

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-445-FtM-29SPC

DANIEL S. NEWMAN, as Receiver,

Plaintiff,

vs.

SUN CAPITAL, INC.,
SUN CAPITAL HEALTHCARE, INC., AND HLP
PROPERTIES OF PORT ARTHUR, LLC

Defendants.

**RECEIVER'S RESPONSE IN OPPOSITION TO DEFENDANTS' EMERGENCY
MOTION TO STAY PROCEEDINGS DURING SETTLEMENT NEGOTIATIONS
AND MEMORANDUM OF LAW**

Receiver Daniel S. Newman, not individually, but solely in his capacity as receiver (the "Receiver") for Founding Partners Capital Management Company ("Founding Partners") and relief defendants Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (collectively, the "Receivership Entities") by his attorneys, Broad and Cassel, hereby files his Response to Defendants' Emergency Motion to Stay Proceedings During Settlement Negotiations and Memorandum of Law (DE 196) (the "Motion to Stay") and states as follows:

I. INTRODUCTION

The Receiver opposes any stay at this juncture as Sun¹ has forced the Receiver into this position, lest he abdicate his Court-ordered duties. Sun refused to provide the Receiver access to information to assess the settlement described in the Motion to Stay, the status of the

¹ Sun Capital, Inc. and Sun Capital Healthcare, Inc. shall be collectively referred to as "Defendants" and/or "Sun."

Receivership Entities' collateral that Sun intends to distribute as part of a settlement, or the effect on and treatment of investors under any potential settlement.

The Receiver and his professionals spent the last 14 days trying to obtain this information from Sun to no avail. Indeed, for no apparent reason, Sun refused to provide basic information or release the investors from a confidentiality agreement to permit discussion of the potential settlement with the Receiver despite their stated desire to discuss the issues with the Receiver.

As the Court is aware, certain of the Receivership Entities loaned hundreds of millions of dollars to the Defendants in this action. To date, the Defendants have failed to repay these funds or even pay interest. Rather, the Defendants have had unfettered use of these funds and the Receiver has been denied access to documents and information that would allow him to report to the Court the status of that collateral and the Defendants' uses of such funds. This conduct contravenes the fact that the Receiver has a security interest in certain of those funds and Defendants, as borrowers, are contractually required to provide such information. Simply stated, to date, the Defendants have successfully hid this information from the Receiver's and, indeed, the Court's eyes.

Since his appointment, the Receiver has persistently sought from Sun full and complete disclosure regarding the state of the Receivership Entities' collateral. Upon learning of the Motion to Stay, the Receiver again asked for this information, and Sun refused to provide it to him. Defendants' Motion to Stay confirms that the Defendants have a body of information that has been developed and has been purposefully kept from the Receiver (and from certain investors) for months, notwithstanding his repeated requests—formal and informal—for that very type of information, in a strategic attempt to circumvent the Receiver's review and reporting of Sun's uses of the collateral to the Court.

The truth is that the current litigation, which Sun now seeks to stay, and Sun's knowledge of a pending decision on its motion for preliminary injunction (relating to the lock-boxes) has brought Sun to the table. Contrary to Sun's contention that the Receiver seeks to incur additional litigation costs or to interfere with what might, in fact, eventually lead to a final and satisfactory resolution in favor of the investors, the Receiver opposes the relief sought by the

Defendants, at this juncture because as a fiduciary he simply cannot agree that the relief is in the best interests of the Receivership. First, the real party in interest – the Receiver -- was not part of the discussions. Full and complete disclosure has not been made to the Receiver regarding the current state of the collateral, the anticipated settlement's terms and operation, and the due diligence materials upon which the settlement is being negotiated. Second, the litigation sought to be stayed is the only motivation that has caused Sun to propose the settlement now under discussion.

Neither the Receiver, nor this Court—most respectfully—has any information that suggests that Sun and the participating investors are on that “path to asset maximization” or whether those investors are being led astray, once again, by the very persons and entities that actively participated in the underlying fraud which victimized the investors. As such, the Receiver cannot assure himself, nor can he report to the Court, and the Court cannot assure itself, respectfully, that the anticipated settlement is in the best interests of *all* of the investors and that the Receivership Entities' collateral is not being dissipated during the course of any such stay.

This fact is critical because since the filing of Sun's Motion to Stay, investors have come forward indicating that they did not know about a purported settlement in principle or otherwise, that they were not comfortable with the notion of negotiating with the Defendants, and that they absolutely would want the Receiver to participate in any such negotiations. The Receiver further submits that any such stay would also have to be limited in scope so as to not unnecessarily restrict the production of discoverable evidence or to create a scenario where the collateral is in the complete control of the Defendants with no degree of oversight by the Court or by the Receiver, to whom that collateral actually belongs.

The Receiver submits that the Defendants' request for a four-month stay should be denied because: (i) Sun continues to hide from the Receiver information relating to the current status of the collateral; and (ii) despite the Receiver's requests for such information, both during the course of this action and, more recently, efforts made in an attempt to evaluate the Motion to Stay (and to which the Receiver has agreed to apply a settlement privilege), Sun *still* refuses to provide documentation concerning the terms of the proposed settlement, the status of the

collateral, or information concerning the treatment of all investors. The Receiver is not adverse to the notion of possibly reaching a commercial resolution to the present dispute. He does not, however, have even the most minimal information relating to the one being proposed/negotiated by the Defendants which would possibly permit him to consider consenting to a stay.

II. BACKGROUND

A. The Receiver's Efforts to Protect His Collateral

1. At the inception of the Receivership, the Defendants contacted the Receiver (through counsel) to meet, and at the Receiver's request, offered to provide immediate and complete financial disclosure so that the Receiver could see the status of the Receivership Entities' collateral and to verify that Sun's representations that they had done nothing wrong were truthful. *See* E-mail from V. Paparo to D. Newman, as Receiver, dated May 28, 2009, attached as Exhibit A (indicating would provide information including on-line access to lockbox accounts). After several weeks, despite promises to the contrary, the Defendants made a very limited production and the Receiver and his professionals were unable to determine from the selective documentation provided whether the Receivership Entities' cash collateral was being improperly dissipated. *See* Letter from J. Etra to V. Paparo, dated July 2, 2009, attached as Exhibit B.

2. On July 14, 2009, after Sun refused to provide disclosure without compulsion, the Receiver initiated this case against the Defendants (the "Instant Litigation"). (D.E. 1). One day later, the Receiver also exercised the right of Stable-Value to seize the Lockboxes.² Faced with the prospect of losing their hold over the Receivership Entities' cash, the Defendants again represented that they would provide full and complete disclosure to the Receiver and his professionals in order to induce the Receiver into an agreement to release funds from the seized Lockboxes and (unknown to the Receiver) to buy additional time to file a motion for a temporary

² Although the Receiver felt compelled to take this action, the Receiver remained willing to allow the Defendants to prove that they were not dissipating the Receivership Estate's cash collateral. *See* Letter dated July 16, 2009 from S. Barnes de Resendiz to V. Paparo attached as Exhibit C. Again, Sun refused to provided information.

restraining order. Rather than providing the information, the Defendants accepted the funds released by the Receiver, fraudulently represented that they would provide a mortgage that did not exist, failed to provide any replacement collateral, and filed a motion for temporary restraining order to enjoin the Receiver from maintaining control over the Lockboxes and—once again—broke their promise to provide information to the Receiver.

3. During the course of an expedited discovery period, the Defendants produced some limited documents in response to the Receiver's requests. All such documents were produced for the time period ending October, 2009, and the Receiver has no information relating to what has been done to the collateral over the past eight (8) months.

4. On March 1, 2010, the Receiver sought leave to amend the original complaint herein based upon the information that was provided by the Defendants. D.E. 159. More specifically, the limited information provided by the Defendants revealed a varied and tangled web of related corporate entities, hospitals, and real estate ventures, which received and/or otherwise benefited from transfers of monies derived from investor funds. Accordingly, the Receiver sought leave to amend the original complaint herein to assert claims against all of these related entities.

5. Although the Receiver's motion for leave was granted in part and denied in part by the Court (D.E. 193), the Receiver has since filed a First Amended Complaint. D.E. 195.³

6. Furthermore, based on Sun's continued failure to report the state of the collateral to the Court, on June 1, 2010, the Receiver issued thirty-three (33) subpoenas in the SEC Action to third parties including to the Defendants herein. The Receiver also issued thirty-one (31) subpoenas in the Instant Litigation.

7. Rather than seek an enlargement of time to respond to the subpoenas or object to the subpoenas, the Defendants filed their Motion to Stay in which they contended that an

³ The Defendants claim that the Amended Complaint filed by the Receiver "went way beyond what the Court had permitted" because the Amended Complaint included claims for unjust enrichment and conversion even though those claims were asserted against the existing Defendants. Motion to Stay at p. 6. The Receiver respectfully submits that a review of the Report and Recommendation that was ultimately adopted by this Court refutes Sun's contention.

“emergency” exists. Prior to filing their Motion to Stay, the Defendants did not communicate with the Receiver at all regarding any concerns that they had with the number of subpoenas issued, the breadth of the documents requested and/or the response time set forth on their face. Instead, Defendants and their counsel opted to *create* an “emergency” by refraining from engaging in any such discussions and telling the Receiver late Friday, June 11, 2010, that they would be filing the Motion to Stay and filing their Motion to Stay the Saturday before the Tuesday response date on the subpoenas.

8. In the Motion to Stay, the Defendants inaccurately represented the Receiver’s position on the relief sought. The Defendants misrepresented that the Receiver “took no position” on the Motion to Stay, most likely in an effort to have the Court rule of the Motion to Stay prior to the Receiver having the opportunity to formally file a response thereto. D.E. 196 at p. 17.

9. On the Monday morning immediately following the Saturday filing of Defendants’ misleading Motion to Stay, the Receiver filed his Notice of Intent to File Memorandum in Opposition to Defendants’ Emergency Motion to Stay. D.E. 197.

10. Soon thereafter, this Court entered an order temporarily staying responses to the subpoenas and pending Amended Complaint for fourteen days. D.E. 198.

11. While Sun might bemoan the Receiver’s efforts to recover through litigation monies Sun wrongfully possesses, Sun’s evasive tactics have given the Receiver no other choice.⁴ The instant response is the result of that very same conduct on the part of the Defendants.

B. The Receiver’s Good Faith Efforts Over the Past 14 Days

12. The Receiver and his professionals have worked hard over the past 14 days to attempt to gain access to the information he would need to in order determine whether he could

⁴ With regard to the Defendants’ claim that the “investors had become concerned about the high costs of the Receiver’s litigation for both sides”, it would also be telling to learn what is the amount of the Defendants’ counsels’ fees relating to services performed thus far, which fees are presumably being paid for with the Receivership Entities’ funds. As more fully described herein and throughout other pleadings that have been filed by the Receiver, much of the Receiver’s efforts in litigation has been necessitated by the Defendants’ scorched earth tactics and unwillingness to cooperate with the Receiver extra-judicially and without compulsion.

possibly consent to some sort of stay; yet, the Receiver regrets to inform the Court that the Defendants have refused to provide the information and they have also restrained the investors from providing to the Receiver even the most minimal amount of information necessary for the Receiver to understand and assess the deal Sun and the investors are purportedly negotiating.

13. Specifically, on the same afternoon the Court issued its June 14th Order, the Receiver spoke counsel for the “Investor Committee” as defined in the Motion to Stay, James Chadwick, Esq. There appeared to be a mutual understanding that the Receiver should and could work with the investor group and Sun, and be fully informed and involved throughout the process.

14. On June 17, 2010, undersigned counsel sent a confirmatory letter to Mr. Chadwick regarding the information that was requested from him in this regard. *See* Letter from Jonathan Etra, Esq. to Jim Chadwick, Esq. dated June 17, 2010, attached as Exhibit D. *See also* E-mail correspondences from J. Etra to J. Chadwick dated June 22, 2010, June 23, 2010, and June 24, 2010 attached as Composite Exhibit E. Undersigned counsel even agreed to treat any information provided to the Receiver as confidential for settlement purposes as a concession to Sun. *See* E-mail from J. Etra to J. Chadwick dated June 24, 2010 attached as Exhibit F. However, Mr. Chadwick eventually advised undersigned counsel that he could not provide the Receiver with any of the information requested because it was the subject of confidentiality agreements with Sun and Sun had not released them.⁵

15. The Receiver also, of course, tried to reach a resolution of the Motion to Stay with Sun directly.

16. The Receiver’s efforts in that regard began at the June 11th meeting itself when the Defendants first informed the Receiver and his counsel that there was a “settlement in principle” between Sun and certain investors. At that same meeting, the Receiver requested the specific information relating to the purported “settlement in principle” (which would, of course, include information relating to the collateral), access to the applicable due diligence documents

⁵ For its own strategic reasons, Sun seeks to divide and conquer by attempting to separate the interests of the Receivership Entities from those of the investors.

and data room that Sun's counsel represented to exist and the list of investors on board with the purported relief sought (i.e., the stay and, as it was represented to the Receiver, the settlement itself).

17. The Receiver memorialized that request in a correspondence dated June 21, 2010. *See* Letter from Jonathan Etra, Esq. to Defendants' counsel dated June 21, 2010, attached as Exhibit G. However, absolutely no response was forthcoming from Sun for days.

18. Consequently, upon being advised by Mr. Chadwick that his clients could not provide the Receiver with the information he requested due to restrictions imposed by Sun, undersigned counsel went directly to Sun's counsel once again and reiterated his request for, at a minimum, the term sheet, and as he did with Mr. Chadwick, agreed to treat the same confidential. Undersigned counsel also requested that Sun release the investors from any confidentiality agreement to the extent that it was preventing them from speaking with the Receiver and similarly expressly offered to treat any information provided to him pursuant thereto as confidential for settlement purposes also. *See* E-mail correspondence from J. Etra to S. Gold dated June 24, 2010 attached as Exhibit H. The Receiver agreed to confidentiality as a concession in order to hopefully gain access to the information that he would need in order to assess, in good faith, whether he could possibly agree to the relief Sun seeks and to report to the Court why a stay would be warranted.

19. Not surprisingly, Sun responded this past Friday afternoon still refusing all of the Receiver's requests and only offering to provide him with "periodic briefings." *See* Letter from S. Gold to J. Etra dated June 25, 2010 attached as Exhibit I.

20. Finally, yesterday evening, undersigned counsel made one last-ditch effort to "inject some common sense into this process." Once again, the Receiver requested that by noon today, Sun (a) provide the settlement in principle and (b) release the investors from their prohibitions on discussing the basis for the settlement in principle with the Receiver. *See* Email from J. Etra to S. Gold dated June 27, 2010 attached as Exhibit J. Late in the day, Sun stated it would provide the term sheet to the Receiver (and nothing more) if the Receiver would agree to a confidentiality agreement to be provided "shortly", even though there was already a

confidentiality agreement between the parties approved and entered by the Magistrate Judge in this case. *See* Email from S. Gold to J. Etra dated June 28, 2010 attached as Exhibit K. At approximately 6:02pm, counsel for Sun transmitted a proposed confidentiality agreement which on its face would preclude the Receiver from reporting to the Court, even in a sealed submission.

21. Consequently, Sun has intentionally put the Receiver in a position where he is duty-bound to oppose its Motion to Stay because he has no information relating to the settlement in principle and he has been entirely foreclosed from the process. Sun's posture is untenable because the Receiver is the sole holder of the current claims being asserted in the action Sun seeks to stay and the sole fiduciary over the collateral Sun seeks to transfer to others as part of a settlement.

22. The Receiver has been advised by investors with whom he has spoken with over the two weeks that they want him to be part of any such process.

23. In sum, the Receiver is (and has consistently been) troubled by the fact that he still does not have information relating to the current state of the collateral (which would presumably be included in the documents and information that he would need access to anyway in order to possibly agree to the stay sought by the Defendants). He is now, however, even more concerned because the Defendants' representations suggest that the information exists and that it has purposefully not been provided to him in an attempt to draw a wedge between certain investors and to circumvent his ability to report to the Court and determine that any proposed deal is fair and reasonable and protects all investors.

24. Indeed, *if* the Defendants have information relating to the current state of the collateral and the Receiver, who stands in the shoes of the Receivership Entities that have an interest therein, has requested such information by way of the discovery process (and informally as well), *why will the Defendants simply not disclose it?* The Receiver's position is simple: as the sole possessor of the claims in this action and the fiduciary over the collateral, he must be informed and he must be involved, and there is absolutely no legitimate reason why to deny him this.

25. There is no legitimate reason why Sun is denying the Receiver this information, and it should, respectfully, cause the Court great pause that this has been Sun's *modus operandi* since the beginning of this litigation. Sun has always refused and will continue to refuse to provide the Receiver meaningful information unless this Court requires it to do so.

26. For the reasons more fully described below, the Court should deny the Motion to Stay and the Instant Litigation should continue, because the claims in this action cannot be resolved without the Receiver's participation, as he holds the claims Sun seeks to stay, and Sun, for strategic reasons, refuses to engage in discussions with the Receiver.

IV. ARGUMENT

A. Applicable Standard

Although it is well established that district courts have inherent authority to issue stays in many circumstances, "a stay must not be immoderate as to amount to an abuse of discretion." *Trembath v. Meritplan Insurance Co.*, 2009 WL 2147112 (M.D. Fla. 2009). In fact, "[t]he party seeking to stay proceedings carries a 'heavy burden of establishing that such an order would be appropriate.'" *Pesticide Action Network North America v. EPA*, 2008 WL 5130405 (N.D. Ca. 2008) (citations omitted) (cited by Defendants). "[T]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936).

In the present case, the stay sought by the Defendants is far from moderate. The Defendants are asking this Court for a stay that would permit them unfettered use of the Receivership Entities' collateral for a 120-day period, without oversight or reporting obligations. The agreement in principle they discuss is far from concrete and indeed involves months of due diligence and detailed drafting of documents to be agreed upon. Further, the agreement in principle is only with certain investors and the claims sought to be resolved do not belong to those investors. There is a very real possibility of significant, if not, complete dissipation of the collateral during this period, and the Defendants cannot show that there is anything to gain from such a stay if the Receiver is not permitted to participate in settlement negotiations and any

resulting settlement admittedly because he still must be a party to any such agreement in order for it to conclusively resolve the Instant Litigation as a matter of law. As such, the Defendants' Motion to Stay should be denied.

B. Fundamental Principles of Receivership and Commercial Law Require that the Receiver Be A Party to Any Settlement of the Receivership Entities' Collateral as a Matter of Law

1. The Receiver, a party to this litigation, is the only one empowered to settle claims against the Defendants in this action and relating to the disposition of the Receivership Entities' collateral

The Defendants argue in their Motion to Stay that "[i]f consummated, this settlement would resolve all the claims asserted in this action and any other potential SV Investor claims against the Sun-related Parties." That statement is inaccurate as to the Instant Litigation. The claims in this action arise from the misconduct of the Defendants for damages to the Receivership Entities. Any claims resolved with investors do not resolve this litigation and the possibility of this occurring (i.e., a settlement between the Defendants and certain investors) is not a basis to stay this litigation. Settlement with the investors cannot affect the collateral to which they have no direct legal interest and that collateral cannot be disposed of pursuant to a purported settlement agreement to which the Receiver is not a party.

Pursuant to fundamental receivership law (and notably this Court's own Receivership Order), the Receiver has the power and duty to settle claims on behalf of the entities in receivership. It is a general rule that "a receiver, standing in the shoes of management, holds the *sole* right...to direct the litigation of the corporation with whose care his is entrusted." *SEC v. Spence & Green Chem. Co.*, 612 F. 2d 896, 903 (5th Cir. 1980) (emphasis added). Moreover, the Receivership Order in this case states that the Receiver is "authorized, empowered, and directed" to:

Defend, compromise or settle legal actions, including the instant proceeding, in which Founding Partners, any of the Founding Partners Relief Defendants, or the Receiver are a party....

Receivership Order at Paragraph 2(f). Consequently, it is the Receiver that has the authority to settle the Instant Litigation insofar as it relates to the entities in receivership, subject of course, to

Court approval. *See SEC v. Kirkland*, 2008 WL 169711 (M.D. Fla. 2008); *see also O'Neal v. General Motors Corp.*, 841 F. Supp. 391, 398 (M.D. Fla. 1993) (holding that the receiver is the real party in interest as to a cause of action and the one with the right to sue and the receiver has the concomitant right to settle any claim or potential claim) (citations omitted).

2. Because the Receivership Entities have a security interest in the collateral, the Receiver, on their behalf, must authorize the disposition of that collateral and/or constructive trust claims to other monies

Furthermore, pursuant to general commercial law, because the Receivership Entities have a security interest in certain of the collateral, the Receiver must be a party to any settlement that would otherwise effect, transfer or somehow diminish or dispose of that collateral. Section 679.3151, Fla. Stat. provides that a creditor's security interest continues in collateral notwithstanding the sale, exchange or other disposition of the collateral, unless the secured party authorizes the disposition free of the security interest. Consequently, a secured creditor may assert a claim for conversion if property that is subject to its security interest is disposed of without that creditor's authorization. *Seaman v. Clearwater Oaks Bank*, 469 So. 2d 246 (Fla. 2d DCA 1985).⁶

In this case, the Receiver has asserted claims against the Defendants as the Receiver for the Receivership Entities. He undeniably seeks to recover assets for the benefit of the victims of the underlying fraud, and by way of this opposition, he certainly is *not* seeking to unreasonably interfere with a resolution that might be in the best interests of the investors. However, because he stands in the shoes of the entities in receivership themselves and has himself asserted the claims herein in that capacity, he must be a party to any settlement that purports to settle away such claims and/or, more problematically, somehow impact the Receivership Entities' collateral. The Defendants' Motion to Stay is a veiled attempt to circumvent the Receiver's authority, this Court's Receivership Order, and applicable law. They should not be permitted to do so.

⁶ Further, the Receiver has fraudulent transfer and constructive trust claims concerning funds Sun and its principals diverted from the Receivership Entities.

C. The Receiver Cannot Tell Whether All Investors' Interests are Being Fairly Represented and Investors Have Indicated That They Want the Receiver to Participate in and Oversee Any Settlement Negotiations with the Defendants

The relief sought by the Defendants should also be denied because it is unclear whether all investors' interests are being fairly represented.

First, the Defendants play fast and loose with the descriptions of the group of investors with whom they have purportedly been negotiating and that purportedly support the relief sought as well as the status of the alleged "settlement in principle." In the first paragraph on the first page of the Defendants' Motion to Stay, the Defendants proclaim that they seek the stay so that the parties may pursue a "comprehensive settlement" that has been "agreed to in principle by the Defendants herein and *the* great majority of investors in Founding Partners Stable-Value Fund, L.P...." To describe a settlement as "comprehensive" and then refer to it as existing only "in principle" is contradictory in-and-of-itself. More problematically, with regard to the "majority" that is being referred to, the Defendants state on the next page that it is the "over 90% of SV Investors *who have been contacted....*" Motion to Stay at p. 2 (emphasis added). The Defendants again recede somewhat from their proclamation on page 1 by also referring to the relevant group of SV Investors as "a team of large investors in Stable-Value" on page 2.

Further, this "team" purports to negotiate "on behalf of all direct and indirect investors in Stable-Value", yet, the Defendants have failed to proffer any evidence of how "direct and indirect investors" have consented to the SV Investors engaging in negotiations on their behalf. It is unclear what authority, if any, has been given to and/or what rights, if any, have been assigned to the "team of large investors in Stable-Value" by all other investors that are not part of that "team." Moreover, it is the Receiver's understanding that significant diligence remains to be performed and documents prepared which all still must be agreed upon. Consequently, such characterizations by Sun, when considered carefully, are suspect, self-serving, and possibly misleading.

Such allegations are undermined altogether, moreover, when certain investors themselves confirm that they are not represented by the SV Investors, the Investor Committee, and/or its counsel. For example, Mr. Alan Arnold, an investor who lost \$500,000.00, first learned about Sun's Motion to Stay when he contacted the Receiver's office on June 23rd to inquire as to, amongst other things, whether there were any updates that had not been posted on the receivership website and he was told about the Motion to Stay. The Receiver learned that Mr. Arnold had not been contacted by anyone to inquire whether he desired to participate in a possible settlement with the Defendants or whether he was willing to allow his interests to be represented by other investors in such negotiations. Mr. Arnold is not adverse to the notion of a commercial resolution to the dispute but he has informed the Receiver that he wants the Receiver to be involved in the settlement process.

Similarly, the Receiver has learned that the Archdiocese of New Orleans, who invested \$5 million in Stable Value, similarly had not been contacted by Sun or by the Investor Committee prior to the Motion to Stay being filed and also desires that the Receiver participate in any settlement negotiations.⁷

Based on the foregoing, the Defendants' allegations and innuendo relating to the "great majority of investors" is not Scripture. The Receiver questions, and this Court, most respectfully should question, which investors are actually on board with the purported "settlement in principle" if and until the Defendants provide the Receiver full and complete disclosure of which investors were contacted, which investors were not contacted, and what the investors' respective positions are—to the extent that the Defendants know --with regard to the purported settlement in principle. Moreover, even if the Court were to assume that the Defendants, in fact, had the backing of the actual majority of investors—be it determined by the number of investors or the actual amount of their collective investment as represented to the overall investor losses—still, the rights of the investors is not determined by a majority vote. The Receiver and this Court

⁷ The Archdiocese filed papers on June 28, 2010, reflecting this desire. The Archdiocese had previously provided to the Receiver and the Receiver had provided to the Court an affidavit stating that Sun participated in the fraud.

have a duty to *all* investors that their interests are being represented and that they are being treated fairly.

D. The Defendants Must Make Full Disclosure to the Receiver Pursuant to the Federal Rules of Civil Procedure

The Receiver also believes that a stay should be denied at this juncture because it appears Sun is attempting to use it as cover for its failure to comply with pending discovery obligations. Specifically, the Receiver has served two waves of requests for production on the Defendants in the Instant Litigation. The Receiver's first requests for production included multiple requests relating to key categories of documents the responsive documents to which would include: accounts receivable aging reports and analysis, documents showing the aggregate principal balance amount of all loans, documents showing the accrued and unpaid interests on all loans, bank records showing account balances and documents showing all perfected security interests in favor of Founding Partners. Copies of the Receiver's First Requests for Production to Defendants SCHI and SCI are respectively attached hereto as Exhibits L and M.

Documents responsive to the Receiver's second requests for production would include: updated financial statements and reports; monthly balance sheets and monthly income statements; and cash flow analyses and detailed cash disbursements. Copies of the Receiver's Second Requests for Production to Defendants SCHI and SCI are respectively attached hereto as Exhibits N and O. The Receiver also recently issued subpoenas to Sun in the SEC Action. Copies of the Receiver's most recent subpoenas to the Defendants are attached as Composite Exhibit P.⁸

To the extent that documents responsive to previously propounded requests exist in readily accessible format, which have not been produced to the Receiver, Sun must do so. Rule 26, Fed. R. Civ. P. (imposing a duty to supplement all initial disclosures and prior responses to discovery). Sun must similarly respond to the Receiver's outstanding subpoenas. In fact, the

⁸ Some of documents requested include documents that relate to the sale—actual or intended-- of any of Sun's and/or any of the Related Entities' assets; documents relating to the Collateral; documents relating to the value of Sun and/or any of the Related Entities; and all presentations and/or reports prepared by any outside advisors, consultants and/or experts.

Receiver and Sun already have entered into a confidentiality agreement concerning discovery; therefore, that also cannot be an excuse for withholding that information.⁹ As such, there is no legitimate reason why responsive documents and information, which appear to exist in readily-available form, should not be provided to the Receiver or why such discovery should serve as a purported basis for a stay.

E. The Scope of the Proposed Stay is Unnecessarily Overbroad

1. A “stay of all proceedings” is not the appropriate remedy to deal with pending subpoenas and a pending response to an amended complaint

As noted by the Court, the “emergency basis [of Defendants’ Motion to Stay was] primarily with regard to the subpoenas.” D.E. 198. Whatever “emergency” that might have existed was addressed by the Court.

Further, the Receiver is certainly not going to take the position that responses to the subpoenas and to the Amended Complaint are delinquent and due immediately. The Receiver would respectfully request that this Court enter an order providing the parties with a schedule of deadlines by which the corresponding responses should be filed and/or served.

Moreover, with regard to the subpoenas, the Receiver also does not seek to require the Defendants to re-produce documents previously provided to the Receiver, nor does he seek to require them to provide the same documents twice in each of the separate actions pending before this Court.¹⁰ Certainly, the Receiver would accept some sort of correspondence/response from the Defendants, through their counsel, indicating by bates numbers which documents previously produced are responsive to any of the Receiver’s most recent requests. The Receiver would also accept one set of documents and/or such a correspondence that is indicated by the Defendants to

⁹ The Defendants inaccurately claim that the Receiver suggested that he would need “formal discovery” to assess the proposed settlement. Seeing as the Receiver already propounded such discovery and the Defendants are admitting that responsive documents exist but are not being given to the Receiver, the Receiver simply seeks disclosure of same.

¹⁰ The Defendants conveniently omit any reference to the manner by which a good portion of the requests in the Receiver’s most recent subpoenas were qualified with the phrase “to the extent not previously produced” in order to avoid undue burden to the Defendants.

be responsive to subpoenas issued in both cases. Clearly, this information exists, in readily accessible form. It would be absolutely disingenuous of the Defendants to claim that producing such documents and information would somehow be burdensome seeing as they already exist in some sort of readily-accessible format and/or place. Further, production of such information which arguably should have been produced does not prejudice Defendants since a confidentiality agreement would protect such documents.

Finally, a broad-based stay of all proceedings is excessive and not the appropriate mechanism by which to deal with the presently outstanding subpoenas. With regard to the Amended Complaint, the Defendants may certainly seek an enlargement of time to respond to same pursuant to Rule 6(b), Fed. R. Civ. P. Further, *if* the Defendants were to agree to and/or the Court was to order full disclosure to the Receiver and his participation in negotiations on a going-forward basis, certainly the Receiver would be more receptive to the notion of a stay of the Instant Litigation, albeit that litigation and related settlement negotiations very often are conducted on parallel tracks. With regard to the subpoenas, if, notwithstanding the fact that extensive documentation and information that is responsive thereto exists in readily-accessible format, the Defendants still objected to the requests therein, the appropriate procedural vehicle by which to do so would be to seek a protective order pursuant to Rule 45, Fed. R. Civ. P.

2. A “stay of all proceedings” that would stay responses to the subpoenas issued in the SEC Action is unnecessarily overbroad and unwarranted

The Defendants’ request for a stay of all proceedings including all proceedings concerning any subpoenas issued by the Receiver in the SEC Action is overly broad and unsupported by the law.

Although the subpoenas issued in the Instant Litigation were certainly for litigation purposes, the Receiver appropriately issued subpoenas in the SEC Action pursuant to his duty to investigate and report to the Court regarding, amongst other things, the current state of the collateral. A stay does not nullify, eliminate or absolve the Receiver from his duties in that regard. Moreover, the Court should be informed of this important information and the Receiver

cannot do so absent Defendants providing such information. The Defendants argue that this will somehow place a burden on them is a “red herring” now that they have conceded that substantial information exists and in a readily accessible. Moreover, the Receiver would agree to have such information covered under a confidentiality agreement such as the one that currently exists.¹¹

3. The duration of the requested stay is excessive and appears to have no justification

Lastly, the Defendants have failed to make any claim as to why 120 days are necessary in order to purportedly engage in finalization of the anticipated settlement. The Defendants are silent as to why they believe that a stay should last 120 days or what they anticipate will occur within the 120 days. It is also unclear what assurances, if any, the Defendants are willing to provide that they will, in fact, provide the full extent of the due diligence claimed to still be pending. Although counsel for the Investor Committee did, on the other hand, suggest to undersigned counsel that it was at least his experience that it would take approximately 120 days to consummate a deal of this nature, his expectation based upon his experience could be meaningless if the party with whom he is dealing—namely, Sun—is not acting in good faith and has itself remained conspicuously silent as noted.

Without any information relating to the foregoing, without any information relating to the collateral, the due diligence performed thus far, and without any assurance by the Defendants that they would agree to allow the Receiver to participate in negotiations during any such stay, there is considerable risk of prejudice to the Receiver and to the investors. Specifically, as a result of the Temporary Restraining Order currently in place and the Defendants continuing failure/refusal to make full disclosure to the Receiver regarding the state of his collateral, there is a very real risk that the collateral has been dissipated, is still being dissipated, and will continue to be dissipated by the Defendants during the duration of any such stay. The stay will further debilitate the Receiver’s investigatory powers and will formally preclude him from making any

¹¹ To the extent the Motion to Stay purports to seek a stay of all proceedings, it is further improper because it would prohibit the Receiver from carrying out his court-appointed duties unrelated to Sun and preclude the Receiver from asserting claims against unrelated third parties.

inquiries as to the state of the collateral, nullify all powers granted to him by the Receivership Order, and paralyze any ability he might otherwise have to perform his duties thereunder. This nullification of the Receiver in this litigation would deprive him of his right to prosecute his rightfully stated claims to the collateral and give complete, unchecked autonomy to the Defendants to essentially do whatever they want to do for four months while the Receiver's collateral is exclusively in their control with no assurance that a settlement will ever be reached. Clearly, the risk of loss to the investors is much too great to grant the Defendants the relief they seek.

F. The relief sought by the Defendants is not supported by the cases they cite.

None of the cases cited by the Defendants support the extraordinary relief they seek—to stay the Receiver's claims while Sun negotiates with non-parties to the Instant Litigation. The various cases cited by the Defendants are all distinguishable from the facts at hand and none support the relief sought by the Defendants. For example, in *Clinton v. Jones*, 520 U.S. 681, 708 (1997), the U.S. Supreme Court actually ruled that the lower court erred in staying trial until the end of the petitioner's Presidency because “[s]uch a lengthy and categorical stay takes no account whatever of the respondent's interest in bringing the case to trial.” *Id.* at 708. The Supreme Court noted certain prejudicial effects of the stay requested by the petitioner therein including the possible loss of evidence. Such rationale actually undermines the relief sought by the Defendants herein a fortiori because in *Clinton v. Jones* there was expressly no stay of discovery, which is the precise relief being sought by the Defendants herein.

The Defendants also cited a variety cases where stays were granted in order to permit dispositive issues to be decided, which would in turn determine the rights of the *parties* to the dispute and the manner by which the stayed case would proceed, if at all. Unlike the present case, however, none of these cases involved a request by a litigant party to engage in settlement negotiations, let alone settlement negotiations with parties who did not themselves assert and could not themselves surrender the claims at issue. For example, in *Danner Construction Co., Inc. v. Hillsborough County*, 2009 WL 3055315 (M.D. Fla. 2009), the county sought a stay

during the pendency of an interlocutory appeal to determine whether the lower court erred by not dismissing certain federal law based claims. *Id.* at *1. If the claims at issue were to be dismissed, then the court would have been divested of jurisdiction. Therefore, a stay was warranted. Similarly, in *Spencer v. Coventry Health and Life Ins. Co.*, No. 07-0847-WS-M, 2008 WL 719211 (S.D. Ala. Mar. 14, 2008), the Court granted a stay because a “controlling ruling” was forthcoming. *Id.* at *1; *Innovative Patented Tech., LLC v. Samsung Electronics Co., Ltd.*, NO. 07-81148-CIV (S. D. Fla. July 10, 2008), 2008 WL 2726914 (in a patent case, granting a stay pending a case in another district court regarding “Plaintiff’s ownership of the patents asserted in this action.”).

In the present case, on the other hand, there is no threshold issue that is pending, the resolution of which could resolve this litigation.¹² As noted in previous sections, the Instant Litigation was initiated by the Receiver against the Defendants on behalf of the Receivership Entities for damages caused to the Receivership Entities by the Defendants. A settlement with the investors does *not* resolve or determine the Receiver’s claims. Further, only the Receiver can resolve the claims related to the Receivership Entities’ collateral, which collateral Sun seeks to transfer to investors without the involvement of the Receiver. Hence, Sun’s request to basically be left alone for the next four months with the collateral, and certain of the investors is not a basis upon which to stay litigation. Further, the Receiver respectfully submits that staying the litigation will remove a large incentive for Sun to proceed promptly toward settlement (if that is indeed its intention) as it was only the litigation that brought Sun to the settlement table.

V. CONCLUSION

Based upon the foregoing, the Receiver respectfully requests that this Court deny the Motion to Stay in its entirety.

Dated: June 28, 2010

¹² The case of *Trembath v. Meritplan Insurance Co.*, 2009 WL 2147112 (M.D. Fla. 2009) is also inapposite to the instant dispute. In that case, the court found that mediation was a condition precedent to any litigation and, therefore, ordered the litigation stayed accordingly.

Respectfully Submitted,

BROAD AND CASSEL

One Biscayne Tower, 21st Floor

2 S. Biscayne Boulevard

Miami, FL 33131

Telephone: (305) 373-9400

Facsimile: (305) 995-9443

By: /s/ Jonathan Etra

Jonathan Etra, P.A.

Florida Bar No. 0686905

Counsel for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jonathan Etra

Jonathan Etra, P.A.

EXHIBIT A

Jonathan Etra

From: Paparo, Vincenzo [vpaparo@proskauer.com]
Sent: Thursday, May 28, 2009 12:36 PM
To: Daniel Newman
Cc: Jonathan Etra; Lester Perling; Gold, Sarah S.; lheller@ghblaw.com; Levitan, Jeffrey W.; Aufiero, Susan; Berkowitz, Adam
Subject: Founding Partners/Sun

Daniel, it was a pleasure meeting you yesterday. We felt that the meeting was constructive and informative. Hopefully it is the beginning of a positive relationship as we attempt to resolve the various issues which now exist between FP and Sun. In order to avoid any doubt, this e mail will confirm that restructuring discussions will be coordinated by the undersigned and business calls or meetings will be arranged as necessary/requested.

As discussed yesterday, I would like to begin forwarding you requested information in your new capacity as receiver for Founding Partners. Accordingly, this is the first of a series of e mails you will be receiving from us today and tomorrow.

1. The Founding Partners attorneys at Mayer Brown involved in the failed restructuring were John Lawlor 312-701-7220 and Kristin M. Rylko (312) 701-7613. If you would like to see drafts of the proposed restructuring just let me know.

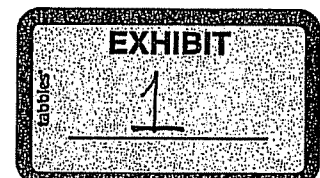
2. We will arrange online access to Sun's lockbox accounts through the SunTrust Lockbox Browser software. We need however the names of the individuals who will be authorized by the receiver in order to set up ID and Pass Codes as well as an email address for daily wire reports. Access to these accounts will allow you to see checks and related paperwork sent to the lockbox. All electronic transfers made to lockbox accounts can have a report emailed from SunTrust.

3. We would like to have a brief call with you today to answer your questions regarding the Bermuda entity set up by Mr. Gunlicks several years ago. Please let me know what time works best.

Finally, this e mail confirms that our communications with you continue to be in the context of settlement discussions.

To ensure compliance with requirements imposed by U.S. Treasury Regulations, Proskauer Rose LLP informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This message and its attachments are sent from a law firm and may contain information that is confidential and protected by privilege from disclosure. If you are not the intended recipient, you are prohibited from printing, copying, forwarding or saving them. Please delete the message and attachments without printing, copying, forwarding or saving them, and notify the sender

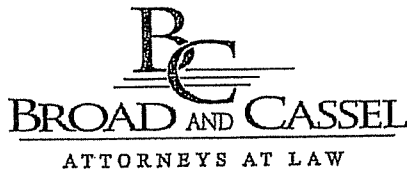


7/23/2009

immediately.

7/23/2009

EXHIBIT B



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JONATHAN ETRA
DIRECT: 305.373.9447
FACSIMILE: 305.995.6403
EMAIL: jetra@broadandcassel.com

July 2, 2009

VIA E-MAIL (vpaparo@proskauer.com)

Vincenzo Paparo, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036

Re: *United States v. Founding Partners Capital Management, et al.*
Case No. 2:09-cv-229 (M.D. Fla.)

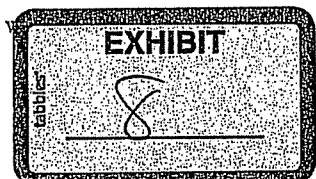
Dear Vince:

When you and your clients, Sun Capital, Inc.; Sun Capital Healthcare, Inc.; Promise Healthcare, Inc. ("Promise"); and Success Healthcare, LLC ("Success") (collectively "Sun"), met with Receiver Dan Newman in Miami on May 27, Sun made numerous representations concerning its desire to cooperate with the Receiver and immediately provide information. Among other things (i) Sun expressed gratitude that the Receiver was willing to listen to its side of the story and give Sun a chance to explain itself; (ii) Sun represented repeatedly that the prior Receiver and the SEC purportedly refused Sun that opportunity, and Sun claimed much unnecessary litigation was caused as a result; and (iii) Sun insisted that it had done nothing wrong, that the Promise and Success Hospitals were not operating at losses, and that there was no need for the Receiver to take any action against Sun or the Promise and Success facilities. Finally--and most importantly--to substantiate all of Sun's assertions, Sun insisted it would provide immediate, full, and complete voluntary disclosure so that the Receiver could see that Sun was telling the truth.

Peter Baronoff, Howard Koslow, and Lawrence Leder looked the Receiver in the eye and assured him that they had nothing to hide and that anything the Receiver wanted to know about Sun, Promise, and Success and their dealings with Mr. Gunlicks and Founding Partners would be provided voluntarily and immediately.

On Sun's assurance that it was dealing in good faith and with the hope of obtaining critical information quickly and without the necessity and expense of subpoenas and motion practice, the Receiver gave Sun the benefit of the doubt.

Immediately after the May 27 meeting, the Receiver asked Sun for the materials Sun had promised, which included Focus Reports. Nothing materialized. Instead, Sun then sought to



Vincenzo Paparo, Esq.
July 2, 2009
Page 2

impose pre-conditions and stipulations, simply for providing the materials Sun promised to provide on May 27.

On June 16, 2009, in a call with the Receiver (with one of the Receiver's accountants in your law office), you told the Receiver that Sun needed a list of materials requested by Receiver, at which point Sun would finally comply with its initial promise of disclosure. The Receiver provided you with a list, but, to date, Sun has not produced the materials. A month after our initial meeting, we still have not received any of the documents requested, except access to the lockbox bank accounts.¹

In a voice mail message last week, you stated that Sun had determined it would provide the Receiver with only a small fraction of the promised materials, contrary to the representations of Sun at the May 27 meeting and the June 16 call. Thereafter, in a call between one of our accountants and Mr. Leder, our accountant asked when the Receiver would begin receiving materials from Sun. Mr. Leder responded that this was a matter to be discussed between counsel. That is not the kind of cooperation Sun promised.

For all these reasons, on June 29, the Receiver expressed his disappointment in Sun's lack of disclosure, in a conversation with Sun's local counsel, Mr. Lawrence Heller. Mr. Heller apparently relayed the Receiver's disappointment in Sun to you, prompting you to call me on that day. You told me Sun expected to provide a package of materials by Wednesday (July 1), but you still refused to commit to full disclosure to permit the Receiver to obtain necessary information on the use of investor funds by Sun. No materials were provided on July 1. The Receiver's accountants were then told by Sun that they would receive documents upon meeting with Sun employees on July 2, 2009. Again, no substantial documents were received on July 2, 2009, and instead the Receiver's accountants were told documents would be given on Monday, July 6, 2009, with no reason why documents were not provided as promised.

While we hope Sun will provide materials on Monday, the Receiver simply cannot rely on Sun's representations alone. Immediate, complete, and unhindered disclosure from Sun is required. With more than \$500 million in investor funds at issue--and in the face of delay and broken promises since the Receiver's appointment--Sun has left the Receiver with no alternative but to supplement his efforts by issuing subpoenas to obtain the information he must have.

¹ Sun suggested that Sun might release some materials relating to Cain Brothers, the investment banking firm retained by Sun/Promise/Success to obtain refinancing or recapitalization; but Sun has made that release dependent on the Receiver's agreeing to an onerous Non-Disclosure Agreement, which, for which reasons I have explained to you many times, is something the Receiver will not be able to agree to in light of his duties to the Court and the investors. Even if the Receiver could agree to these conditions, based on Sun's conduct to date, the Receiver has no assurance that Sun will be any more forthcoming on materials relating to Cain Brothers.

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July 2, 2009
Page 3

Accordingly, enclosed are copies of subpoenas directed to Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., and Success Healthcare, LLC. Based on your representation of these clients, I assume you will accept service on their behalf. Please confirm this fact tomorrow as I know you carry a blackberry and are available continuously. If I do not hear from you tomorrow, we will assume you are not authorized to accept service, and we will proceed to serve your clients directly.

Although the Receiver is issuing these subpoenas, he remains optimistic that Sun will fulfill its promises voluntarily. Further, as you will notice the subpoenas call for testimony of an individual with knowledge of certain facts represented to us by you and Sun. The Receiver needs this information in sworn form to carry out his duties.

Finally, Susan Barnes de Resendiz, Esq., of our firm will be taking the lead on matters relating to Sun, Promise, Success, and Messrs. Baronoff, Koslow, and Leder. Please direct all communications concerning these subpoenas to Ms. de Resendiz, of our firm. Her telephone number is 305.373.9443, and her email address is sderesendiz@broadandcassel.com.

Very truly yours,

BROAD AND CASSEL


Jonathan Etra

cc: Sarah Gold, Esq.
Daniel S. Newman, Esq.
Susan Barnes de Resendiz, Esq.

Enclosures

EXHIBIT C



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SUSAN BARNES DE RESENDIZ
DIRECT: 305.373.9474
FACSIMILE: 305.995.6425

EMAIL: sderesendiz@broadandcassel.com

July 16, 2009

VIA E-MAIL (vpaparo@proskauer.com) and U.S. MAIL

Vincenzo Paparo, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036

Re: *SEC v. Founding Partners Capital Management, et al.*
Case No. 2:09-cv-229 (M.D. Fla.)

Dear Vince:

As you know, yesterday the Receiver exercised his rights as to Sun bank accounts under the loan and security agreements and related agreements between the Receivership entities and your clients (the "Collateral"). The Receiver took this action in order to protect the interests of the Receivership Estate and the investors of Founding Partners.

As the Receiver told you and your clients at the May 27th meeting in Miami, the Receiver was willing to consider all Sun proposals, including a negotiated workout with Sun, but he requires complete disclosure from Sun of all pertinent information necessary to making an informed decision about a Sun proposal. Although Sun stated that it would promptly provide such information, including the current status of the Collateral, Sun has consistently failed to present a detailed written plan on how Sun would repay the funds owed to the Receivership Estate. My email to you last night details my efforts to obtain such information as well. To date no such proposal has been made to the Receiver.

Significantly, the limited and much delayed production of documents, the failure to deliver current information about Sun Entities that have received and continue to use proceeds of the investor funds loaned to Sun and other information from Sun critical to the Receiver's execution of his duties, and the blocking of the Receiver's efforts to depose Sun Entities have not been consistent with the complete cooperation that was promised to the Receiver at the May 27th meeting and in subsequent discussions.

Despite Sun's representations that the Receivership's collateral is not being depleted, the limited documentation we have received from Sun indicates otherwise. The Receiver's accountants report that approximately 12% of the current accounts receivable is comprised of accounts receivable not older than 150 days and that most are due from entities under common



Vincenzo Paparo, Esq.
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Page 2

control with Sun. The other approximately 88% of accounts receivable are comprised of accounts receivable older than 150 days, and of the 88%, more than half are more than 180 days old. All but a very small percentage of Sun's accounts receivable are due from entities under common control with Sun.

It cannot come as a surprise to you that, after 90 days of Receivership, wherein you have failed to provide any current information about the hospitals that the Founding Partners Entities' loan proceeds are funding, that the Receiver, in fulfilling his obligations to the Court, would begin to take action to recover assets for the investors. Without current information from Sun that supports Sun's contention that Sun's operations are truly going concerns and that the hospitals receiving funds that are the Receiver's Collateral are viable entities, the Receiver has no choice but to begin collecting assets of the receivership estate for repayment to investors.

Nonetheless, as I reiterated in our call and my e-mail last night, the Receiver wants a written proposal with supporting documentation to justify

- (a) any continuing funding of Sun operations,
- (b) Sun's use of the cash proceeds of the Collateral to fund related entities, and
- (c) the continued nonpayment of interest or principal.

If, for example, Sun can provide specific current information showing the Sun hospitals are viable, going concerns and that continued funding of those hospitals with the Receiver's cash collateral will not diminish the collateral available to repay investors, the Receiver will consider such funding if sufficient current financial information supports such a decision on a hospital by hospital basis. This is not possible, however, without a written proposal to do so and without any current reporting or accounting to the Receiver of Sun's continued use of the Receiver's cash collateral.

To the extent there is a critical need for financing today in order to fund the operations of any particular hospital, please provide us immediately with a request and supporting information so that the Receiver can understand the critical nature of the request and why the funding is in the best interests of the Receivership Estate. The Receiver will give immediate and serious consideration to any such request. I am available to you 24 hours a day to receive information and to counsel the Receiver.

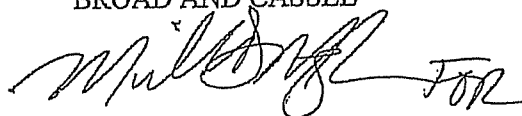
We are also available to meet with you immediately to discuss your funding requests and supporting information. If you wish to meet with us this afternoon, Friday, or over the weekend we will be available.

Vincenzo Paparo, Esq.
July 16, 2009
Page 3

If your clients take unilateral action without first availing themselves of these options, they will be responsible for any further impairment of the Collateral, including the precipitous closure of any Sun-related entity or facility.

Very truly yours,

BROAD AND CASSEL

A handwritten signature in black ink, appearing to read 'Susan Barnes de Resendiz', with a stylized flourish at the end.

Susan Barnes de Resendiz, Esq.

cc: Jeffrey Levitan, Esq.
Sarah Gold, Esq.
Daniel S. Newman, Esq.
Jonathan Etra, Esq.

EXHIBIT D

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Thursday, June 17, 2010 10:02 PM
To: 'James C. Chadwick (jchadwick@pattonboggs.com)'
Cc: Daniel Newman; Michelle Visiedo-Hidalgo
Subject: Emailing: Re Sun's Motion to Stay.pdf
Attachments: Re Sun's Motion to Stay.pdf

Jim,

Please see attached letter.

Thanks,

Jonathan



Jonathan Etra

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FACSIMILE: 305.373.9443

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6/28/2010



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JONATHAN ETRA, P.A.
PARTNER
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DIRECT FACSIMILE: 305.995.6403
EMAIL: JETra@BroadandCassel.com

June 17, 2010

VIA E-MAIL

Jim Chadwick, Esq.
Patton Boggs
2000 McKinney Ave.
Suite 1700
Dallas, Texas 75201

Re: *Newman v. Sun Capital, et al.*

Dear Jim:

I am writing to follow up on our call Monday evening concerning Sun's motion for a 120 day stay of litigation ("Motion to Stay").

As I began to explain to you on Monday evening, the Receiver is not in a position to support Sun's Motion to Stay, under the present circumstances. The Receiver cannot agree to stay his recoupment efforts in favor of settlement discussions over his collateral in which he is not a fully informed and active participant. The Receiver is duty-bound to oppose a stay of his recoupment efforts absent full access to information and participation because the Receiver will have no information upon which to make an informed decision, including whether all investors are being treated fairly and to report back to the Court as necessary.

In our telephone call, we requested certain information, and we write to follow up on those requests:

1) Please provide the term sheet that purportedly represents the settlement in principle between your clients and the Sun Principals, which is referenced in the Motion to Stay. We made this request of you on Monday evening (and of Mr. Paparo on Friday afternoon). As of today, neither you nor Mr. Paparo have provided it.

2) Please explain whether the term sheet is truly a final negotiated resolution from your clients' perspective (subject only to due diligence) or whether you anticipate more negotiations to satisfy your clients. Further, if you believe it is a truly final resolution from your clients' perspective (subject only to due diligence), what is your plan to modify it as needed to obtain full investor support and the support of the Receiver? What procedure do you have in mind to ensure that the Receiver has full information and the opportunity to negotiate to ensure that proposed resolution is fair and appropriate and how much time do you expect that process to take?

E

Jim Chadwick, Esq.
June 17, 2010
Page 2

3) Please explain why your clients believe that the Receiver's recoupment efforts in litigation should be stayed for any length of time at all (as opposed to having the litigation continue) while negotiations take place. Please also explain why your clients believe that a stay should last 120 days, what do you expect to happen within the 120 days, whether you are ruling out seeking extensions of your requested stay, and what assurances you have that Sun Principals will provide the due diligence you need and/or that the due diligence will confirm the representations made by the Sun Principals? Further, how much additional time will be needed so that the Receiver will then have an opportunity to obtain full access to information and negotiate to ensure he carries out his Court-appointed duties?

4) Please provide all information provided by the Sun Principals in negotiations and describe what access, if any, you have been given to Sun, Promise, or Success data, personnel, and advisors and the information obtained from them. Our understanding is that there is an electronic data room to which you have been given access that has financial information. We asked Mr. Paparo for access to the electronic data room in our meeting on Friday afternoon. Even though we believe such information would need to be provided in discovery, Mr. Paparo has refused to confirm that what appears to be readily available information (plainly needed to evaluate any settlement) will be provided to the Receiver.

5) Please provide a list of the concessions to the Sun Principals (including family members) including a list of related party transfers that benefitted the Sun Principals, directly or indirectly, and explain why your clients believe it is prudent to make those concessions to the Sun Principals. Concessions might well be appropriate but they would need to be disclosed, understood, and justified to the Court.

6) Please provide a list of investors who have been contacted by your clients and their positions on (a) the term sheet and (b) the Motion to Stay.

7) Please explain how your clients propose to ensure that all investors are treated fairly and equally in a final resolution.

8) Please explain how you intend to convert investor claims into ownership interests in an acquiring company, and how you intend to determine the value of the investor claims. Further, what procedure do you intend to utilize to take into account withdrawals by certain investors?

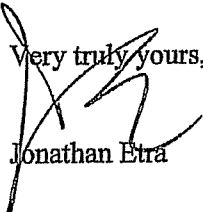
Finally, and more generally, please confirm that your clients will provide the Receiver and his staff with full access to information and that the Receiver will be fully included in negotiations. If your clients refuse this request, please explain why your clients are taking such a position and please explain how you plan to obtain court approval while taking such an approach.

Jim Chadwick, Esq.
June 17, 2010
Page 3

I look forward to your response. Please feel free to call me if you want to discuss any of the requests or the Motion to Stay.

We will be writing separately to Sun's counsel, but feel free to share this letter with them if you wish.

Very truly yours,



Jonathan Etra

JE:pb

EXHIBIT E

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Tuesday, June 22, 2010 6:17 PM
To: 'Chadwick, James'
Cc: Michelle Visiedo-Hidalgo
Subject: Follow Up

Jim,

I am writing to follow up on our discussion this past Friday.

It was my understanding that you had a meeting scheduled with your clients to have taken place yesterday (Mon.), and then I would hear back from you.

I am hoping you will call soon.

If you call tomorrow (Wed.), I will be out of the office, so please contact my colleague, Michelle Visiedo, who I am copying. Her direct line is 305-373-9454.

Thanks,

Jonathan



Jonathan Etra
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6/28/2010

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Wednesday, June 23, 2010 5:17 PM
To: 'James C. Chadwick (jchadwick@pattonboggs.com)'
Subject: Follow Up

Jim,

I just called your office to continue our discussion and was advised that you are out of the office and that e-mail is the best way to reach you.

Please call me.

Thanks,

Jonathan



Jonathan Etra

PARTNER
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6/28/2010

EXHIBIT E

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Tuesday, June 22, 2010 6:17 PM
To: 'Chadwick, James'
Cc: Michelle Visiedo-Hidalgo
Subject: Follow Up

Jim,

I am writing to follow up on our discussion this past Friday.

It was my understanding that you had a meeting scheduled with your clients to have taken place yesterday (Mon.), and then I would hear back from you.

I am hoping you will call soon.

If you call tomorrow (Wed.), I will be out of the office, so please contact my colleague, Michelle Visiedo, who I am copying. Her direct line is 305-373-9454.

Thanks,

Jonathan



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6/28/2010

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Wednesday, June 23, 2010 5:17 PM
To: 'James C. Chadwick (jchadwick@pattonboggs.com)'
Subject: Follow Up

Jim,

I just called your office to continue our discussion and was advised that you are out of the office and that e-mail is the best way to reach you.

Please call me.

Thanks,

Jonathan



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6/28/2010

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Thursday, June 24, 2010 8:37 PM
To: 'James C. Chadwick (jchadwick@pattonboggs.com)'
Cc: Michelle Visiedo-Hidalgo
Subject: RE: Follow Up

Jim,

I still have not heard back from you.

I will be in the office late tonight.

Can you please call?

Jonathan

Jonathan Etra

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From: Jonathan Etra
Sent: Wednesday, June 23, 2010 5:17 PM
To: 'James C. Chadwick (jchadwick@pattonboggs.com)'
Subject: Follow Up

Jim,

I just called your office to continue our discussion and was advised that you are out of the office and that e-mail is the best way to reach you.

Please call me.

Thanks,

Jonathan

6/28/2010



Jonathan Etra

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EXHIBIT F

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Thursday, June 24, 2010 8:42 PM
To: 'James C. Chadwick (jchadwick@pattonboggs.com)'
Cc: Michelle Visiedo-Hidalgo
Subject: RE: Follow Up

Jim,

In the event I do not hear from you tonight, I am advising you that the Receiver will treat the term sheet and materials provided by Sun as governed by the settlement privilege.

Jonathan



Jonathan Etra

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From: Jonathan Etra
Sent: Thursday, June 24, 2010 8:37 PM
To: 'James C. Chadwick (jchadwick@pattonboggs.com)'
Cc: Michelle Visiedo-Hidalgo
Subject: RE: Follow Up

Jim,

I still have not heard back from you.

I will be in the office late tonight.

Can you please call?

Jonathan

6/28/2010



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From: Jonathan Etra
Sent: Wednesday, June 23, 2010 5:17 PM
To: 'James C. Chadwick (jchadwick@pattonboggs.com)'
Subject: Follow Up

Jim,

I just called your office to continue our discussion and was advised that you are out of the office and that e-mail is the best way to reach you.

Please call me.

Thanks,

Jonathan



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6/28/2010

EXHIBIT G

Michelle Visiedo-Hidalgo

From: Brenda Fradera
Sent: Monday, June 21, 2010 2:58 PM
To: 'vpaparo@proskauer.com'; 'sgold@proskauer.com'
Cc: Daniel Newman; Michelle Visiedo-Hidalgo; Jonathan Etra
Subject: Newman v. Sun Capital, et al.
Attachments: 20100621145439720.pdf

Mr. Paparo and Ms. Gold,

Please see attached correspondence.



Brenda Fradera
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JONATHAN ETRA, P.A.
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June 18, 2010

VIA E-MAIL

Vince Paparo, Esq.
Sarah Gold, Esq.
Proskauer Rose
1585 Broadway
New York, NY 10036

Re: *Newman v. Sun Capital, et al.*

Dear Vince and Sarah:

I am writing to follow up on our meeting on the afternoon of Friday, June 11, 2010, concerning Sun's Motion for a 120 day stay of litigation ("Motion to Stay") which was filed on Saturday, June 12, 2010.

As we told you when we met, the Receiver is not in a position to support Sun's Motion to Stay, under the present circumstances. The Receiver cannot agree to stay his recoupment efforts in favor of settlement discussions over the Receivership Estate's collateral, where as here, he has no information concerning the process and has been precluded from being an active participant. The Receiver is duty-bound to oppose a stay of his recoupment efforts absent full access to information and participation because the Receiver has no information upon which to make an informed decision, or based upon which he may report to the Court as necessary, including but not limited to whether all investors are being treated fairly.

In our meeting on June 11th, we asked for information. You told us you would think about it and get back to us. Because we have not heard back from you we are writing this letter.

1) Please provide the term sheet that purportedly represents the settlement in principle between your clients and the Sun Principals, which is referenced in the Motion to Stay. We made this request of you on June 11th. As of today, you have not provided it.

2) Please explain whether the term sheet is truly a final negotiated resolution from your clients' perspective (subject only to due diligence) or whether you anticipate more negotiations following due diligence. Further, if you believe it is a truly final resolution from your clients' perspective (subject only to due diligence), what is your plan to modify it as needed to obtain full investor support and the support of the Receiver? What procedure do you have in mind to ensure that the Receiver has full information and the opportunity to negotiate to ensure that proposed resolution is fair and appropriate and how much time do you expect that process to take?

E

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Vince Paparo, Esq.
Sarah Gold, Esq.
June 18, 2010
Page 2

3) Please explain why your clients believe that the Receiver's recoupment efforts in litigation should be stayed for any length of time at all (as opposed to having the litigation continue) while negotiations take place. Please also explain why your clients believe that a stay should last 120 days, what do you expect to happen within the 120 days, and whether you are ruling out seeking extensions of your requested stay? Further, when during this time period will the Receiver have an opportunity to obtain full access to information?

4) Please provide all information provided by the Sun Principals in negotiations and describe what access, if any, you have given to these with when you are negotiating to Sun, Promise, or Success data, personnel, and advisors, and the information provided to the investors. You told us Friday there is an electronic data room that has all of the financial information for the Sun, Promise, Success entities. As we told you, we believe such information needs to be provided in discovery and indeed should have already been provided or supplied as required under the Federal Rules of Civil Procedure. You refused to confirm that what appears to be readily available information (plainly needed to evaluate any settlement) will be provided to the Receiver. Please advise whether you will provide the Receiver immediate access to this information.

5) Please provide a list of the concessions to the Sun Principals (including family members) including a list of related party transfers that benefitted the Sun Principals, directly or indirectly. Concessions might well be appropriate, but they would need to be disclosed, understood, and justified to the Court.

6) Please explain why the Receiver should have comfort that all investors are treated fairly and equally in a final resolution.

7) Please explain how you intend to convert investor claims into ownership interests in an acquiring company, and how you intend to determine the value of the investor claims.

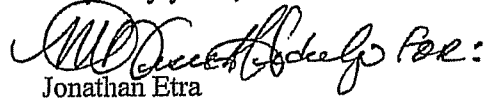
Finally, and more generally, please confirm that your clients will provide the Receiver and his staff with full access to information and that the Receiver will be fully included in negotiations. If your clients refuse this request, please explain why your clients are taking such a position.

I look forward to your response. Please feel free to call me if you want to discuss any of the requests or the Motion to Stay.

Vince Paparo, Esq.
Sarah Gold, Esq.
June 18, 2010
Page 3

We have written separately to Mr. Chadwick, but feel free to share this letter with him if you wish.

Very truly yours,

 Per:
Jonathan Etra

JE:pb

EXHIBIT H

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Thursday, June 24, 2010 10:36 PM
To: 'Gold, Sarah S.'
Cc: 'Paparo, Vincenzo'; 'James C. Chadwick (jchadwick@pattonboggs.com)'
Subject: Sun's Motion to Stay

Sarah,

I have not heard back from you since I sent my letter on your Motion to Stay.

First, at an absolute minimum, we need to see the term sheet that you have negotiated. We will agree that the settlement privilege applies to it.

Second, please immediately release Mr. Chadwick's clients from the restrictions of the confidentiality agreements they entered into with you in order to permit them to provide us with the information you have provided them. We will agree that such information provided by Mr. Chadwick's clients will be subject to the settlement privilege.

Third, please advise if you are available tomorrow (Friday) to discuss the Motion to Stay and whether a resolution can be achieved.

Jonathan



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6/28/2010

EXHIBIT I

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Friday, June 25, 2010 3:50 PM
To: Daniel Newman; Michelle Visiedo-Hidalgo
Subject: FW: Newman v. Sun Capital
Attachments: NY SCAN.pdf



Jonathan Etra
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From: Clarke, Karen [<mailto:KClarke@proskauer.com>]
Sent: Friday, June 25, 2010 3:48 PM
To: Jonathan Etra
Cc: Michael Shafir; Chadwick, James; Gold, Sarah S.; Paparo, Vincenzo
Subject: Newman v. Sun Capital

Please see attached letter.
<<NY SCAN.pdf>>

Karen E. Clarke
Attorney at Law

Proskauer
1585 Broadway
New York, NY 10036-8299
Dir. Tel: 212.969.3911
Fax: 212.969.2900
Gen. Tel: 212.969.3000
kclarke@proskauer.com

To ensure compliance with requirements imposed by U.S.

6/28/2010

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=====



Proskauer Rose LLP 1585 Broadway New York, NY 10036-8299

Sarah S. Gold
Member of the Firm
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sgold@proskauer.com
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June 25, 2010

By E-mail

Jonathan Etra, Esq.
Broad and Cassel
One Biscayne Tower, 21st Floor
2 South Biscayne Boulevard
Miami, FL 33131-1811

Re: *Newman v. Sun Capital, Inc., et al.*,
No. 2:09-cv-445-JES-SPC (M.D. Fla.)

Dear Jonathan:

I write in response to your letter dated June 18, 2010, which raises a number of questions concerning the settlement in principle with Stable-Value investors that we discussed in our meeting on June 11, 2010, as well as your e-mail of last night, in which you suggest the possibility of resolving our motion for a stay of proceedings while the settlement is pursued.¹ I called you this morning in response to your e-mail, but have not heard back from you.

At our meeting, we described the process in which the Stable-Value investors had retained a financial advisor who negotiated a settlement in principle that had been agreed to by the great majority of Stable-Value investors, and explained that we would like to move off the costly litigation path and instead pursue a more constructive path toward finalizing that settlement. You demanded that voluminous information relating to the settlement be provided to you, and stated that you would not agree to any settlement confidentiality restrictions because you wanted to use the information for litigation purposes.²

¹ While your rendition of what was said at our meeting is not accurate, I will not belabor that point. Relatedly, however, I was dismayed by your incorrect statement to the Court that we had falsely stated your response to our request for a stay of all litigation proceedings. We correctly reported what you said at that time. If your position changed slightly over the next two days, that is fine, but it is inappropriate to make needless false accusations.

² You took a similar obstructive position in response to our prior efforts to engage you in a constructive negotiation in May 2009, when we went to meet with the then-newly-appointed Receiver, and in July 2009, when we brought our clients' investment banker, Ms. Frew, to make a detailed restructuring presentation to the Receiver. On both occasions you demanded extensive information but refused to enter

Proskauer

Jonathan Etra, Esq.
June 25, 2010
Page 2

Your June 18 letter again demands that settlement-related information be provided to you as discovery under the Federal Rules, confirming that you seek the documents as ammunition for your litigation agenda, not as a means to make a positive contribution to the settlement process.³ It also appears from your exchanges with the investors' counsel that your efforts since June 11 have been geared toward finding ways to derail the settlement, not to help advance it.

Consequently, we do not see that any productive purpose would be served by acceding to your demands for extensive information or an active negotiating role, which unfortunately seem designed to undermine the settlement, not to assist in its successful conclusion. Moreover, since both sets of parties are already represented by competent legal and financial advisors, there is no need for inefficient duplication of effort. Accordingly, while we are not prepared to proceed as your letter or your e-mail requests, we propose below an alternative procedure to address your concerns. We have spoken with the investors' counsel, and believe that they, too, are amenable to proceeding this way. Your mention of resolving the motion to stay the proceedings is heartening, suggesting your recognition that the contemplated settlement would indeed be in the best interests of the Stable-Value investors.

Accordingly, if you wish to withdraw your opposition to the motion to stay the proceedings, we would be prepared to proceed as follows: As the process continues over the next few months, we and/or the investors' counsel or business advisor will give you periodic briefings about what is going on and any issues that might require your attention. We and the investors' advisors will jointly undertake to give you comfort that all the investors are being treated fairly and that the process is in good faith and not a waste of time. To that end, we will seek the Receiver's assistance in ensuring that all Stable-Value investors have been identified, so that we can be sure all investors are being considered and treated appropriately. The Receiver may thus contribute to the settlement process in a way that is constructive and not duplicative of the work already being done by the investors' financial advisor and legal counsel.

We are hopeful that you will recognize the wisdom of this course, allowing all parties to focus on finalizing the restructuring settlement that your constituents favor without incurring any further litigation costs. If you are amenable, we would be happy to work out a consent order along these lines to propose to the Court. Also, mediator Dennis Archer (whom the investors chose for the initial negotiations in February) has offered to advise the Court of his assessment that the negotiating parties are serious in their intentions to resolve the matter and have been working

into any sort of settlement confidentiality agreement, and failed to retain an advisor in a position to engage in a restructuring resolution, preferring to pursue the excessive litigation route.

³ As a side note, much of the information provided to the investor representatives either has already been produced to the Receiver in discovery, pursuant to the confidentiality order entered in the litigation, or had already been provided to Stable-Value prior to the litigation. In addition, the companies' recent financial information is not called for under Rule 26(b) because it is not relevant to the claims or defenses in your litigation.

Proskauer»

Jonathan Etra, Esq.

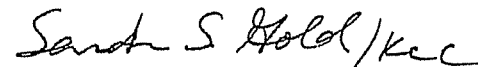
June 25, 2010

Page 3

toward a full and fair resolution of the matter in good faith. Perhaps that would help alleviate any concerns you may have. Mr. Archer has also expressed willingness to facilitate bringing this matter to a successful conclusion in any manner agreed to by the parties or suggested by the Court.

Please feel free to call me to discuss this proposal further.

Sincerely,

A handwritten signature in cursive script that reads "Sarah S. Gold / kcc".

Sarah S. Gold

cc. (by e-mail):

James Chadwick, Esq.

EXHIBIT J

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Sunday, June 27, 2010 10:34 PM
To: 'sgold@proskauer.com'
Cc: 'vpaparo@proskauer.com'; 'kclarke@proskauer.com'; 'Chadwick, James'
Subject: Response to Your June 25 Letter

Dear Sarah,

I am writing in response to your letter dated June 25, 2010.

I do not think it is productive to spend the time it would take to correct the numerous mischaracterizations and false statements in your letter.

As you know, you have intentionally put the Receiver in the position where he has no choice but to oppose the Motion for Stay. I am sure you have your reasons for this.

As we have explained, the Receiver cannot even consider supporting a stay, consistent with his duties, without access to the actual purported settlement in principle and the support for it and similarly without access to information and participation on a going forward basis.

In view of your concerns, I e-mailed you on June 24th, assuring you that we would treat the settlement in principle and other information from your clients under the settlement privilege. With that assurance, I asked you to immediately provide the settlement in principle and to release the investors with whom you are negotiating from their confidentiality requirements, so that the Receiver's staff can discuss the settlement in principle with the investor representatives before Monday, when the Receiver's response is due.

There is no legitimate reason to oppose our request for this information, as a predicate to potentially supporting some form of a stay, in which the Receiver would be involved in negotiations.

Yet, your June 25th letter ignores my June 24th e-mail altogether.

As I am sure you know, I have separately had constructive discussions with Mr. Chadwick, who represents the investors, and I believe we can agree to a procedure in which the Receiver is informed and involved in negotiations (not at the mercy of your clients, as you suggest in your letter).

However, the Receiver cannot provide any support for any kind of stay without the information and access we requested in our June 24th e-mail, without violating his fiduciary duties.

It is our understanding that your clients are the obstacle to the Receiver having access to the settlement principle and the support for it, and being able to discuss it with the investors' representatives.

Nevertheless, I am going to make one last effort to inject common sense into this process. If you (a) provide the settlement in principle and (b) release the investors from their prohibition on discussing the basis for the settlement in principle with us, by noon on Monday, we will move on consent (if you provide it) for a week extension to respond to the Motion to Stay to provide the Receiver with an opportunity to review and analyze the settlement in principle and the support for it, while the limited stay is extended accordingly.

I look forward to your immediate response.

Jonathan

6/28/2010



Jonathan Etra

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EXHIBIT K

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Monday, June 28, 2010 4:13 PM
To: Daniel Newman; Michelle Visiedo-Hidalgo
Subject: From Sara Gold



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From: Clarke, Karen [mailto:KClarke@proskauer.com]
Sent: Monday, June 28, 2010 4:09 PM
To: Jonathan Etra
Cc: Paparo, Vincenzo; Gold, Sarah S.; Clarke, Karen; Chadwick, James
Subject: RE: Response to Your June 25 Letter

Jonathan,

First, we do not see any point in extending the temporary stay by one week to give you additional time to prepare an opposition to our reasonable request for a 120-day stay of proceedings (to which you really ought to consent regardless of your views on the merits of the settlement), especially given that you have already told the Court that you oppose the requested stay.

Second, with respect to your comments about Mr. Chadwick and the procedure going forward, we have spoken with Mr. Chadwick and he does not agree with the views you have expressed here concerning the Receiver being "involved in negotiations". Mr. Chadwick and we concur that there will be no further negotiations of the terms of the settlement transactions, which are set; there will only be discussions concerning drafting the documentation of those transactions. Therefore, although Mr. Chadwick and we are prepared to keep you informed from time to time about the settlement-finalizing process if you agree to the stay, we do not see any active negotiating role for the Receiver. Further, we understand that the investors do not wish to incur the costs and burdens that would be occasioned by your effort to duplicate (or undermine) the work already done by the investors' business advisor and legal counsel.

6/28/2010

Consequently, while we do not see that anything productive would come from providing you with extensive information, we will provide the Receiver with a copy of the term sheet memorializing the terms of the settlement in principle, on the condition that you and Mr. Newman execute a settlement confidentiality agreement providing that you will treat it as confidential, not to be disclosed to third parties, and to be used only in connection with pursuing the settlement. I will shortly send a letter agreement along those lines.

Sarah S. Gold
Member of the Firm

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f 212.969.2900
sgold@proskauer.com

greenspaces

Please consider the environment before printing this email.

From: Jonathan Etra [mailto:jetra@broadandcassel.com]
Sent: Sunday, June 27, 2010 10:34 PM
To: Gold, Sarah S.
Cc: Paparo, Vincenzo; Clarke, Karen; 'Chadwick, James'
Subject: Response to Your June 25 Letter

Dear Sarah,

I am writing in response to your letter dated June 25, 2010.

I do not think it is productive to spend the time it would take to correct the numerous mischaracterizations and false statements in your letter.

As you know, you have intentionally put the Receiver in the position where he has no choice but to oppose the Motion for Stay. I am sure you have your reasons for this.

As we have explained, the Receiver cannot even consider supporting a stay, consistent with his duties, without access to the actual purported settlement in principle and the support for it and similarly without access to information and participation on a going forward basis.

In view of your concerns, I e-mailed you on June 24th, assuring you that we would treat the settlement in principle and other information from your clients under the settlement privilege. With that assurance, I asked you to immediately provide the settlement in principle and to release the investors with whom you are negotiating from their confidentiality requirements, so that the Receiver's staff can discuss the settlement in principle with the investor representatives before Monday, when the Receiver's response is due.

There is no legitimate reason to oppose our request for this information, as a predicate to potentially supporting some form of a stay, in which the Receiver would be involved in negotiations.

Yet, your June 25th letter ignores my June 24th e-mail altogether.

6/28/2010

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However, the Receiver cannot provide any support for any kind of stay without the information and access we requested in our June 24th e-mail, without violating his fiduciary duties.

It is our understanding that your clients are the obstacle to the Receiver having access to the settlement principle and the support for it, and being able to discuss it with the investors' representatives.

Nevertheless, I am going to make one last effort to inject common sense into this process. If you (a) provide the settlement in principle and (b) release the investors from their prohibition on discussing the basis for the settlement in principle with us, by noon on Monday, we will move on consent (if you provide it) for a week extension to respond to the Motion to Stay to provide the Receiver with an opportunity to review and analyze the settlement in principle and the support for it, while the limited stay is extended accordingly.

I look forward to your immediate response.

Jonathan



Jonathan Etra

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6/28/2010

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=====

Michelle Visiedo-Hidalgo

From: Jonathan Etra
Sent: Monday, June 28, 2010 6:13 PM
To: Daniel Newman; Michelle Visiedo-Hidalgo
Subject: FW: Response to Your June 25 Letter
Attachments: Ltr Etra.DOC



Jonathan Etra
PARTNER
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From: Clarke, Karen [<mailto:KClarke@proskauer.com>]
Sent: Monday, June 28, 2010 6:02 PM
To: Jonathan Etra
Cc: Paparo, Vincenzo; Gold, Sarah S.; Chadwick, James
Subject: RE: Response to Your June 25 Letter

Jonathan, here is the confidentiality letter agreement referenced in our prior e-mail.

Karen E. Clarke
Attorney at Law

Proskauer
1585 Broadway
New York, NY 10036-8299
Dir. Tel: 212.969.3911
Fax: 212.969.2900
Gen. Tel: 212.969.3000
kclarke@proskauer.com

From: Clarke, Karen
Sent: Monday, June 28, 2010 4:09 PM

6/28/2010

To: Jonathan Etra Esq. (jetra@broadandcassel.com)
Cc: Paparo, Vincenzo; Gold, Sarah S.; Clarke, Karen; 'Chadwick, James'
Subject: RE: Response to Your June 25 Letter

Jonathan,

First, we do not see any point in extending the temporary stay by one week to give you additional time to prepare an opposition to our reasonable request for a 120-day stay of proceedings (to which you really ought to consent regardless of your views on the merits of the settlement), especially given that you have already told the Court that you oppose the requested stay.

Second, with respect to your comments about Mr. Chadwick and the procedure going forward, we have spoken with Mr. Chadwick and he does not agree with the views you have expressed here concerning the Receiver being "involved in negotiations". Mr. Chadwick and we concur that there will be no further negotiations of the terms of the settlement transactions, which are set; there will only be discussions concerning drafting the documentation of those transactions. Therefore, although Mr. Chadwick and we are prepared to keep you informed from time to time about the settlement-finalizing process if you agree to the stay, we do not see any active negotiating role for the Receiver. Further, we understand that the investors do not wish to incur the costs and burdens that would be occasioned by your effort to duplicate (or undermine) the work already done by the investors' business advisor and legal counsel.

Consequently, while we do not see that anything productive would come from providing you with extensive information, we will provide the Receiver with a copy of the term sheet memorializing the terms of the settlement in principle, on the condition that you and Mr. Newman execute a settlement confidentiality agreement providing that you will treat it as confidential, not to be disclosed to third parties, and to be used only in connection with pursuing the settlement. I will shortly send a letter agreement along those lines.

Sarah S. Gold
Member of the Firm

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New York, NY 10036-8299
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greenspaces

Please consider the environment before printing this email.

From: Jonathan Etra [mailto:jetra@broadandcassel.com]
Sent: Sunday, June 27, 2010 10:34 PM
To: Gold, Sarah S.
Cc: Paparo, Vincenzo; Clarke, Karen; 'Chadwick, James'
Subject: Response to Your June 25 Letter

Dear Sarah,

I am writing in response to your letter dated June 25, 2010.

6/28/2010

I do not think it is productive to spend the time it would take to correct the numerous mischaracterizations and false statements in your letter.

As you know, you have intentionally put the Receiver in the position where he has no choice but to oppose the Motion for Stay. I am sure you have your reasons for this.

As we have explained, the Receiver cannot even consider supporting a stay, consistent with his duties, without access to the actual purported settlement in principle and the support for it and similarly without access to information and participation on a going forward basis.

In view of your concerns, I e-mailed you on June 24th, assuring you that we would treat the settlement in principle and other information from your clients under the settlement privilege. With that assurance, I asked you to immediately provide the settlement in principle and to release the investors with whom you are negotiating from their confidentiality requirements, so that the Receiver's staff can discuss the settlement in principle with the investor representatives before Monday, when the Receiver's response is due.

There is no legitimate reason to oppose our request for this information, as a predicate to potentially supporting some form of a stay, in which the Receiver would be involved in negotiations.

Yet, your June 25th letter ignores my June 24th e-mail altogether.

As I am sure you know, I have separately had constructive discussions with Mr. Chadwick, who represents the investors, and I believe we can agree to a procedure in which the Receiver is informed and involved in negotiations (not at the mercy of your clients, as you suggest in your letter).

However, the Receiver cannot provide any support for any kind of stay without the information and access we requested in our June 24th e-mail, without violating his fiduciary duties.

It is our understanding that your clients are the obstacle to the Receiver having access to the settlement principle and the support for it, and being able to discuss it with the investors' representatives.

Nevertheless, I am going to make one last effort to inject common sense into this process. If you (a) provide the settlement in principle and (b) release the investors from their prohibition on discussing the basis for the settlement in principle with us, by noon on Monday, we will move on consent (if you provide it) for a week extension to respond to the Motion to Stay to provide the Receiver with an opportunity to review and analyze the settlement in principle and the support for it, while the limited stay is extended accordingly.

I look forward to your immediate response.

Jonathan

Jonathan Etra
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6/28/2010

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=====



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June 28, 2010

By E-mail

Jonathan Etra, Esq.
Broad and Cassel
One Biscayne Tower, 21st Floor
2 South Biscayne Boulevard
Miami, FL 33131-1811

Re: *Newman v. Sun Capital, Inc., et al.*,
No. 2:09-cv-445-JES-SPC (M.D. Fla.)

Dear Jonathan:

At our meeting on June 11, 2010, Vince Paparo and I described to you and Mr. Newman the provisions of the term sheet ("the Term Sheet") memorializing the settlement in principle reached between Sun Capital and its affiliates and the investor committee representing the Stable-Value investors as a group ("the Settlement"). You have demanded a copy of that term sheet. We are prepared to provide you with a copy thereof on the condition that you agree to treat it as confidential and solely for settlement purposes, as set forth below.

The Term Sheet, and any other documents or information that may be provided to you in connection with the Term Sheet or the Settlement, and any communications or discussions relating thereto, constitute confidential information (collectively, the "Confidential Information") and may not be disclosed to third parties other than the Receiver's counsel, financial advisors and accountants, unless required by law or for the approval or enforcement of the Settlement. All such Confidential Information shall be used solely for purposes of pursuing the Settlement.

All communications or discussions relating to the Term Sheet and/or the Settlement shall constitute settlement discussions and may not be used, referred to or admitted into evidence in any court proceeding, other than one for approval or enforcement of the Settlement, and will be further governed by Rule 408 of the Federal Rules of Civil Procedure. However, this letter agreement may be admitted into evidence in any proceeding to enforce the provisions of this letter agreement or for approval or enforcement of the Settlement.

In the event that you receive a request or demand for disclosure of any Confidential Information, you shall promptly provide notice of such request to counsel for the parties to the Settlement and shall take reasonable steps to protect the Confidential Information from disclosure.

Proskauer»

Jonathan Etra, Esq.

June 28, 2010

Page 2

If you are in agreement with the foregoing terms, please sign this letter in the space provided below and return a copy to us.

Sincerely,

Sarah S. Gold

AGREED TO:

Daniel Newman, Esq., Receiver

Jonathan Etra, Esq.,
for Broad & Cassel, counsel to the Receiver

EXHIBIT L

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

DANIEL S. NEWMAN, as Receiver for
Founding Partners Capital Management
Company; Founding Partners Stable-Value
Fund, L.P.; Founding Partners Stable-Value
Fund II, L.P.; Founding Partners Global
Fund, Ltd.; and Founding Partners Hybrid-
Value Fund, L.P.,

Case No. 2:09-cv-445-FtM-99-SPC

Plaintiff,

v.

SUN CAPITAL, INC., a Florida corporation,
SUN CAPITAL HEALTHCARE, INC.,
a Florida corporation and HLP PROPERTIES
OF PORT ARTHUR, LLC, a Texas limited liability
company,

Defendants.

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION TO DEFENDANT SUN
CAPITAL HEALTHCARE, INC., PURSUANT TO COURT ORDER
DATED JULY 28, 2009**

Pursuant to the Court's Order dated July 28, 2009 cancelling the hearing on the motion for preliminary injunction and setting an expedited discovery schedule, Plaintiff, Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P., by and through its undersigned counsel, hereby request that Defendant, Sun Capital Healthcare, Inc. ("SCHH") produce for inspection and copying at the offices of Broad and Cassel, One Biscayne Tower, 21st Floor, 2 S. Biscayne Boulevard, Miami, Florida 33131, or such other place agreeable to the

parties, the documents and materials specified below, within fourteen (14) days from the date of service. If any of the documents and materials specified below cannot or will not be produced for inspection and copying within the designated time period, SCHI shall file a written response specifying the documents and materials that cannot or will not be produced and the reasons therefore.

Definitions

For purposes of answering these requests:

1. "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with that Person and shall include, without limitation (a) any officer or director of such Person and (b) any Person of which that Person beneficially owns either (i) at least five percent (5%) of the outstanding equity securities having the general power to vote or (ii) at least five percent (5%) of all equity interests.
2. "Founding Partners" means Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund, II, L.P., Founding Partners Global Fund, Ltd., Founding Partners Global Fund, Inc. and Founding Partners Hybrid-Value Fund, L.P. (f/k/a Founding Partners Equity Fund, L.P.), as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf. "Founding Partners" includes, without limitation, William L. Gunlicks.
3. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), including any meeting, conversation, discussion, correspondence, message, or other transmittal of information, including but not limited to all electronic communication.
4. "CSA" means that certain Credit and Security Agreement entered into as of June 6, 2000 by and between Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.) as Lender and Sun Capital Healthcare, Inc. as Borrower. All capitalized (first-letter capitalized) terms used but not defined herein shall have the meanings ascribed to them in the CSA.
5. The word "document" means any kind of written or graphic matter, however provided or reproduced, of any kind or description, whether sent or received or neither, including but not limited to papers, books, book entries, correspondence, telegrams, cables, telex messages, memorandum, notes, data, notations, work papers, inter-office communications, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of

conferences, or of committee meetings, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, formulae, plans, specifications, evaluations, contracts, licenses, agreements, offers, ledgers, journals, books of records of account, summaries of accounts, bills, receipts, balance sheets, income statements, questionnaires, answers to questionnaires, statistical records, desk calendars, appointment books, diaries, lists, tabulations, charts, graphs, maps, surveys, sound recordings, computer tapes, magnetic tapes, punch cards, computer printouts, data processing input and output, microfilms, all other records kept by electronic photographic, or mechanical means, and things similar to any of the foregoing, however denominated, whether currently in existence or already destroyed. A draft or non-identical copy is a separate document within the meaning of this term. The term "document" is intended to be comprehensive and to include, without limitation, all original writings of any nature whatsoever, copies and drafts which, by reason of notes, changes, initials, or identification marks, are not identical to the original, and all non-identical original copies thereof. In all cases where original or non-original copies are not available, "document" also means identical copies of original documents and copies of non-identical copies.

6. "Person" means any natural person or any corporation, association, partnership, joint venture, limited liability company, joint stock company or other company, business trust, trust, organization, business or government or any governmental agency or political subdivision thereof.

7. "Promise" means Promise Healthcare, Inc. as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf.

8. "Receiver" means Daniel S. Newman.

9. "Refer or relate to" means relating to, reflecting, concerning, referring to, describing, evidencing, or constituting.

10. "Representative" or "Representatives" means any Person who has worked or is working for you, or has acted or is now acting on your behalf including, without limitation, any agent, official, director, employees, trustee, officer, attorney, attorney-in-fact, consultant, accountant, servant, limited partner, general partner, investigator, investment advisor, analyst, broker, broker-dealer, or dealer.

11. "Success" means Success Healthcare, LLC as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf.

12. "SCHF" means Sun Capital Healthcare, Inc. as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf.

INSTRUCTIONS

1. In construing this request: (a) the singular shall include the plural and the plural shall include the singular; (b) the words "and" and "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request all information that might otherwise be construed to be outside its scope; (c) the words "any" and "all" shall be read to mean each and every; and (d) the term "including" shall mean "including, without limitation."

2. This request includes all documents in your possession, custody or control, regardless of where such documents are located.

3. A copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such document is within your possession, custody, or control.

4. All documents must be produced in their entirety, including all attachments and enclosures, and in their original folder, binder or other cover or container. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label of such cover or other container must be attached to the document or group of documents.

5. If you object to any portion of this request, state with specificity the grounds for each such objection and produce all documents and submit all answers responsive to the remainder of the request.

6. If you claim privilege or immunity with respect to any document or information, state the nature and basis of the privilege or other ground asserted as justification for withholding such information in sufficient detail to permit the Court to adjudicate the validity of the claim. This includes, at a minimum: (a) the date of the document or communication; (b) the author or speaker; (c) the addressee(s) or person to whom the communication was directed; (d) all other recipients or persons receiving the communication; (e) the type of document (letter, report, etc.) or communication; (f) the general subject matter of the document or communication; and (g) the specific privilege claimed.

7. This request is continuing in nature. Any information or documents called for by this request that you obtain subsequent to the service of your response to this request, shall promptly be supplied in the form of supplemental document productions pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

8. All documents are to be produced as they are kept in the usual course of business so that the requesting parties can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

9. All documents responsive to this request that are maintained in the usual course of business in electronic format shall be produced in their native format along with software

necessary to interpret such files if such software is not readily available. All such documents shall be accompanied by a listing of all file properties, commonly known as meta data, concerning such document, including all information concerning the date(s) and recipient(s) of the document, the location and content of any attachment(s) to the document, and the location and content of any information imbedded or annotated in the document.

10. If any documents requested were at one time in existence but are no longer in existence, please so state, separately specifying for each document no longer existing:

- (a) the type of document;
- (b) the type of information contained therein;
- (c) the date(s) on which it was created;
- (d) the sender(s) and recipient(s), if applicable;
- (e) the date (or approximate date) on which it ceased to exist;
- (f) the circumstances under which it ceased to exist;
- (g) the name of the person authorizing the disposal or destruction or having responsibility for the loss of the document;
- (h) the identity of all persons having knowledge of the contents of such document; and
- (i) the paragraph number(s) of the request(s) in response to which the document otherwise would have been produced.

DOCUMENTS TO BE PRODUCED

THE SCHI CSA

1. A copy of the SCHI CSA with exhibits.

A. AMENDMENTS, CONSENTS, WAIVERS

2. All real or purported amendments to the CSA as well as all waivers and consents from Founding Partners, pursuant to which SCHI claims it had or has the right to act in variance of, or deviation from, the terms of the SCHI CSA, without causing an event of default.

3. All documents referring or relating to the real or purported amendments, waivers, and consents referred to in Request Number 1.

B. REVOCATION OF AMENDMENTS, CONSENTS, AND WAIVERS

4. The July 7, 2009 letter from the Receiver to SCHI revoking prior waivers and consents.

5. All documents referring or relating to the Receiver's July 7, 2009 letter revoking prior waivers and consents, including the effect of the letter upon SCHI and SCHI's clients and customers.

OBLIGATIONS AND DEFAULTS IN GENERAL

6. All documents referring or relating to SCHI's obligations under the SCHI CSA, on or after July 7, 2009.

7. All documents referring or relating to whether SCHI has been in default of the SCHI CSA, on or after July 7, 2009.

REPORTING OBLIGATIONS UNDER THE AGREEMENT

8. All "Weekly Reports" provided by SCHI to Founding Partners, pursuant to the SCHI CSA (*see* ¶6.5(e)).

9. All "Weekly Reports" not provided by SCHI to Founding Partners.
10. All monthly financial statements provided by SCHI to Founding Partners, pursuant to the SCHI CSA (*see* ¶6.5(d)(iii)).
11. All monthly financial statements not provided by SCHI to Founding Partners.
12. All quarterly financial statements provided by SCHI to Founding Partners, pursuant to the SCHI CSA (*see* ¶6.5(d)(ii)).
13. All quarterly financial statements not provided by SCHI to Founding Partners.
14. All semi-annual (6-month period) financial statements provided by SCHI to Founding Partners, pursuant to the SCHI CSA (*see* ¶6.33).
15. All semi-annual (6-month period) financial statements not provided by SCHI to Founding Partners.
16. All annual financial statements provided by SCHI to Founding Partners, pursuant to the SCHI SCA (*see* ¶6.5(d)(i)).
17. All annual financial statements not provided by SCHI to Founding Partners.
18. All Purchase and Sale Agreements provided by SCHI to Founding Partners, pursuant to the SCHI SCA (*see* ¶ 1.97, 5.2.4(a)).
19. All Purchase and Sale Agreements not provided by SCHI to Founding Partners.

INTEREST PAYMENTS REQUIRED UNDER THE AGREEMENT

20. Documents sufficient to show all payments of interest made to Founding Partners under the SCHI CSA, from January 1, 2008 to the present. (*see* ¶¶ 3.1, 4.1).
21. Documents sufficient to show all accrued interest under the SCHI CSA (*see* ¶¶ 3.1, 4.1), and the method of calculation, from January 1, 2009 to the present.

**DOCUMENTS NEEDED TO CALCULATE
BORROWING BASE ON SPECIFIED DATES**

**A. IDENTIFYING ACCOUNTS RECEIVABLE THAT ARE NOT ELIGIBLE
ACCOUNTS BECAUSE THEY HAVE AGED ON SPECIFIED DATES**

22. Provide accounts receivable aging reports and analyses (in form of Exhibits A and B, which were provided by SCHI to the Receiver) from the electronic books and records of SCHI (a) for the last day of the month, from January 2008 through the present, including for July 31, 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) January 26, 2009 and January 27, 2009 and for (c) July 7, 2009 and each day thereafter to the present.

23. Provide "Invoice Aging Reports, Grouped by Clients, Invoices Sorted By Invoice Date" (in the form of Exhibit C, which was provided by SCHI to the Receiver) from the electronic books and records of SCHI, for each individual client: (a) for the last day of the month, from January 2008 through the present, including for July 31, 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) January 26, 2009 and January 27, 2009, and for (c) July 7, 2009 and each day thereafter to the present.

**B. IDENTIFYING ACCOUNTS RECEIVABLE THAT ARE NOT ELIGIBLE
ACCOUNTS FOR REASONS OTHER THAN AGING ON SPECIFIED
DATES**

24. For all of SCHI's purchases/factoring/financing of "Working Capital Loans" (referred to as "Working Capital Inv." on Exhibit A) that appear on aging reports to be produced herein (pursuant to Requests Number 22 and 23), provide: (a) the purported invoices; (b) the "Purchase and Sale Agreement" (§§ 1.97, 6.20) pursuant to which the purported invoices or accounts receivable were purchased, financed, or factored; (c) the transaction documents evidencing the purchase, financing, or factoring of the purported invoices or accounts receivable (including the amounts and dates of every payment made by SCHI that comprise Working

Capital Loans (referred to by SCHI as "Working Capital Inv.") and documents evidencing the debt owed to SCHI for these Working Capital Loans); (d) documents indicating when the purported accounts receivable are expected to be, or were, paid; (e) documents referring or relating to whether the purported accounts receivable are "Eligible Accounts" (*see* ¶ 1.37 of the SCHI CSA); and (f) all other back up documentation for these claimed accounts receivables.

25. For all of SCHI's purchases/factoring/financing of "DSH Receivables" that appear on aging reports to be produced herein (pursuant to Requests Number 22 and 23), provide (a) the purported invoices, (b) the "Purchase and Sale Agreement" (¶¶ 1.97, 6.20) pursuant to which the purported invoices or accounts receivable were purchased, financed, or factored; (c) the transaction documents evidencing the purchase, financing, or factoring of the purported invoices or accounts receivable (including the amounts and dates of every payment made by SCHI that comprise "DSH Receivables" and documents evidencing the debt owed to SCHI for these "DSH Receivables"); (d) correspondence with the relevant payors of the purported accounts receivable referring or relating to the payors' obligation and intent to pay; (e) documents indicating when the purported accounts receivable are expected to be, or were, paid; (f) documents referring or relating to whether the purported accounts receivable are "Eligible Accounts" (*see* ¶ 1.37 of the SCHI CSA); and (g) all other back up documentation for these claimed accounts receivables.

26. For all of SCHI's purchases/factoring/financing of "Workers Compensation" receivables (referred to as "wc" on Exhibit A) that appear on aging reports to be produced herein (pursuant to Requests Number 22 and 23), provide: (a) the "Purchase and Sale Agreement" (¶1.97) pursuant to which the purported receivables were purchased, financed, or factored; (b) documents indicating when the purported receivables are expected to be, or were, paid, including

all correspondence with the insurance companies; and (c) documents referring or relating to whether the purported account receivables are "Eligible Accounts." (see ¶ 1.37 of the SCHI CSA).

27. All "Purchase and Sale Agreements" (SCHI CSA ¶ 5.2.4) in effect during any time between January 1, 2008 through the present.

C. OTHER INFORMATION TO CALCULATE BORROWING BASE ON THE SPECIFIED DATES

28. Documents sufficient to show "the Outstanding Amounts Paid to Sellers with respect to all Purchased Accounts" for each purported account receivable then outstanding (see ¶ 1.12(a)) for (a) the last day of every month from January 2008 through the present; (b) January 26, 2009 and January 27, 2009; (c) July 7, 2009 and every date thereafter to the present.

29. On the reports requested in Request Number 23, include the amounts paid for the invoices (or provide that information from the electronic books and records of Sun in other report)

30. Documents sufficient to show "the Net Collectable Amounts of the Purchased Accounts for each purported account receivable then outstanding (see ¶ 1.12(b)(i)) for (a) the last day of every month from January 2008 through the present; (b) January 26, 2009 and January 27, 2009; (c) July 7, 2009 and every date thereafter to the present.

31. Documents sufficient to show "Collections on...Purchased Accounts for each account receivable, in each case as shown on the most recent Weekly Report" furnished (or are required to have been furnished in accordance with Section 6.5) (see ¶ 1.12(b)(ii)) for (a) the last day of every month from January 2008 through the present; (b) January 26, 2009 and January 27, 2009; (c) July 7, 2009 and every date thereafter to the present.

DOCUMENTS NEEDED TO CALCULATE LOAN AVAILABILITY

32. Documents showing the "Maximum Account of Credit" under the SCHI CSA (see ¶¶ 1.69(a), 1.75) for the following dates: (a) the last day of each month from January 2008 through the present including for July 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) on January 26, 2009 and January 27, 2009; and (c) on July 7, 2009, and each day thereafter to the present.

33. Documents sufficient to show the "amount on deposit in the Holding Account" (see ¶¶ 1.69(a), 1.56) for the following dates: (a) the last day of each month from January 2008 through the present including for July 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) on January 26, 2009 and January 27, 2009; and (c) on July 7, 2009, and each day thereafter to the present.

34. Documents showing "the aggregate principal balance amount of all Loans" (see ¶¶ 1.69(b), 1.68) for the following dates: (a) the last day of each month from January 2008 through the present including for July 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) on January 26, 2009 and January 27, 2009; and (c) on July 7, 2009, and each day thereafter to the present.

35. Documents showing "the accrued and unpaid interests on all Loans" (see ¶¶ 1.69(b), 1.68) for the following dates: (a) the last day of each month from January 2008 through the present including for July 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) on January 26, 2009 and January 27, 2009; and (c) on July 7, 2009, and each day thereafter to the present.

GENERAL OFFICER'S CERTIFICATES FOR FUNDING, WHICH MUST CERTIFY, INTER ALIA, NO BORROWING BASE DEFICIENCY

36. All "General Officer's Certificates" provided by SCHI to Founding Partners to request funding, pursuant to SCHI SCA (*see* ¶5.2.1), from January 1, 2008 through the present.

37. All documents that refer or relate to the "General Officer's Certificates," including but not limited to SCHI's back up-materials and documentation supporting the representations therein (*e.g.*, that no borrowing base deficiency existed, *see* § 5.12(f)).

HOW SCHI IN FACT CALCULATED BORROWING BASE AND LOAN AVAILABILITY AND RECOGNITION OF SAME

38. From January 1, 2008 through the present, all SCHI calculations of the "Borrowing Base," "Loan Availability," and "Borrowing Base Deficiency" under the SCHI CSA, *see* ¶¶ 1.12, 1.13, 1.69.

39. From January 1, 2008 through the present, all documents referring or relating to "Borrowing Base," "Loan Availability," and "Borrowing Base Deficiency" requirements and covenants under the SCHI CSA, *see* ¶¶ 1.12, 1.13, 1.69.

OTHER EVENTS OF DEFAULT

40. Documents sufficient to show whether, from January 1, 2008 to the present, SCHI purchased accounts from a seller "that is party to a proceeding under any Debtor Relief Law (other than solely as a creditor)" (*see* ¶ 6.28).

41. All insurance policies required under the SCHI CSA, including Credit Insurance, and documents referring or relating to those policies.

INTERNAL COMMUNICATIONS REGARDING DEFAULTS

42. All documents referring or relating to actual or potential events of defaults under the SCHI CSA.

RECEIVER'S NOTICES OF DEFAULT

43. All letters from the initial Receiver (Ms. Leyza Blanco) and the current Receiver (Mr. Daniel S. Newman) to SCHI referring or relating to default or alleged defaults, as well as accelerating the payment of principal and accrued to Section 8.2.3.

44. All documents referring or relating to the letters from the Receivers requested in the previous Request.

IRREPARABLE HARM

**A. FUNDS WASTED THROUGH
RELATED-PARTY TRANSACTIONS**

45. All documents that refer or relate to SCHI's use of any funds received into the SunTrust Bank lockboxes for purposes *other than* continued funding of health care receivables (see SCHI's TRO and PI Motion at 3, 11), including but not limited to Sun's use of such funds for overhead or any other expenses, from January 1, 2008 to the present.

46. For the "Due From Related Party" entries that appear on SCHI's financial statements and/or books and records from January 1, 2008 through the present, provide documents sufficient to (a) identify each of the transactions making up these entries; and (b) show the outstanding balance for all transactions for the months ending January 1, 2008 to the present.

47. For each of the transactions that are represented in the "Due From Related Party" entries that appear on SCHI's financial statements and/or books and records from January 1, 2008 through the present, provide (a) all transaction documents and (b) documents sufficient to show (i) the payor and payee for each transaction (ii) the amount of the payment or credit for each transaction, (iii) the source of funds for the payment or credit for each transaction (iv) the

reason for the payment or credit for each transaction and (v) when and whether debt has been repaid for each transaction.

B. FUNDS TO SCHI OWNERS AND ASSOCIATES

48. Documents sufficient to show funds provided to SCHI owners and their family members, from January 1, 2008 through the present in any form, including, but not limited to, salaries, bonuses, management fees, loans, credits, distributions, dividends, profits, and payments from Founding Partners (including from one or more Bermuda accounts in which SCHI principals have an interest, including accounts held by "Stewards & Partners, Ltd." and "Founding Partners Capital (Bermuda) Ltd.")

49. Documents sufficient to show funds provided to Affiliates of SCHI or its principals, including but not limited to Promise and Success.

50. All documents that refer or relate to payments to Founding Partners, other than the interest payments required under the CSA.

C. COMPARING FUNDING FROM FOUNDING PARTNERS TO CASH IN LOCKBOX AND TO BE DELIVERED TO LOCKBOX

51. Documents sufficient to show all funding provided by Founding Partners from the beginning of the CSA to the present.

52. SunTrust bank records reflecting account balances for the "Holding Account" and all lockbox and lockbox-related accounts, from the beginning of the CSA to the present.

D. FAILURE TO PERFECT SECURITY INTERESTS

53. Documents sufficient to show all perfected security interests in favor Founding Partners.

E. NO LOSS OF TRUE RECEIVABLES

54. All documents referring or relating to the allegation in SCHI's TRO and PI Motion (at 4) that the seizure of the lockboxes will cause millions of dollars of receivables which are now collectable to become uncollectable.

E. NO HARM TO PATIENT SAFETY

55. All correspondence with government agencies referring or relating to the possibility that any of the hospitals obtaining funding from SCHI might be forced to shut down. *See* SCHI Motion for TRO and PI.

56. All plans in existence to ensure patient safety in the event that hospitals obtaining funding from SCHI might be forced to shut down. *See* SCHI Motion for TRO and PI.

F. COMMUNICATIONS WITH SUNTRUST REGARDING LOCKBOXES

57. All correspondence between SCHI and SunTrust referring or relating to the Receiver's seizure of the Holding Account or lockboxes and the Receiver's efforts to fund SCHI following the seizure.

G. OTHER DOCUMENTS CONCERNING IRREPARABLE HARM

58. Any other documents supporting SCHI's claim of irreparable harm from the Receiver seizing or controlling the Holding Account or lockboxes.

SCHI'S CLAIM THAT FOUNDING PARTNERS BREACHED THE CSA

59. All documents referring or relating to SCHI's funding request to Founding Partners on or about January 27, 2009, including (a) the reasons for the request for funding; (b) SCHI's intended use of the funds it was seeking; (c) SCHI's prior awareness that Founding Partners did not have capital to provide the requested funds; (d) whether SCHI was in default of the CSA at the time it made the request for funding; (e) the negative effect upon SCHI, if any,

from not receiving the requested funds, including any effect the purported breach had on SCHI's ability to make interest payments under the SCHI CSA. *See* SCHI Motion for TRO and PI.

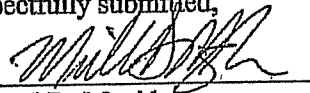
60. All documents referring or relating to any other claimed breach of the SCHI CSA by the Founding Partners.

CORRESPONDENCE

61. All correspondence between SCHI and Founding Partners.

Date: August 10, 2009

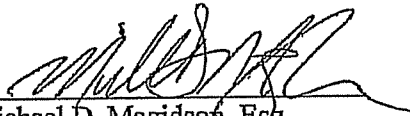
Respectfully submitted,

By: 
Michael D. Magidson
Florida Bar No. 36191

BROAD AND CASSEL
Attorneys for Receiver
100 N. Tampa Street
Suite 3500
Tampa, FL 33602
Tel: 813.225.3011
Fax: 813.204.2137
mmagidson@broadandcassel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 10th day of August, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.


Michael D. Magidson, Esq.

SERVICE LIST

Jonathan Galler, Esq.

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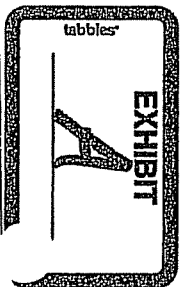
Counsel for Defendants Sun Capital, Inc.,

Sun Capital Healthcare, Inc.

and HLP Properties of Port Arthur, LLC

Service via email and U.S. Mail

AGING AS OF 6-31												
	1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	151 To 180	Over 180	TOTALS	Working Cap Inv.	Total w/o Invoices		
BAYTON ROUGE SPECIALTY MEDICAL CENTER	1,258,441.42	869,991.10	26,266.97			700,000.00	5,550,000.00	8,403,359.49	(6,250,000.00)	2,143,359.49		
GOLDEN TRIANGLE	623,221.15	264,018.92	16,093.08	22,488.68	29,666.22	3,235,000.00	4,225,000.00	8,406,185.05	(7,460,000.00)	946,185.05		
LAGUNA HOSPITAL INCORPORATED	2,805,669.61	1,702,675.28	183,806.45	170,247.66	32,029.65	11,045,000.00	13,500,000.00	28,445,325.20	(24,545,000.00)	4,999,325.20		
PHOENIX SPECIALTY MEDICAL CENTER	1,183,214.59	481,954.40	51,549.15	284,883.14	7,388.02	7,510,000.00	7,510,000.00	17,045,075.70	(15,020,000.00)	2,025,075.70		
PROFESSIONAL REHAB HOSPITAL LLC	582,286.53	313,653.14	1,084.19			1,210,000.00	1,210,000.00	3,317,016.85	(2,420,000.00)	897,016.85		
PROMISE HOSPITAL OF ASCENSION, INC.	780,282.10	355,328.82	13,771.25	89,351.49	6,531.17	3,950,000.00	3,950,000.00	9,075,404.84	(7,870,000.00)	1,205,404.84		
PROMISE SPEC. MEDICAL CTR. OF VICKSBURG	849,428.42	258,920.55	19,480.13				1,555,000.00	4,059,529.61	(3,130,000.00)	929,529.61		
SALT LAKE SPECIALTY MEDICAL CENTER INC	1,514,428.61	873,342.45	85,223.47	74,081.22	40,682.57	2,775,000.00	2,775,000.00	6,237,948.32	(6,250,000.00)	2,687,948.32		
SAN ANTONIO SPECIALTY MEDICAL CENTER	408,762.74	615,189.48	1,573.01	20,686.58		2,520,000.00	2,520,000.00	5,083,211.74	(5,040,000.00)	1,043,211.74		
SUBURBAN MEDICAL CENTER	5,287,402.73	4,474,546.24	1,004,382.19	772,603.80	390,765.27	12,574,000.00	10,475,000.00	34,797,375.43	(27,850,000.00)	7,947,375.43		
PROMISE HOSPITAL OF SAN DIEGO	2,940,830.41	2,552,718.89	1,004,382.19	504,278.25	853,831.38	9,000,000.00	11,000,000.00	27,655,021.13	(20,000,000.00)	7,655,021.13		
CITY OF ANGELS MEDICAL CENTER	1,442,093.14	588,891.57	482,244.15	587,838.55	413,871.03	850,478.32	474,597.27	5,340,205.43				
FOREST PARK HOSPITAL CORP.	1,121,075.59	541,270.59	329,021.70	436,452.57	201,501.17			2,629,721.58				
ST. ALEXIUS HOSPITAL CORP.	1,514,245.11	632,657.04	302,039.80	147,592.81	279,304.58			2,872,939.44				
SUBURBAN MEDICAL CENTER	7,133,711.21	1,152,900.41	1,000,000.45	1,171,010.61	759,100.00	5,500,450.32	7,203,577.27	17,065,713.31				
MICHAEL REESE 11					6,670.27	8,325.00		12,995.57				
PACIFICA OF THE VALLEY CORP.				100,414.03	297,883.91			398,097.94				
PACIFICA 11	2,937,808.59	1,488,977.82	906,935.65	338,131.82	9,288.73			5,682,944.61				
ACCESSIBLE NURSE REGISTRY INCORPORATED							805,222.66	805,222.66				
BRYLIN HOSPITALS, INC.	895,058.94	405,321.53	129,084.50	142,043.72	253,584.18	130,000.00	247,843.00	2,002,957.04				
CORNERSTONE DIABETES & MEDICAL SUPPLIES	8,673.52	9,127.43	9,357.52	10,181.64			37,334.11	135,448.59				
METROPLEX MEDICAL CENTRES	97,216.36	24,951.40	11,203.88	3,077.56	52,485.35	48,280.11	405,108.43	702,673.08				
NORMATEC INDUSTRIES, LP	130,213.27	35,592.44	8,288.83	25,789.55	8,100.00	1,350,000.00	1,350,000.00	1,829,572.67				
GRAND MEDICAL SERVICES	29,145,102.47	6,729,211.55	8,935,900.41	1,172,107.72	2,669,455.51	5,500,000.00	1,193,774.45	7,551,121.06				
DSH	1 To 60	61 To 120	121 To 180	181 To 240	241 To 300	301 To 360	Over 360					
MICHAEL REESE DSH							3,965,665.68					
PACIFICA DSH						700,000.00	3,168,869.65					
PACIFICA DSH 11	502,133.33				12,384,501.79	4,492,450.50	4,883,333.33	20,960,665.02				
SAN DIEGO DSH							902,133.33					
SUBURBAN DSH							6,000,000.00					
CITY OF ANGELS DSH				4,307,500.00	5,471,250.00		8,000,000.00					
SILVER LAKE DSH	3,051,422.66	3,257,353.63	7,263,686.15				18,328,280.00					
FOREST PARK DSH				4,492,354.72	23,020,460.70	12,918,545.32	250,000	40,692,970.74				
ST. ALEXIUS DSH				500,000.00	11,583,954.88	5,309,755.23	2,000,000.00	19,773,710.12				
WIC	1 To 615	615 To 676	676 To 825	826 To 1055	1056 To 1210	1211 To 1350	Over 1350					
TOTALS								375,474,548.48	(120,145,000.00)	255,029,548.48		



Sun Capital Healthcare, Inc and Sun Capital, Inc
 Accounts Receivable
 May 31, 2009

	Health Care	DSH	Pain Net	Total	Inc	Combined
Bal per Ayrings	176,984,112	146,031,981	52,178,865	375,174,948	10,000,198	385,285,146
Accrued fees per Factor	5,601,183	16,532,855	1,108,422	22,242,470	893,881	23,136,351
Accrued fees per Factor NFE	50,165,885			50,165,885		50,165,885
Additional accrued fees						
2006 US Adjustments in GL						4,827
Accrued fees					4,827	
AR					844,217	844,217
2004 Entries						
Accrued fees per Factor					2,751,218	2,751,218
Negative balances of reserves					(608,435)	(608,435)
2005 Entries						
Negative balances of reserves					(2)	(2)
Rounding						
Final Bal per GL	\$ 232,731,168	\$ 161,564,836	\$ 53,287,277	\$ 447,583,301	\$ 13,977,908	\$ 461,561,207
Symbio reserves					7,371,913	7,371,913
Close out Suburban dish					15,687,886	15,687,886
Reserve debt balances per CS, net					3,687,491	3,687,491
Kantamian Partners	162,883			162,883		162,883
Legal receivable per GL						
Reserve for credit losses						
Accrued fees per Larry 2008	2,350,000			2,350,000		2,350,000
Accrued fees per Larry 2009	2,500,000			2,500,000		2,500,000
Final Bal per Financial Statements	\$ 237,734,081	\$ 161,564,836	\$ 53,287,277	\$ 452,586,194	\$ 40,625,185	\$ 493,211,379



07/08/09
11:37:02 AM

PROMISE HEALTHCARE
INVOICE AGING REPORT
Grouped By Clients
Invoices Sorted By Invoice Date
As Of 5/31/2009

Page 63
Ver. 2.3.0.182

(Report Format 1)

BATON ROUGE SPECIALTY MEDICAL CENTER
201 EAST LOUISIANA AVE
RAYNE, LA 70578

Client Id: 902

Ph: 999-999-9999

Invoice Id	Sched No	Inv Date	Due Date	Inv Days	Invoice Aging By Invoice Date						
					1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	151 To 180	Over 180
Relation Id: 902					Relation Name: BATON ROUGE SPECIALTY MEDICAL CENTER						
Account Id: ADVKY0003902					Debtor: ADVANTERA FREEDOM 3						Ph: 866-386-2330
00000076788	294	05/08/2009	08/07/2009	24	18,218.59						
Account Totals:					18,218.59	18,218.59					
						100.00%					
Account Id: BLULA0001902					Debtor: BLUE CROSS BLUE SHIELD OF LOUISIANA						Ph: 225-281-5370 Fax: -
00000075721	290	04/08/2009	06/08/2009	56		33,000.00					
00000075720	290	04/08/2009	05/08/2009	54		44,800.00					
00000075720	290	04/30/2009	05/30/2009	32		45,100.00					
00000076788	294	05/08/2009	08/07/2009	24	11,000.00						
Account Totals:					133,900.00	11,000.00	122,900.00				
						8.22%	91.78%				
Account Id: HUMKY0003902					Debtor: HUMANA						Ph: 800-367-7587 Fax: -
00000075720	290	04/15/2009	05/15/2009	47		23,100.00					
00000076827	295	05/15/2009	08/14/2009	17	1,516.56						
00000077098	295	05/22/2009	08/21/2009	10	5,785.19						
Account Totals:					30,411.75	7,311.75	23,100.00				
						24.04%	76.86%				
Account Id: HUMKY0003902					Debtor: HUMANA						
00000076788	294	05/08/2009	08/07/2009	24	1,100.00						
00000076788	294	05/08/2009	08/07/2009	24	18,388.19						
00000076828	295	05/15/2009	08/14/2009	17	7,700.00						
00000076827	295	05/15/2009	08/14/2009	17	8,854.13						
00000077098	295	05/22/2009	08/21/2009	10	7,700.00						
Account Totals:					45,733.32	45,733.32					
						100.00%					
Account Id: LOULA0003902					Debtor: LOUISIANA WORKERS COMP						Ph: 989-999-9999 Fax: -
00000076788	294	05/07/2009	08/06/2009	25	73,125.00						
Account Totals:					73,125.00	73,125.00					
						100.00%					
Account Id: MEDMS0001902					Debtor: MEDICARE						Ph: 801-936-0106 Fax: -
0000007534	269	10/15/2008	11/14/2008	229						1,300,000.00	
0000007534	270	11/15/2008	12/15/2008	198						2,100,000.00	
0000007534	270	11/15/2008	12/15/2008	198						2,100,000.00	
0000007534	270	12/15/2008	01/14/2009	168						700,000.00	
00000073401	283	03/13/2009	04/12/2009	80		5,742.25					
00000073815	284	03/20/2009	04/19/2009	73		7,865.97					
00000073992	285	03/27/2009	04/26/2009	66		2,918.37					
00000073993	285	03/27/2009	04/26/2009	66		844.40					
00000073995	285	03/27/2009	04/26/2009	66		7,865.97					
00000074524	288	04/03/2009	05/03/2009	59		5,809.53					
00000074525	288	04/03/2009	05/03/2009	59		5,810.80					

EXHIBIT



EXHIBIT M

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL S. NEWMAN, as Receiver for
Founding Partners Capital Management
Company; Founding Partners Stable-Value
Fund, L.P.; Founding Partners Stable-Value
Fund II, L.P.; Founding Partners Global
Fund, Ltd.; and Founding Partners Hybrid-
Value Fund, L.P.,

Case No. 2:09-cv-445-FtM-99-SPC

Plaintiff,

v.

SUN CAPITAL, INC., a Florida corporation,
SUN CAPITAL HEALTHCARE, INC.,
a Florida corporation and HLP PROPERTIES
OF PORT ARTHUR, LLC, a Texas limited liability
company,

Defendants.

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION TO DEFENDANT SUN
CAPITAL, INC., PURSUANT TO COURT ORDER
DATED JULY 28, 2009**

Pursuant to the Court's Order dated July 28, 2009 cancelling the hearing on the motion for preliminary injunction and setting an expedited discovery schedule, Plaintiff, Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P., by and through his undersigned counsel, hereby requests that Defendant, Sun Capital, Inc. ("SCI") produce for inspection and copying at the offices of Broad and Cassel, One Biscayne Tower, 21st Floor, 2 S. Biscayne Boulevard, Miami, Florida 33131, or such other place agreeable to the parties, the

documents and materials specified below, within fourteen (14) days from the date of service. If any of the documents and materials specified below cannot or will not be produced for inspection and copying within the designated time period, SCI shall file a written response specifying the documents and materials that cannot or will not be produced and the reasons therefore.

Definitions

For purposes of answering these requests:

1. "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with that Person and shall include, without limitation (a) any officer or director of such Person and (b) any Person of which that Person beneficially owns either (i) at least five percent (5%) of the outstanding equity securities having the general power to vote or (ii) at least five percent (5%) of all equity interests.

2. "Founding Partners" means Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund, II, L.P., Founding Partners Global Fund, Ltd., Founding Partners Global Fund, Inc. and Founding Partners Hybrid-Value Fund, L.P. (f/k/a Founding Partners Equity Fund, L.P.), as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf. "Founding Partners" includes, without limitation, William L. Gunlicks.

3. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), including any meeting, conversation, discussion, correspondence, message, or other transmittal of information, including but not limited to all electronic communication.

4. "CSA" means that certain Credit and Security Agreement entered into as of January 24, 2002 by and between Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.) as Lender and Sun Capital, Inc. as Borrower. All capitalized (first-letter capitalized) terms used but not defined herein shall have the meanings ascribed to them in the CSA.

5. The word "document" means any kind of written or graphic matter, however provided or reproduced, of any kind or description, whether sent or received or neither, including but not limited to papers, books, book entries, correspondence, telegrams, cables, telex messages, memorandum, notes, data, notations, work papers, inter-office communications, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of

conferences, or of committee meetings, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, formulae, plans, specifications, evaluations, contracts, licenses, agreements, offers, ledgers, journals, books of records of account, summaries of accounts, bills, receipts, balance sheets, income statements, questionnaires, answers to questionnaires, statistical records, desk calendars, appointment books, diaries, lists, tabulations, charts, graphs, maps, surveys, sound recordings, computer tapes, magnetic tapes, punch cards, computer printouts, data processing input and output, microfilms, all other records kept by electronic photographic, or mechanical means, and things similar to any of the foregoing, however denominated, whether currently in existence or already destroyed. A draft or non-identical copy is a separate document within the meaning of this term. The term "document" is intended to be comprehensive and to include, without limitation, all original writings of any nature whatsoever, copies and drafts which, by reason of notes, changes, initials, or identification marks, are not identical to the original, and all non-identical original copies thereof. In all cases where original or non-original copies are not available, "document" also means identical copies of original documents and copies of non-identical copies.

6. "Person" means any natural person or any corporation, association, partnership, joint venture, limited liability company, joint stock company or other company, business trust, trust, organization, business or government or any governmental agency or political subdivision thereof.

7. "Promise" means Promise Healthcare, Inc. as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf.

8. "Receiver" means Daniel S. Newman.

9. "Refer or relate to" means relating to, reflecting, concerning, referring to, describing, evidencing, or constituting.

10. "Representative" or "Representatives" means any Person who has worked or is working for you, or has acted or is now acting on your behalf including, without limitation, any agent, official, director, employees, trustee, officer, attorney, attorney-in-fact, consultant, accountant, servant, limited partner, general partner, investigator, investment advisor, analyst, broker, broker-dealer, or dealer.

11. "Success" means Success Healthcare, LLC as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf.

12. "SCP" means Sun Capital, Inc. as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf.

INSTRUCTIONS

1. In construing this request: (a) the singular shall include the plural and the plural shall include the singular; (b) the words "and" and "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request all information that might otherwise be construed to be outside its scope; (c) the words "any" and "all" shall be read to mean each and every; and (d) the term "including" shall mean "including, without limitation."

2. This request includes all documents in your possession, custody or control, regardless of where such documents are located.

3. A copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such document is within your possession, custody, or control.

4. All documents must be produced in their entirety, including all attachments and enclosures, and in their original folder, binder or other cover or container. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label of such cover or other container must be attached to the document or group of documents.

5. If you object to any portion of this request, state with specificity the grounds for each such objection and produce all documents and submit all answers responsive to the remainder of the request.

6. If you claim privilege or immunity with respect to any document or information, state the nature and basis of the privilege or other ground asserted as justification for withholding such information in sufficient detail to permit the Court to adjudicate the validity of the claim. This includes, at a minimum: (a) the date of the document or communication; (b) the author or speaker; (c) the addressee(s) or person to whom the communication was directed; (d) all other recipients or persons receiving the communication; (e) the type of document (letter, report, etc.) or communication; (f) the general subject matter of the document or communication; and (g) the specific privilege claimed.

7. This request is continuing in nature. Any information or documents called for by this request that you obtain subsequent to the service of your response to this request, shall promptly be supplied in the form of supplemental document productions pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

8. All documents are to be produced as they are kept in the usual course of business so that the requesting parties can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

9. All documents responsive to this request that are maintained in the usual course of business in electronic format shall be produced in their native format along with software

necessary to interpret such files if such software is not readily available. All such documents shall be accompanied by a listing of all file properties, commonly known as meta data, concerning such document, including all information concerning the date(s) and recipient(s) of the document, the location and content of any attachment(s) to the document, and the location and content of any information imbedded or annotated in the document.

10. If any documents requested were at one time in existence but are no longer in existence, please so state, separately specifying for each document no longer existing:

- (a) the type of document;
- (b) the type of information contained therein;
- (c) the date(s) on which it was created;
- (d) the sender(s) and recipient(s), if applicable;
- (e) the date (or approximate date) on which it ceased to exist;
- (f) the circumstances under which it ceased to exist;
- (g) the name of the person authorizing the disposal or destruction or having responsibility for the loss of the document;
- (h) the identity of all persons having knowledge of the contents of such document; and
- (i) the paragraph number(s) of the request(s) in response to which the document otherwise would have been produced.

DOCUMENTS TO BE PRODUCED

THE SCI CSA

1. A copy of the SCI CSA with exhibits.

A. AMENDMENTS, CONSENTS, WAIVERS

2. All real or purported amendments to the CSA as well as all waivers and consents from Founding Partners, pursuant to which SCI claims it had or has the right to act in variance of, or deviation from, the terms of the SCI CSA, without causing an event of default.

3. All documents referring or relating to the real or purported amendments, waivers, and consents referred to in Request Number 2.

B. REVOCATION OF AMENDMENTS, CONSENTS, AND WAIVERS

4. The July 7, 2009 letter from the Receiver to SCI revoking prior waivers and consents.

5. All documents referring or relating to the Receiver's July 7, 2009 letter revoking prior waivers and consents, including the effect of the letter upon SCI and SCI's clients and customers.

OBLIGATIONS AND DEFAULTS IN GENERAL

6. All documents referring or relating to SCI's obligations under the SCI CSA, on or after July 7, 2009.

7. All documents referring or relating to whether SCI has been in default of the SCI CSA, on or after July 7, 2009.

REPORTING OBLIGATIONS UNDER THE AGREEMENT

8. All "Weekly Reports" provided by SCI to Founding Partners, pursuant to the SCI CSA (*see* ¶6.5(e)).

9. All "Weekly Reports" not provided by SCI to Founding Partners.
10. All monthly financial statements provided by SCI to Founding Partners, pursuant to the SCI CSA (*see* ¶6.5(d)(iii)).
11. All monthly financial statements not provided by SCI to Founding Partners.
12. All quarterly financial statements provided by SCI to Founding Partners, pursuant to the SCI CSA (*see* ¶6.5(d)(ii)).
13. All quarterly financial statements not provided by SCI to Founding Partners.
14. All semi-annual (6-month period) financial statements provided by SCI to Founding Partners, pursuant to the SCI CSA (*see* ¶6.33).
15. All semi-annual (6-month period) financial statements not provided by SCI to Founding Partners.
16. All annual financial statements provided by SCI to Founding Partners, pursuant to the SCI SCA (*see* ¶6.5(d)(i)).
17. All annual financial statements not provided by SCI to Founding Partners.
18. All Purchase and Sale Agreements provided by SCI to Founding Partners, pursuant to the SCI SCA (*see* ¶ 1.98, 5.2.4(a)).
19. All Purchase and Sale Agreements not provided by SCI to Founding Partners.

INTEREST PAYMENTS REQUIRED UNDER THE AGREEMENT

20. Documents sufficient to show all payments of interest made to Founding Partners under the SCI CSA, from January 1, 2008 to the present. (*see* ¶¶ 3.1, 4.1).
21. Documents sufficient to show all accrued interest under the SCI CSA (*see* ¶¶ 3.1; 4.1), and the method of calculation, from January 1, 2009 to the present.

**DOCUMENTS NEEDED TO CALCULATE
BORROWING BASE ON SPECIFIED DATES**

**A. IDENTIFYING ACCOUNTS RECEIVABLE THAT ARE NOT ELIGIBLE
ACCOUNTS BECAUSE THEY HAVE AGED ON SPECIFIED DATES**

22. Provide accounts receivable aging reports and analyses (in form of Exhibits A and B, which were provided by SCI to the Receiver) from the electronic books and records of SCI (a) for the last day of the month, from January 2008 through the present, including for July 31, 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) January 26, 2009 and January 27, 2009 and for (c) July 7, 2009 and each day thereafter to the present.

23. Provide "Invoice Aging Reports, Grouped by Clients, Invoices Sorted By Invoice Date" (in the form of Exhibit C, which was provided by SCI to the Receiver) from the electronic books and records of SCI, for each individual client: (a) for the last day of the month, from January 2008 through the present, including for July 31, 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) January 26, 2009 and January 27, 2009, and for (c) July 7, 2009 and each day thereafter to the present.

24. Insofar as you contend that the invoices on Exhibits A, B and C represent Tier 1 Accounts (*see* ¶ 1.117, SCI CSA), please provide documentation that supports this contention.

**B. IDENTIFYING ACCOUNTS RECEIVABLE THAT ARE NOT ELIGIBLE
ACCOUNTS FOR REASONS OTHER THAN AGING ON SPECIFIED
DATES**

25. All "Purchase and Sale Agreements" (SCI CSA ¶ 5.2.4) in effect during any time between January 1, 2008 through the present.

**C. OTHER INFORMATION TO CALCULATE BORROWING BASE ON
THE SPECIFIED DATES**

26. Documents sufficient to calculate the Borrowing Base (*see* ¶ 1.13, SCI CSA) for (a) the last day of every month from January 2008 through the present; (b) January 26, 2009 and January 27, 2009; (c) July 7, 2009 and every date thereafter to the present.

DOCUMENTS NEEDED TO CALCULATE LOAN AVAILABILITY

27. Documents showing the "Maximum Account of Credit" under the SCI CSA (*see* ¶¶ 1.72(a), 1.78) for the following dates: (a) the last day of each month from January 2008 through the present including for July 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) on January 26, 2009 and January 27, 2009; and (c) on July 7, 2009, and each day thereafter to the present.

28. Documents sufficient to show the "amount on deposit in the Factor Account" (*see* ¶¶ 1.72(a), 1.47) for the following dates: (a) the last day of each month from January 2008 through the present including for July 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) on January 26, 2009 and January 27, 2009; and (c) on July 7, 2009, and each day thereafter to the present.

29. Documents showing "the aggregate principal amount of all Loans" (*see* ¶¶ 1.72(b), 1.71) for the following dates: (a) the last day of each month from January 2008 through the present including for July 2009 (and, upon the conclusion of subsequent months, for those months as well); (b) on January 26, 2009 and January 27, 2009; and (c) on July 7, 2009, and each day thereafter to the present.

30. Documents showing "the accrued and unpaid interests on the Loans" (*see* ¶¶ 1.72(b), 1.71) for the following dates: (a) the last day of each month from January 2008 through the present including for July 2009 (and, upon the conclusion of subsequent months, for those

months as well); (b) on January 26, 2009 and January 27, 2009; and (c) on July 7, 2009, and each day thereafter to the present.

GENERAL OFFICER'S CERTIFICATES FOR FUNDING, WHICH MUST CERTIFY, INTER ALIA, NO BORROWING BASE DEFICIENCY

31. All "Officer's Certificates" provided by SCI to Founding Partners to request funding, pursuant to SCI SCA (*see* ¶5.2.1), from January 1, 2008 through the present.

32. All documents that refer or relate to the "Officer's Certificates," including but not limited to SCI's back up-materials and documentation supporting the representations therein (*e.g.*, that no borrowing base deficiency existed, *see* § 5.2.1(f)).

HOW SCI IN FACT CALCULATED BORROWING BASE AND LOAN AVAILABILITY AND RECOGNITION OF SAME

33. From January 1, 2008 through the present, all SCI calculations of the "Borrowing Base," "Loan Availability," and "Borrowing Base Deficiency" under the SCI CSA, *see* ¶¶ 1.13, 1.14, 1.72.

34. From January 1, 2008 through the present, all documents referring or relating to "Borrowing Base," "Loan Availability," and "Borrowing Base Deficiency" requirements and covenants under the SCI CSA, *see* ¶¶ 1.13, 1.14, 1.72.

OTHER EVENTS OF DEFAULT

35. Documents sufficient to show whether, from January 1, 2008 to the present, SCI purchased accounts from a seller "that is party to a proceeding under any Debtor Relief Law (other than solely as a creditor)" (*see* ¶ 6.28).

36. All insurance policies required under the SCI CSA, including Credit Insurance, and documents referring or relating to those policies.

INTERNAL COMMUNICATIONS REGARDING DEFAULTS

37. All documents referring or relating to actual or potential events of defaults under the SCI CSA.

RECEIVER'S NOTICES OF DEFAULT

38. All letters from the initial Receiver (Ms. Leyza Blanco) and the current Receiver (Mr. Daniel S. Newman) to SCI referring or relating to default or alleged defaults, as well as accelerating the payment of principal and accrued to Section 8.2.3.

39. All documents referring or relating to the letters from the Receivers requested in the previous Request.

IRREPARABLE HARM

**A. FUNDS WASTED THROUGH
RELATED-PARTY TRANSACTIONS**

40. All documents that refer or relate to SCI's use of any funds received into the SunTrust Bank lockboxes for purposes *other than* continued funding of health care receivables (see SCI's TRO and PI Motion at 3, 11), including but not limited to Sun's use of such funds for overhead or any other expenses, from January 1, 2008 to the present.

41. For the "Due From Related Party" entries that appear on SCI's financial statements and/or books and records from January 1, 2008 through the present, provide documents sufficient to (a) identify each of the transactions making up these entries; and (b) show the outstanding balance for all transactions for the months ending January 1, 2008 to the present.

42. For each of the transactions that are represented in the "Due From Related Party" entries that appear on SCI's financial statements and/or books and records from January 1, 2008 through the present, provide (a) all transaction documents and (b) documents sufficient to show (i) the payor and payee for each transaction (ii) the amount of the payment or credit for each

transaction, (iii) the source of funds for the payment or credit for each transaction (iv) the reason for the payment or credit for each transaction and (v) when and whether debt has been repaid for each transaction.

B. FUNDS TO SCI OWNERS AND ASSOCIATES

43. Documents sufficient to show funds provided to SCI owners and their family members, from January 1, 2008 through the present in any form, including, but not limited to, salaries, bonuses, management fees, loans, credits, distributions, dividends, profits, and payments from Founding Partners (including from one or more Bermuda accounts in which SCI principals have an interest, including accounts held by "Stewards & Partners, Ltd." and "Founding Partners Capital (Bermuda) Ltd.")

44. Documents sufficient to show funds provided to Affiliates of SCI or its principals, including but not limited to Promise and Success.

45. All documents that refer or relate to payments to Founding Partners, other than the interest payments required under the CSA.

C. COMPARING FUNDING FROM FOUNDING PARTNERS TO CASH IN LOCKBOX AND TO BE DELIVERED TO LOCKBOX

46. Documents sufficient to show all funding provided by Founding Partners from the beginning of the CSA to the present.

47. SunTrust bank records reflecting account balances for the "Factor Account" and all lockbox and lockbox-related accounts, from the beginning of the CSA to the present.

D. FAILURE TO PERFECT SECURITY INTERESTS

48. Documents sufficient to show all perfected security interests in favor Founding Partners.

E. NO LOSS OF TRUE RECEIVABLES

49. All documents referring or relating to the allegation in SCI's TRO and PI Motion (at 4) that the seizure of the lockboxes will cause millions of dollars of receivables which are now collectable to become uncollectable.

E. COMMUNICATIONS WITH SUNTRUST REGARDING LOCKBOXES

50. All correspondence between SCI and SunTrust referring or relating to the Receiver's seizure of the Factor Account or lockboxes and the Receiver's efforts to fund SCI following the seizure.

F. OTHER DOCUMENTS CONCERNING IRREPARABLE HARM

51. Any other documents supporting SCI's claim of irreparable harm from the Receiver seizing or controlling the Factor Account or lockboxes.

SCI'S CLAIM THAT FOUNDING PARTNERS BREACHED THE CSA

52. All documents referring or relating to SCI's funding request to Founding Partners on or about January 27, 2009, including (a) the reasons for the request for funding; (b) SCI's intended use of the funds it was seeking; (c) SCI's prior awareness that Founding Partners did not have capital to provide the requested funds; (d) whether SCI was in default of the CSA at the time it made the request for funding; (e) the negative effect upon SCI, if any, from not receiving the requested funds, including any effect the purported breach had on SCI's ability to make interest payments under the SCI CSA. *See* SCI Motion for TRO and PI.

53. All documents referring or relating to any other claimed breach of the SCI CSA by the Founding Partners.

CORRESPONDENCE

54. All correspondence between SCI and Founding Partners.

Date: August 14, 2009

Respectfully submitted,

By: 

Michael D. Magidson
Florida Bar No. 36191

BROAD AND CASSEL

Attorneys for Receiver

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Suite 3500

Tampa, FL 33602

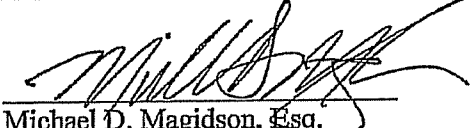
Tel: 813.225.3011

Fax: 813.204.2137

mmagidson@broadandcassel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 14th day of August, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.


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*Counsel for Defendants Sun Capital, Inc.,
Sun Capital Healthcare, Inc.
and HLP Properties of Port Arthur, LLC
Service via email and U.S. Mail*

Sun Capital Healthcare and
Sun Capital, Inc.
Asset Accounts Receivable
12/31/08

Non Promoter/Success Clients

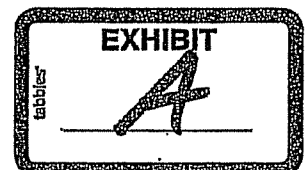
	1-30	31-60	61-90	91-120	120-150	150+	Total
Pacific of the Valley	321,757	1,713,122	751,448	425,846	353,180		3,565,333
Pacific of the Valley DSH				7,500,784		17,217,236	24,718,019
Michael Reese	53,211	70,978	18,512	10,889	26,133	12,153	188,886
Michael Reese DSH						6,189,888	6,189,888
City of Angola		326,412	358,013	303,618	142,942		1,130,985
City of Angola DSH		2,801,250		4,863,760	3,855,000	23,848,750	34,753,750
Brylin Hospital	875,775	414,722	195,595	282,430	113,148	125,000	2,008,668
Comorstone Diabetes	42,421	14,881	5,480	8,448			72,181
Metrolplex Medical	74,048	8,438	8,911	7,474			97,768
Normalea Industries	101,318	48,782	108,317	128,854	80,651	288,011	716,931
Allcare Workers Comp						12,785,447	12,785,447
America West Workers Comp						3,138,888	3,138,888
Pain Net Phys, Grp Workers Comp						9,588,171	9,588,171
Pain Net New Workers Comp						3,373,288	3,373,288
Pain Net Old Workers Comp						24,512,058	24,512,058
	1,468,428	5,198,583	1,442,257	13,224,204	4,851,032	100,914,770	126,800,261

Promoter/Success Clients

Silver Lake Medical CTR DSH	4,005,128						4,005,128
Silver Lake Medical CTR	1,591,715	543,007					2,234,722
Baton Rouge Specialty	1,774,888	4,487,888	1,530,374	488,238	32,474		8,320,788
Golden Triangle	3,763,857	3,254,881	1,411,240	179,771	167,005		8,798,642
Legnappa Hospital	13,884,118	10,858,470	4,072,820	34,885	74,050		28,734,441
Phoenix Specialty	7,883,227	4,704,910	3,422,174	74,316			16,084,627
Professional Rehab	1,715,210	1,474,340	11,482	48,828	38,928		3,283,588
Ascension	4,416,288	2,380,540	2,007,607	50,054			9,883,557
Vicksburg	2,270,130	1,855,927	55,203				4,182,260
Sell Lake	3,184,045	1,846,480	1,530,328	28,013	16,707		6,585,583
San Antonio	3,100,284	2,024,004	623,325	8,825			5,756,249
Suburban Medical CTR	17,188,582	7,780,713	6,907,857	351,318	182,802		32,351,372
Suburban Medical CTR DSH						8,000,000	8,000,000
San Diego	12,081,560	6,473,818	5,582,234	1,104,300	2,821,041		28,082,883
San Diego DSH						6,000,000	6,000,000
Forest Park Hospital	1,702,157	450,704	304,513	263,038	100,113		2,804,368
Forest Park Hospital DSH				18,118,280	22,172,424	12,001,667	52,292,371
St. Alexius	2,245,448	577,840	286,102	218,384	177,823		3,504,578
St. Alexius DSH				7,154,200	10,519,510	7,313,189	25,008,899
	80,768,240	48,788,732	27,748,347	25,115,942	38,430,876	83,314,856	285,180,082

SUN CAPITAL, INC.

Symbio Solutions	2,228,100	1,718,801	884,830	55,728	28,841	432,314	5,158,814
BZ Kids	12,887	3,823	834				17,234
Fire Equipment	24,944	5,881	185				32,100
Senecore Enterprises	34,889	87,581	35,771	22,240			181,481
Southern Connecticut	130,852	84,554	3,485				198,891
Assured Communications							0
Bedford Brands	648,485	378,397	315,317	83,363	71,491	37,570	1,444,634
Budco							0
Conveyor Controls							4,771
Corporate Recycling	4,771						67,273
JO&A Worldwide	38,745	21,733	9,785				2,422,514
Karloman, O'Leary		504,704	454,378	301,085	217,005	844,847	14,401
Lady Deborah	14,401						254,136
Osmotics	42,089	222,087					22,280
Ricola Professional		22,280					17,847
Synergy Air	12,081	5,755					188,885
Technomedia	137,245	21,740					5,332
Three Rivers	8,332						32,526
Tident Technical		32,526					205,580
Iron Bridge		29,383	82,418	113,781			78,034
Medcomp	48,872	17,748	12,804	1,810			554,308
Medi Trans	378,401	124,884	33,475	16,738			802,745
Medi Translations	203,848	83,881	17,734	17,082			
	3,883,013	3,335,849	1,841,529	622,527	315,437	1,414,731	11,193,188



Sun Capital Healthcare, Inc and Sun Capital, Inc
Accounts Receivable
May 31, 2008

	Health Care	DSH	Paid Net	Total	Inc	Combined
Bal per Agings	176,884,112	146,031,591	52,478,865	375,394,568	10,080,188	385,285,148
Accrued fees per Factor	5,001,493	15,832,865	1,108,422	22,242,470	883,861	23,126,351
Accrued fees per Factor NFE	50,165,885			50,165,885		50,165,886
Additional accrued fees						
2005 CS Adjustments in GL						
Accrued fees					4,827	4,827
AR					844,217	844,217
2004 Entries						
Accrued fees per Factor						
Negative balances of reserves					2,751,218	2,751,218
2005 Entries						
Negative balances of reserves					(805,435)	(808,435)
rounding	(2)			(2)		(2)
Final Bal per GL	\$ 232,731,188	\$ 161,864,895	\$ 53,287,277	\$ 447,883,361	\$ 13,977,808	\$ 461,561,207
Symbol reserves						
Close out Suburban diet	-			-	7,371,913	7,371,913
Reserve debit balances per CS, net						
Kanlieman Patients					15,587,886	15,587,886
Legal receivable per GL	152,893			152,893	3,687,491	3,840,384
Reserve for credit losses						152,893
Accrued fees per Lany 2008	2,350,000			2,350,000		2,350,000
Accrued fees per Lany 2009	2,500,000			2,500,000		2,500,000
Final Bal per Financial Statements	\$ 237,734,081	\$ 161,864,895	\$ 53,287,277	\$ 452,886,253	\$ 40,625,105	\$ 493,211,358



07/05/08
09:38:33 AM
COMMAND SOFTWARE
INVOICE AGING REPORT
Grouped By Clients
Summary Aging
As Of 6/31/2009

Page 1
Ver. 2.3.0.182
(Report Format 2)

Symbio Solutions Inc
325 N St Paul Street
Suite 4000
Dallas, TX 75201
Contact: RON CADDELL

Client Id: 311

Invoice Aging By Invoice Date
Ph: 469-386-5602 Fax: 469-386-5603

Client Totals: 4,173,041.88

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
1,824,266.59	1,572,554.62	527,229.69	101,375.28	172,009.33	175,505.98
38.82%	37.65%	12.64%	2.43%	4.12%	4.21%

07/05/08
09:38:33 AM
COMMAND SOFTWARE
INVOICE AGING REPORT
Grouped By Clients
Summary Aging
As Of 6/31/2009
Company Totals

(Report Format 2)

Page 2
Ver. 2.3.0.182

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
1,624,266.59	1,572,554.62	527,229.69	101,375.28	172,009.33	175,505.98
38.82%	37.65%	12.64%	2.43%	4.12%	4.21%

Company Totals: 4,173,041.88

Number Of Clients Reported: 1

07/05/08
09:38:33 AM
Express Business Funding
INVOICE AGING REPORT
Grouped By Clients
Summary Aging
As Of 6/31/2009

Ver. 2.3.0.182

Page 3

(Report Format 2)

EEZ Kids LLC
134 Johnston Blvd
P O Box 8749
Asheville, NC 28815
Contact: BENJAMIN BIBER

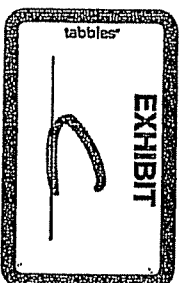
Client Id: 192

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
20,048.09	3,773.67	2,117.35			
77.28%	14.55%	8.16%			

Ph: 800-543-7883 Fax: 828-252-4368

Client Totals: 25,637.41



FIRE EQUIPMENT SERVICES OF ST LUCIE INC
434 N 7TH STREET
FORT PIERCE, FL 34950

Client Id: 167

Contact: LUCY FOLEBRECHT

Invoice Aging By Invoice Date

Ph: - Fax: 772-488-0204

Client Totals:

28,383.34 7,305.57
79.53% 20.47%

Sinatra Enterprises Inc
1150-3 Lincoln Avenue
Hoboken, NY 11744

Client Id: 169

Contact: ARNOLD BRUCKNER

Invoice Aging By Invoice Date

Ph: 800-442-4577 Fax: 631-557-5105

Client Totals:

34,240.50
100.00%

Southern Connecticut Pallet Inc
160 N Plains Industrial Road
Wallingford, CT 06492

Client Id: 165

Contact: James Wladack

Invoice Aging By Invoice Date

Ph: 203-255-1313 Fax: 203-255-5815

Client Totals:

226,745.70
154,405.20 79,590.50
68.22% 33.81% 1.17%

07/06/09 Express Business Funding
09:38:33 AM INVOICE AGING REPORT
Grouped By Clients

Var: 23.0.182

Page 4

Summary Aging
As Of 6/31/2009
Company Totals

(Report Format 2)

Invoice Aging By Invoice Date

1 To 30 31 To 60 61 To 90 91 To 120 121 To 150 Over 150

Company Totals:

332,612.52

Number Of Clients Reported:

202,824.63
60.98%
4

80,540.84 38,137.05
27.25% 11.77%

07/06/09 Sun Capital Government Accounts
09:38:33 AM INVOICE AGING REPORT

Var: 23.0.182

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Grouped By Clients
Summary Aging
As Of 6/31/2009

(Report Format 2)

Client Id: 389

LADY DEBORAH INC
4876 Palm Coast Pkwy NW
Suite #1
Palm Coast, FL 32137
Contact: Deborah Williams

Pin: 386-503-6081 Fax: 386-446-1710

Invoice Aging By Invoice Date

Client Totals: 14,760.44
100.00%

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150

07/08/09 Sun Capital Government Accounts

083833 AM INVOICE AGING REPORT

Grouped By Clients

Summary Aging

As Of 6/31/2009

Company Totals

(Report Format 2)

Ver: 2.3.0.182

Page 6

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150

Company Totals: 14,760.44
100.00%

Number Of Clients Reported: 1

07/06/09 SUN CAPITAL, INC.
083833 AM INVOICE AGING REPORT

Grouped By Clients

Summary Aging

As Of 6/31/2009

(Report Format 2)

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Budford Brands Ltd
2 East Avenue
Suite 208
LARCHMONT, NY 10538
Contact: MARIO BEARDINO

Client Id: 131

Invoice Aging By Invoice Date

Pin: 914-833-2726 Fax: 914-833-9013

Client Totals: 1,529,294.03
294,056.83
19.24%

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150

CORPORATE RECYCLING INC

1939 Shepherds Gate

Client Id: 288

Chesapeake, VA 23320

Contact: Duwayne Trueman

Ph: 757-720-8516 Fax: 757-562-8518

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150

Client Total: 11,491.00

0.55% 2,504.40
77.84% 22,036

Client Id: 121

GROUP INFOTECH INC
960 Peninsula Corporate Circle
BOCA RATON, FL 33487

Contact: Gino Pandolfi

Ph: 561-888-3488 Fax: 561-241-5451

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150

Client Total: 8,570.00

0.57% 8,570.00
100.00%

Client Id: 402

J C & A WORLDWIDE INC
12828 SW 134 Ct, Suite 205
Miami, FL 33186

Contact: Maria Borghese

Ph: 786-242-8106 Fax: 305-255-5044

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150

Client Total: 65,248.04

40.20% 23,061.63
61.52% 33,386 2.00%

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07/03/08 SUN CAPITAL, INC.
09/30/04 AM INVOICE AGING REPORT
Grouped By Clients
Summary Aging
As of 6/31/2009

Ver. 2.3.0.182

(Report Format 2)

Kontemann, O'Leary & Susella L.L.P.

60 Main Street

White Plains, NY 10605

Client Id: 380

Contact: Michelle or Jim in NYC

Ph: 212-878-6886 Fax: 914-457-2201

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150

Client Total: 2,459,474.52

431,005.08 2,058,467.63
17.24% 82.75%

Client Id: 51

Osmonics Corporation
1444 WAZEE STREET

DENVER, CO 80202

Contact: Key Ransom

Invoice Aging By Invoice Date

Ph: 303-534-7100 Fax: 303-534-7050

Client Totals:

441,052.15

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
147,155.50	243,608.25	50,277.60			
33.37%	55.23%	11.40%			

RICK'S PROFESSIONAL CLEANING SERVICE

121 PATTERSON AVENUE

BELLMAWR, NJ 08031

Client Id: 233

Contact: MARY RAGANO

Invoice Aging By Invoice Date

Ph: 609-472-8100 cell Fax: 856-598-5101

Client Totals:

54,226.78

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
31,246.52	23,023.67				
48.81%	51.29%				

SYNERGY AIR SERVICES INC

2333 North State Road 7

Suite N

Margate, FL 33063

Contact: Scott Kasoldanow is son

Client Id: 405

Invoice Aging By Invoice Date

Ph: 954-989-9309 Fax: 954-989-9170

Client Totals:

57,317.44

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
33,333.79	23,983.65				
58.10%	41.89%				

SUN CAPITAL, INC.

09/08/09

INVOICE AGING REPORT

Grouped By Clients

Summary Aging

As Of 6/31/2009

Ver. 2.0.0.1B2

Page 9

(Report Format 2)

Trident Technical Corporation

29074 Watson Blvd #103

Warner Robins, GA 31063

Client Id: 418

Contact: Leo Shalhousa

Invoice Aging By Invoice Date

Ph: 478-529-9923 Fax: 478-523-1218

Client Totals:

52,444.52

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
52,444.52					
100.00%					

SUN CAPITAL, INC.

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09:38:34 AM

INVOICE AGING REPORT

Ver. 2.3.0.182

Grouped By Client
Summary Aging
As Of 6/31/2009

(Report Format 2)

Company Totals

Invoice Aging By Invoice Date					
1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
53,600.32	674,178.89	249,347.62	172,291.60	465,088.25	2,817,728.53
11.27%	14.25%	5.21%	3.85%	10.25%	55.36%

Company Totals: 4,728,566.49

Number Of Clients Reported: 8

07/06/09 Sun Capital, Inc.
INVOICE AGING REPORT
Grouped By Client
Summary Aging
As Of 6/31/2009

(Report Format 2)

Ver. 2.3.0.182

Page 11

Modcomp U S A Inc

1360 South Powolline Road
Pompano Beach, FL 33069

Client Id: 411

Contact: Con Kus

PI: 954-343-1600 FAX: 954-343-1730

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
24,777.13	24,433.39	6,393.11			
44.62%	43.00%	11.38%			

Client Totals: 55,603.62

Client Id: 410

Modl Trans Inc
1360 South Powolline Road
Pompano Beach, FL 33069

Contact: Con Kus or Kuldorp

PI: 954-343-1600 FAX: 954-343-1730

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
282,456.46	123,953.18	27,554.65	5,593.94		
65.07%	27.59%	6.15%	1.24%		

Client Totals: 449,362.24

Client Id: 412

Modl Translations Inc
1360 South Powolline Road
Pompano Beach, FL 33069

Contact: Con Kus

PI: 954-343-1600 FAX: 954-343-1730

Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150

Client Totals:

336,351.12	189,900.22	119,740.03	25,469.57	1,391.00
	55.45%	35.80%	7.54%	0.40%

07/05/09
09:38:34 AM

Sun Capital, Inc.
INVOICE AGING REPORT
Grouped By Clients
Summary Aging
As Of 6/31/2009
Company Totals

(Report Format 2)

Ver. 2.3.0.102

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Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
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Company Totals:

841,248.98

Number Of Clients Reported:

482,035.89	288,475.84	77,457.61	13,278.05	
57.30%	31.91%	9.21%	1.53%	

3

07/05/09
09:38:34 AM
SUN CAPITAL, INC.
INVOICE AGING REPORT
Grouped By Clients
Summary Aging
As Of 6/31/2009
Corporate Totals

(Report Format 2)

Ver. 2.3.0.102

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Invoice Aging By Invoice Date

1 To 30	31 To 60	61 To 90	91 To 120	121 To 150	Over 150
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Company Totals:

2,695,598.05

Number Of Clients Reported:

2,695,598.05	2,695,690.29	891,242.77	287,235.01	657,077.59	2,793,234.51
29.31%	25.93%	8.62%	2.85%	6.51%	27.59%

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EXHIBIT N

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

DANIEL S. NEWMAN, as Receiver for
Founding Partners Capital Management
Company; Founding Partners Stable-Value
Fund, L.P.; Founding Partners Stable-Value
Fund II, L.P.; Founding Partners Global
Fund, Ltd.; and Founding Partners Hybrid-
Value Fund, L.P.,

Case No. 2:09-cv-445-FtM-99-SPC

Plaintiff,

v.

SUN CAPITAL, INC., a Florida corporation,
SUN CAPITAL HEALTHCARE, INC.,
a Florida corporation and HLP PROPERTIES
OF PORT ARTHUR, LLC, a Texas limited liability
company,

Defendants.

**PLAINTIFF'S SECOND REQUEST FOR PRODUCTION TO DEFENDANT SUN
CAPITAL HEALTHCARE, INC., PURSUANT TO COURT ORDERS**

Pursuant to the Court's Orders dated July 28, 2009 and September 22, 2009, Plaintiff Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P., by and through its undersigned counsel, hereby request that Defendant, Sun Capital Healthcare, Inc. ("SCH") produce for inspection and copying at the offices of Broad and Cassel, One Biscayne Tower, 21st Floor, 2 S. Biscayne Boulevard, Miami, Florida 33131, or such other place agreeable to the parties, the documents and materials specified below, within 10 days from the date of service. If any of the documents and materials specified below cannot or will not be produced for

10/28/09

inspection and copying within the designated time period, SCHI shall file a written response specifying the documents and materials that cannot or will not be produced and the reasons therefore.

Definitions

For purposes of answering these requests:

1. "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with that Person and shall include, without limitation (a) any officer or director of such Person and (b) any Person of which that Person beneficially owns either (i) at least five percent (5%) of the outstanding equity securities having the general power to vote or (ii) at least five percent (5%) of all equity interests.

2. "Founding Partners" means Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund, II, L.P., Founding Partners Global Fund, Ltd., Founding Partners Global Fund, Inc. and Founding Partners Hybrid-Value Fund, L.P. (f/k/a Founding Partners Equity Fund, L.P.), as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf. "Founding Partners" includes, without limitation, William L. Gunlicks.

INSTRUCTIONS

1. In construing this request: (a) the singular shall include the plural and the plural shall include the singular; (b) the words "and" and "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request all information that might otherwise be construed to be outside its scope; (c) the words "any" and "all" shall be read to mean each and every; and (d) the term "including" shall mean "including, without limitation."

2. This request includes all documents in your possession, custody or control, regardless of where such documents are located.

3. A copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such document is within your possession, custody, or control.

4. All documents must be produced in their entirety, including all attachments and enclosures, and in their original folder, binder or other cover or container. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or

other cover or container, a copy of the label of such cover or other container must be attached to the document or group of documents.

5. If you object to any portion of this request, state with specificity the grounds for each such objection and produce all documents and submit all answers responsive to the remainder of the request.

6. If you claim privilege or immunity with respect to any document or information, state the nature and basis of the privilege or other ground asserted as justification for withholding such information in sufficient detail to permit the Court to adjudicate the validity of the claim. This includes, at a minimum: (a) the date of the document or communication; (b) the author or speaker; (c) the addressee(s) or person to whom the communication was directed; (d) all other recipients or persons receiving the communication; (e) the type of document (letter, report, etc.) or communication; (f) the general subject matter of the document or communication; and (g) the specific privilege claimed.

7. This request is continuing in nature. Any information or documents called for by this request that you obtain subsequent to the service of your response to this request, shall promptly be supplied in the form of supplemental document productions pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

8. All documents are to be produced as they are kept in the usual course of business so that the requesting parties can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

9. All documents responsive to this request that are maintained in the usual course of business in electronic format shall be produced in their native format along with software necessary to interpret such files if such software is not readily available. All such documents shall be accompanied by a listing of all file properties, commonly known as meta data, concerning such document, including all information concerning the date(s) and recipient(s) of the document, the location and content of any attachment(s) to the document, and the location and content of any information imbedded or annotated in the document.

10. If any documents requested were at one time in existence but are no longer in existence, please so state, separately specifying for each document no longer existing:

- (a) the type of document;
- (b) the type of information contained therein;
- (c) the date(s) on which it was created;
- (d) the sender(s) and recipient(s), if applicable;
- (e) the date (or approximate date) on which it ceased to exist;
- (f) the circumstances under which it ceased to exist;
- (g) the name of the person authorizing the disposal or destruction or having responsibility for the loss of the document;
- (h) the identity of all persons having knowledge of the contents of such document; and

- (i) the paragraph number(s) of the request(s) in response to which the document otherwise would have been produced.

DOCUMENTS TO BE PRODUCED

1. Updated SCHI financial statements and reports from August 1, 2009 to the Present, in the form previously provided or produced to Founding Partners or the Receiver. This request includes: balance sheets, income statements, due from related-party schedules, ledger entries, account receivable aging reports and attachments, the underlying client-by-client agings of accounts receivable.

2. Monthly Balance sheets and monthly income statements for SCHI that are *not* consolidated with SCI or any other affiliated entity, from October 1, 2008 to the Present.

3. Cash flow analyses and detailed cash disbursements for SCHI, from October 1, 2008 to the Present.

4. Documents responsive to Request Numbers 24, 25, 26, 45, 46, 47, 48, and 49 (relating to working capital advances, factoring of DSH, factoring of worker's compensation other diversions and dissipation of funds) of Plaintiff's First Request for Production to SCHI insofar as they were not produced and/or not yet in existence at the time that SCHI produced documents in response to Plaintiff's First Request for Production.

Date: October 28, 2009

By: _____

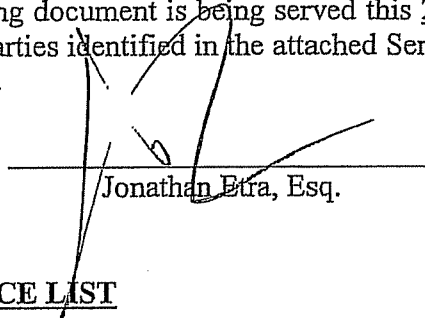
Jonathan Etra, Esq.
Florida Bar No. 0686905

BROAD AND CASSEL

Attorneys for Receiver
2 South Biscayne Boulevard, 21st Floor
Miami, FL 33131
Tel: (305) 373-9400
Fax: (305) 995-6403
jetra@broadandcassel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 28th day of October, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.



Jonathan Etra, Esq.

SERVICE LIST

Jonathan Galler, Esq.

Proskauer Rose, LLP

2255 Glades Rd

Suite 340 West

Boca Raton, FL 33431

561.995.4733

561.241.7145 (fax)

jgaller@proskauer.com

Sarah S. Gold, Esq.

Karen E. Clarke, Esq.

Proskauer Rose, LLP

1585 Broadway

New York, NY 10036

212.969.3000

212.969.2900 (fax)

sgold@proskauer.com

kclarke@proskauer.com

Counsel for Defendants Sun Capital, Inc.,

Sun Capital Healthcare, Inc.

and HLP Properties of Port Arthur, LLC

Service via email and U.S. Mail

EXHIBIT O

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

DANIEL S. NEWMAN, as Receiver for
Founding Partners Capital Management
Company; Founding Partners Stable-Value
Fund, L.P.; Founding Partners Stable-Value
Fund II, L.P.; Founding Partners Global
Fund, Ltd.; and Founding Partners Hybrid-
Value Fund, L.P.,

Case No. 2:09-cv-445-FtM-99-SPC

Plaintiff,

v.

SUN CAPITAL, INC., a Florida corporation,
SUN CAPITAL HEALTHCARE, INC.,
a Florida corporation and HLP PROPERTIES
OF PORT ARTHUR, LLC, a Texas limited liability
company,

Defendants.

**PLAINTIFF'S SECOND REQUEST FOR PRODUCTION TO DEFENDANT
SUN CAPITAL, INC., PURSUANT TO COURT ORDERS**

Pursuant to the Court's Orders dated July 28, 2009 and September 22, 2009, Plaintiff Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P., by and through its undersigned counsel, hereby request that Defendant, Sun Capital, Inc. ("SCI") produce for inspection and copying at the offices of Broad and Cassel, One Biscayne Tower, 21st Floor, 2 S. Biscayne Boulevard, Miami, Florida 33131, or such other place agreeable to the parties, the documents and materials specified below, within 10 days from the date of service. If any of the documents and materials specified below cannot or will not be produced for inspection and

10/28/09

copying within the designated time period, SCI shall file a written response specifying the documents and materials that cannot or will not be produced and the reasons therefore.

Definitions

For purposes of answering these requests:

1. "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with that Person and shall include, without limitation (a) any officer or director of such Person and (b) any Person of which that Person beneficially owns either (i) at least five percent (5%) of the outstanding equity securities having the general power to vote or (ii) at least five percent (5%) of all equity interests.

2. "Founding Partners" means Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund, II, L.P., Founding Partners Global Fund, Ltd., Founding Partners Global Fund, Inc. and Founding Partners Hybrid-Value Fund, L.P. (f/k/a Founding Partners Equity Fund, L.P.), as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, Affiliate, predecessor, successor, attorney, accountant, representative, or other Person(s) purporting to act on their behalf. "Founding Partners" includes, without limitation, William L. Gunlicks.

INSTRUCTIONS

1. In construing this request: (a) the singular shall include the plural and the plural shall include the singular; (b) the words "and" and "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request all information that might otherwise be construed to be outside its scope; (c) the words "any" and "all" shall be read to mean each and every; and (d) the term "including" shall mean "including, without limitation."

2. This request includes all documents in your possession, custody or control, regardless of where such documents are located.

3. A copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such document is within your possession, custody, or control.

4. All documents must be produced in their entirety, including all attachments and enclosures, and in their original folder, binder or other cover or container. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label of such cover or other container must be attached to the document or group of documents.

5. If you object to any portion of this request, state with specificity the grounds for each such objection and produce all documents and submit all answers responsive to the remainder of the request.

6. If you claim privilege or immunity with respect to any document or information, state the nature and basis of the privilege or other ground asserted as justification for withholding such information in sufficient detail to permit the Court to adjudicate the validity of the claim. This includes, at a minimum: (a) the date of the document or communication; (b) the author or speaker; (c) the addressee(s) or person to whom the communication was directed; (d) all other recipients or persons receiving the communication; (e) the type of document (letter, report, etc.) or communication; (f) the general subject matter of the document or communication; and (g) the specific privilege claimed.

7. This request is continuing in nature. Any information or documents called for by this request that you obtain subsequent to the service of your response to this request, shall promptly be supplied in the form of supplemental document productions pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

8. All documents are to be produced as they are kept in the usual course of business so that the requesting parties can ascertain the files in which they were located, their relative order in such files and how such files were maintained.

9. All documents responsive to this request that are maintained in the usual course of business in electronic format shall be produced in their native format along with software necessary to interpret such files if such software is not readily available. All such documents shall be accompanied by a listing of all file properties, commonly known as meta data, concerning such document, including all information concerning the date(s) and recipient(s) of the document, the location and content of any attachment(s) to the document, and the location and content of any information imbedded or annotated in the document.

10. If any documents requested were at one time in existence but are no longer in existence, please so state, separately specifying for each document no longer existing:

- (a) the type of document;
- (b) the type of information contained therein;
- (c) the date(s) on which it was created;
- (d) the sender(s) and recipient(s), if applicable;
- (e) the date (or approximate date) on which it ceased to exist;
- (f) the circumstances under which it ceased to exist;
- (g) the name of the person authorizing the disposal or destruction or having responsibility for the loss of the document;
- (h) the identity of all persons having knowledge of the contents of such document; and
- (i) the paragraph number(s) of the request(s) in response to which the document otherwise would have been produced.

DOCUMENTS TO BE PRODUCED

1. Updated SCI financial statements and reports from August 1, 2009 to the Present, in the form previously provided or produced to Founding Partners or the Receiver. This request includes: balance sheets, income statements, due from related-party schedules, ledger entries, account receivable aging reports and attachments, the underlying client-by-client agings of accounts receivable.
2. Monthly Balance sheets and monthly income statements for SCI that are *not* consolidated with SCHI or any other affiliated entity, from October 1, 2008 to the Present.
3. Cash flow analyses and detailed cash disbursements for SCI, from October 1, 2008 to the Present.
4. Documents responsive to Request Numbers 40 to 45, inclusive (relating to diversion and dissipation of funds) of Plaintiff's First Request for Production to SCI insofar as they were not produced and/or not yet in existence at the time that SCI produced documents in response to Plaintiff's First Request for Production.

Date: October 28, 2009.

By: 

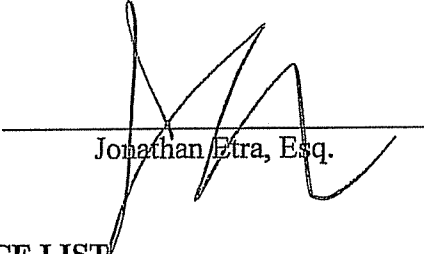
Jonathan Etra, Esq.
Florida Bar No. 0686905

BROAD AND CASSEL

Attorneys for Receiver
2 South Biscayne Boulevard, 21st Floor
Miami, FL 33131
Tel: (305) 373-9400
Fax: (305) 995-6403
jetra@broadandcassel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 28th day of October, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.



Jonathan Etra, Esq.

SERVICE LIST

Jonathan Galler, Esq.

Proskauer Rose, LLP
2255 Glades Rd
Suite 340 West
Boca Raton, FL 33431
561.995.4733
561.241.7145 (fax)
jgaller@proskauer.com

Sarah S. Gold, Esq.

Karen E. Clarke, Esq.

Proskauer Rose, LLP
1585 Broadway
New York, NY 10036
212.969.3000
212.969.2900 (fax)

sgold@proskauer.com

kclarke@proskauer.com

Counsel for Defendants Sun Capital, Inc.,

Sun Capital Healthcare, Inc.

and HLP Properties of Port Arthur, LLC

Service via email and U.S. Mail

EXHIBIT P

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

U.S. SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

FOUNDING PARTNERS, CAPITAL MANAGEMENT
CO. AND WILLIAM GUNLICKS

Defendant

Civil Action No. 2:09-cv-229-FtM-29SPC

(If the action is pending in another district, state where:
Middle District of Florida)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Sun Capital Healthcare, Inc., 999 Yamato Rd., 3rd Floor, Boca Raton, FL 33431
c/o David J. Armstrong, as Registered Agent

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE SCHEDULE "A" ATTACHED

Place: Broad and Cassel
2 South Biscayne Blvd., Suite 2100
Miami, FL 33131

Date and Time:

06/15/2010 9:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 6-1-10

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Daniel Newman, Receiver
, who issues or requests this subpoena, are:

Jonathan Etra, Esq., 2 South Biscayne Blvd., Suite 2100, Miami, FL 33131, 305-373-9400

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:09-cv-229-FtM-29SPC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

INSTRUCTIONS

1. In construing this request (a) the singular shall include the plural and the plural shall include the singular; (b) the words "and" and "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request all information that might otherwise be construed to be outside its scope; (c) the words "any" and "all" shall be read to mean each and every; and (d) the term "including" shall mean "including, without limitation."
2. This request includes all documents in your possession, custody, or control, regardless of where such documents are located.
3. A copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such document is within your possession, custody, or control.
4. All documents must be produced in their entirety, including all attachments and enclosures, and in their original folder, binder, or other cover or container. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label of such cover or other container must be attached to the document or group of documents.
5. If you object to any portion of this request, state with specificity the grounds for each such objection and produce all documents and submit all answers responsive to the remainder of the request.
6. If you claim privilege or immunity with respect to any document or information, state the nature and basis of the privilege or other ground asserted as justification for withholding such information in sufficient detail to permit the Court to adjudicate the validity of the claim.

This includes, at a minimum: (a) the date of the document or communication; (b) the author or speaker; (c) the addressee(s) or person to whom the communication was directed; (d) all other recipients or persons receiving the communication; (e) the type of document (letter, report, etc.) or communication; (f) the general subject matter of the document or communication; and (g) the specific privilege claimed.

7. This request is continuing in nature. Any information or documents called for by this request that you obtain subsequent to the service of your response to this request shall promptly be supplied in the form of supplemental document productions pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

8. All documents are to be produced as they are kept in the usual course of business so that the requesting parties can ascertain the files in which they were located, their relative order in such files, and how such files were maintained.

9. All documents responsive to this request that are maintained in the usual course of business in electronic format shall be produced in their native format along with software necessary to interpret such files if such software is not readily available. All such documents shall be accompanied by a listing of all file properties, commonly known as meta data, concerning such document, including all information concerning the date(s) and recipient(s) of the document, the location and content of any attachment(s) to the document, and the location and content of any information imbedded or annotated in the document.

10. If any documents requested were at one time in existence but are no longer in existence, please so state, separately specifying for each document no longer existing:

- (a) the type of document;
- (b) the type of information contained therein;

- (c) the date(s) on which it was created;
- (d) the sender(s) and recipient(s), if applicable;
- (e) the date (or approximate date) on which it ceased to exist;
- (f) the circumstances under which it ceased to exist;
- (g) the name of the person authorizing the disposal or destruction or having responsibility for the loss of the document;
- (h) the identity of all persons having knowledge of the contents of such document; and
- (i) the paragraph number(s) of the request(s) in response to which the document otherwise would have been produced.

11. Unless indicated otherwise, the relevant time period for the requests is January 1, 2000 through the present.

DEFINITIONS

1. "Collateral"- means all of the property and interests in property that secure the payment or performance of any payment obligations pursuant to either the SCI Agreement or SCHI Agreement.
2. "document"- means any kind of written or graphic matter, however provided or reproduced, of any kind or description, whether sent or received or neither, including but not limited to, papers, books, book entries, correspondence, telegrams, cables, telex messages, memorandum, notes, data, notations, work papers, inter-office communications, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of committee meetings, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, formulae, plans, specifications, evaluations, contracts, licenses, agreements, offers, ledgers, journals, books of records of account, summaries of accounts, bills, receipts, balance sheets, income statements, questionnaires, answers to questionnaires, statistical records, desk calendars, appointment books, diaries, lists, tabulations, charts, graphs, maps, surveys, sound recordings, computer tapes, magnetic tapes, punch cards, computer printouts, data processing input and output, microfilms, all other records kept by electronic photographic, or mechanical means, and things similar to any of the foregoing, however denominated, whether currently in existence or already destroyed. A draft or non-identical copy is a separate document within the meaning of this term. The term "document" is

intended to be comprehensive and to include, without limitation, all original writings of any nature whatsoever, copies and drafts which, by reason of notes, changes, initials, or identification marks, are not identical to the original, and all non-identical original copies thereof. In all cases where original or non-original copies are not available, "document" also means identical copies of original documents and copies of non-identical copies.

3. "Holding Account"- means account number 0494002031891 in the name of SCHI and held by SunTrust Bank, and all such other accounts as SCHI and any the Receivership Entity mutually designated as the "Holding Account."
4. "Lockboxes"- means any lockbox accounts maintained pursuant to any lockbox agreement entered into pursuant to the SCHI Agreement and/or SCI Agreement.
5. "Person"- means any natural person or any corporation, association, partnership, joint venture, limited liability company, joint stock company or other company, business trust, trust, organization, business, or government or any governmental agency or political subdivision thereof.
6. "Property"- means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.
7. "Purchase and Sale Agreement"- means any agreement entered into by SCHI or SCI with a seller of accounts receivable pursuant to the SCHI Agreement or the SCI Agreement.
8. "Refer" or "relate to" means relating to, reflecting, concerning, referring to, describing, evidencing, or constituting.
9. "Receivership Entities" means Founding Partners Capital management Company, Founding Partners Stable Value Fund, L.P., Founding Partners Stable Value Fund, II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P.
10. "Related Entities" – refers to means all of the entities listed on Exhibit 1 hereto, as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, or other person(s) purporting to act on their behalf.
11. "Sun"- refers to Sun Principals, Sun Capital, Inc., and Sun Capital Healthcare, Inc.; as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, or other person(s) purporting to act on their behalf.
12. "SCI Agreement"- means that certain credit and security agreement and all amendments thereto, entered into by Stable Value Fund on or about January 24, 2002.
13. "SCHI Agreement"- means that certain credit and security agreement and all amendments thereto, entered into by Stable Value Fund's predecessor Found Partners Multi-

Strategy Fund, L.P. and Sun Capital, Inc. and Sun Capital Healthcare, Inc. on or about June 6, 2000.

14. "Sun Principals"- refer to Peter Baronoff, Howard Koslow, and Lawrence Leder.

15. "You" or "Your" and/or the "Company" - means the individual or entity identified in the subpoena, and their predecessors, successors, or affiliates, officers, directors, employees, and agents, including, without limitation, any of the Sun Principals.

DOCUMENTS BEING SUBPOENAED

1. All documents that relate to any agreement, whether written or oral, between the Company and Sun.
2. All documents that relate to any agreement, whether written or oral, between the Company and any of the Receivership Entities.
3. All documents that relate to any agreement, whether written or oral, between the Company and any of the Related Entities.
4. All Purchase and Sale Agreements (including any written amendments thereto) to which the Company is a party.
5. All documents relating to any Purchase and Sale Agreement produced in response to the previous request, including but not limited to any documents transmitting such agreements to any of the Receivership Entities and/or Mr. Gunlicks.
6. All documents that relate to any funds and/or assets derived by the Company, directly or indirectly, from any of the Receivership Entities.
7. All documents that relate to any funds and/or assets derived by the Company from Sun.
8. All documents that relate to any funds and/or assets derived by the Company from any of the Related Entities.
9. All documents that relate to the transfer of any funds and/or assets from the Company to Sun.

10. All documents that relate to the transfer of any funds and/or assets from the Company to any of the Related Entities.
11. All documents that relate to any funds and/or assets derived by the Company from any of the Receivership Entities pursuant to the SCHI Agreement and/or SCI Agreement.
12. All financial statements, general ledgers and supporting documentation, which would include but is not limited to:
 - a. Income Statements and Balance Sheets;
 - b. General Ledger Trial Balance;
 - c. Accounts Receivable Aging Schedules;
 - d. Statement of Cash Flows;
 - e. Sun Due from Related Parties schedules;
 - f. EBITDA reconciliation, on a consolidated basis and by entity;
 - g. Recent Accounts Payable aging schedules;
 - h. Analysis of significant non-recurring and other one-time revenues or expenses, including description and accounting treatment; and
 - j. Fixed asset registers.
13. All reports provided by the Company to any of the Receivership Entities, including but not limited to reports relating to the Collateral.
14. All reports provided by the Company to Sun, including but not limited to reports relating to the Collateral.
15. All reports provided by the Company to any of the Related Entities, including but not limited to reports relating to the Collateral.
16. All monthly operating reports relating to the Company's, Sun's and/or any Related Entities' operations.
17. Any projections, forecasts and/or strategic or business plans developed within the last six months or the current fiscal year-to-date for the Company, Sun and/or any Related Entities.
18. All budgets and/or cash forecasts (weekly, monthly, 13 week rolling, annual and/or five year) for the Company, Sun and/or any Related Entities..

19. Detailed cash receipts journals for the Company, Sun and/or any Related Entities in electronic format.
20. Detailed cash disbursement journals for the Company, Sun and/or any Related Entities in electronic format.
21. All documents that relate to the sale—actual or intended-- of any of the Company's assets, including but not limited to letters of intent, term sheets, drafts, notes, private placement memoranda and the like.
22. To the extent not previously produced, any documents reflecting the sale, assignment, pledging, conveyance or otherwise transfer—actual or intended—of any of the Company's assets.
23. All documents relating to the Collateral, including but not limited to documents relating to the preservation of any of the Receivership Entities' first priority perfected security interest.
24. All documents relating to any mortgages or other security interests filed against the Company, Sun and/or any Related Entities..
25. All federal tax returns for the Company, Sun and/or any Related Entities for the years 2006, 2007, 2008, and 2009.
26. All documents that relate to repayment by the Company of any loans from Sun, including but not limited to correspondences, account statements, wire transfer confirmations, cancelled checks, and all other documents that reflect the transfer of funds by the Company to Sun.
27. To the extent not produced in response to another request, all documents relating to summaries of terms, collateral, and payment schedules for all outstanding indebtedness to Sun or other assets beneficially owned by Sun.

28. All documents that relate to any planned or proposed repayment by the Company of loans from Sun.

29. To the extent not previously produced, all income statements and balance sheets for the Company, Sun and/or any Related Entities.

30. To the extent not previously produced, all documents that relate to the balance of the Lockboxes, and the use of any funds derived therefrom.

31. To the extent not previously produced, all documents that relate to the balance of the Holding Accounts, and the use of any funds derived therefrom.

32. To the extent not previously produced, all records from any software system relating to receivables purchased by Sun, including, but not limited to, payments made toward those receivables and the remaining balances of those receivables.

33. To the extent not previously produced, all documents relating to payments by the Company to Sun.

34. To the extent not previously produced, all documents relating to payments by any of the Related Entities to the Company.

35. To the extent not previously produced, any applications by the Company for financing.

36. To the extent not previously produced, all borrowing base certifications.

37. To the extent not previously produced, all documents relating to any form of indebtedness by the Company, including, but not limited to any mortgages, loan obligations, promissory notes.

38. To the extent not previously produced, all documents relating to the value of the Company, including but not limited to valuations, appraisals, and/or estimates of value or sale price.

39. To the extent not previously produced, all collateral and/or fixed assets appraisals.
40. All documents relating to leases, if any, for land, facilities, machinery and equipment or other assets to which the Company is a party.
41. All correspondences between the Company and Mr. Gunlicks.
42. All correspondences between the Company and Sun.
43. All correspondences between the Company and any of the Related Entities.
44. All documents reflecting the management structure of the Company.
45. All corporate books and records, including but not limited to all by-laws, minutes, stock records, records of capital contributions, and all other documents identifying primary shareholders and percentage ownership.
46. All agreements with outside advisors, consultants and/or experts.
47. All presentations and/or reports prepared by any outside advisors, consultants and/or experts.
48. To the extent not previously produced, all documents and back-up materials to presentations and/or reports prepared by any outside advisors, consultants, and/or experts.
49. All management agreements to which the Company is a party, including but not limited to any management agreements with Tatum.
50. Summaries of pending litigation matters and/or pending legal settlements.
51. Summaries of any pending environmental issues, if any, including but not limited to all relevant analyses, studies and/or correspondences relating to same.
52. All documents referring or relating to the Company, Sun and/or any of the Related Entities as a debtor-in-possession of funds of any entity in bankruptcy.

EXHIBIT 1

Bossier Land Acquisition, Corp.
Emerald Hills Ventures, Inc.
F.G.C. Courtyard, Inc.
Forest Park Hospital Corporation #1
HLP of Los Angeles
HLP Partners of Miami-Dade, LLC
HLP Properties of Lee, LLC
HLP Properties of Port Arthur LLC
HLP Properties, Inc.
LH Acquisition, LLC
Professional Rehabilitation Hospital, LLC d/b/a Promise Specialty Hospital of Miss Lou
Promise Healthcare, Inc.
Promise Hospital of Ascension, Inc.
Promise Hospital of Baton Rouge, Inc.
Promise Hospital of Dade, Inc.
Promise Hospital of Florida at the Villages, Inc.
Promise Hospital of Lee, Inc.
Promise Hospital of Louisiana, Inc.
Promise Hospital of Phoenix, Inc.
Promise Hospital of Salt Lake, Inc.
Promise Hospital of San Antonio, Inc.
Promise Hospital of Southeast Texas, Inc.
Promise Hospital of Vicksburg, Inc.
Quantum Properties, LP
St. Alexius Hospital Corporation #1
Success Healthcare 1, LLC, d/b/a Silver Lakes medical Center
Success Healthcare 2, LLC
Success Healthcare, LLC
Sun Capital Healthcare, Inc.
Sun Capital Management Services, Inc.
Sun Capital, Inc.
The Sun Capital Group, Inc.
Trieste Land Ventures, Inc.
Vidalia Real Estate Partners, LLC
WorldFactor, LLC

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

U.S. SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

FOUNDING PARTNERS, CAPITAL MANAGEMENT
CO. AND WILLIAM GUNLICKS

Defendant

Civil Action No. 2:09-cv-229-FtM-29SPC

(If the action is pending in another district, state where:

Middle District of Florida)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Sun Capital, Inc., 999 Yamato Rd., 3rd Floor, Boca Raton, FL 33431
c/o David J. Armstrong, as Registered Agent

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE SCHEDULE "A" ATTACHED

Place: Broad and Cassel
2 South Biscayne Blvd., Suite 2100
Miami, FL 33131

Date and Time:

06/15/2010 9:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:

6-1-10

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Daniel Newman, Receiver, who issues or requests this subpoena, are:

Jonathan Etra, Esq., 2 South Biscayne Blvd., Suite 2100, Miami, FL 33131, 305-373-9400

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:09-cv-229-FtM-29SPC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

INSTRUCTIONS

1. In construing this request (a) the singular shall include the plural and the plural shall include the singular; (b) the words "and" and "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request all information that might otherwise be construed to be outside its scope; (c) the words "any" and "all" shall be read to mean each and every; and (d) the term "including" shall mean "including, without limitation."

2. This request includes all documents in your possession, custody, or control, regardless of where such documents are located.

3. A copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such document is within your possession, custody, or control.

4. All documents must be produced in their entirety, including all attachments and enclosures, and in their original folder, binder, or other cover or container. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label of such cover or other container must be attached to the document or group of documents.

5. If you object to any portion of this request, state with specificity the grounds for each such objection and produce all documents and submit all answers responsive to the remainder of the request.

6. If you claim privilege or immunity with respect to any document or information, state the nature and basis of the privilege or other ground asserted as justification for withholding such information in sufficient detail to permit the Court to adjudicate the validity of the claim.

This includes, at a minimum: (a) the date of the document or communication; (b) the author or speaker; (c) the addressee(s) or person to whom the communication was directed; (d) all other recipients or persons receiving the communication; (e) the type of document (letter, report, etc.) or communication; (f) the general subject matter of the document or communication; and (g) the specific privilege claimed.

7. This request is continuing in nature. Any information or documents called for by this request that you obtain subsequent to the service of your response to this request shall promptly be supplied in the form of supplemental document productions pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

8. All documents are to be produced as they are kept in the usual course of business so that the requesting parties can ascertain the files in which they were located, their relative order in such files, and how such files were maintained.

9. All documents responsive to this request that are maintained in the usual course of business in electronic format shall be produced in their native format along with software necessary to interpret such files if such software is not readily available. All such documents shall be accompanied by a listing of all file properties, commonly known as meta data, concerning such document, including all information concerning the date(s) and recipient(s) of the document, the location and content of any attachment(s) to the document, and the location and content of any information imbedded or annotated in the document.

10. If any documents requested were at one time in existence but are no longer in existence, please so state, separately specifying for each document no longer existing:

- (a) the type of document;
- (b) the type of information contained therein;

- (c) the date(s) on which it was created;
- (d) the sender(s) and recipient(s), if applicable;
- (e) the date (or approximate date) on which it ceased to exist;
- (f) the circumstances under which it ceased to exist;
- (g) the name of the person authorizing the disposal or destruction or having responsibility for the loss of the document;
- (h) the identity of all persons having knowledge of the contents of such document; and
- (i) the paragraph number(s) of the request(s) in response to which the document otherwise would have been produced.

11. Unless indicated otherwise, the relevant time period for the requests is January 1, 2000 through the present.

DEFINITIONS

1. "Collateral"- means all of the property and interests in property that secure the payment or performance of any payment obligations pursuant to either the SCI Agreement or SCHI Agreement.
2. "document"- means any kind of written or graphic matter, however provided or reproduced, of any kind or description, whether sent or received or neither, including but not limited to, papers, books, book entries, correspondence, telegrams, cables, telex messages, memorandum, notes, data, notations, work papers, inter-office communications, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of committee meetings, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, formulae, plans, specifications, evaluations, contracts, licenses, agreements, offers, ledgers, journals, books of records of account, summaries of accounts, bills, receipts, balance sheets, income statements, questionnaires, answers to questionnaires, statistical records, desk calendars, appointment books, diaries, lists, tabulations, charts, graphs, maps, surveys, sound recordings, computer tapes, magnetic tapes, punch cards, computer printouts, data processing input and output, microfilms, all other records kept by electronic photographic, or mechanical means, and things similar to any of the foregoing, however denominated, whether currently in existence or already destroyed. A draft or non-identical copy is a separate document within the meaning of this term. The term "document" is

intended to be comprehensive and to include, without limitation, all original writings of any nature whatsoever, copies and drafts which, by reason of notes, changes, initials, or identification marks, are not identical to the original, and all non-identical original copies thereof. In all cases where original or non-original copies are not available, "document" also means identical copies of original documents and copies of non-identical copies.

3. "Holding Account"- means account number 0494002031891 in the name of SCHI and held by SunTrust Bank, and all such other accounts as SCHI and any the Receivership Entity mutually designated as the "Holding Account."

4. "Lockboxes"- means any lockbox accounts maintained pursuant to any lockbox agreement entered into pursuant to the SCHI Agreement and/or SCI Agreement.

5. "Person"- means any natural person or any corporation, association, partnership, joint venture, limited liability company, joint stock company or other company, business trust, trust, organization, business, or government or any governmental agency or political subdivision thereof.

6. "Property"- means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

7. "Purchase and Sale Agreement"- means any agreement entered into by SCHI or SCI with a seller of accounts receivable pursuant to the SCHI Agreement or the SCI Agreement.

8. "Refer" or "relate to" means relating to, reflecting, concerning, referring to, describing, evidencing, or constituting.

9. "Receivership Entities" means Founding Partners Capital management Company, Founding Partners Stable Value Fund, L.P., Founding Partners Stable Value Fund, II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P.

10. "Related Entities" – means all of the entities listed on Exhibit 1 hereto, as well as as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, or other person(s) purporting to act on their behalf.

11. "SCI Agreement"- means that certain credit and security agreement and all amendments thereto, entered into by Stable Value Fund on or about January 24, 2002.

12. "SCHI Agreement"- means that certain credit and security agreement and all amendments thereto, entered into by Stable Value Fund's predecessor Found Partners Multi-Strategy Fund, L.P. and Sun Capital, Inc. and Sun Capital Healthcare, Inc. on or about June 6, 2000.

13. "Sun Principals"- refer to Peter Baronoff, Howard Koslow, and Lawrence Leder.

14. "You" or "Your" and/or "Sun" - refers to Sun Principals, Sun Capital, Inc., and Sun Capital Healthcare, Inc.; as well as any owner, director, officer, employee, agent, trust, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, or other person(s) purporting to act on their behalf.

DOCUMENTS BEING SUBPOENAED

1. All documents that relate to any agreement, whether written or oral, between the Sun and any of the Related Entities.
2. All documents that relate to any agreement, whether written or oral, between the Sun and any of the Receivership Entities.
3. All Purchase and Sale Agreements (including any written amendments thereto) to which the Sun is a party.
4. All documents relating to any Purchase and Sale Agreement produced in response to the previous request, including but not limited to any documents transmitting such agreements to any of the Receivership Entities and/or Mr. Gunlicks.
5. All documents that relate to any funds and/or assets derived by Sun, directly or indirectly, from any of the Receivership Entities.
6. All documents that relate to any funds and/or assets from Sun to any of the Related Entities.
7. All documents that relate to the transfer of any funds and/or assets from the any of the Receivership Entities to Sun.
8. All documents relating to the transfer of any funds and/or assets from the Receivership Entities to any of the Related Entities.

9. To the extent not previously produced, all documents that relate to any funds and/or assets derived by Sun from any of the Receivership Entities pursuant to the SCHI Agreement and/or SCI Agreement.
10. All financial statements, general ledgers and supporting documentation, which would include but is not limited to:
 - a. Income Statements and Balance Sheets;
 - b. General Ledger Trial Balance;
 - c. Accounts Receivable Aging Schedules;
 - d. Statement of Cash Flows;
 - e. Due from Related Parties schedules;
 - f. EBITDA reconciliation, on a consolidated basis and by entity;
 - g. Recent Accounts Payable aging schedules;
 - h. Analysis of significant non-recurring and other one-time revenues or expenses, including description and accounting treatment; and
 - j. Fixed asset registers.
11. All reports provided by Sun and/or any of the Related Entities to any of the Receivership Entities, including but not limited to reports relating to the Collateral.
12. All monthly operating reports related to Sun and/or any of the Related Entities.
13. Any projections, forecasts and/or strategic or business plans developed within the last six months or the current fiscal year-to-date for Sun and/or any of the Related Entities.
14. All budgets and/or cash forecasts (weekly, monthly, 13 week rolling, annual and/or five year) for Sun and/or any of the Related Entities.
15. Detailed cash receipts journals for Sun and/or any of the Related Entities in electronic format.
16. Detailed cash disbursement journals for Sun and/or any of the Related Entities in electronic format.

17. All documents that relate to the sale—actual or intended-- of any of Sun's and/or any of the Related Entities' assets, including but not limited to letters of intent, term sheets, drafts, notes, private placement memoranda, pro forma and the like.
18. To the extent not previously produced, any documents relating to the sale, assignment, pledging, conveyance or otherwise transfer—actual or intended—of any of Sun's and/or any of the Related Entities' assets.
19. All documents relating to the Collateral, including but not limited to documents relating to the preservation of any of the Receivership Entities' first priority perfected security interest.
20. All documents relating to any mortgages or other security interests filed against Sun and/or any of the Related Entities.
21. All federal tax returns for Sun for the years 2006, 2007, 2008, and 2009.
22. All documents that relate to repayment by any of the Related Entities of any loans from Sun, including but not limited to correspondences, account statements, wire transfer confirmations, cancelled checks, and all other documents that reflect the transfer of funds by any of the of the Related Entities to Sun.
23. All documents that relate to the repayment by Sun of any loans from the Receivership Entities, including but not limited to correspondences, account statements, wire transfer confirmations, cancelled checks, and all other documents that reflect the transfer of funds by Sun to any of the Receivership Entities.
24. To the extent not produced in response to another request, all documents relating to summaries of terms, collateral, and payment schedules for all outstanding indebtedness to the Receivership Entities or other assets beneficially owned by the Receivership Entities.

25. All documents that relate to any planned or proposed repayment by any of the Related Entities of loans from Sun.

26. All documents that relate to any planned or proposed repayment by Sun of loans from any of the Receivership Entities.

27. To the extent not previously produced, all income statements and balance sheets for Sun and/or any of the Related Entities.

28. To the extent not previously produced, all documents that relate to the balance of the Lockboxes, and the use of any funds derived therefrom.

29. To the extent not previously produced, all documents that relate to the balance of the Holding Accounts, and the use of any funds derived therefrom.

30. To the extent not previously produced, all records from any software system relating to receivables purchased by Sun, including, but not limited to, payments made toward those receivables and the remaining balances of those receivables.

31. To the extent not previously produced, all documents relating to payments by any of the Related Entities to Sun.

32. To the extent not previously produced, all documents relating to payments by Sun to any of the Receivership Entities.

33. To the extent not previously produced, any applications by Sun and/or any of the Related Entities for financing.

34. To the extent not previously produced, all borrowing base certifications.

35. To the extent not previously produced, all documents relating to any form of indebtedness by Sun and/or any of the Related Entities, including, but not limited to any mortgages, loan obligations, promissory notes.

36. To the extent not previously produced, all documents relating to the value of Sun and/or any of the Related Entities, including but not limited to valuations, appraisals, and/or estimates of value or sale price.
37. To the extent not previously produced, all collateral and/or fixed assets appraisals.
38. All documents relating to leases, if any, for land, facilities, machinery and equipment or other assets to which Sun and/or any of the Related Entities is/are a party.
39. All correspondences between Sun and Mr. Gunlicks.
40. All correspondences between Sun and any of the Related Entities.
41. All documents reflecting the management structure of Sun and/or any of the Related Entities.
42. All corporate books and records, including but not limited to all by-laws, minutes, stock records, records of capital contributions, and all other documents identifying primary shareholders and percentage ownership.
43. All agreements with any outside advisors, consultants and/or experts.
44. All presentations and/or reports prepared by any outside advisors, consultants and/or experts.
45. To the extent not previously produced, all documents and back-up materials to presentations and/or reports prepared by any outside advisors, consultants, and/or experts.
46. All management agreements to which Sun and/or any of the Related Entities is/are a party, including but not limited to any management agreements with Tatum.
47. Summaries of pending litigation matters and/or pending legal settlements.
48. Summaries of any pending environmental issues, if any, including but not limited to all relevant analyses, studies and/or correspondences relating to same.

49. All documents referring or relating to Sun and/or any of the Related Entities as a debtor-in-possession of funds of any entity in bankruptcy.

EXHIBIT 1

Bossier Land Acquisition, Corp.
Emerald Hills Ventures, Inc.
F.G.C. Courtyard, Inc.
Forest Park Hospital Corporation #1
HLP of Los Angeles
HLP Partners of Miami-Dade, LLC
HLP Properties of Lee, LLC
HLP Properties of Port Arthur LLC
HLP Properties, Inc.
LH Acquisition, LLC
Professional Rehabilitation Hospital, LLC d/b/a Promise Specialty Hospital of Miss Lou
Promise Healthcare, Inc.
Promise Hospital of Ascension, Inc.
Promise Hospital of Baton Rouge, Inc.
Promise Hospital of Dade, Inc.
Promise Hospital of Florida at the Villages, Inc.
Promise Hospital of Lee, Inc.
Promise Hospital of Louisiana, Inc.
Promise Hospital of Phoenix, Inc.
Promise Hospital of Salt Lake, Inc.
Promise Hospital of San Antonio, Inc.
Promise Hospital of Southeast Texas, Inc.
Promise Hospital of Vicksburg, Inc.
Quantum Properties, LP
St. Alexius Hospital Corporation #1
Success Healthcare 1, LLC, d/b/a Silver Lakes medical Center
Success Healthcare 2, LLC
Success Healthcare, LLC
Sun Capital Management Services, Inc.
The Sun Capital Group, Inc.
Trieste Land Ventures, Inc.
Vidalia Real Estate Partners, LLC
WorldFactor, LLC