

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

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

**CASE NO. 2:09-CV-445-FtM-99SPC
Proceeding Ancillary to 2:09-cv-229-FtM-29SPC**

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, LH Acquisition, LLC, a Texas limited liability company,	
--	--

Defendants.

RECEIVER'S MOTION TO STRIKE REPLY DECLARATIONS

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Plaintiff, DANIEL S. NEWMAN, solely in his capacity as duly appointed Receiver (“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. (“Receivership Entities”), by and through undersigned counsel, hereby files his Motion to Strike the Affidavit and Declarations (D.E. 162-172) (collectively, “the Reply Declarations”) filed by Defendants Sun Capital, Inc. (“SCI”), Sun Capital Healthcare, Inc. (“SCHH”), and HLP Properties of Port Arthur, LLC (“HLP”) (collectively, “Sun Capital”).

INTRODUCTION

Throughout the briefing and expedited discovery period on the Motion for Preliminary Injunction, the Receiver has endeavored to act in accordance with the duties and responsibilities set forth by the Court in its order appointing him – namely, to investigate the affairs of the Receivership Entities and pursue claims on behalf of the Estate and the Receivership Entities’ investors and creditors. Sun Capital, however, has sought to portray the Receiver as an ordinary litigant with a private agenda – ignoring the Receiver’s Court-mandated responsibilities. By tarring the Receiver with this brush, Sun Capital has attempted to shift the Court’s focus away from the results of the Receiver’s investigation, which revealed that the Sun Capital Principals were complicit in Mr. Gunlick’s fraud on the investors for the benefit of the Sun Capital Principals and at investors’ expense. Moreover, the Receiver has presented evidence to the Court, in accordance with his reporting

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

obligations, that in fact, Sun Capital knowingly provided false information to Founding Partners, in an attempt to conceal Sun Capital's financial position and use of investor funds.

Sun Capital's submission of the Reply Declarations is an improper attempt to nullify the entire Court-ordered procedure on the pending Motion for Preliminary Injunction, in which the Receiver engaged in good faith and at great expense to the Receivership Estate. Under the guise of a "Reply," Sun Capital ignores and contradicts binding admissions made in multiple depositions, and attempts to rewrite the record out of whole cloth by relying upon purported new facts and data that Sun Capital refused to provide to the Receiver in discovery. To cover its tracks, Sun Capital insists that no evidentiary hearing is necessary (D.E. 161 at 114-116), since, through their improper reply papers, Sun Capital has put its evidence before the court, and seeks to prevent the Receiver from challenging that new evidence.

The entire purpose of the expedited procedure was to avoid this situation. Sun Capital was improperly evasive, in order to withhold critical information from the Receiver. This is just the latest example of Sun Capital – along with their affiliates, Promise Healthcare, Inc. ("Promise"), and Success Healthcare, Inc. ("Success") – abusing the system, a disturbing pattern that began with the false and misleading Koslow Affidavits (which Sun Capital now seeks to obscure in a deluge of new testimony and previously withheld evidence).

PROCEDURAL HISTORY

I. THE KOSLOW AFFIDAVITS, THE TRO, AND THE ORDER ON EXPEDITED DISCOVERY AND BRIEFING

On July 22, 2009, Sun Capital moved for a temporary restraining order and preliminary injunction to enjoin the Receiver from having control of the lockboxes at issue in this case. (D.E. 11). At that time, Sun Capital submitted a comprehensive legal

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

memorandum arguing numerous points of law. *Id.* Sun Capital also submitted an extensive July 23, 2009 affidavit of Mr. Koslow (D.E. 11-3), and also relied upon the previously submitted May 5, 2009 affidavit of Mr. Koslow. (D.E. 11-4). The two Koslow affidavits were definitive and designed to be alarming, and did not suggest that further discovery was needed to fill in any gaps. To the contrary, the hallmark of the Koslow affidavits was their certainty – otherwise, Sun Capital would have been unable to obtain injunctive relief.

Faced with the assertions made by Mr. Koslow (who had successfully resisted the Receiver's efforts to depose him), including his insistence that the Receivership Entities' collateral was secure and being maintained, and with no contrary substantive evidence before it, the Court issued the temporary restraining order ("TRO"). (D.E. 9). The Court set oral argument on the Motion for Preliminary Injunction for July 30, 2009. (D.E. 19 at 10).

On July 28, 2009, the Receiver moved to adjourn the preliminary injunction hearing, so that he could take discovery on Mr. Koslow's affidavit testimony, upon which the TRO was based. (D.E. 22). Also on July 28, 2009, the Court granted the Receiver's Motion, stating that it made "good sense." (D.E. 9 at 2). The Court set a schedule for the Receiver to file an Opposition Brief, and for Sun Capital to file a Reply Brief thereafter. (D.E. 9 at 3).

II. THE RECEIVER'S EXPEDITED DISCOVERY PROPERLY FOCUSED ON THE KOSLOW AFFIDAVITS AND RELIED PRIMARILY ON DEPOSITIONS NOTICED PURSUANT TO RULE 30(B)(6) TO ENSURE A COMPLETE AND CONTROLLING DISCOVERY RECORD

The Receiver propounded deposition notices pursuant to Rule 30(b)(6) to each of the Sun Capital Entities and to Promise and Success.¹ The Receiver elected to use "corporate

¹ Copies of the Notices are attached as composite Exhibit A.

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

representative” depositions to ensure that witnesses came prepared to answer all relevant questions, as required under Rule 30(b)(6). The Receiver’s Rule 30(b)(6) depositions were also designed to obtain admissions from the corporate defendants – as well as the affiliated hospitals, who are the primary TRO beneficiaries – that would be binding and conclusive.

In addition to the Rule 30(b)(6) deposition notices, the Receiver also propounded document requests to the Sun Capital Entities and to Promise and Success.² Those requests sought, among other things, up-to-date financial information needed to verify Mr. Koslow’s affidavit testimony relating to (among other things) the purported need for immediate injunctive relief; the viability of Sun Capital, Promise and Success; and Mr. Koslow’s sworn testimony that Sun Capital was only “recycling receivables” and maintaining the Receivership Estate’s collateral.

III. DESPITE THE COURT’S ORDER AND APPLICABLE LAW, THE RULE 30(B)(6) DEONENTS WERE NOT PREPARED OR WILLING TO PROVIDE FULL OR COMPLETE TESTIMONY ON THE IDENTIFIED SUBJECTS

Sun Capital was required to provide testimonial evidence relating to Mr. Koslow’s affidavits and their Motion for Preliminary Injunction because: (a) Sun Capital bears the burden of production and proof on their Motion; (b) the Court’s July 28, 2009 Order on expedited discovery (D.E. 9) required Sun Capital to “engage in expedited discovery related to the issues involved in the request for preliminary injunction;” (c) the Receiver’s proper Rule 30(b)(6) deposition notices called for such evidence; and (d) Sun Capital had, and continues to have, independent duties (under the governing Loan Agreements) to provide financial information on collateral.

² Copies of the document requests are attached as composite Exhibit B.

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Sun Capital, however, did not comply with any of the foregoing obligations, and instead played a game of “cat and mouse” with the Receiver (causing great expense to the Estate). (See D.E. 46 ¶¶ 13-30). Sun Capital produced Mr. Koslow, the affiant and the President of the Sun Capital Entities, as their corporate representative. Mr. Koslow did make certain limited admissions, mostly concerning the issue of purported waivers.³ Mr. Koslow actually testified only to a limited set of waivers.⁴

In reality, however, Mr. Koslow claimed not to have any knowledge about numerous areas of testimony, including his own affidavit testimony. (See D.E. 147). On financial matters, in particular, Mr. Koslow was not prepared to provide answers to the noticed areas of inquiry (including, again, his own affidavit testimony). Rather, Mr. Koslow pointed the Receiver to Sun Capital’s CFO, Mr. Lawrence Leder.⁵

Promise and Success initially refused to provide any discovery to the Receiver, on the false pretense that Mr. Koslow’s affidavit and Sun Capital’s Motion for Preliminary Injunction had nothing to do with the Hospitals. (See D.E. 52-9). Later, Promise and Success offered to provide deposition testimony, but only at their unilateral discretion. (See D.E. 52-14). On the Receiver’s Motion to Compel (D.E. 46), Promise and Success were ordered to comply with the Rule 30(b)(6) subpoenas. (D.E. 57).

³ (See, e.g., D.E. 126-1 at 10-11, 40-44 (waiver of interest payments); 31-32, 39 (waiver of audited financials); 32, 39 (waiver of weekly reports); 38 (waiver allowing purchase of accounts subject to debtor relief); 50-52 (waiver regarding insurance requirements); 64-67, 78-80 (waiver regarding borrowing base requirements); 66-69 (waiver allowing purchase of DSH receivables); 69-71 (waiver allowing purchase of worker’s compensation receivables); 85-87 (waiver allowing use of funds for hospital acquisition)).

⁴ (See D.E. 126-1 at 87-91 (where Mr. Koslow testified that he did not remember any other waivers)).

⁵ (See, e.g., D.E. 126-1 at 16-19, 23-27, 39-40, 52-53, 69-76, 99, 156-159, 164-165, 170-173, 180-187, 192, 198, 205, 218, 223; D.E. 126-2 at 11-12, 17, 41-42, 52, 54, 82-83; D.E. 126-4 at 100-102, 197, 271, 275-276).

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Mr. Leder was next proffered as corporate representative of the Sun Capital Entities, Promise, and Success. Mr. Leder provided binding admissions in response to numerous questions, often straying from the questions to make his point. Mr. Leder had ample opportunity to explain himself, and testified freely about the subjects he was most interested in testifying about. Mr. Leder's self-serving testimony contained devastating admissions that undermined Sun Capital's legal and equitable positions, which are recounted in the Receiver's Memorandum in Opposition to the Motion for Preliminary Injunction. (D.E. 125)

Sun Capital and its counsel, however, ensured that Mr. Leder's testimony as corporate representative was intentionally incomplete.⁶ Mr. Leder refused to answer any questions about Sun Capital's role in inducing victims to invest in Stable-Value (for the benefit of Sun Capital), despite the fact that Sun Capital has always (falsely) insisted to the Court that it had clean hands and was not involved in defrauding investors. (D.E. 11 at 19-20; D.E. 11-3 ¶ 21; D.E. 11-4 ¶¶ 14, 16). Similarly, although the Rule 30(b)(6) notices to Promise and Success asked for financial information on the hospitals, and although Mr. Leder is the CFO for both entities, he could not (or would not) provide any details on the performance or financial status of the hospitals⁷ or on numerous other areas of inquiry, despite his obligations under Rule 30(b)(6).⁸

⁶ It appeared as if Sun Capital strategically chose to have Mr. Koslow appear as the first corporate representative, in order to "scout" the Receiver's questions so that Mr. Leder would be prepared to answer them in the most self-serving and evasive manner possible.

⁷ (See, e.g., D.E. 126-7 at 62-63, 87-89, 168-169; D.E. 126-9 at 85-86, 92-94, 101).

⁸ (See, e.g., D.E. 126-5 at 42-45, 75; D.E. 126-6 at 133, 181, 189, 192, 202, 213, 215, 218, 232, 245, 271; D.E. 126-7 at 34, 44, 54, 56-58, 68, 79, 88-90, 97, 100, 103-104, 106, 120, 158-159, 169, 171, 177, 209; D.E. 126-9 at 48, 52, 67, 72, 89-90, 92-94, 97, 101, 132; D.E. 127-1 at 301, 310, 313-314, 328, 334-338, 347-361, 363, 368, 371-374, 382-384, 396-397, 399, 414-415, 423.)

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

IV. DESPITE THE COURT'S ORDER AND OTHER LEGAL REQUIREMENTS, DEFENDANTS, PROMISE AND SUCCESS REFUSED TO PROVIDE COMPLETE OR UPDATED FINANCIAL INFORMATION ON THE KOSLOW AFFIDAVITS

The Receiver served targeted discovery requests upon Sun Capital, Promise and Success, in light of the limited time for discovery and the concern that Sun Capital would use the extended TRO to continue to dissipate the Receivership Estate's collateral. The Receiver also anticipated (correctly, as it turned out) that Sun Capital and its affiliates would be quick to seize upon any argument that the requests were in some way overbroad.⁹ Indeed, no matter how limited and narrow the requests – and notwithstanding Sun Capital's burden of production and proof – Sun Capital, Promise and Success took every opportunity to avoid or limit discovery and to ensure that the Receiver had as little information as possible upon which to rely in opposing the Motion for Preliminary Injunction. (*See, e.g.*, D.E. 90-8).

Promise and Success were the worst offenders. Initially, Promise and Success expressly refused to produce **any** documents. (*See* D.E. 52-9). Even after the Court granted the Receiver's motion to compel the depositions of Promise and Success, they still stood on their formal objections. (*See* D.E. 96-6 ¶ 9; D.E. 96-7 ¶ 9). Ultimately, near the end of the expedited discovery period, Promise and Success eventually produced certain *summary* financial documents (*i.e.*, only through portions of 2009), but provided little historical information and no cash flow information or underlying data. Although the Receiver pressed

⁹ For example, while the Receiver would have liked financial and other records going further back, the Receiver believed it was necessary to request financial information only as of January 2008, given the expedited procedural context and the need to move forward toward a ruling that would end the TRO.

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Promise and Success for updated financial information, Promise and Success flatly refused, asserting that “current financial status [of the hospitals] is irrelevant.” (D.E. 96 at 7).¹⁰

V. BASED ON THE LIMITED DISCOVERY RECORD, THE RECEIVER’S OPPOSITION MEMORANDUM AND EXPERT REPORT PROPERLY RELIED UPON ADMISSIONS THAT NEGATED THE KOSLOW AFFIDAVITS AND THE PENDING MOTION

In light of the recalcitrance and gamesmanship of Sun, Promise and Success, the Receiver had no choice but to base his opposition brief on the limited (but legally significant) admissions from the corporate representative deposition testimony. Notwithstanding the limited information provided, the admissions made at those depositions confirmed that Mr. Koslow’s affidavits were false and misleading. Consequently, Sun Capital has not sustained the substantial burden of proof necessary for the “drastic and extraordinary”¹¹ remedy of a preliminary injunction.

The conclusions of the Receiver’s expert, Mr. Michael Kennelly, were similarly and necessarily limited to the meager financial discovery provided. Nevertheless, as a result of Mr. Leder’s deposition admissions that Founding Partners funds transferred to Promise and Success were not recoverable (and similar admissions),¹² Mr. Kennelly ably

¹⁰ Sun Capital often argues that snapshots of certain banking transactions are sufficient for the Receiver’s purposes, which is not true and is not substantiated by qualified witness testimony. Sun Capital’s witnesses do not limit themselves to that very limited information, and neither should the Receiver be so limited. Sun Capital’s assertion that the Receiver has been given full and current information on his collateral (D.E. 161 at 31) constitutes yet another false representation to the Court, and is further evidence of Sun Capital’s inequitable conduct and unclean hands in dealings with the Court and the Receiver. The Receiver’s repeated efforts to obtain accurate financial information, in order to attempt to maximize value for investors, have been thwarted at every turn by Sun Capital’s improper tactics.

¹¹ See *Johnson & Johnson Vision Care, Inc. v. CIBA Vision Corp.*, 2005 WL 2063785, at *3 (M.D. Fla. Aug. 18, 2005) (“a preliminary injunction is a drastic and extraordinary remedy that is not to be routinely granted.”) (internal citations omitted).

¹² (See, e.g., D.E. 126-5 at 89, 95-96, 105, 130).

demonstrated that Sun Capital's monthly financial reports were false and fraudulent.

Redacted

Precisely because Promise and Success provided so little information in discovery on their own finances, Mr. Kennelly's testimony about Promise and Success was limited and tentative

Redacted

(D.E. 131-2 at 14-15) – contentions which are also **not** rebutted in the Reply Papers).

The Receiver's declaration covered limited, discrete areas, as necessitated by Sun Capital's violations of its discovery obligations under the July 28, 2009 Order and Rule 30(b)(6).¹³ Incidentally, the limited (but probative) evidentiary facts in the Receiver's declaration – including that Sun Capital committed a knowing, purposeful fraud on the Court-appointed Receiver – are **not** denied in Sun Capital's voluminous reply papers. These violations of Federal and Florida criminal law¹⁴ provide additional **uncontested** evidence of Sun Capital's inequitable conduct and unclean hands.

¹³ Sun Capital's corporate representatives refused to answer questions about Sun Capital's recent fraud upon the Receiver in offering non-existent collateral to obtain funding. (*See, e.g.*, D.E. 126-7 at 176-178.). Also, after admitting under oath that Sun Capital could and would take the steps necessary to ensure patient safety even if Sun Capital lost the Motion for Preliminary Injunction, Mr. Leder chose to contradict himself at a subsequent deposition (*See, e.g.*, D.E. 126-7 at 204; D.E. 126-9 at 131-133), necessitating correspondence between counsel to clear up and moot the false specter of danger to patients.

¹⁴ As set forth in the Receiver's memorandum in opposition to the preliminary injunction motion, Sun Capital Principals obtained funding from the Receiver by fraudulently offering a mortgage from an entity (LHA) that did not own the property to be mortgaged. Days later, Sun's counsel reaffirmed the fraud

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

ARGUMENT

I. APPLICABLE LEGAL PRINCIPLES

The Court has the inherent authority to strike from the record materials offered in violation of the rules that govern the discovery, disclosure and presentation of evidence. In addition, an affidavit that is "replete with legal argument" and raises arguments not addressed in previous papers can be stricken. *See Shutts v. Precision Assessment Tech. Corp.*, No. 960103, *4 (M.D. Fla. Apr. 6, 2009). Also, the Court can refuse to consider evidence as a result of a party's willful failure to disclose that evidence in discovery. *See Lawver v. Hillcrest Hospice, Inc.*, 300 Fed.Appx. 768, *2-3 (11th Cir. 2008).¹⁵

The new declarations and affidavit filed by Sun Capital contradict or materially change the nature of testimony Sun Capital offered at deposition. They include information that was undoubtedly available to Sun Capital and its affiliates at the time of the depositions, but which was purposefully withheld from the Receiver. As such, they should be stricken. In this Circuit, "a party's affidavit may be disregarded as a sham

by sending proposed mortgage papers from LHA. The Sun Principals thus committed violations of Federal and Florida criminal law directed at the Receiver in furtherance of their scheme to defraud the Receiver. *See* 18 U.S.C. §§ 1341, 1343; Fla. Stat. § 817.034. The Sun Principals now attempt to explain away the fact that they perpetrated a \$14 million mortgage fraud on the Court-appointed Receiver by claiming that this was an "inadvertent error," committed twice (D.E. 161-1 at 108, n.46). This baseless defense (for which no discovery has been provided) sidesteps the most glaring question – if the multiple errors were "inadvertent," why did Sun Capital not simply correct the errors, provide accurate documentation from the entity that owned the real estate, and mortgage the property to the Receiver as promised? The obvious answer is that the Sun Capital principals never intended to provide the Receiver with a mortgage, and hoped the Receiver would let the matter of their fraudulent inducement drop.

¹⁵ Although the authority cited in this portion of the Receiver's argument generally involves cases at the summary judgment or trial stage, the concepts are analogous. Given the drastic and extraordinary relief sought by Sun Capital, and the truncated Court-ordered procedure on the preliminary injunction motion, the determination of Sun Capital's motion is akin to a summary judgment ruling or a mini-trial. General principles of fair play and justice dictate that Sun Capital should not be permitted to obtain sweeping injunctive relief by playing "hide-the-ball" and withholding critical information from the Receiver and from this Court.

when it contradicts, without explanation, her prior deposition testimony." *Lawver, supra*, at *2-3; *see also United States v. Nguyen*, 655 F. Supp. 2d 1203, 1208-09 (S.D. Ala. 2009). *Accord Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F. 2d 656, 659 (district court properly held a party's affidavit could not create an issue of fact in light of the party's deposition and the documentary record before the Court).

Willful failure to disclose a witness who may provide relevant evidence, or to disclose evidence relied upon by such witnesses, is properly sanctioned by precluding use of the evidence the witness will offer. *See Lawver, supra*, at *1 (citing Fed. R. Civ. P. 37(c)(1)). Indeed, under Federal Rule of Civil Procedure 26(e), parties are prohibited from holding back supplemental evidence – particularly if they intend to use it to support their case – and the Court is free to prohibit use of the withheld evidence as a sanction. *See Williams v. Roberts*, 202 F.R.D. 294, 296-97 (M.D. Ala. 2001) ("If a party does not seasonably supplement its disclosures, a court does not abuse its discretion by limiting the witness's testimony to what has been timely disclosed.").

Similarly, a corporation cannot manipulate the deposition process by producing a representative witness to answer questions on topics, only to later attempt to "revise[] the positions taken at the 30(b)(6) depositions" to avoid an adverse result. *See Rainey v. Am. Forest And Paper Ass'n., Inc.*, 26 F. Supp. 2d 82, 94 (D.D.C. 1998). Depositions under Rule 30(b)(6) "aim to prevent a corporate defendant from thwarting inquiries during discovery, then staging an ambush during a later phase of the case," and a corporation's

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

failure to provide information to its representative at the time of its deposition will preclude use of that information later in the case. *See Rainey*, 26 F. Supp. 2d at 95.¹⁶

Finally, much of the substance of the Reply Declarations is new legal argument, which is improper for consideration on reply. *See, e.g., Importers' Service Corp. v. GP Chems. Equity, LLC*, 652 F.Supp. 2d 1292, 1300 (N.D. Ga. 2009) ("generally issues not raised in the initial brief are abandoned."). Given the subject matter of the allegedly "new" information Sun Capital offers, it is readily apparent that this information was available to Sun Capital and its affiliates when they were deposed, but purposefully not proffered at that time. Sun Capital should not be permitted to avail itself of this information, when the Receiver has been unfairly precluded from examining it.¹⁷

II. THE REPLY DECLARATIONS SHOULD BE STRICKEN

A. THE REPLY DECLARATION OF MR. MICHAEL MAZZARINO (CONCERNING PROMISE AND SUCCESS) AND ARGUMENTS BASED ON IT SHOULD BE STRICKEN

First, Mr. Mazzarino does not confine his "testimony" to the very limited discovery provided by Sun Capital, Promise, or Success during the expedited discovery

¹⁶ Although the Eleventh Circuit has not directly addressed this issue, and certain other courts have held that Rule 30(b)(6) admissions do not operate as binding "judicial admissions," *e.g., AI Credit Corp. v. Legion Ins. Co.*, 265 F. 3d 630, 637 (7th Cir. 2001), those cases refused to make the testimony binding on the basis that merely "because" the witness testified as a Rule 30(b)(6) representative, the corporation would be forever bound against subsequent developments. That is not the basis for binding Sun Capital here. In this case, holding Sun Capital to its deposition testimony is appropriate because Sun Capital affirmatively chose to make that its testimony, withholding the remainder of its "evidence" only to provide it later through other witnesses. Under both the unfair surprise rule and Rule 26(e), the more appropriate approach in this case is to keep Sun Capital from changing its story on the eve of the injunction hearing.

¹⁷ Sun Capital's tactics attempt to improperly prejudice the Receiver, and therefore, in the event the Reply Declarations are not stricken, the Court should permit additional briefing to the extent the new evidence is considered. *See Hammett v. American Bankers Insurance Co.*, 203 F.R.D. 690, 695 n.1 (S.D.Fla. 2001) (granting leave to file sur-reply specifically because of new arguments and new theory presented in reply brief).

period. To the contrary, the Mazzarino Declaration (D.E. 170) sets forth a dizzying array of old and new purported statistics and facts, all of which were affirmatively withheld by Promise and Success during the expedited discovery period.¹⁸ In fact, there is not a single cite to any deposition or to the discovery record in the Mazzarino Declaration.

Ironically, Mr. Mazzarino criticizes Mr. Kennelly's testimony on Promise and Success for having "no analysis" of the underlying hospital data (D.E. 170 ¶ 8), but Mr. Kennelly made it clear that his opinions on the Hospitals were based solely on the limited data given to the Receiver. (See D.E. 131-2, at 30-32). Mr. Mazzarino operates with no such artificial limits. Similarly, Mr. Mazzarino's insistence that the Receiver is intent on shutting down all hospitals is rank speculation, not testimony, that is inconsistent with the Receiver's position that he would fund hospitals if the data (withheld from the Receiver) showed that continued funding was feasible and prudent. (D.E. 125 at 60-61, 66-70). The Receiver seeks to protect the interests of defrauded investors and to maximize value for them. If funding the hospitals presented the best option for doing so, the Receiver would not hesitate. The difficulty is that Sun Capital continues to conceal and withhold

¹⁸ Mr. Mazzarino's firm was retained by Sun Capital's counsel in May 2009. (D.E. 170 ¶ 1). Counsel for Sun Capital was able to conceal the existence of this purported "expert" by refusing to provide privilege logs, ostensibly due to the expedited nature of the proceedings. When the Receiver pressed for discovery from Promise and Success, counsel for Sun Capital chose to withhold this data under the veil of privilege, instead causing Mr. Leder to be designated and to provide as little information as possible. However, now that the Receiver effectively used the limited information from the Promise and Success depositions in his Opposition brief, Sun Capital counsel has lifted the veil of privilege, ambushing the Receiver with a new witness and an avalanche of new alleged facts that likely are just as misleading as the affidavits from Mr. Koslow that started this judicial procedure. The privilege cannot be used as both a shield and a sword. See *Baratta v. Homeland Housewares, LLC*, 242 F.R.D. 641, 643 (S.D. Fla. 2007); *McGrath v. Nassau County Health Care Corp.*, 204 F.R.D. 240, 245 (E.D.N.Y. 2001) (rejecting selective waiver); *Delagi v. Delagi*, 313 N.Y.S.2d 265, 268-79 (N.Y. App. Div. 1970) (recognizing it is improper to allow a party to use privilege as both a sword and shield); see also *GAB Bus. Servs., Inc. v. Syndicate 627*, 809 F. 2d 755, 762 (11th Cir. 1987) (privilege "was intended as a shield, not a sword.").

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

financial data, leaving the Receiver unable to make an informed determination.

Second, the Mazzarino Declaration directly contradicts the controlling admissions of Sun Capital and its affiliates from the Rule 30(b)(6) depositions. For example:

- Mr. Leder testified, on behalf of Promise and Success, that

Redacted

(*See, e.g.*, D.E. 126-7 at 134-136, 139; D.E. 126-9 at 42); Mr. Mazzarino contradicts this controlling testimony of Promise and Success. (D.E. 170 ¶ 12; *but see* ¶ 19).

- Mr. Leder testified, on behalf of Promise and Success, that

Redacted

(*See, e.g.*, D.E. 126-7 at 134); Mr. Mazzarino contradicts this controlling deposition testimony of Promise and Success. (D.E. 170 ¶ 29).

- Mr. Leder testified, on behalf of Success, that

Redacted

(*See, e.g.*, D.E. 126-9 at 41, 86, 92, 96); Mr. Mazzarino contradicts this controlling testimony of Success. (D.E. 170 ¶¶ 9, 27, 31).

- Mr. Leder testified, on behalf of Success, to

Redacted

(*See, e.g.*, D.E. 126-8 at 16-17; D.E. 126-9 at 118); Mr. Mazzarino disputes this, by (D.E. 170 ¶¶ 9, 14). This appears to be another exercise in post-hoc lawyerly wordsmithing.

Redacted

- Mr. Leder testified, on behalf of Success, that

(D.E. 126-8 at 9; D.E. 126-9 at 67, 71); Mr. Mazzarino contradicts this testimony, claiming that

Redacted

(D.E. 170 ¶ 28). This argument of Mr. Mazzarino directly contradicts the Promise and Success testimony that the funds of Sun Capital, Promise, and Success are commingled. (*See, e.g.*, D.E. 126-6 at 229; D.E. 126-7 at 121, 123; D.E. 126-9 at 42-43, 49, 68, 96; D.E. 127-1 at 332-334, 337-338, 342-345, 366, 375, 378, 422-424.)

- Mr. Koslow and Mr. Leder, on behalf of Sun Capital, testified that Sun Capital

Redacted

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

(See D.E. 126-1 at 223-26; 126-2 at 70-80; D.E. 126-5 at 76, 77, 80, 81).¹⁹ Mr. Mazzarino contradicts Sun Capital's testimony, purportedly based on his own private conversations with Sun Capital Principals, including supposed conversations regarding new purported waivers. (D.E. 170 ¶ 9).

- Mr. Koslow and Mr. Leder, on behalf of Sun Capital, testified to all claimed waivers by Mr. Gunlicks, and did not include any waiver of fees or interest by Promise and Success on non-factoring advances (*See, e.g.*, D.E. 126-5 at 62, 64, 106; D.E. 126-6 at 247, 262, 271, 273, 275, 278; D.E. 126-8 at 25; D.E. 126-9 at 119; D.E. 127-1 at 298, 311).²⁰ Mr. Mazzarino contradicts this testimony, in reliance on private conversations with Sun Capital Principals, including presumably Mr. Koslow and Mr. Leder. (D.E. 170 ¶¶ 6, 18).

Third, the Mazzarino Declaration contradicts itself. Mr. Mazzarino testified that

Redacted

(D.E. 170 ¶¶ 9, 19). At best, the Mazzarino Declaration is an exercise in lawyerly wordsmithing; at worst, a deliberate attempt to repaint the record developed in discovery.

Finally, buried amidst his argumentative assertions, Mr. Mazzarino did provide a stunning and noteworthy admission.

Redacted

¹⁹ The Sun witnesses occasionally argued that the Purchase and Sale Agreements between Sun Capital and the Hospitals created binding, non-factoring, funding commitments (D.E. 126-2 at 73-78; D.E. 126-5 at 65, 88), but then acknowledged that those Agreements did not apply to general funding and that Sun Capital had the discretion not to purchase any Account under them. (D.E. 126-2 at 79-80).

²⁰ *See supra* fn. 3 & 4.

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Redacted

(D.E. 170 ¶¶ 5, 6).²¹ Sun Capital has come a long way in its moving papers, initially making false representations (to obtain the TRO) that it had only been “recycling receivables” and studiously maintaining collateral, and now admitting that, instead, its Principals looted the collateral for their own benefit and at the expense of the defrauded victims. (D.E. 11 at 17-18; D.E. 11-3 ¶¶ 6, 13, 15, 24, 29, 36; D.E. 11-4 ¶¶ 9, 21-25).

**B. THE DECLARATION OF MR. JAMES HOPWOOD
(CONCERNING SUN CAPITAL) AND ARGUMENTS BASED ON
IT SHOULD BE STRICKEN**

Mr. Hopwood’s Declaration (D.E. 171) suffers from the same defects as Mr. Mazzarino’s Declaration. Mr. Hopwood does not confine himself to the discovery record or to the numerous admissions in the Sun Capital depositions. Also, like Mr. Mazzarino, Mr. Hopwood expressly contradicts the Sun Capital depositions.

For example, Sun Capital testified to a discrete list of purported waivers by Stable-Value, which did not include (a) waiving the right to obtain fees and interest on so-called working capital advances, or (b) waiving the right to obtain accurate, non-fraudulent financial records.²² Yet, Mr. Hopwood represents to this Court that such waivers were given by Mr. Gunlicks, apparently based solely on recent private (and unverifiable) assurances by the deponents.²³ (D.E. 171 ¶¶ 13, 30).²⁴

²¹ Any valuation of the hospitals or of the Sun Capital Principals’ claim to equity or control of the Hospitals must now be viewed in the context of

Redacted

²² See supra fn. 3 & 4.; See, D.E. 127-1 at 369.

²³ Another example involves DSH at Silver Lake. Mr. Hopwood testified that:

[1] I understand from Sun Capital management that

Redacted

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Similarly, Mr. Hopwood's "testimony" regarding the diversions of loan proceeds and collateral described by Mr. Kennelly (based on the discovery record) is, in essence, that Sun Capital's principals privately informed him (presumably quite recently) that Mr. Gunlicks knew of their diversions of funds and knew that such diversions hurt the investors, but simply did not care. This is second-hand hearsay, and not expert testimony. In fact, Mr. Hopwood's statement in this regard does not purport to undermine Mr. Kennelly's recounting of the facts showing the scheme successfully masterminded by the Sun Capital Principals for their own benefit, which has continued to take place since the entry of the TRO.²⁵

Mr. Hopwood's "testimony" challenging Mr. Kennelly's analysis and findings – namely, that Sun Capital presented Founding Partners with false and misleading financial reports, **Redacted** should also be stricken. Mr. Hopwood provides no competent rebuttal testimony. Mr. Hopwood does not deny the specifics of Mr. Kennelly's analysis or findings. Mr. Hopwood does not provide countervailing expert opinion on the same facts available to Mr. Kennelly.

Redacted

The first statement's private assurance by Sun Capital Principals to Mr. Hopwood **Redacted** is not in the deposition record. The second and third statements are flatly contradicted by Sun Capital testimony that

(See, e.g., D.E. 126-6 at 149; D.E. 126-8 at 8-10.)

²⁴ See, e.g., *Croom v. Balkwill*, 672 F.Supp. 2d 1280, 1286 (M.D. Fla. 2009) ("the Court must strike an affidavit when it is a conclusory argument, rather than a statement of fact, or when the affidavit is not based on personal knowledge.") (internal citations omitted).

²⁵ Mr. Hopwood's testimony also does not justify diversions from defrauded investors, or diversions that have taken place since the Receiver's appointment.

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Rather, Mr. Hopwood represents to this Court, again, that **the Sun Capital Principals told him** that Mr. Gunlicks did not mind receiving inaccurate and fraudulent financial records from Sun Capital, further evidence of Sun Capital's inequitable conduct and unclean hands.²⁶ Mr. Hopwood's testimony that Mr. Gunlicks wanted Sun Capital to "lie" to him on financial records is not just absurd; it is flatly contradicted by Mr. Leder's insistence that Mr. Gunlicks wanted to know the true status of the collateral (*See, e.g.*, D.E. 126-6 at 235; D.E. 127-1 at 305) and his testimony that Sun Capital's financial records were supposedly accurate. (D.E. 126-6 at 220). Regardless of what Mr. Gunlicks agreed to, Sun Capital knew its fraudulent financials would be conveyed to the investors who, as Sun Capital also knew, were the victims of the fraud scheme.

C. THE FREW DECLARATION (ON MARKETING EFFORTS) AND ARGUMENTS BASED ON IT SHOULD BE STRICKEN

First, the Frew Declaration (D.E. 172) is not limited to the discovery provided by Sun Capital, Promise, or Success; rather, it is based on new information previously withheld from the Receiver. Ms. Frew complains that

Redacted

This is not proper rebuttal because the Receiver was not given the data that Ms. Frew claims to rely upon. Sun Capital, Promise, and Success **refused** to provide that data to the Receiver, despite initially promising to do so.²⁷

²⁶ Sun Capital's provision of false financial statements is a crime in Florida. *See* Fla. Stat. § 817.15.

²⁷ Ms. Frew neglects to mention that **she** (along with Sun Capital) had promised the Receiver full access to Ms. Frew's information and full access to the accounting firm that was purportedly auditing the books and records of Promise and Success. Despite these promises, none of this information was ever provided to the Receiver. Like Sun Capital, Ms. Frew has been wholly unable to provide any support for her pronouncements. Paralleling their inequitable conduct in discovery (summarized above), Sun Capital

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Second, the Frew Declaration is also largely comprised of legal argument. Ms. Frew provides her own interpretation of the Receiver's brief, arguing that the Receiver is intent on liquidation. (D.E. 172 ¶ 8). This is not first-hand or expert testimony; rather, it is an inadmissible (and false) characterization of the Receiver's brief. Sun Capital apparently feels that its only chance to prevail on its motion for injunctive relief is to deceive the Court into believing that the Receiver is bent on liquidation.

Ms. Frew's complaint that

Redacted also disguised legal argument. (D.E. 172 ¶ 4). Of course, the hospitals would be worth more if they had no debts, and if they were not capitalized by fraudulent conveyances, fraud, and other inequitable conduct at the expense of Founding Partners and the investors. But that situation was caused by the Sun Capital principals, not the Receiver. Essentially, Sun Capital asks the Court to rewrite history and erase Sun Capital's prodigious record of misconduct, in order to present a false picture of financial stability to potential investors.

Sun Capital has misstated the problem and offered an improper solution. The problem is that Sun Capital has improperly withheld financial information, and excluded the Receiver from marketing efforts, even though potential investors know that the Receiver is a real party in interest and has valid claims on the Hospitals being marketed. The solution is that the Receiver should be permitted to exercise his contractual rights to the lockboxes, and the Sun Principals will have no choice but to work with the Receiver

and its advisors complain that the Receiver would not work with them on a recapitalization, all the while withholding the very data needed and requested by the Receiver to evaluate such a proposal.

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

in marketing the Hospitals. With the Receiver at the negotiating table, the market can take seriously Sun Capitals' marketing efforts.

Ms. Frew's conclusion fully negates any rebuttal value her declaration may have:

Redacted

Ms. Frew's unsubstantiated opinion that the Sun Capital Principals

Redacted

is

nothing more than Sun Capital's lawyers attempting to manipulate the Court into believing that Sun Capital is acting in the investors' interests, when the opposite is true.²⁸

Redacted

D. THE LEDER AFFIDAVIT SHOULD BE STRICKEN

In light of the two Koslow affidavits upon which the pending Motion has been based, and in light of the comprehensive Rule 30(b)(6) depositions that were taken to test

²⁸ Indeed, Sun Capital and its counsel used a similar manipulation tactic – making misrepresentations to the Court in order to create a false panic regarding patient lives purportedly “hanging in the balance,” when the truth was quite the opposite – to obtain the TRO.

²⁹ It is also striking that Promise and Success have so vigorously shielded their financial information from the Receiver, and in turn from the Court, to whom the Receiver must report.

and challenge the Koslow affidavits by Court Order, Sun Capital would be hard-pressed to explain why Mr. Leder is submitting **any** new testimony at all, much less a far-ranging 70-page affidavit (D.E. 162-169). In any event, Sun Capital does not even try to carve out a narrow legitimate ground for additional testimony from Mr. Leder, instead simply behaving as if nothing came before. For this reason alone, Mr. Leder's new affidavit should be stricken. In addition, the Receiver notes the following specific problems with the new affidavit from Mr. Leder:

To begin with, the Leder Affidavit suffers from the same deficiencies as the Reply Declarations. The Leder Affidavit (like the Reply Declarations) ignores and contradicts the admissions in the Rule 30(b)(6) depositions,³⁰ which is improper. The Leder Affidavit (like the Reply Declarations) purports to rely on data and evidence that Sun Capital, Promise, and Success refused to provide to the Receiver in discovery, including recent financial data. (*See, e.g.*, D.E. 162 at ¶ 84.) The Leder Affidavit (like the Reply Declarations) is also largely the argument of Sun Capital's lawyers, dressed as

³⁰ For example, Mr. Leder admitted in depositions that

(*See, e.g.*, D.E. 126-6 at 229; D.E. 126-7 at 121, 123; D.E. 126-9 at 42-43, 49, 68, 96.) Mr. Leder also admitted that

(*See, e.g.*, D.E. 126-8 at 8-9; D.E. 126-6 at 229; D.E. 126-7 at 121, 123; D.E. 126-9 at 42-43, 49, 68, 96; D.E. 127-1 at 332-334, 337-338, 342-345, 366, 375, 378, 422-424.) Mr. Leder's affidavit expressly contradicts this sworn testimony (as does Mr. Hopwood's). (D.E. 162 ¶ 107). Even after strategically engineering Mr. Leder's testimony to occur after Mr. Koslow had had the chance to "scout" the Receiver's questions, Sun Capital still cannot keep their story straight, and Mr. Leder's affidavit is simply another transparent attempt to rewrite the record.

Redacted

Redacted

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

testimony.³¹ Significantly, the Leder Affidavit (like the Reply Declarations) fails to actually rebut the evidence relied upon by the Receiver, rendering it an improper reply.

For example, Mr. Leder's criticism of Mr. Kennelly's analysis contains no evidence or analysis to contradict Mr. Kennelly.³² Similarly, Mr. Leder's lengthy "testimony" that purports to defend Sun Capital's position – specifically, that all breaches were effectively waived and turned into oral modifications – misses or glosses over the specific evidence and arguments of the Receiver, which were based on the admissions of Mr. Koslow and Mr. Leder. Mr. Leder's affidavit also fails to support Sun Capital's position that, by purportedly agreeing to waive or orally modifying the CSAs to accommodate certain historical breaches, Mr. Gunlicks thereby somehow waived all future breaches or orally modified the CSAs to permit unlimited future breaches.³³

³¹ For example, Mr. Leder "testifies" that the Receiver misunderstood his deposition testimony. (*See, e.g.*, D.E. 162 ¶¶ 82, 91-93, 107-110, 112 fn. 48, 121). Mr. Leder also "testifies" about his interpretation of the Koslow affidavits and his own testimony. (*See, e.g.*, D.E. 162 ¶¶ 83-85, 111-117). Mr. Leder also "testifies" that he disagrees with the Receiver's conclusions. This is not evidence, nor is it reply evidence.

³² For example, in his affidavit Mr. Leder "testifies" in conclusory fashion that .

Redacted

.. Mr. Leder never addresses or confronts Mr. Kennelly's specific facts and analysis. (*See* D.E. 162 ¶ 96). Insofar as the Court believes that Mr. Leder has somehow countered the Receiver's proof, then the Receiver submits that an evidentiary hearing is required to determine whether Sun Capital can sustain its burden of proof on this issue. The Receiver requested an evidentiary hearing in its memorandum in opposition to the preliminary injunction motion.

³³ In certain limited respects, Mr. Leder provides arguably proper reply evidence. One example is Mr. Leder's recollection of his dealings with Mr. Phil Fues (D.E. 162 ¶¶ 58-81), whose testimony on the January 29, 2009 meeting was used to corroborate the Receiver's argument based on the Standstill Agreements. That portion of Mr. Leder's affidavit testimony is arguably proper rebuttal (although Mr. Leder constantly referred to Mr. Fues in his depositions and Sun Capital intentionally chose not to depose him, evidently hoping the Receiver would not take the steps necessary to obtain an affidavit). If the Court determines that the differences between their testimony are material to the resolution of the pending Motion, the Receiver respectfully submits the Court should order an evidentiary hearing to identify to resolve those differences, as requested by the Receiver in his opposition papers. Incidentally, the unsigned and unauthenticated memorandum by Mr. Gunlicks on accruing interest is consistent with the Receiver's evidence and argument that Mr. Gunlicks agreed to accrue interest payments during the Standstill Periods.

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

In fact, the documents attached to the Leder Declaration **affirmatively disprove** numerous Sun Capital contentions, including the following:

First,

Redacted

However, Mr. Leder's affidavit

Redacted

(*See, e.g., D.E.*

165-11, 165-12, 165-13, 165-14, 165-15, 165-16, 165-17, 165-18, 165-19, 165-29, 166-

1). The Receiver has never contested these facts; indeed,

Redacted

Regardless of Mr. Leder's testimony in this regard, the fact remains that

Redacted

Another potential example is Mr. Leder's belated attempt to explain away the Receiver's evidence that Sun Capital was actively involved in the fraud on the investors (*See, e.g., D.E. 162 ¶¶ 122-124*), which Mr. Leder may not provide on reply since he refused to respond to the Receiver's deposition questions on this issue. (*See, e.g., D.E. 126-6 at 281; D.E. 126-7 at 205-206; D.E. 126-9 at 133; D.E. 127-1 at 430.*) If the Court is willing to consider this testimony, an evidentiary hearing would be needed for the Court to rule on the conflicting testimony and assess the credibility of Sun Capital's fraud victims, including representatives from the Archdiocese of New Orleans, against that of Mr. Leder.

Redacted

(D.E. 125 at 19). Mr. Leder's documents complete the picture of Sun Capital's multi-faceted fraud on Mr. Gunlicks –

Redacted

Second, the documents attached to Mr. Leder's Affidavit affirmatively **disprove** another central Sun Capital contention – namely, **Redacted**

The documents attached by Mr.

Leder merely show that

For

example, Mr. Leder testifies that

Redacted

34

The exception (that proves the rule) is Exhibit 53 to Mr. Leder's Affidavit (D.E. 165-21), in which

Redacted

35

Redacted

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

Two documents in particular serve as a representative sample of how the Mr. Leder's cited documents actually negate his "reply" testimony.

Redacted

³⁶ Mr. Gunlicks's testimony before the Florida regulators (D.E. 166-1) provides additional evidence of Sun Capital's unclean hands. Sun Capital admits that

Redacted

³⁷ See composite Exhibit C hereto (which includes the Receiver's letter in response).

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests this Court to enter an Order striking the Reply Declarations, denying Sun Capital's Motion for Preliminary Injunction, dissolving the TRO, and granting any further relief deemed just and proper.

CONFERRAL CERTIFICATION

Pursuant to Local Rule 3.01, undersigned counsel certifies that he conferred with Sun Capital's counsel, who has indicated that Sun Capital objects to the relief requested herein.

Respectfully submitted,

BROAD AND CASSEL
One Biscayne Tower, 21st Floor
2 South Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 373-9400
Facsimile: (305) 995-9443

By: /s/ Jonathan Etra
Jonathan Etra, Esq.
Florida Bar No. 0686905
Counsel for Plaintiff

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 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, 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

*Counsel for Defendants Sun Capital
Capital, Inc., Sun Capital Capital
Healthcare, Inc., and HLP
Properties of Port Arthur, LLC
Service via CM/ECF*

Sarah S. Gold, Esq.
Karen 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
Capital, Inc., Sun Capital Capital
Healthcare, Inc. and HLP Properties
of Port Arthur, LLC
Service via CM/ECF*

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.

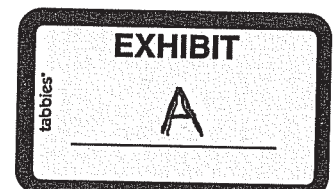
NOTICE OF TAKING DEPOSITION PURSUANT TO RULE 30(b)(6), FED. R. CIV. P.,
OF DEFENDANT SUN CAPITAL HEALTHCARE, INC.

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

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
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 21 st 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.

BROAD and CASSEL
One Biscayne Tower, 21st Floor, 2 South Biscayne Boulevard, Miami, Florida 33131-1811

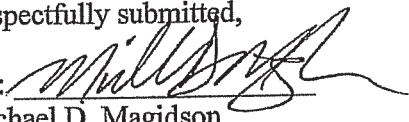


CASE NO.: 2:09-cv-445-FtM-99SPC

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
100 N. Tampa Street
Suite 3500
Tampa, FL 33602
Tel: 813.225.3011
Fax: 813.204.2137
mmagidson@broadandcassel.com

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

CASE NO.: 2:09-cv-445-FtM-99SPC

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

Brenda Fradera

From: Michael Magidson
Sent: Tuesday, August 11, 2009 3:35 PM
To: 'sgold@proskauer.com'; 'kclarke@proskauer.com'; 'jgaller@proskauer.com'
Cc: 'Paparo, Vincenzo'
Subject: Newman v. Sun/2:09-cv-445 Middle District of Florida
Attachments: Notice of Taking Deposition - SCHI.pdf

Please see the attached.



Michael D. Magidson, Esq.

100 NORTH TAMPA STREET
SUITE 3500
TAMPA, FL 33602
TELEPHONE: 813.225.3020
FACSIMILE: 813.225.3039

BIO

DIRECT LINE: 813.225.3011
DIRECT FACSIMILE: 813.204.2137
E-MAIL: mmagidson@broadandcassel.com

www.broadandcassel.com

**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, 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:

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

CASE NO.: 2:09-cv-445-FtM-99SPC

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 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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. "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.

CASE NO.: 2:09-cv-445-FtM-99SPC

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
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 21 st 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.,

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, 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
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 21 st 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

CERTIFICATE OF SERVICE

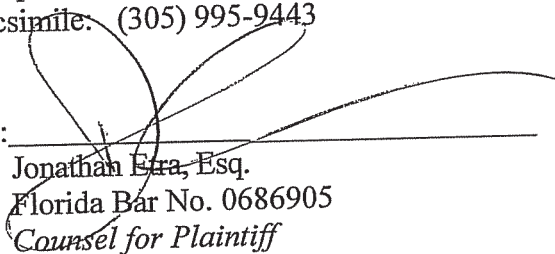
I HEREBY CERTIFY that that the foregoing document is being served this 2nd day of September, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

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 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 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. “SCI” 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

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.

**SECOND AMENDED 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital Healthcare, Inc. designated to testify about the areas identified in Schedule A attached hereto	September 17, 2009 9:30 a.m.	Offices of Broad and Cassel One Biscayne Tower 21 st 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 16th 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

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*

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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.,

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 CONTINUATION OF 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 continued videotaped deposition(s) of:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital Healthcare, Inc. designated to testify about the areas identified in Schedule A attached hereto	September 22, 2009 9:30 a.m.	Offices of Broad and Cassel One Biscayne Tower 21 st 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

CERTIFICATE OF SERVICE

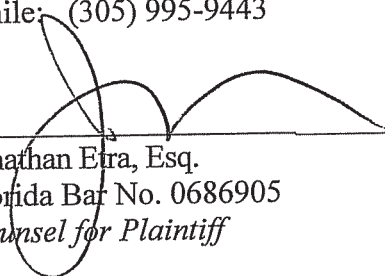
I HEREBY CERTIFY that that the foregoing document is being served this 18th day of September, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

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

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*

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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.,

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.

**SECOND AMENDED 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital, Inc. designated to testify about the areas identified in Schedule A attached hereto	September 22, 2009 at 9:30 a.m. (or at the conclusion of the deposition of Sun Capital Healthcare, Inc.)	Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Boulevard 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that that the foregoing document is being served this 18th 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

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 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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. "SCI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

**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 CONTINUATION OF 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital, Inc. designated to testify about the areas identified in Schedule A attached hereto	September 30, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Boulevard 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

4/15/09

CASE NO.: 2:09-cv-445-FtM-99SPC

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

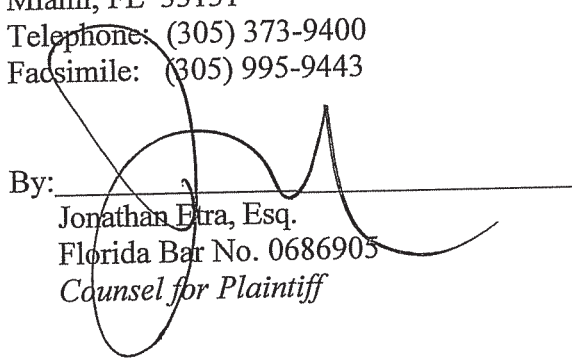
I HEREBY CERTIFY that that the foregoing document is being served this 25th day of September, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

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 Ftra, Esq.
Florida Bar No. 0686905
Counsel for Plaintiff

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

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 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 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. "SCI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

**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 RE-SETTING VIDEOTAPED DEPOSITION
PURSUANT TO COURT'S ORDER**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated September 22, 2009,
the undersigned attorneys intend to take the videotaped deposition(s) of:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Promise Healthcare, Inc. designated to testify about the areas identified in Schedule A of the Subpoena previously served and attached hereto.	October 1, 2009 at 9:30 am	Broad and Cassel One Biscayne Tower 21 st Floor 2 S. Biscayne Boulevard 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.

09/24/09

CASE NO.: 2:09-cv-445-FtM-99SPC

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 24th 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

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

)
)
) Civil Action No. 2:09-cv-445-FtM-99SPC
)
) (If the action is pending in another district, state where:
) Middle District of Florida
)

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Promise Healthcare, Inc., c/o ARMSTRONG, DAVID J EVP, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See Attached

Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131	Date and Time: 09/21/2009 10:00
---	---------------------------------

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/21/09
CLERK OF COURT

OR

Attorney's signature

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

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Promise, its purposes, and the funds used to create Promise and acquire the Entities and to secure indebtedness.
2. Promise's ownership and the owners' contributions to capital.
3. The acquisition of the Promise Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Promise books and records.
6. The lending or factoring between SCHI and Promise, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Promise.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Promise.
7. Promise's effort to obtain alternative financing or recapitalization.
8. Damages to Promise from the SCHI's failure to provide funding
9. Promise's ownership, and the flow of funds from Promise to Promise's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Promise Entities are located, ownership structure of same, and payments to same.

**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 RE-SETTING VIDEOTAPED DEPOSITION
PURSUANT TO COURT'S ORDER**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated September 22, 2009,
the undersigned attorneys intend to take the videotaped deposition(s) of:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Success Healthcare, LLC designated to testify about the areas identified in Schedule A of the Subpoena previously served and attached hereto.	October 2, 2009 at 9:30 am	Broad and Cassel One Biscayne Tower 21 st Floor 2 S. Biscayne Boulevard 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.

4/24/09

CASE NO.: 2:09-cv-445-FtM-99SPC

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 24th 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FtM-99SPC
(If the action is pending in another district, state where: Middle District of Florida)

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Success Healthcare, LLC, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See Attached

Table with 2 columns: Place (Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131) and Date and Time (09/22/2009 10:00)

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/3/09 CLERK OF COURT

OR

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 S. Newman, Receiver, who issues or requests this subpoena, are:

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because _____ ; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Success, its purposes, and the funds used to create Success and acquire the Entities and to secure indebtedness.
2. Success's ownership and the owners' contributions to capital.
3. The acquisition of the Success Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Success books and records.
6. The lending or factoring between SCHI and Success, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Success.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Success.
7. Success's effort to obtain alternative financing or recapitalization.
8. Damages to Success from the SCHI's failure to provide funding
9. Success's ownership, and the flow of funds from Success to Success's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Success Entities are located, ownership structure of same, and payments to same.

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 CONTINUATION OF 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital Healthcare, Inc. designated to testify about the areas identified in Schedule A attached hereto	October 14, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Boulevard 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

10/14/09

CASE NO.: 2:09-cv-445-FtM-99SPC

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 9th day of October, 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

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 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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. "SCI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

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 CONTINUATION OF 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital, Inc. designated to testify about the areas identified in Schedule A attached hereto	October 14, 2009 at 9:30 a.m. (or at the conclusion of the deposition of Sun Capital Healthcare, Inc.)	Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Boulevard 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

2/19/09

CASE NO.: 2:09-cv-445-FtM-99SPC

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 9th day of October, 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

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*

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 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 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. "SCI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

**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 CONTINUATION OF 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital Healthcare, Inc. designated to testify about the areas identified in Schedule A attached hereto	October 15, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Boulevard 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

10/12/09

CASE NO.: 2:09-cv-445-FtM-99SPC

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

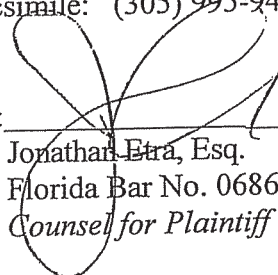
I HEREBY CERTIFY that that the foregoing document is being served this 12th day of October, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

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 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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. "SCI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

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 CONTINUATION OF 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital, Inc. designated to testify about the areas identified in Schedule A attached hereto	October 15, 2009 at 9:30 a.m. (or at the conclusion of the deposition of Sun Capital Healthcare, Inc.)	Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Boulevard 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

10/15/09

CASE NO.: 2:09-cv-445-FtM-99SPC

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

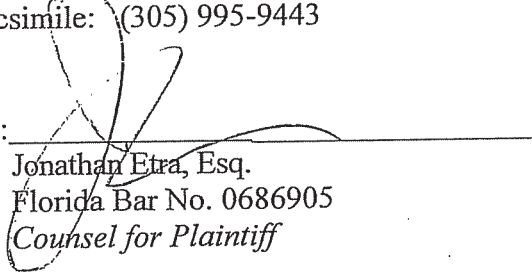
I HEREBY CERTIFY that that the foregoing document is being served this 12th day of October, 2009, on all counsel of record or *pro se* parties identified in the attached Service List in the manner specified.

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

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 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 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. "SCI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

**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.

**AMENDED NOTICE OF RE-SETTING VIDEOTAPED DEPOSITION
PURSUANT TO COURT'S ORDER**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated September 22, 2009,

the undersigned attorneys intend to take the videotaped deposition(s) of:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Promise Healthcare, Inc. designated to testify about the areas identified in Schedule A of the Subpoena previously served and attached hereto.	October 19, 2009 at 9:30 am	Broad and Cassel One Biscayne Tower 21 st Floor 2 S. Biscayne Boulevard 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.

10/19/09

CASE NO.: 2:09-cv-445-FtM-99SPC

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 9th day of October, 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

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.

Sun Capital, Inc., et al.
Defendant

)
)
) Civil Action No. 2:09-cv-445-FtM-99SPC
)
) (If the action is pending in another district, state where:
) Middle District of Florida
)

**SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION**

To: Promise Healthcare, Inc., c/o ARMSTRONG, DAVID J EVP, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See Attached

Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131	Date and Time: 09/21/2009 10:00
---	------------------------------------

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/21/09 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 S. Newman, Receiver _____, who issues or requests this subpoena, are:

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Promise, its purposes, and the funds used to create Promise and acquire the Entities and to secure indebtedness.
2. Promise's ownership and the owners' contributions to capital.
3. The acquisition of the Promise Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Promise books and records.
6. The lending or factoring between SCHI and Promise, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Promise.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Promise.
7. Promise's effort to obtain alternative financing or recapitalization.
8. Damages to Promise from the SCHI's failure to provide funding
9. Promise's ownership, and the flow of funds from Promise to Promise's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Promise Entities are located, ownership structure of same, and payments to same.

**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.

**AMENDED NOTICE OF RE-SETTING VIDEOTAPED DEPOSITION
PURSUANT TO COURT'S ORDER**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated September 22, 2009,
the undersigned attorneys intend to take the videotaped deposition(s) of:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Success Healthcare, LLC designated to testify about the areas identified in Schedule A of the Subpoena previously served and attached hereto.	October 21, 2009 at 9:30 am	Broad and Cassel One Biscayne Tower 21 st Floor 2 S. Biscayne Boulevard 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 9th day of October, 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FtM-99SPC
(If the action is pending in another district, state where:
Middle District of Florida

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Success Healthcare, LLC, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See Attached

Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131	Date and Time: 09/22/2009 10:00
---	---------------------------------

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/3/09
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 S. Newman, Receiver, who issues or requests this subpoena, are:

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Success, its purposes, and the funds used to create Success and acquire the Entities and to secure indebtedness.
2. Success's ownership and the owners' contributions to capital.
3. The acquisition of the Success Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Success books and records.
6. The lending or factoring between SCHI and Success, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Success.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Success.
7. Success's effort to obtain alternative financing or recapitalization.
8. Damages to Success from the SCHI's failure to provide funding
9. Success's ownership, and the flow of funds from Success to Success's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Success Entities are located, ownership structure of same, and payments to same.

**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.

**AMENDED NOTICE OF RE-SETTING VIDEOTAPED DEPOSITION
PURSUANT TO COURT'S ORDER**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated September 22, 2009,
the undersigned attorneys intend to take the videotaped deposition(s) of:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Promise Healthcare, Inc. designated to testify about the areas identified in Schedule A of the Subpoena previously served and attached hereto.	October 22, 2009 at 9:30 am	Broad and Cassel One Biscayne Tower 21 st Floor 2 S. Biscayne Boulevard 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 16th day of October, 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

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.

Defendant

)
)
) Civil Action No. 2:09-cv-445-FIM-99SPC
)
) (If the action is pending in another district, state where:
) Middle District of Florida
)

**SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION**

To: Promise Healthcare, Inc., c/o ARMSTRONG, DAVID J EVP, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See Attached


Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131	Date and Time: 09/21/2009 10:00
---	---------------------------------

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/21/09
CLERK OF COURT

OR


Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) _____
Daniel S. Newman, Receiver _____, who issues or requests this subpoena, are:
Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify):* _____

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Promise, its purposes, and the funds used to create Promise and acquire the Entities and to secure indebtedness.
2. Promise's ownership and the owners' contributions to capital.
3. The acquisition of the Promise Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Promise books and records.
6. The lending or factoring between SCHI and Promise, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Promise.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Promise.
7. Promise's effort to obtain alternative financing or recapitalization.
8. Damages to Promise from the SCHI's failure to provide funding
9. Promise's ownership, and the flow of funds from Promise to Promise's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Promise Entities are located, ownership structure of same, and payments to same.

**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.

**AMENDED NOTICE OF RE-SETTING VIDEOTAPED DEPOSITION
PURSUANT TO COURT'S ORDER**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated September 22, 2009,
the undersigned attorneys intend to take the videotaped deposition(s) of:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Success Healthcare, LLC designated to testify about the areas identified in Schedule A of the Subpoena previously served and attached hereto.	October 22, 2009 at 9:30 am (or at the conclusion of the deposition of Promise Healthcare, Inc.)	Broad and Cassel One Biscayne Tower 21 st Floor 2 S. Biscayne Boulevard 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 16th day of October, 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FtM-99SPC
(If the action is pending in another district, state where:
Middle District of Florida

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Success Healthcare, LLC, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See Attached

Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131	Date and Time: 09/22/2009 10:00
---	------------------------------------

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/3/09
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 S. Newman, Receiver _____, who issues or requests this subpoena, are:

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify):* _____

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Success, its purposes, and the funds used to create Success and acquire the Entities and to secure indebtedness.
2. Success's ownership and the owners' contributions to capital.
3. The acquisition of the Success Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Success books and records.
6. The lending or factoring between SCHI and Success, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Success.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Success.
7. Success's effort to obtain alternative financing or recapitalization.
8. Damages to Success from the SCHI's failure to provide funding
9. Success's ownership, and the flow of funds from Success to Success's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Success Entities are located, ownership structure of same, and payments to same.

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.

**AMENDED NOTICE OF RE-SETTING VIDEOTAPED DEPOSITION
PURSUANT TO COURT'S ORDER**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated September 22, 2009,
the undersigned attorneys intend to take the videotaped deposition(s) of:

NAME AND ADDRESS

DATE AND TIME

PLACE

Corporate representative(s) of
Promise Healthcare, Inc.
designated to testify about the areas
identified in Schedule A of the
Subpoena previously served and
attached hereto.

October 23, 2009 at 8:30 am

Broad and Cassel
One Biscayne Tower
21st Floor
2 S. Biscayne Boulevard
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.

11/10

CASE NO.: 2:09-cv-445-FtM-99SPC

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 20th day of October, 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

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FIM-99SPC

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

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Promise Healthcare, Inc., c/o ARMSTRONG, DAVID J EVP, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See Attached

Table with 2 columns: Place and Date and Time. Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131. Date and Time: 09/21/2009 10:00

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/21/09 CLERK OF COURT

OR [Signature] Attorney's signature

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

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Promise, its purposes, and the funds used to create Promise and acquire the Entities and to secure indebtedness.
2. Promise's ownership and the owners' contributions to capital.
3. The acquisition of the Promise Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Promise books and records.
6. The lending or factoring between SCHI and Promise, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Promise.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Promise.
7. Promise's effort to obtain alternative financing or recapitalization.
8. Damages to Promise from the SCHI's failure to provide funding
9. Promise's ownership, and the flow of funds from Promise to Promise's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Promise Entities are located, ownership structure of same, and payments to same.

**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.

**AMENDED NOTICE OF RE-SETTING VIDEOTAPED DEPOSITION
PURSUANT TO COURT'S ORDER**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated September 22, 2009,
the undersigned attorneys intend to take the videotaped deposition(s) of:

NAME AND ADDRESS

DATE AND TIME

PLACE

Corporate representative(s) of Success Healthcare, LLC designated to testify about the areas identified in Schedule A of the Subpoena previously served and attached hereto.	October 23, 2009 at 8:30 am (or at the conclusion of the deposition of Promise Healthcare, Inc.)	Broad and Cassel One Biscayne Tower 21 st Floor 2 S. Biscayne Boulevard 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 20th day of October, 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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.

Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FtM-99SPC
(If the action is pending in another district, state where:
Middle District of Florida

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Success Healthcare, LLC, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Attached

Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131	Date and Time: 09/22/2009 10:00
---	------------------------------------

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/21/09
CLERK OF COURT

OR

Attorney's signature

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

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Success, its purposes, and the funds used to create Success and acquire the Entities and to secure indebtedness.
2. Success's ownership and the owners' contributions to capital.
3. The acquisition of the Success Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Success books and records.
6. The lending or factoring between SCHI and Success, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Success.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Success.
7. Success's effort to obtain alternative financing or recapitalization.
8. Damages to Success from the SCHI's failure to provide funding
9. Success's ownership, and the flow of funds from Success to Success's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Success Entities are located, ownership structure of same, and payments to same.

**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 CONTINUATION OF VIDEOTAPED DEPOSITION
PURSUANT TO RULE 30(b)(6), FED. R. CIV. P., OF DEFENDANT
SUCCESS HEALTHCARE, INC.**

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

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Success Healthcare, LLC designated to testify about the areas identified in Schedule A of the Subpoena previously served and attached hereto.	October 27, 2009 at 2:30 pm	Broad and Cassel One Biscayne Tower 21 st Floor 2 S. Biscayne Boulevard 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

10/26/09

CASE NO.: 2:09-cv-445-FtM-99SPC

taken for purposes of discovery, for use at trial, or such other purposes, as are permitted under the applicable and governing rules.

Please be advised that the Subpoena for Deposition Duces Tecum previously served upon you is still in full force and effect until the completion of the deposition.

CERTIFICATE OF SERVICE

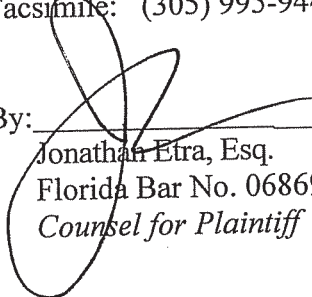
I HEREBY CERTIFY that that the foregoing document is being served this 26th day of October, 2009, on all counsel of record or *pro se* parties identified in the attached Service List via facsimile.

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

CASE NO.: 2:09-cv-445-FtM-99SPC

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*

Veritext Court Reporting

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

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FIM-99SPC
(If the action is pending in another district, state where:
Middle District of Florida

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Success Healthcare, LLC, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See Attached

Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131	Date and Time: 09/22/2009 10:00
---	---------------------------------

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/23/09
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 S. Newman, Receiver, who issues or requests this subpoena, are:

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action. (Page 2)

Civil Action No. 2:09-cv-445-FIM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Success, its purposes, and the funds used to create Success and acquire the Entities and to secure indebtedness.
2. Success's ownership and the owners' contributions to capital.
3. The acquisition of the Success Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Success books and records.
6. The lending or factoring between SCHI and Success, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Success.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Success.
7. Success's effort to obtain alternative financing or recapitalization.
8. Damages to Success from the SCHI's failure to provide funding
9. Success's ownership, and the flow of funds from Success to Success's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Success Entities are located, ownership structure of same, and payments to same.

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 CONTINUATION OF 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:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Corporate representative(s) of Sun Capital, Inc. designated to testify about the areas identified in Schedule A attached hereto	November 4, 2009 at 2:00 p.m.	Broad and Cassel One Biscayne Tower 21st Floor 2 S. Biscayne Boulevard 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

10/28/09

CASE NO.: 2:09-cv-445-FtM-99SPC

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 the foregoing document is being served this 28th day of October, 2009 on all counsel of record or pro se parties identified on 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

CASE NO.: 2:09-cv-445-FtM-99SPC

SERVICE LIST

Daniel S. Newman, as Receiver v. Sun Capital, Inc., et al
Case No. 2:09-cv-445-FtM-99-SPC
United States District Court, Middle District of Florida

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

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 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 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. "SCI" 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.

SCHEDULE A

AREAS OF TESTIMONY

1. Document production in response to the Receiver's Request for Production in this case.
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.
3. The Receiver's revocation of consents and waivers, and the effect of such revocation.
3. SCI's obligations under the SCI 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. SCI's compliance or non-compliance with its obligations under the SCI CSA.
5. SCI's Defaults under the SCI SCA.
6. Whether any account receivable is an "Eligible Account" under the SCI 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 SCI CSA.
9. Founding Partners' alleged breach of the SCI CSA on or about January 27, 2009, the circumstances surrounding it, and its effect on SCI.
10. Any other claimed Founding Partners' breach of the SCI CSA.
11. All funding received from Founding Partners by SCI in connection with the SCI CSA.
12. SCI's use of funds received into all Lockbox Accounts maintained by SCI 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.

CASE NO.: 2:09-cv-445-FtM-99SPC

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.

Brenda Fradera

From: Brenda Fradera
Sent: Wednesday, October 28, 2009 3:34 PM
To: 'sgold@proskauer.com'; 'jgaller@proskauer.com'; 'kclarke@proskauer.com'
Cc: Jonathan Etra; Daniel Newman; Susan Barnes de Resendiz; Scott Flint
Subject: Newman v. Sun Capital, Inc., et al.
Attachments: 20091028153236292.pdf

Please see attached Notice of Continuation of Videotaped Deposition of Sun Capital, Inc.

10/28/2009

**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.

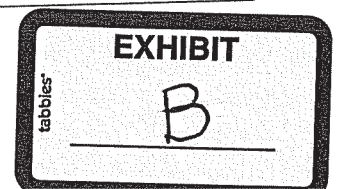
SUN CAPITAL, INC., a Florida corporation,
SUN CAPITAL HEALTHCARE, INC.,
a Florida corporation, and HLP PROPERTIES
OF PORT ARTHUR, LLC, a Texas limited liability
company,

Defendants.

**RECEIVER'S NOTICE OF ISSUANCE OF
SUBPOENA DUCES TECUM**

PLEASE TAKE NOTICE that the undersigned attorneys, pursuant to the Federal Rules of Civil Procedure, issued the attached Subpoena Duces Tecum on the 10th day of September, 2009, as described below:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Howard B. Koslow c/o Sun Capital, Inc. 999 Yamato Road Third Floor Boca Raton, Florida 33431	September 23, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21 st Floor 2 South Biscayne Blvd. Miami, FL 33131
Lawrence Leder c/o Sun Capital, Inc. 999 Yamato Road Third Floor Boca Raton, Florida 33431	September 24, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21 st Floor 2 South Biscayne Blvd. Miami, FL 33131



Peter R. Baronoff c/o Sun Capital, Inc. 999 Yamato Road Third Floor Boca Raton, Florida 33431	September 25, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21 st Floor 2 South Biscayne Blvd. Miami, FL 33131
--	---------------------------------	---

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 11th 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

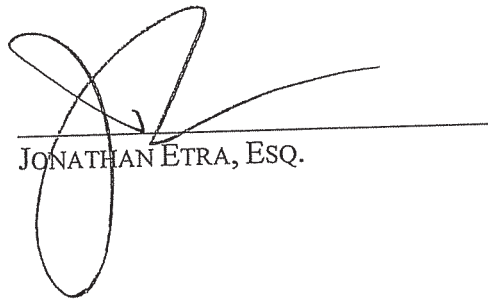
By: _____

Jonathan Etta, Esq.
Florida Bar No. 0686905
Counsel for Plaintiff

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*



JONATHAN ETRA, ESQ.

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the Middle District of Florida

Daniel S. Newman, As Receiver
Plaintiff
v.
Sun Capital, Inc. a Florida corporation, et al.
Defendant

Civil Action No. 2:09-cv-445-FTM-99-SPC

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

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Howard Koslow
c/o Sun Capital, Inc., 999 Yamato Road, Third Floor, Boca Raton, FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place and Date and Time. Place: Broad and Cassel, One Biscayne Tower, 21st Floor, 2 South Biscayne Blvd., Miami, FL 33131. Date and Time: 09/23/2009 09:30

The deposition will be recorded by this method: Stenographer and videotape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Rider A attached hereto.

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: 09/10/2009

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 S. Newman, Receiver, who issues or requests this subpoena, are: Jonathan Etra, Esq., Broad and Cassel, One Biscayne Tower, 21st Floor, 2 South Biscayne Blvd., Miami, FL 33131 (305) 373-9400, jetra@broadandcassel.com

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FTM-99-SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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:

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 3)

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).

RIDER A

DOCUMENTS TO BE PRODUCED

1. All documents in your files relating to Sun, Founding Partners, Founding Partners, Founding Partners Bahamas, Founding Partners investors, Promise, Success, Envision, Cain Brothers, Focus, or potential investors in Promise, Success, or "Superior".
2. Documents sufficient to show funds provided to you or your family members (directly or indirectly, including to companies affiliated with you or your family) in any form, including, but not limited to, salaries, bonuses, management fees, loans, credits, distributions, dividends, profits, and payments from Sun, Promise, Founding Partners, Founding Partners Bahamas, or any affiliate.

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Middle District of Florida

Daniel S. Newman, As Receiver
Plaintiff
v.
Sun Capital, Inc. a Florida corporation, et al.
Defendant

Civil Action No. 2:09-cv-445-FTM-99-SPC
(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Lawrence Leder
c/o Sun Capital, Inc., 999 Yamato Road, Third Floor, Boca Raton, FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Broad and Cassel One Biscayne Tower, 21st Floor 2 South Biscayne Blvd., Miami, FL 33131	Date and Time: 09/24/2009 09:30
--	------------------------------------

The deposition will be recorded by this method: Stenographer and videotape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Rider A attached hereto.

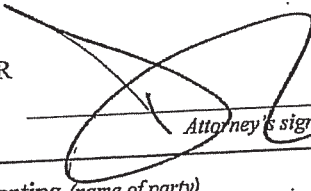
The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 09/10/2009

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 S. Newman, Receiver, who issues or requests this subpoena, are:
Jonathan Etra, Esq., Broad and Cassel, One Biscayne Tower, 21st Floor, 2 South Biscayne Blvd., Miami, FL 33131
(305) 373-9400, jetra@broadandcassel.com

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FTM-99-SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

RIDER A

DOCUMENTS TO BE PRODUCED

1. All documents in your files relating to Sun, Founding Partners, Founding Partners, Founding Partners Bahamas, Founding Partners investors, Promise, Success, Envision, Cain Brothers, Focus, or potential investors in Promise, Success, or "Superior".
2. Documents sufficient to show funds provided to you or your family members (directly or indirectly, including to companies affiliated with you or your family) in any form, including, but not limited to, salaries, bonuses, management fees, loans, credits, distributions, dividends, profits, and payments from Sun, Promise, Founding Partners, Founding Partners Bahamas, or any affiliate.

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Middle District of Florida

Daniel S. Newman, As Receiver
Plaintiff
v.
Sun Capital, Inc. a Florida corporation, et al.
Defendant

Civil Action No. 2:09-cv-445-FTM-99-SPC
(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Peter R. Baronoff
c/o Sun Capital, Inc., 999 Yamato Road, Third Floor, Boca Raton, FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Broad and Cassel One Biscayne Tower, 21st Floor 2 South Biscayne Blvd., Miami, FL 33131	Date and Time: 09/25/2009 09:30
--	------------------------------------

The deposition will be recorded by this method: Stenographer and videotape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Rider A attached hereto.

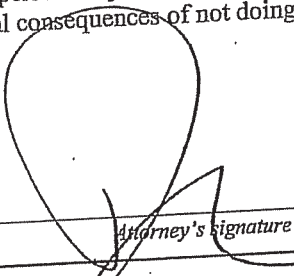
The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 09/10/2009

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 S. Newman, Receiver

_____, who issues or requests this subpoena, are:
Jonathan Etra, Esq., Broad and Cassel, One Biscayne Tower, 21st Floor, 2 South Biscayne Blvd., Miami, FL 33131
(305) 373-9400, jetra@broadandcassel.com

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FTM-99-SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

RIDER A

DOCUMENTS TO BE PRODUCED

1. All documents in your files relating to Sun, Founding Partners, Founding Partners, Founding Partners Bahamas, Founding Partners investors, Promise, Success, Envision, Cain Brothers, Focus, or potential investors in Promise, Success, or "Superior".
2. Documents sufficient to show funds provided to you or your family members (directly or indirectly, including to companies affiliated with you or your family) in any form, including, but not limited to, salaries, bonuses, management fees, loans, credits, distributions, dividends, profits, and payments from Sun, Promise, Founding Partners, Founding Partners Bahamas, or any affiliate.

**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.

**RECEIVER'S NOTICE OF ISSUANCE OF
AMENDED SUBPOENAS DUCES TECUM**

PLEASE TAKE NOTICE that the undersigned attorneys, pursuant to the Federal Rules of Civil Procedure, issued the attached Amended Subpoenas Duces Tecum on the 24th day of September, 2009, as described below:

<u>NAME AND ADDRESS</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
Howard B. Koslow c/o Sun Capital, Inc. 999 Yamato Road Third Floor Boca Raton, Florida 33431	October 12, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21 st Floor 2 South Biscayne Blvd. Miami, FL 33131
Lawrence Leder c/o Sun Capital, Inc. 999 Yamato Road Third Floor Boca Raton, Florida 33431	October 13, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21 st Floor 2 South Biscayne Blvd. Miami, FL 33131

12/4/09

Peter R. Baronoff c/o Sun Capital, Inc. 999 Yamato Road Third Floor Boca Raton, Florida 33431	October 14, 2009 at 9:30 a.m.	Broad and Cassel One Biscayne Tower 21 st Floor 2 South Biscayne Blvd. Miami, FL 33131
--	-------------------------------	---

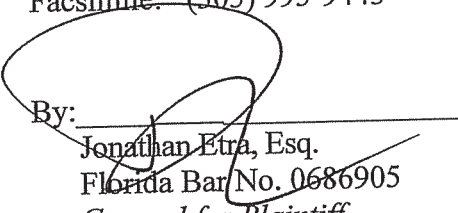
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that that the foregoing document is being served this 24th 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

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*

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the Southern District of Florida

Daniel S. Newman, as Receiver

Plaintiff

v.

Sun Capital, Inc., et al.

Defendant

Civil Action No. 2:09-cv-445-FTM-99-SPC

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

AMENDED SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Howard B. Koslow c/o Sun Capital, Inc., 999 Yamato Road, Third Floor, Boca Raton, FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Broad and Cassel One Biscayne Tower, 21st Floor 2 S. Biscayne Boulevard, Miami, FL 33131

Date and Time: 10/12/2009 09:30

The deposition will be recorded by this method: Stenographer and videotape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Rider "A" attached hereto

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: 09/24/2009

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 S. Newman, P.A., as Receiver, who issues or requests this subpoena, are: Jonathan Etra, Esq., Broad and Cassel, One Biscayne Tower, 21st Floor, 2 S. Biscayne Boulevard, Miami, FL 33131, (305) 373-9400, jetra@broadandcassel.com

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FTM-99-SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

RIDER A

DOCUMENTS TO BE PRODUCED

1. All documents in your files relating to Sun, Founding Partners, Founding Partners, Founding Partners Bahamas, Founding Partners investors, Promise, Success, Envision, Cain Brothers, Focus, or potential investors in Promise, Success, or "Superior".
2. Documents sufficient to show funds provided to your or your family members (directly or indirectly, including to companies affiliated with you or your family) in any form, including, but not limited to, salaries, bonuses, management fees, loans, credits, distributions, dividends, profits, and payments from Sun, Promise, Founding Partners, Founding Partners Bahamas, or any affiliate.

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the Southern District of Florida

Daniel S. Newman, as Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FTM-99-SPC
(If the action is pending in another district, state where: Middle District of Florida)

AMENDED SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Lawrence Leder
c/o Sun Capital, Inc., 999 Yamato Road, Third Floor, Boca Raton, FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Broad and Cassel One Biscayne Tower, 21st Floor 2 S. Biscayne Boulevard, Miami, FL 33131
Date and Time: 10/13/2009 09:30

The deposition will be recorded by this method: Stenographer and videotape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Rider "A" attached hereto

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: 09/24/2009

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 S. Newman, P.A., as Receiver, who issues or requests this subpoena, are: Jonathan Etra, Esq., Broad and Cassel, One Biscayne Tower, 21st Floor, 2 S. Biscayne Boulevard, Miami, FL 33131, (305) 373-9400, jetra@broadandcassel.com

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FTM-99-SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

RIDER A

DOCUMENTS TO BE PRODUCED

1. All documents in your files relating to Sun, Founding Partners, Founding Partners, Founding Partners Bahamas, Founding Partners investors, Promise, Success, Envision, Cain Brothers, Focus, or potential investors in Promise, Success, or "Superior".

2. Documents sufficient to show funds provided to your or your family members (directly or indirectly, including to companies affiliated with you or your family) in any form, including, but not limited to, salaries, bonuses, management fees, loans, credits, distributions, dividends, profits, and payments from Sun, Promise, Founding Partners, Founding Partners Bahamas, or any affiliate.

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

Daniel S. Newman, as Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FTM-99-SPC
(If the action is pending in another district, state where:
Middle District of Florida

AMENDED SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Peter R. Baranoff
c/o Sun Capital, Inc., 999 Yamato Road, Third Floor, Boca Raton, FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Broad and Cassel
One Biscayne Tower, 21st Floor
2 S. Biscayne Boulevard, Miami, FL 33131
Date and Time:
10/14/2009 09:30

The deposition will be recorded by this method: Stenographer and videotape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Rider "A" attached hereto.

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: 09/24/2009

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 S. Newman, as Receiver, who issues or requests this subpoena, are:
Jonathan Etra, Esq., Broad and Cassel, One Biscayne Tower, 21st Floor, 2 S. Biscayne Boulevard, Miami, FL 33131
(305) 373-9400, jetra@broadandcassel.com

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FTM-99-SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

RIDER A

DOCUMENTS TO BE PRODUCED

1. All documents in your files relating to Sun, Founding Partners, Founding Partners, Founding Partners Bahamas, Founding Partners investors, Promise, Success, Envision, Cain Brothers, Focus, or potential investors in Promise, Success, or “Superior”.

2. Documents sufficient to show funds provided to your or your family members (directly or indirectly, including to companies affiliated with you or your family) in any form, including, but not limited to, salaries, bonuses, management fees, loans, credits, distributions, dividends, profits, and payments from Sun, Promise, Founding Partners, Founding Partners Bahamas, or any affiliate.

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FtM-99SPC
(If the action is pending in another district, state where: Middle District of Florida)

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Success Healthcare, LLC, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Attached

Table with 2 columns: Place and Date and Time. Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131. Date and Time: 09/22/2009 10:00

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/3/09 CLERK OF COURT

OR [Signature] Attorney's signature

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

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

9/3/09

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Success, its purposes, and the funds used to create Success and acquire the Entities and to secure indebtedness.
2. Success's ownership and the owners' contributions to capital.
3. The acquisition of the Success Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Success books and records.
6. The lending or factoring between SCHI and Success, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Success.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Success.
7. Success's effort to obtain alternative financing or recapitalization.
8. Damages to Success from the SCHI's failure to provide funding
9. Success's ownership, and the flow of funds from Success to Success's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Success Entities are located, ownership structure of same, and payments to same.

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the Southern District of Florida

Daniel S. Newman, Receiver
Plaintiff
v.
Sun Capital, Inc., et al.
Defendant

Civil Action No. 2:09-cv-445-FtM-99SPC
(If the action is pending in another district, state where: Middle District of Florida)

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Promise Healthcare, Inc., c/o ARMSTRONG, DAVID J EVP, 999 YAMATO ROAD, THIRD FLOOR, BOCA RATON FL 33431

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Attached

Table with 2 columns: Place and Date and Time. Place: Broad and Cassel, One Biscayne Tower, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131. Date and Time: 09/21/2009 10:00

The deposition will be recorded by this method: Stenographer and video tape

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

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: 9/21/09 CLERK OF COURT

OR [Signature] Attorney's signature

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

Scott J. Flint, 100 N. Tampa St. Suite 3500, Tampa, Florida 33602 813-225-3020

9/3/09

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 2:09-cv-445-FtM-99SPC

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 personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because _____ ; or

Other *(specify)*:

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).

Attachment to 30(b)(6) Deposition Subpoena

AREAS OF TESTIMONY

1. The creation of Promise, its purposes, and the funds used to create Promise and acquire the Entities and to secure indebtedness.
2. Promise's ownership and the owners' contributions to capital.
3. The acquisition of the Promise Entities and the associated real estate.
4. Communications with SCHI, Founding Partners, or Founding Partners' investors.
5. DSH receivables financing, and the underlying obligation or expectation of payment by government agencies and valuation and recording of the same in the Promise books and records.
6. The lending or factoring between SCHI and Promise, including the factored receivables and other funding from SCHI.
7. The valuation, financial status, health and viability of Promise.
6. The risks associated with accepting and continuing to rely on SCHI's financing of Promise.
7. Promise's effort to obtain alternative financing or recapitalization.
8. Damages to Promise from the SCHI's failure to provide funding
9. Promise's ownership, and the flow of funds from Promise to Promise's owners, directly and indirectly.
10. The entity or entities owning the real estate upon which the Promise Entities are located, ownership structure of same, and payments to same.

Exhibit C to Motion
to Strike Reply Declarations

Filed Under Seal Pursuant to
Order Governing the Use of Confidential
Discovery Information
Dated March 18, 2010 (D.E. 178)