UNITED STATES DISTRICT COURT`1
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.,

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.
_____/

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

RECEIVER'S *EMERGENCY* MOTION TO COMPEL DEPOSITIONS OR, ALTERNATIVELY, TO STRIKE DEFENDANTS' EMERGENCY MOTION AND VACATE THE TRO DUE TO SUN'S FAILURE TO PROVIDE COURT-ORDERED EXPEDITED DISCOVERY

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Local Rule 3.01, and the Court's Order dated July 28, 2009 (Doc. # 130), the Receiver respectfully submits his Emergency Motion to Compel Depositions, Or, Alternatively, To Strike Defendants' Emergency Motion and Vacate The TRO Due To Sun's Failure To Provide Court-Ordered Expedited Discovery.

EMERGENCY MOTION

This is an Emergency Motion due to the expedited discovery schedule on Defendants' Sun Capital Health Care, Inc. ("SCHI") and Sun Capital, Inc.("SCI") (collectively, "Sun")

Emergency Motion for TRO and Preliminary Injunction. An expedited schedule was proposed by the Receiver, consented to by Sun, and entered by the Court. Pursuant to that July 28, 2009 Order, the Receiver must complete his discovery on Sun's Motion for Preliminary Injunction by September 30, 2009. An emergency briefing schedule is therefore necessary.

REQUEST FOR RELIEF

For the reasons described below, the Receiver seeks an Order from the Court compelling the depositions of SCHI, SCI, Promise, Success, and their three Principals for dates certain by September 30, 2009, regardless of the status of document production. Key documents not produced by Sun until after the depositions can be utilized, if necessary, at an evidentiary hearing on Sun's Emergency Motion.

ALTERNATIVE REQUEST FOR RELIEF

The Receiver filed his Unopposed Motion to Continue the Preliminary Injunction Oral Argument and for Expedited Discovery (Doc. # 133), in an attempt to obtain the necessary discovery from Defendants to test, challenge, and rebut the many assertions and assumptions in Sun's Emergency Motion for TRO and Preliminary Injunction (Doc # 122), which the Receiver believes to be false and misleading. Based on Sun's representations to the Receiver and to the Court, the Receiver was under the impression that Sun recognized its burden to come forward with the necessary discovery to permit the Receiver to meaningfully challenge Sun's factual assertions and legal theories upon which it obtained the TRO and wishes to obtain a preliminary injunction, to the detriment of the Receiver and the investors.

However, far from embracing its opportunity to provide discovery on its Emergency Motion, Sun is stalling, has reneged on promises, and apparently seeks to "run out the clock" on discovery, in an attempt to thwart the Receiver's efforts to protect the Receivership Estate's cash

collateral. Sun apparently seeks to prevent the Court from considering anything but its own untested and unchallenged version of events, without due process or basic fairness to the Receiver and to the extreme detriment of the investors.

In view of the drastic provisional relief sought by Sun (temporarily provided by the Court's TRO Order), and in view of Sun's Court-ordered obligations to provide full and expedited discovery on its Emergency Motion, if Sun persists in failing to meet its considerable burden of producing discovery on its Emergency Motion as ordered, Sun should not be permitted to proceed on its Emergency Motion or continue to benefit from the TRO obtained by that Motion and which was extended on the basis of Sun's submission to expedited discovery. *See* Fed. R. Civ. P. 37(b)(2)(i), (iii), (v).

RELEVANT BACKGROUND

1. On July 22, 2009, Sun filed its Emergency Motion for a TRO and Preliminary Injunction, to reverse the Receiver's acquisition of the lockboxes and preclude the Receiver from ever again seizing exercising its rights under the Agreements to seize the lockboxes in the future, pending the conclusion of the trial of this case.

2. Sun's Emergency Motion was supported by two affidavits of Mr. Howard Koslow, a Sun principal. In Sun's Emergency Motion, Sun and Mr. Koslow made several false and misleading allegations and arguments, including:

a. That *Sun was never in default* under the Loan Agreements *in the nine-years* since Sun began borrowing money from Founding Partners;

b. That, although Sun indisputably acted in *violation of numerous core contractual provisions* over the nine-year period of the relationship, Sun was nevertheless not in default because *Mr. Bill Gunlicks of Founding Partners allegedly waived each and every one of those defaults over the past nine years (even though, to this day, Sun refuses to identify each such alleged waiver by Mr. Gunlicks);*

c That it was Founding Partners, not Sun, that defaulted under the Agreements, when, in January 2009, Mr. Gunlicks refused a request for funding by Sun, *even though Founding Partners was under no obligation to fund the request due to (i) Sun's numerous defaults, (b) the lack of a borrowing base, (iii) the demand for funding by Sun was for the acquisition of hospitals, which is not a permitted use of loan proceeds under the Agreements* (thus, even assuming *arguendo* Mr. Gunlicks had waived default with respect to Sun's prior use of funds for certain capital investments Founding Partners was *never obligated* to fund those requests);

d. That, upon such purported breach, Sun was thus excused from performing every single one of its obligations under the Agreements, including the obligation to pay interest, the surrendering the lockboxes or the acceleration of payment in the event of a Sun default -- *even though the Agreements expressly preclude Sun from making this very same argument, a dispositive fact Sun inappropriately concealed from the Court in its Emergency Motion.*[1]

e. That the Receiver and the investors will not be harmed by returning the lockboxes to Sun since Sun can be trusted to use the funds only to finance ongoing operations at its hospital clients, *even though Sun has diverted and fraudulently conveyed hundreds of millions of investor funds for the benefit of its principals and without providing equivalent value or security to the investors;*

f. That Sun has provided full disclosure to the Receiver which demonstrates that the funds at issue will not be dissipated, *despite the fact that the little information Sun provided to the Receiver raised alarming questions about dissipation and diversion of the cash collateral, and when pressed on this by the Receiver's counsel and accountants, Sun cut off the flow*

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1 *See* SCHI and SCI Loan Agreements:

Waivers. To the extent that such waiver is not prohibited by the provisions of applicable law that cannot be waived, the ***Borrrower [Sun], hereby waives . . . any defense (other than payment in full) which it may now or hereafter have with respect to its liability under this Agreement or any other Program Document [defined to include the Master Lockbox Agreement]*** or with respect to the Credit Obligations."

Paragraphs 8.4(d) (emphases added).

information and complained that the Receiver's professionals were asking too many irrelevant questions;

g. That, if the Receiver is not enjoined, patients will be put at risk, *despite the fact that Sun principals know fully well (but did not disclose to the Court) that the hospitals can seek alternative financing and that emergency procedures and state regulators are in place precisely to ensure that no patient is put at risk when a hospital shuts down;*

h. That the investors need protection from the Receiver because the closure of the hospitals will cause certain receivables to lose value, *despite the fact that Sun has steadfastly refused to even try to demonstrate to the Receiver that the funds needed to keep the hospitals afloat long enough to recover such receivables are less than the funds likely recoverable on those receivables, i.e., that the continued investment of funds in the hospitals is advisable (and despite the fact the investors uniformly complain to the Receiver, not that the Receiver is being too aggressive, but that Sun is still permitted to use their funds with no oversight or accountability).*

3. Notably, Sun knew when it sought drastic emergency relief on the basis of Mr. Kowlow's affidavits that no one from Sun had been deposed by the Receiver. In fact, Sun had earlier prevented the Receiver from deposing Mr. Koslow and the other Sun principals. On July 2, 2009, the Receiver served subpoenas duces tecum to Sun pursuant to Fed. R. Civ. P. 30(b)(6) because Sun had failed to provide relevant information on a voluntary basis, in violation of its numerous broken promises to the Receiver. On July 10, 2009 (Friday night), Sun filed a Motion for Protective Order on the Receiver's subpoenas. Before the Receiver had an opportunity to respond, the Court, on July 13, 2009 (the following Monday morning) granted Sun's Motion, but provided that the depositions and document provision should take place by August 13th, which arguably became moot when the parties agreed to the expedited discovery schedule at issue in this Motion (although Sun ought to have continued to work on document collection and organization all along). It is ironic that Sun's obtaining drastic relief of a TRO has somehow

encouraged Sun to provide less discovery than it was ordered to provide before it filed its Emergency Motion and obtained the TRO.

4. On July 24, 2009, the Court granted Sun's Emergency Motion for a TRO, based on the one-sided, untested, and unchallenged testimony of Mr. Koslow. (Doc. # 130). As the Court recognized, the record before it was "undeveloped." The Court scheduled a hearing date on Sun's Emergency Motion for Preliminary Injunction for July 20, 2009.

5. In view of the success of Sun's Emergency Motion for a TRO and the need for discovery from Sun to disprove Mr. Koslow's false and misleading affidavits and Sun's untenable legal arguments, the Receiver reluctantly opted to consent to the continuation of the TRO past 10 days, in exchange for expedited discovery on Sun's Motion and an expedited briefing schedule. Sun claimed to agree to this, in apparent recognition of its obligation to substantiate Mr. Koslow's testimony with relevant discovery and to meet Sun's considerable burden of proof. Thus, on July 28, 2009, the Receiver filed his Unopposed Emergency Motion to Continue Preliminary Injunction Oral Argument and for Expedited Discovery (Doc. # 133).

6. That same day, the Court granted the Receiver's Unopposed Emergency Motion, stating that the Receiver's request to continue the TRO, have expedited discovery, and an expedited briefing schedule "makes good sense." (Doc. # 134). The Court ordered, among other things, that "the parties . . . shall engage in expedited discovery related to the issues in the request for preliminary injunction, which discovery shall be completed on or before SEPTEMBER 30, 2009."

7. The Receiver's professionals spent a great deal of time and thought on fashioning the Receiver's initial discovery requests, under the Court's July 28th Order.

8. First, with respect to depositions, to prevent a dispute about the scheduling of witnesses and to try to avoid having each Sun witness claim lack of knowledge, the Receiver sought, as its first two deposition witnesses, corporate representatives of SCHI and SCI, under Rule 30(b)(6). Although Mr. Koslow had to have been able to testify about all relevant issues immediately, on behalf of both SCHI and SCI, in view of his all-encompassing sworn affidavit testimony, the Receiver noticed these depositions for August 31, 2009 (for SCHI) and September 2, 2009 (for SCI).[2] The Receiver thus gave Sun's counsel approximately 20 days from the notices to further prepare its witnesses on issues Mr. Koslow previously swore to and whose testimony was the sole factual basis upon which the Court already granted a TRO (without *any* bond).

9. Second, with respect to documents, the Receiver took great care to try to preclude any argument from Sun that the documents requests were beyond the scope of Sun's Emergency or were overly broad or unduly burdensome. This was not a simple task since Sun's Emergency Motion for TRO and Preliminary Injunction made broad claims covering virtually every aspect of a nine-year lending relationship, in which Sun indisputably did not comply with numerous provisions of the governing Agreements (although Sun claims it obtained waivers) and also because of Sun's false arguments on equity and the numerous instances that Sun diverted funds and acted with unclean hands. The Receiver's counsel therefore took the unusual step of expressly stating the relevant legal principle or issue requiring each document request. The Receiver also went to great lengths to limit the burden of discovery on Sun, for example, by using *summary computer printouts* from Sun's computer systems that Sun previously provided to the Receiver as a model for the Receiver's discovery, thus avoiding production of endless reams

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[2] A copy of the Notices of Deposition to SCHI and SCI are attached as Exhibits A and B.

of computer data. In another example, the Receiver voluntarily limited the requests for certain materials to the beginning of 2008. In other instances, the Receiver voluntarily limited the requests to once a month, plus certain other key dates, since the beginning of 2008, and focused extensively on January 26 and 27, 2009 (because that is the time period of Founding Partners' purported breach in not funding Sun) and July 7, 2009 and thereafter (because July 7, 2009 is when the Receiver formally revoked any waivers previously given by Mr. Gunlicks).

10. Nevertheless, some of the requests may require the production of voluminous paper records. This is unavoidable in view of the broad (and false) claims made by Sun and Mr. Koslow in Sun's Emergency Motion, and upon which it obtained the TRO. This cannot reasonably cause any legitimate concern for Sun or its counsel for a variety of reasons. First, unlike the Receivership companies, Sun is still an ongoing organization. Sun is still run by the same three principals who dealt with Founding Partners, and it is still represented by the same outside counsel (Proskauer Rose) that guided Sun through its unorthodox dealings with Mr. Gunlicks, the prior receiver, and the current Receiver. Sun and its counsel know exactly where the relevant documents are. Second, Sun and its counsel have been litigating these same factual matters ever since the SEC's first subpoena to Mr. Koslow (pursuant to which Sun produced documents to the SEC) and through extensive motion practice before this Court in the SEC action. Third, Sun and Mr. Koslow alleged and swore to the same factual matters in their Emergency Motion. It is hard to believe that Sun and its counsel did not long ago organize and review the documents that relate to the arguments and sworn testimony that Sun expected the Court to rely upon (and which the Court in fact did rely upon). Finally, even if Sun presented arguments and provided sworn testimony without the requisite factual investigation, having presented the arguments and testimony, and obtained the drastic relief of a TRO and threaten to

obtain the more drastic relief of a preliminary injunction, it is absolutely incumbent upon Sun to apply whatever resources are needed to comply with the Court's Order on expedited discovery; otherwise, Sun should withdraw its Emergency Motion and consent to vacatur of the TRO. Sun cannot have it both ways.

11. The Receiver noticed his initial discovery for well prior to the September 30th cut-off date so that he could quickly assess the need for additional discovery prior to the September 30th cut off. Because many of the issues in the Emergency Motion and Mr. Koslow's affidavit concern affiliated hospitals owned by Promise and Success, in the event that the SCHI and SCI claim lack of knowledge about the hospitals, the Receiver has also noticed the depositions of Promise and Success, and in the process of noticing the depositions of principals common to Sun, Promise, and Success (Mr. Koslow, Mr. Peter Baronoff, and Mr. Leder), in the event their depositions are necessary. If Sun is successful in running out the clock on the depositions of SCHI and SCI, the Receiver will not have the time left to take the depositions of Promise, Success, and the three Principals, which may be necessary.

12. In addition, the Receiver has tried to avoid scheduling difficulties in late September arising from the Jewish High Holidays.[3]

13. Unfortunately, Sun's delay tactics, refusal to meet and confer in favor of unilateral ultimatums, and broken promises began early and continue to this day, necessitating this Motion.

14. First, during the week of August 17, 2009, Sun's counsel telephoned a member of the Receiver's legal team and stated that (i) the Rule 30(b)(6) depositions of SCHI and SCI, which were noticed for August 31, 2009 and September 2, 2009, could not begin until after

[3] This year, only one weekday (September 28th for Yom Kippur) is affected by the Jewish High Holidays.

September 14th due to undescribed scheduling conflicts (which is not possible because any Sun witness can testify under Rule 30(b)(6), which was the Receiver's precise reason for utilizing Rule 30(b)(6)); and that (ii) document production would not be completed until September 14th.

15. During this telephone call, the Sun attorney did ***not*** take the position (and has never taken the position in any of the subsequent correspondence) that no Sun witness is capable of immediately providing the requested testimony under Rule 30(b)(6); nor can Sun make that argument in view of Mr. Koslow's affidavits. The Sun attorney also did ***not*** take the position (and has never taken the position in any of the subsequent correspondence) that the Receiver's discovery requests are beyond the scope of Sun's Emergency Motion or that the Receiver should have taken greater efforts to reduce the burden on Sun. Further, the Sun attorney did ***not*** offer (and has never offered) any constructive suggestion on ways to limit the discovery requests to ease the burden on Sun, while still providing the relevant discovery to the Receiver. In fact, the Sun attorney did ***not*** offer (and has never offered to agree) to meet and confer in any way about any issue, but simply declared what Sun would do regardless of the Rules or the Receiver's position.

16. On August 21, 2009, the Receiver's counsel wrote to Sun's counsel.[4] The Receiver's counsel stated that Sun's unilateral refusal to comply with the Receiver's discovery requests, without any meeting and conferring, was improper, for all the same reasons noted herein. The Receiver's counsel expressly put Sun on notice that failure to provide Court-ordered expedited discovery could lead to the striking of the Emergency Motion and the vacatur of the TRO. The Receiver's counsel also urged Sun to meet and confer about discovery, but without

[4] A copy of this letter is attached as Exhibit C.

meaningful meeting and conferring or a Court Order, the Receiver's counsel stated he would hold Sun to the deposition and document discovery dates in its notices.

17. Indeed, *as the Receiver's counsel explained to Sun in its August 21st letter, Receiver's counsel was prepared to begin the depositions of SCHI and SCI, as scheduled, even if document production from them was not yet completed.* That both sides have propounded document requests is no excuse to shield Sun from the Receiver's deposition examinations. There could be no conceivable reason why Mr. Koslow (or another individual from Sun) could not be immediately available to answer the Receiver's questions about Mr. Koslow's testimony.

18. The Receiver respectfully submits that permitting depositions without complete document production, in the context of a Court-ordered expedited discovery schedule, is incumbent on a party that obtained a TRO, continues to benefit from the TRO to the detriment of the Receiver and the investors, and seeks a preliminary injunction on the basis of one-sided, untested affidavits. Indeed, early depositions of SCHI and SCI sought by the Receiver would have helped narrow the issues for further discovery and may have obviated the need for some of the Receiver's document requests. But Sun refused to even consider this option and seems to want to put the depositions until the end of all possible document production.

19. Sun has a refused to meet and confer on depositions. Instead, Sun responded on August 24, 2009 in a letter that was filled with invective and unilateral determinations by Sun.[5] In the letter's final paragraph, Sun stated:

> Therefore, it is orderly and reasonable to schedule the depositions you have noticed during the week of September 14, 2009. I suggest we begin on September 15, 2009. Please let me know if this date works for you.

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[5] A copy of the letter is attached as Exhibit D.

20. On August 25, 2009, the Receiver's counsel responded, reiterating the need for Court-ordered expedited discovery and again urging Sun to meet and confer on discovery:[6]

> Therefore, I once again urge you to confer with me on document discovery and depositions in a meaningful fashion, as I believe it will be in everyone's interests, and, in fact, is required by the Local Rules. If you truly intend to provide discovery in good faith, no harm can come from such a conference. I look forward to your call.

21. Sun did not respond to Receiver's counsel's August 25th letter. Sun still refused to meet and confer.

22. As noted, the Rule 30(b)(6) depositions of SCHI and SCI were properly noticed for August 31, 2009 and September 2, 2009, respectively . The Receiver's depositions of Sun were not postponed or re-scheduled by Receiver's counsel, who expressly stated that the deposition dates would hold, unless Sun met and conferred (or sought or obtained a Protective Order). Sun did none of these things. Instead, Sun flouted the rules. Sun chose not to attend the properly-noticed depositions on August 31, 2009 and September 2, 2009, in flagrant disregard of Sun's discovery obligations, the Federal Rules of Civil Procedure, the Local Rules of this Court, and the Court's July 28, 2009 Order on expedited discovery on Sun's Emergency Motion.[7]

23. Ironically, on September 1, 2009, in between the two properly-noticed depositions of SCI and SCHI, which Sun improperly disregarded, Sun's counsel wrote to the Receiver castigating him for pursuing legal remedies in favor of the investors, and offering immediate settlement meetings with Sun's principals.[8] While settlement discussions can have value (so far, the Receiver has found Sun to be unforthcoming and apparently engaging in stall tactics), Sun

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6 A copy of the letter is attached as Exhibit E.

7 *See* Certificate of Nonappearance for SCHI's deposition, attached as Exhibit F.

8 A copy of this letter is attached as Exhibit G.

cannot refuse to show up for depositions pursuant to Court-ordered expedited discovery, while offering to attend only meetings of its own choosing. Similarly, instead of attending properly noticed depositions pursuant to the Court-ordered expedited discovery (to which Sun consented), Sun principals organized and attended meetings with investors in Chicago and Texas. While Sun is free to communicate with investors,[9] that effort cannot take priority over Sun's Court-ordered discovery obligations and properly-noticed depositions of the Receiver.

24. Although Sun had already violated federal and local discovery rules and norms, and although Mr. Koslow has been prepared to testify to the issues in this Motion since Sun's Emergency Motion for TRO and Preliminary Injunction was filed on July 22, 2009 and Sun has been seeking delay ever since, the Receiver's counsel opted to minimize discovery motion practice and to absolutely guarantee that the depositions of SCHI and SCI would be completed with at least two weeks left in the expedited discovery period. Therefore, on September 2, 2009, ***Receiver's counsel very reluctantly agreed to Sun's unilateral demand that the depositions take place on September 15th***:[10]

> In view of Defendants' insistence that they not be deposed until September 15th, and notwithstanding our continued objection to this position and concern that Defendants are trying to avoid their discovery obligations, the Receiver will take the depositions of Defendants SCHI and SCI on September 15th and September 16th, the earliest dates you have offered.
>
> Attached are revised notices of deposition.
>
> ***I trust this resolves the scheduling of the SCHI and SCI depositions, since we have capitulated to your demands.***

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[9] Following a meeting between Sun principals and one group of investors (who had been listening to Sun's explanations and proposals before the Receiver was appointed), that group moved to intervene in the SEC action to assert fraud claims against Sun and its principals.

[10] A copy of this letter is attached as Exhibit H.

25. Incredibly, however, ***Sun broke its own promise and reneged on its own demand***, so intent is Sun on continued delay and running out the clock on the Receiver's discovery. Sun rejected the Receiver's capitulation to Sun's unilateral (and unjustified) demand that the depositions be delayed and not begin until September 15th, and then issued a revised new unilateral (and unjustified) demand that the depositions of SCHI and SCI be delayed further and not take place until September 17th and 22nd.

26. Specifically, in a letter dated September 4, 2009 Sun stated:[11]

> Although I did suggest in my letter of August 24 that September might be a good deposition date for SCHI, you did not respond to that suggestion for more than a week; and that date (and September 16) is no longer workable given the massive effort required to gather to and review documents responsive to your overbroad document requests and prepare for deposition. Therefore, I propose that the SCHI deposition proceed on Thursday, September 17, and the SCI deposition be scheduled for the following Tuesday, September 22. (The intervening Rosh Hashannah holiday makes it impossible to do the SCI deposition earlier.) Please let me know if those dates work for you.

27. Sun's false pretext for reneging on its earlier demand, and further delaying Court-ordered expedited discovery, is evident. Sun received the Receiver's document requests to SCHI on August 11, 2009 (and the largely overlapping requests upon SCI on August 15, 2009). If Sun is to be believed, Sun had been hard at work on those requests ever since then, and long before it insisted, on August 24th, that the deposition of SCHI begin on September 15, 2009. Moreover, the argument about the Receiver's document discovery is beside the point. Sun has an obligation to produce relevant discovery on an expedited basis, or risk the striking of its Motion and the vacatur of the TRO (as it was specifically warned by Receiver's counsel). There has never been any reason why Mr. Koslow (or his designee) was not made available for deposition on the issues in the Motion since the day after the Emergency Motion was filed. The Receiver's

[11] A copy of this letter is attached as Exhibit I.

counsel expressly stated that it would begin depositions of SCHI and SCI, as originally noticed, even if document production was not complete.

28. It is more evident than ever that Sun is trying to run out the clock and use delay tactics to severely limit the Receiver's discovery on Sun's Emergency Motion (which is one of the reasons Sun refuses to meet and confer, in violation of the Local Rules). Without immediate relief, Sun will be successful in its cynical ploy.

29. Specifically, Sun's September 4th letter stated that September 18th (a Friday) and September 21st (a Monday) are not available for depositions due to the Rosh Hashanah holiday. In fact, Rosh Hashannah this year falls on September 19th and 20th (a Saturday and Sunday). Thus, Sun's position is that, despite its Court-ordered obligations and despite its delay tactics since the August 31st noticed date for the SCHI deposition, it can unilaterally refuse to participate in a depositions the weekday *before* a High Holiday (September 18) and on the weekday *after* a High Holiday (September 21). Yom Kippur falls on September 28th (a Monday). Therefore, if the Receiver accepts Sun's new demand (if not withdrawn again) and if, as Sun insists, Yom Kippur and the day after Yom Kippur are off limits, the Receiver would have ***only four weekdays left in which to try to fit in all remaining depositions***. It was precisely these scheduling headaches that Receiver's counsel tried to avoid when it noticed the depositions of SCHI and SCHI for August 31st and September 2nd, which SCHI and SCI, as noted, unilaterally and illegally ignored.

30. Notably, at the time Sun wrote its September 4th letter, Sun had already been served with the Receiver's notices of its subpoenas duces tecum for Promise and Success pursuant to Rule 30(b)(6), which noticing their depositions for September 21st and September 22nd. Yet, Sun failed to take into account the Receiver's notices for Promise or Success or

suggest when those depositions can take place. The reason is plain. Sun is trying to run out the clock and prevent the Receiver from taking the discovery to which it is entitled -- including the depositions of the Promise, Success, and the three principals common to Sun, Promise, and Success, and including documents (as discussed below) -- because discovery will reveal and prove that Sun's Emergency Motion and Mr. Koslow's affidavit are false and misleading and that Sun cannot meet its burden of proof on its Motion for Preliminary Injunction.

MOTION TO COMPEL DEPOSITIONS

For the foregoing reasons, the Receiver respectfully requests that the Court order the depositions of SCHI, SCI, Promise, Success, Mr. Koslow, Mr. Leder, and Mr. Baronoff for dates certain. *See Savino del Bene v. Kitchens of S. Fla.*, No. No. 08-21901-CV, 2009 WL 2762151, (S.D. Fla. Aug. 28, 2009) (ordering a witness to appear for deposition on date certain). The Receiver further requests that the depositions be ordered according to the foregoing list (SCHI, SCI, Promise, Success, Mr. Koslow, Mr. Leder, and Mr. Baronoff), which will allow counsel to determine whether the later depositions are necessary.

The purposes of this request are to ensure that Sun does not prevent the Receiver from obtaining deposition testimony in accordance with the Court-ordered expedited discovery schedule, and to prevent Sun from reneging on any more phantom promises as the discovery deadline approaches. *Bray & Gillespie Management LLC v. Lexington Ins. Co.*, No. 6:07-cv-222-Orl-35KRS, 2009 WL 2407754 (M.D. Fla. Aug. 03, 2009) ("[A]s a discovery deadline or trial date draws near, discovery conduct that might have been 'merely' discourteous at an earlier point in the litigation may well breach a party's duties to its opponent and the Court.").

MEET AND CONFER CERTIFICATION

As indicated in the attached correspondence, excerpted above, the Receiver's efforts to meet and confer on deposition scheduling have proven unsuccessful.

Indeed, Sun has both failed to appear at depositions when properly noticed, in violation of the Rules. *Herstgaard v. Cherryden, LLC*, No. 1:07CV02-MP/AK, 2009 WL 2191862, at *2 (N.D. Fla. July 22, 2009) ("It is always preferable if the parties agree to a date and time for deposition, but is not **required** that they do. What is required is that a good faith effort be made in scheduling, but if depositions need to be scheduled because deadlines are running then reasonable notice of the deposition, typically ten days, is all that is required.")

Sun has also reneged on its prior demands on deposition scheduling, thus necessitating Orders on the scheduling of all Sun and Sun-affiliated depositions.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court schedule the depositions of SCHI, SCI, Promise, Success, Mr. Koslow, Mr. Leder, and Mr. Baronoff for dates certain.

Date: September 10, 2009

Respectfully submitted,

By: /s/Jonathan Etra

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document was served this 10th day of September, 2009, on all counsel of record or *pro se* parties identified below:

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Service via email and U.S. Mail

/s/ Jonathan Etra, Esq.
Jonathan Etra, Esq.

EXHIBIT "A"

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.
_____/

NOTICE OF TAKING DEPOSITION PURSUANT TO RULE 30(b)(6), FED. R. CIV. P., OF DEFENDANT SUN CAPITAL HEALTHCARE, INC.

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6), Fed.R.Civ.P., the undersigned attorneys intend to take the deposition(s) of:

NAME AND ADDRESS	DATE AND TIME	PLACE
Corporate representative(s) of Sun Capital Healthcare, Inc. designated to testify about the areas identified in Schedule A attached hereto	August 31, 2009 10:00 a.m.	Offices of Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Blvd. Miami, FL 33131

upon oral examination before a court reporter, any other Notary Public or other officer authorized by law to take depositions in the State of Florida. The oral examination will continue from day to day until completed. The deposition is being taken for purposes of discovery, for use at trial, or such other purposes, as are permitted under the applicable and governing rules.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 11th day of August, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

Respectfully submitted,

By: _____
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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

Definitions

For purposes of the areas of testimony to be covered:

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 its 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 its behalf.

12. "SCHI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.

2. The SCHI CSA, including amendments, consents, waivers, and negotiations referring or relating to such amendments, consents, waivers, and any other discussions with Founding Partners referring or relating to any other deviation from the terms of the SCHI CSA.

3. The Receiver's revocation of consents and waivers, and the effect of such revocation.

3. SCHI's obligations under the SCHI CSA (including, for example, reporting obligations, Borrowing Base and Eligible Account requirements, prohibition on funding hospitals subject to Debtor Relief Laws, and payment obligations).

4. SCHI's compliance or non-compliance with its obligations under the SCHI CSA.

5. SCHI's Defaults under the SCHI SCA.

6. Whether any account receivable is an "Eligible Account" under the SCHI CSA.

7. Calculations of Borrowing Base, Loan Availability and Borrowing Base Deficiency for: (a) the last day of the month from January 2008 through the present, (b) January 26, 2009 and January 27, 2009, and (c) July 7, 2009 and every day thereafter.

8. Founding Partners' rights concerning the Holding Account, in the event that Founding Partners has defaulted under the SCHI CSA.

9. Founding Partners' alleged breach of the SCHI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCHI.

10. Any other claimed Founding Partners' breach of the SCHI CSA.

11. All funding received from Founding Partners by SCHI in connection with the SCHI CSA.

12. SCHI's use of funds received into all Lockbox Accounts maintained by SCHI at SunTrust Bank, including but not limited to the use of such funds for overhead or other expenses, from January 1, 2008 to the present.

13. Dissipation of Founding Partners' cash collateral.

14. Payments and remuneration to and for the benefit of SCHI's principals, in any form whatsoever, derived or directly or indirectly from Founding Partners' funding.

15. The names of the hospitals and their financial viability, for each hospital being factored or financed by SCHI.

16. SCHI's claims of irreparable harm if the Receiver gains control of the Holding Accounts/Lockboxes.

EXHIBIT "B"

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.
_____/

NOTICE OF TAKING DEPOSITION PURSUANT TO RULE 30(b)(6), FED. R. CIV. P., OF DEFENDANT SUN CAPITAL HEALTHCARE, INC.

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6), Fed.R.Civ.P., the undersigned attorneys intend to take the deposition(s) of:

NAME AND ADDRESS	DATE AND TIME	PLACE
Corporate representative(s) of Sun Capital Healthcare, Inc. designated to testify about the areas identified in Schedule A attached hereto	August 31, 2009 10:00 a.m.	Offices of Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Blvd. Miami, FL 33131

upon oral examination before a court reporter, any other Notary Public or other officer authorized by law to take depositions in the State of Florida. The oral examination will continue from day to day until completed. The deposition is being taken for purposes of discovery, for use at trial, or such other purposes, as are permitted under the applicable and governing rules.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 11th day of August, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

Respectfully submitted,

By: _____
Michael D. Magidson
Florida Bar No. 36191

BROAD AND CASSEL
Attorneys for Receiver
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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

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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.

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SCHEDULE A

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15. The names of the hospitals and their financial viability, for each hospital being factored or financed by SCHI.

16. SCHI's claims of irreparable harm if the Receiver gains control of the Holding Accounts/Lockboxes.

EXHIBIT "C"

BROAD AND CASSEL
ATTORNEYS AT LAW

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EMAIL: jetra@broadandcassel.com

August 21, 2009

VIA E-MAIL (sgold@proskauer.com)

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

Re: *Daniel Newman, Receiver v. Sun Capital Healthcare, Inc. et al..*
Case number 2:09-cv-445, Middle District of Florida

Dear Sarah:

I am told you contacted Ms. Susan de Resendiz, Esq. of our office on behalf of your clients Sun Capital Healthcare, Inc. ("SCHI") and Sun Capital, Inc. ("SCHI") (collectively "Sun Entities), and that you advised Ms. de Resendiz that document production from the Sun Entities would not be completed until September 14th and that the Rule 30(b)(6) depositions of the Sun Entities would not take place until sometime after September 14th due to undescribed scheduling conflicts. If I have misstated the substance of your discussion with Ms. de Resendiz, please let me know.

If that is in fact the Sun Entities' position, it is completely unacceptable and contrary to your prior consent to an expedited discovery schedule and the Court's Order. The Sun Entities have the benefit of a TRO on the Receiver's cash collateral, which we believe was obtained through incorrect and incomplete testimony from the Sun Entities, without the benefit of discovery. The Receiver's discovery requests were properly designed to test, challenge, and rebut the testimony of Mr. Koslow and the arguments of the Sun Entities used to obtain the TRO and to seek a preliminary injunction. The Receiver is entitled to that discovery on an expedited basis, as you acknowledged and as the Court ordered. If the Sun Entities were not prepared to provide the resources needed to comply with the expedited discovery schedule, you should have so advised the Court. If the Sun Entities have only now concluded that they will not devote the resources needed to comply with the expedited discovery schedule, you should so advise the Court and move to vacate the TRO and withdraw your motion for preliminary injunction. Plainly, the Sun Entities cannot have the TRO and press ahead for a preliminary injunction, while refusing to divulge the relevant information to the Receiver.

Please understand that we are always open to meeting and conferring, as required by the local rules and as a matter of good practice. If you have any specific concerns about the discovery requests, let's discuss that immediately. In your call with Ms. de Resendiz, however, you did not articulate any problem with the discovery requests. Indeed, virtually all of the

documents should be at your fingertips, and the financial data are available at the press of a button. None of this is new for you or your clients. You previously prepared Mr. Koslow for examination by the SEC and you defended that examination. As you told the Receiver and me in our May 27, 2009 meeting, upon being advised of the SEC's investigation, you conducted a thorough internal investigation on the Sun Entities. In addition, you subsequently engaged in extensive motion practice, including preparing two affidavits for Mr. Koslow, which were used to obtain the TRO and which are the basis for your requested preliminary injunction. Even if some of the requests will require some extra work, it behooves the Sun Entities to perform that work, as they promised to the Court when they agreed to the expedited discovery schedule, in light of the drastic relief they obtained and seek to continue to obtain. Having obtained the lockboxes though the TRO and seeking to keep them through the conclusion of trial through their pending motion for a preliminary injunction, the Sun Entities have an obligation to provide the requested discovery on an expedited basis, even if it requires a little extra work from the Sun Entities and counsel.

Without knowing the specifics of your "scheduling" issue on the depositions, it is hard to imagine why the Rule 30(b)(6) depositions would have to be put off at all. It was precisely to avoid scheduling problems, in view of the expedited nature of this discovery, that we elected to seek Rule 30(b)(6) depositions, to be followed up with witness depositions as needed.

I note that the Sun Entities and counsel have apparently organized and hosted road trip meetings with investors. I am sure the Sun Entities and counsel devoted significant resources to this public relations project. Those resources should have been used to comply with discovery deadlines and the Court's Order on discovery.

In sum, the Receiver's position is as follows: The discovery requests are proper and must be complied with. We look forward to the documents, and we will be ready to take the depositions, as scheduled. If document production is not completed in time for the depositions, we will commence the depositions, but finish them once documents are produced. If you wish to meet and confer in a meaningful fashion on any of these issues, we welcome it. If we are not given assurances the Sun Entities will comply with their discovery obligations, we will move to compel.

Please contact me as soon as possible to try to resolve this.

Sincerely,

Jonathan Etra

cc: Susan Barnes de Resendiz, Esq.
Vincenzo Paparo, Esq.
Karen Clarke, Esq.

4818-1427-8148.2
43125/0001

EXHIBIT "D"

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Sarah S. Gold
Member of the Firm

Direct Dial 212.969.3370
sgold@proskauer.com

August 24, 2009

Via E-Mail

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

Re: *Daniel Newman, Receiver v. Sun Capital Healthcare, Inc., et al.*,
Case No. 2:09-cv-445, Middle District of Florida

Dear Jonathan:

I am in receipt of your letter of August 21, 2009, inexplicably filled with vitriolic statements. Please try to restrain yourself in the future, as it is not productive to attack me or our clients rather than to work cooperatively, even on opposite sides of a litigation.

I did indeed explain to Ms. de Resendiz that the requests you have served on our client have necessitated a massive document pull and review and that, while we will respond to the requests in the designated time frame, the actual document production cannot be completed in the same time frame. I explained to her that there were hundreds of thousands of documents and that we have lawyers working seven days a week reviewing and collecting the relevant documents. I also reminded her, and now remind you, that when Judge Steele entered his order on July 28, Judge Steele granted our discovery time frame and rejected yours.

After Judge Steele issued his order, you appear not to have thought it urgent to get documents from the Sun Entities, as it took you almost two weeks before you issued your first request for documents from SCHI, August 10, 2009, and well over two weeks, August 14, 2009, for your second document request addressed to SCI. I am certain that when Judge Steele provided extra time for discovery, it was not to give you additional time to frame up your requests, particularly in light of the fact that you asked for a shorter period for discovery. Despite the casual time frame within which you advised Sun of your massive, omnibus records requests, you apparently believe all those records should be provided to you in less time than it took you to make the

requests. Unfortunately, it is simply not possible to do that. However, in our continuing effort to work with you (and despite your complete lack of even common courtesy in return), I told Ms. de Resendiz that we would begin producing documents on a rolling basis no later than August 31 and possibly sooner. And, despite your vituperative railings, this schedule is extremely expedited, being just over two weeks after you served the SCI requests and three weeks after you served the SCHI requests. In the normal case, it would take at least 90 days, and likely more, to complete this type of production.

Frankly, having waited as long as you did to request documents from Sun, you are in no position to make the kinds of outrageous statements you make in your letter. In any event, it is of little moment because, as I explained to Ms. de Resendiz, to the extent you expected documents at the same time as the document response, it is not possible to meet your deadline. Your requests, which span nine years' worth of company records, require a review of hundreds of thousands of documents. This type of review and production can neither be done at "the press of a button", to quote your colorful language, nor within the artificial deadline you have requested. And, based upon all your rhetoric about withdrawing the TRO and PI motion, it seems you need to be reminded that you and not the Sun Entities began all this injunction litigation with your imprudent and legally defective seizure of the Sun bank accounts. Your work might be more effective if you would spend less time on the needless and expensive litigation game of trying to "challenge and rebut" everything Sun says (despite the absence of any real basis to think Sun's statements need rebutting), and more time trying to make the business successful and maximizing the return for the Founding Partners investors.

It also bears observing that if you were in such a hurry to obtain the documents you are seeking from the Sun Entities, you would have made a search of the Founding Partners records, where almost all the records you have requested reside. Although Mr. Newman was appointed Receiver three months ago, on May 20, 2009, you have advised us, in writing, that you have made no such search and that "no one knows" what records exist at Founding Partners, and that it is more convenient for the Receiver to obtain records from Sun. In light of your own failure to look for records among those that have been accessible to you for months, which one can only assume is because you are fully cognizant of the massive undertaking involved, again you are in no position to tell us how quickly we should be able to gather and produce the records. If you had reviewed the Founding Partners records and limited your requests to Sun to the few documents not contained within the Founding Partners documents, certainly Sun's production in response to such narrowly-focused requests could have proceeded more quickly.

As I also advised Ms. de Resendiz, we will produce the witness(es) following the document production. It makes no sense to produce witnesses prior to producing the requested records because we do not plan to duplicate the depositions, as you suggest we should do (both before and after the documents are produced), and because we need to review the records as well with our clients in order for them to prepare properly to answer questions on the relevant subject

matters you have requested. It is pointless, and will only lead to more complaints from you, to produce witnesses without refreshed recollections of the myriad issues you have raised in this litigation, which issues span a nine-year business relationship with Founding Partners. Furthermore, I am unavailable to come to Florida for depositions during Labor Day week.

Therefore, it is orderly and reasonable to schedule the depositions you have noticed during the week of September 14, 2009. I suggest we begin on September 15, 2009. Please let me know if this date works for you.

Sincerely,

Sarah S. Gold /kcc

Sarah S. Gold

SSG:sak

cc: Susan Barnes de Resendiz, Esq.

EXHIBIT "E"

BROAD AND CASSEL
ATTORNEYS AT LAW

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JONATHAN ETRA
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August 25, 2009

VIA E-MAIL (sgold@proskauer.com)
Sarah Gold, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036

Re: *Daniel Newman, Receiver v. Sun Capital Healthcare, Inc. et al..*
Case number 2:09-cv-445, Middle District of Florida

Dear Sarah:

I was disappointed by the personal attacks in your letter dated August 24, 2009 and your refusal to address the substance of my letter, which was intended to identify and work through any of Sun Entities' concerns about the Receiver's discovery.

Your use of the terms "vituperative" and "outrageous" is misplaced and not productive. Instead of personal attacks, it would have been helpful to have a meaningful discussion about your concerns, if any, on specific discovery requests.

You complain generally that the requests are "massive, omnibus," but fail to point out any request that is not related to the issues raised on your preliminary injunction motion.

You complain that the requests go back 9 years, but fail to address the many requests that are limited to recent history and are otherwise limited to specific subject matters, such as waivers and consents, which is at the heart of your legal theory.

You state that the discovery is not available at the press of a button, but Mr. Lawrence Leder told our accountants that the financial data is in fact readily available.

While other requests require the organization of paper records, that work must have already been done by Proskauer. Given the extensive history you and your clients have had with these issues, and their affirmative testimony and your firm's affirmative arguments on these issues to obtain the TRO and other relief, it is not possible to believe that you cannot have the requested materials readily available for production. This is especially true since the Receiver subpoenaed much of the same information in early July 2009, and the Sun Entities told the Court that the information requested could be produced by later July or August. Nevertheless, if there are some individual requests that require more time, I urge you to discuss those with me. As I told you in my letter, I was open to meeting and conferring. But I cannot do that without your participation.

Significantly, your letter fails to provide your position on the document requests, even though your responses were due yesterday. Although the deadline for production has passed, you have not disclosed which requested materials you will or will not produce. The time to try to resolve these issues is now. As you can appreciate, the Receiver cannot wait until the last minute and hope that the Sun Entities will provide complete and proper production, especially since the Sun Entities will not reveal their position. The Sun Entities' continued refusal to articulate their position on the Receiver's discovery requests, if not remedied, will force the Receiver to file a motion to compel.

Your suggestion that the Receiver simply accept Mr. Howard Koslow's testimony and the Sun Entities' arguments without question is not a realistic proposal. This would violate the Receiver's Court-appointed duties. From what I can tell in your papers, the Sun Entities do not deny that (a) the Sun Entities have accumulated over $500 million in investor funds, (b) the Sun Entities have been in default at least since the July 7, 2009 revocation of waivers and consents and (c) the Sun Entities have not voluntarily arranged for full repayment of their debt. The Receiver has no choice but to pursue litigation against the Sun Entities, including concerning the lockbox which contains cash collateral that should be transferred to the Receiver for the benefit of investors.

The point of the Order, which you agreed to, was to quickly provide us the same information you have long had so that the Receiver can have a fair opportunity to test, challenge, and rebut the Sun Entities' position. That is what we seek.

Therefore, I once again urge you to confer with me on the document discovery and the depositions in a meaningful fashion, as I believe it will be in everyone's interests, and, in fact, is required by the Local Rules.

If you truly intend to provide discovery in good faith, no harm can come from such a conference. I look forward to your call.

Sincerely,

Jonathan Etra

cc: Susan Barnes de Resendiz, Esq.
Vincenzo Paparo, Esq.
Karen Clarke, Esq.

4818-1427-8148.2
43125/0001

EXHIBIT "F"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
CASE NO. 2:09-cv-445-FtM-99-SPC

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.,

Plaintiff,

CERTIFICATE OF NON-APPEARANCE

v.

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

Defendants.

\- - - - - - - - - - - - - - - - x

I, DINA AMATO, Certified Shorthand Reporter, and Notary Public in and for the State of Florida at Large, do hereby certify that pursuant to Notice of Taking Deposition filed in the above cause, I appeared at 2 South Biscayne Blvd., 21st Floor, Miami, Florida, on Monday, August 31, 2009 at 10:00 a.m., for the purpose of reporting the deposition of the Corporate Representative of Sun Capital Healthcare; and that JONATHAN ETRA, ESQ., was present; that I waited until 10:30 a.m., and the witness did not appear for deposition.

DATED at Miami, Dade County, Florida, this 31st day of August, 2009.

Dina Amato

Notary Public, State of Florida at Large. My commission expires June 3, 2011.

EXHIBIT "G"

BOCA RATON
BOSTON
CHICAGO
LONDON
LOS ANGELES
NEW ORLEANS
NEWARK
PARIS
SÃO PAULO
WASHINGTON

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299
Telephone 212.969.3000
Fax 212.969.2900

Vincenzo Paparo
Member of the Firm

Direct Dial 212.969.3125
vpaparo@proskauer.com

September 1, 2009

Via E-mail (.pdf) and Federal Express

Susan Barnes De Resendiz, Esq.
Broad and Cassel
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131

Re: (i) Credit and Security Agreement (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the "SCH Credit Agreement") dated as of June 6, 2000 between Sun Capital Healthcare, Inc., as borrower ("SCH"), and Founding Partners Stable-Value Fund, L.P. (the "Lender" or "Founding Partners") (as successor), as lender otherwise modified from time to time, the "SC Credit Agreement") dated as of January 24, 2002 between Sun Capital, Inc., as borrower ("SC", and together with SCH, the "Borrower"), and the Lender, as lender (together, the "Agreements")

Dear Ms. De Resendiz:

This letter is in response to your August 19, 2009 letter regarding the Agreements (the "August 19 Letter"). The purpose of my prior correspondence was not to encourage you to write another pointless, rambling and self-serving epistle. Accordingly, below find a response which only addressees the few material issues raised in your August 19 letter.

1. If the Receiver is serious about pursuing a financial restructuring, the Borrower remains prepared to meet. Please provide us with some dates in September, together with an agenda for the meeting and any comments you may have to the Borrower's financial restructuring proposal presented at our July meeting. As you know, the Receiver and its representatives have been provided with thousands of pages of financial documents and other information and nearly every material financial report requested has been delivered.

2. Your August 19 Letter, as well as those of your colleagues, highlights the difficulties the Borrower faces when dealing with the current Receiver. Namely, the Receiver incorrectly believes that Founding Partners was and acted as a bona fide traditional lender. Unfortunately,

neither Founding Partners nor the Receiver is a bona fide traditional lender. The sooner the Receiver acknowledges the facts in this regard the sooner we can all reach a reasonable and rational resolution to the current dispute. No amount of self-serving letters or insistence on performance pursuant to the Agreements is going to wipe away the past 9 years of Founding Partner's course of conduct or its January failure to fund, or the Receiver's harmful actions to date.

3. Finally, in your August 19 letter you claim to be pursuing two tracks (settlement and litigation) when in reality you are only pursuing litigation. To date we have not received any financial restructuring proposals from Receiver, i.e., a short-term restructuring, forbearance, standstill, etc. As you also know, our purpose in agreeing to the dual track approach, was only because the Receiver was unwilling to have any restructuring/settlement conversations because of his fear that such conversations could somehow prejudice his rights. Obviously, in agreeing to a framework for the Borrower to present a financial restructuring proposal, we were not inviting the Receiver to institute suit or freeze all accounts at SunTrust Bank. It is clear that, the Receiver's actions and failure to engage in any meaningful discussions (despite receiving enormous amounts of financial documents and other information) merely highlights the bad faith and true interests of the Receiver that could only result in protracted and unnecessary litigation.

I again encourage you to contact the undersigned with dates for meeting to discuss a settlement of this matter. For purposes of reserving our clients' rights, any settlement discussions or submissions of financial restructuring proposals have been and will continue to be without prejudice to any rights and remedies the Borrower has under the Agreements, or under applicable law or in equity. Furthermore, nothing herein shall be considered (i) an admission of liability or against the interest of Borrower or (ii) a waiver of any claims or defenses Borrower may have relating to breaches by the Lender under the Agreements. The Borrower hereby reserves the right to take such further action, at such times as the Borrower, in its discretion, deems necessary or appropriate to protect its interests.

Very truly yours,

Vincenzo Paparo /s/

Vincenzo Paparo

cc: (Via E-mail (.pdf))
Jonathan Etra, Esq.
Michael Magidson, Esq.
Sarah Gold, Esq.

EXHIBIT "H"

BROAD AND CASSEL
ATTORNEYS AT LAW

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TELEPHONE: 305.373.9400
FACSIMILE: 305.373.9443
www.broadandcassel.com

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

September 2, 2009

VIA E-MAIL (sgold@proskauer.com)
Sarah Gold, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036

Re: *Daniel Newman, Receiver v. Sun Capital Healthcare, Inc. et al..*
Case number 2:09-cv-445, Middle District of Florida

Dear Sarah:

I am writing concerning the depositions of Defendants SCHI and SCI.

They were noticed for this past Monday and today. You stated that they would not appear, but we did not agree to that and asked to meet and confer, which you refused. Having been properly noticed for depositions, the Defendants were required to appear, absent a protective order. Yet, they unilaterally chose not to attend, without even having applied for a protective order.

In view of Defendants' insistence that they not be deposed until September 15th, and notwithstanding our continued objection to this position and concern that Defendants are trying to avoid their discovery obligations, the Receiver will take the depositions of Defendants SCHI and SCI on September 15th and September 16th, the earliest dates you have offered.

Attached are revised notices of deposition.

I trust this resolves the scheduling of the SCHI and SCI depositions, since we have capitulated to your demands.

Sincerely,

Jonathan Etra

cc: Susan Barnes de Resendiz, Esq.
Vincenzo Paparo, Esq.
Karen Clarke, Esq.

4818-1427-8148.2
43125/0001

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.
_____/

NOTICE OF TAKING VIDEOTAPED DEPOSITION PURSUANT TO RULE 30(b)(6), FED. R. CIV. P., OF DEFENDANT SUN CAPITAL HEALTHCARE, INC.

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6), Fed.R.Civ.P., the undersigned attorneys intend to take the videotaped deposition(s) of:

NAME AND ADDRESS	DATE AND TIME	PLACE
Corporate representative(s) of Sun Capital Healthcare, Inc. designated to testify about the areas identified in Schedule A attached hereto	September 15, 2009 10:00 a.m.	Offices of Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Blvd. Miami, FL 33131

upon oral examination before a court reporter, any other Notary Public or other officer authorized by law to take depositions in the State of Florida. The deposition will be videotaped. The oral examination will continue from day to day until completed. The deposition is being taken for purposes of discovery, for use at trial, or such other purposes, as are permitted under the applicable and governing rules.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 2nd day of September, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

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: _____
Jonathan Etra, Esq.
Florida Bar No. 0686905
Counsel for Plaintiff

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Sarah S. Gold, Esq.
Karen E. Clarke, Esq.
Proskauer Rose, LLP
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New York, NY 10036
212.969.3000
212.969.2900 (fax)
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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

Veritext Court Reporting
19 West Flagler St.
Suite 1020
Miami, Florida 33130
(305) 371-1884

Definitions

For purposes of the areas of testimony to be covered:

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 its 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 its behalf.

12. "SCHI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.

2. The SCHI CSA, including amendments, consents, waivers, and negotiations referring or relating to such amendments, consents, waivers, and any other discussions with Founding Partners referring or relating to any other deviation from the terms of the SCHI CSA.

3. The Receiver's revocation of consents and waivers, and the effect of such revocation.

3. SCHI's obligations under the SCHI CSA (including, for example, reporting obligations, Borrowing Base and Eligible Account requirements, prohibition on funding hospitals subject to Debtor Relief Laws, and payment obligations).

4. SCHI's compliance or non-compliance with its obligations under the SCHI CSA.

5. SCHI's Defaults under the SCHI SCA.

6. Whether any account receivable is an "Eligible Account" under the SCHI CSA.

7. Calculations of Borrowing Base, Loan Availability and Borrowing Base Deficiency for: (a) the last day of the month from January 2008 through the present, (b) January 26, 2009 and January 27, 2009, and (c) July 7, 2009 and every day thereafter.

8. Founding Partners' rights concerning the Holding Account, in the event that Founding Partners has defaulted under the SCHI CSA.

9. Founding Partners' alleged breach of the SCHI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCHI.

10. Any other claimed Founding Partners' breach of the SCHI CSA.

11. All funding received from Founding Partners by SCHI in connection with the SCHI CSA.

12. SCHI's use of funds received into all Lockbox Accounts maintained by SCHI at SunTrust Bank, including but not limited to the use of such funds for overhead or other expenses, from January 1, 2008 to the present.

13. Dissipation of Founding Partners' cash collateral.

14. Payments and remuneration to and for the benefit of SCHI's principals, in any form whatsoever, derived or directly or indirectly from Founding Partners' funding.

15. The names of the hospitals and their financial viability, for each hospital being factored or financed by SCHI.

16. SCHI's claims of irreparable harm if the Receiver gains control of the Holding Accounts/Lockboxes.

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.,

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.
_____/

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

NOTICE OF TAKING VIDEOTAPED DEPOSITION PURSUANT TO RULE 30(b)(6), FED. R. CIV. P., OF DEFENDANT SUN CAPITAL, INC.

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6), Fed.R.Civ.P., the undersigned attorneys intend to take the videotaped deposition(s) of:

NAME AND ADDRESS	DATE AND TIME	PLACE
Corporate representative(s) of Sun Capital, Inc. designated to testify about the areas identified in Schedule A attached hereto	September 16, 2009 10:00 a.m.	Offices of Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Blvd. Miami, FL 33131

upon oral examination before a court reporter, any other Notary Public or other officer authorized by law to take depositions in the State of Florida. The deposition will be videotaped. The oral examination will continue from day to day until completed. The deposition is being taken for purposes of discovery, for use at trial, or such other purposes, as are permitted under the applicable and governing rules.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 2nd day of September, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

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:_____
Jonathan Etra, Esq.
Florida Bar No. 0686905
Counsel for Plaintiff

SERVICE LIST

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Sarah S. Gold, Esq.
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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

Veritext Court Reporting
19 West Flagler St.
Suite 1020
Miami, Florida 33130
(305) 371-1884

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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.

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SCHEDULE A

AREAS OF TESTIMONY

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2. The SCI CSA, including amendments, consents, waivers, and negotiations referring or relating to such amendments, consents, waivers, and any other discussions with Founding Partners referring or relating to any other deviation from the terms of the SCI CSA.

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13. Dissipation of Founding Partners' cash collateral.

14. Payments and remuneration to and for the benefit of SCI's principals, in any form whatsoever, derived or directly or indirectly from Founding Partners' funding.

15. The names of the companies and their financial viability, for each company being factored or financed by SCI.

16. SCI's claims of irreparable harm if the Receiver gains control of the Factor Accounts/Lockboxes.

EXHIBIT "I"

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299
Telephone 212.969.3000
Fax 212.969.2900

BOCA RATON
BOSTON
CHICAGO
HONG KONG
LONDON
LOS ANGELES
NEW ORLEANS
NEWARK
PARIS
SÃO PAULO
WASHINGTON

Sarah S. Gold
Member of the Firm

Direct Dial 212.969.3370
sgold@proskauer.com

September 4, 2009

Via E-Mail

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

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

Dear Jonathan:

Thank you for your letter of September 2, 2009, concerning the scheduling of the SCHI and SCI depositions. Although I did suggest in my letter of August 24 that September 15 might be a good deposition date for SCHI, you did not respond to that suggestion for more than a week; and that date (and September 16) is no longer workable given the massive effort required to gather and review documents responsive to your overbroad document requests and prepare for the deposition. Therefore, I propose that the SCHI deposition proceed on Thursday, September 17, and the SCI deposition be scheduled for the following Tuesday, September 22. (The intervening Rosh Hashanah holiday makes it impossible to do the SCI deposition earlier.) Please let me know if those dates work for you.

Also, we would like to produce the witnesses at Proskauer's office in Boca Raton rather than your office in Miami. Please let me know if you have a problem with that. It is difficult to get to Miami from Boca in the mornings and I think the "reverse commute" is easier.

Finally, would it be possible for you to execute and return the confidentiality agreement my colleague, Ms. Clarke, sent you on September 2? There are documents we will not be sending

until it is executed so we need to know when to expect it back.

Sincerely,

Sarah S. Gold

Sarah S. Gold

SSG:sak

cc: Susan Barnes de Resendiz, Esq.