2 million and \$2.5 million. The appraised "short
27 market value" is between \$1.6 million and \$1.9 million. Seaman Declaration ¶ 2.

1 **B. The Purchase by Medical Capital**

2 On September 5, 2006, Medical Capital purchased the Yacht. Although the
3 documents are not entirely clear, it the appears the purchase price was \$3,725,000.
4 A portion of the purchase money for the Yacht came in the form of a loan from
5 Edge Capital in the amount of \$2,980,000. The funds for the loan from Edge
6 Capital came from Medical Capital (Medical Provider Financial Corporation III,
7 later assigned to Medical Capital Funding Corporation V). Medical Capital formed
8 Corporate Impressions, LLC, a Delaware corporation, to take title to the Yacht. The
9 borrower on the loans from Edge Capital is Corporate Impressions. Seaman
10 Declaration ¶ 3.

11 The Yacht was kept in a slip in Newport Harbor. Medical Capital employed
12 one full-time captain and two full-time crewmembers for the Yacht. Seaman
13 Declaration ¶ 4.

14 **C. Post-Receivership Actions**

15 Upon his appointment, the Receiver took possession and control of the Yacht
16 and retained the captain. The Receiver has paid the post-receivership rent for the
17 slip, and arranged for necessary maintenance and repairs to be made. Seaman
18 Declaration ¶ 5.

19 In October 2009, the Receiver engaged Ardell Yacht & Ship Brokers
20 ("Broker") to broadly market the Yacht for sale. Broker listed the Yacht on well
21 known yacht sale websites, including Yachtworld.com, Yachtcouncil.org and
22 Buc.net. Broker also listed the Yacht on its own website, Ardell.com. In addition,
23 Broker promoted the opportunity in various prestigious international nautical
24 publications. Broker received thousands of hits to the websites and formal inquiries
25 from ten interested parties. Broker continues to publicize the opportunity with the
26 goal of promoting overbidding. Seaman Declaration ¶ 6.

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1 Since his appointment, including the slip rental, the captain's salary, utilities,
2 insurance, maintenance and repair, the Receiver has paid approximately \$240,000 in
3 expenses to preserve and protect the value of the Yacht. Seaman Declaration ¶ 7.

4 **D. The Proposed Sale**

5 The highest and best offer for the Yacht was from ("Buyer")
6 in the amount of \$1,800,000. The Receiver and Buyer negotiated and executed the
7 Agreement, subject to overbid and Court approval. The Agreement is attached as
8 Exhibit 1 to the Seaman Declaration. Buyer has deposited \$180,000 with Broker.
9 Seaman Declaration ¶ 8.

10 **III. PROCEDURAL BACKGROUND**

11 On July 16, 2009, the Commission commenced an enforcement action against
12 MCH, MCC, MP VI, Sidney M. Field and Joseph J. Lampariello ("Defendants"),
13 alleging various violations of securities laws (Docket # 1). On the same day, the
14 Commission filed an Ex Parte Application for Temporary Restraining Order and
15 Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting
16 the Destruction of Documents; (4) Granting Expedited Discovery, and (5) Requiring
17 Accountings; and Order to Show Cause Re: Preliminary Injunction and
18 Appointment of a Permanent Receiver (Docket # 3).

19 On August 3, 2009, the Court entered the Temporary Restraining Order and
20 Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting
21 the Destruction of Documents; and (4) Requiring Accountings; and Order to Show
22 Cause Re: Preliminary Injunction and Appointment of a Permanent Receiver
23 ("TRO"). The TRO appointed Thomas A. Seaman as temporary receiver for the
24 Receivership Entities. The Receiver filed his 10-Day Report to the Court on
25 August 12, 2009. On August 18, 2009, the Court entered a Preliminary Injunction
26 and Order Appointing A Permanent Receiver, extending the provisions of the TRO
27 and making the Receiver's appointment permanent (Docket # 20).

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IV. THE PROPOSED SALE

The Agreement is attached as Exhibit 1 to the Seaman Declaration. Its terms are summarized as follows:¹

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

Trial Run and Survey. As is standard for the sale of a yacht of this size and value, the sale is subject to a trial run and out-of-water survey satisfactory to Buyer. The trial run will take place prior to the hearing. Buyer and all qualified bidders will be invited to participate. The Receiver shall make the Yacht available to the Buyer to conduct the out-of-water survey. The survey will occur after the hearing and will be paid for entirely by Buyer or the overbidder approved by the Court. If the survey is not to Buyer's satisfaction, Buyer's deposit will returned, the sale will be cancelled, and the Receiver will continue to market the Yacht for sale.

Purchase Price. \$1.8 million. The full purchase price, less the deposit, to be paid at closing.

Closing Date. Closing will occur within five (5) days following Buyer's review and acceptance of the survey.

Deposit. Buyer has deposited \$180,000 with Broker.

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

Overbid Procedures. The sale is subject to the overbid procedures laid out in the attachment to the Agreement and summarized in the concurrently filed Ex Parte Application. Pursuant to those procedures, if Buyer is not the highest qualified bidder at the auction, Buyer's deposit will be returned to it.

¹ 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 **Brokers' Commission.** By separate agreement, the Receiver has agreed to
2 pay Brokers a commission of ten (10%) percent of the final purchase price. Brokers
3 have marketed the Yacht for approximately a year, and have invested substantial
4 time into locating potential purchasers. Since the Agreement with Buyer was
5 signed, Broker has continued to market the Yacht in an effort to promote
6 overbidding at the auction.

7 V. ARGUMENT

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.").

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

9 **A. The Sale Subject to Overbid**

10 It is generally conceded that a court of equity having custody and control of
11 property has power to order a sale of the same in its discretion. *See, e.g., S.E.C. v.*
12 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
13 and wide discretion to determine relief in an equity receivership). "The power of
14 sale necessarily follows the power to take possession and control of and to preserve
15 property." *See also S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144
16 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
17 (citing 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed.
18 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of
19 equity orders property in its custody to be sold, the court itself as vendor confirms
20 the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law and Practice of
21 Receivers § 487).

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

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1 (state statute allowing time to redeem property after a foreclosure sale not applicable
2 in a receivership sale).

3 Generally, when a court-appointed receiver is involved, the receiver, as agent
4 for the court, should conduct the sale of the receivership property. *Blakely Airport*
5 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
6 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
7 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
8 Clark, Treatise on Law and Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491
9 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are
10 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d
11 354, 357 (9th Cir. 1925).

12 Here, the Yacht has been broadly marketed for sale by Broker. The proposed
13 sale reflects the highest offer received. To ensure that the highest and best price is
14 obtained, the sale is subject to overbid. Continuing to hold and maintain the Yacht
15 in the slip in Newport Harbor involves considerable expense. Accordingly, the sale
16 is in the best interests of the receivership estate and should be approved.

17 **B. The Broker's Commission**

18 The Receiver interviewed several yacht brokers in connection with listing the
19 Yacht for sale. Based on those conversations and his experience with sales of other
20 boats, the Receiver believes that the proposed commission of ten (10%) percent of
21 the purchase price is standard in the yacht broker industry for the sale of a yacht of
22 this size and value. Seaman Declaration ¶ 9. For the past year, Broker has broadly
23 publicized the opportunity and responded to inquiries from parties located all over
24 the world. Broker continues to market the Yacht to potential overbidders.
25 Accordingly, the Receiver requests that the proposed commission be approved.

26 **VI. CONCLUSION**

27 WHEREFORE, the Receiver requests entry of an order (a) approving the sale
28 of the Yacht to Buyer or the highest bidder free and clear of liens and claims, with

1 such liens and claims attaching to the sale proceeds in the sale validity and priority
2 that they had with respect to the Property; and (b) authorizing the Receiver to pay a
3 commission of ten (10%) percent of the final purchase price to Brokers.
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5 Dated: September 23, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

7 By: /s/ Ted Fates

8 TED FATES
9 Attorneys for Receiver
10 Thomas A. Seaman
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