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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **SOUTHERN DIVISION**

13 SECURITIES AND EXCHANGE  
COMMISSION,

14 Plaintiff,

15 v.

16 MEDICAL CAPITAL HOLDINGS, INC.;  
MEDICAL CAPITAL CORPORATION;  
17 MEDICAL PROVIDER FUNDING  
CORPORATION VI; SIDNEY M.  
18 FIELD; and JOSEPH J. LAMPARIELLO,

19 Defendants.

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

**RECEIVER'S REPORT ON AND  
REQUEST TO APPROVE OFFSETS  
TO NOTEHOLDER CLAIMS ON  
ACCOUNT OF THIRD PARTY  
RECOVERIES**

Date: August 12, 2013  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

20  
21 Thomas A. Seaman, the Court-appointed Receiver<sup>1</sup> in this action makes the  
22 following report on the proposed Third Party Recovery offsets to allowed  
23 Noteholder claims. The Court previously approved the Receiver's calculation of the  
24 MIMO claim amounts for Noteholders by order entered June 4, 2012 (Docket  
25 No. 720) The MIMO claim amount was calculated by aggregating all funds  
26  
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28 <sup>1</sup> Capitalized terms not otherwise defined shall have the same meaning assigned in  
the Amended Plan of Distribution (Docket No. 844).

1 invested in the Receivership Entities and deducting from that amount all payments  
2 made to the Noteholders by the Receivership Entities.<sup>2</sup>

3 In an effort to achieve equitable treatment, the Distribution Plan provides that  
4 the MIMO claim amount will be reduced by amounts received by Noteholders, net  
5 of attorneys fees, from Broker Litigation Recoveries and/or Related Litigation  
6 Recoveries that are not administered by the Receiver. Noteholders were required to  
7 return forms and supporting documents regarding their net recoveries from brokers,  
8 sales representatives, or investment advisors ("Third Party Recoveries"). The total  
9 amount of Third Party Recoveries reported to date is approximately \$98,000,000;  
10 thereby reducing the total allowed Noteholder claims from approximately  
11 \$830,000,000 to \$732,000,000.

12 The Receiver sent letters and Third Party Recovery Forms to all Noteholders  
13 in October 2012 instructing them to report their Third Party Recoveries. Not all  
14 Noteholders returned forms, and some returned forms that were inconsistent with  
15 other information gathered by the Receiver from FINRA and other sources. Other  
16 returned Third Party Recovery Forms contained ambiguous information and some  
17 Noteholders reported that claims had been asserted but not yet resolved.

18 At the hearing held on June 24, 2013, the Court directed the Receiver to send  
19 letters, no later than June 28, 2013, to all Noteholders whose Third Party Recoveries  
20 had not been resolved. The Receiver timely sent such letters. The letters sent on  
21 June 28, 2013, instructed the applicable Noteholders to respond with the requested  
22 information no later than July 19, 2013. The letters also advised Noteholders that  
23 the Receiver will be recommending to the Court a Third Party Recovery offset  
24 amount based on the information reported by Noteholders, and obtained from other  
25 sources such as FINRA and the Securities America, Inc. ("SAI") class action claims  
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27 <sup>2</sup> The claims of approximately 170 Noteholders were further adjusted pursuant to  
28 the Receiver's Motion to Correct Allowed Claims Amounts (Docket No. 1003),  
granted by Court on June 20, 2013 (Docket No. 1041)

1 administrator. The letters also provided notice that a hearing would be held on  
2 August 12, 2013 at 8:30 a.m. to determine any disputed offset amounts.

3 In addition to the letters, for every Noteholder whose proposed offset herein is  
4 different from that reported by the Noteholder, the Receiver will provide notice by  
5 mail of the proposed offset amount.

6 The Receiver, his staff and counsel have examined the information reported  
7 by Noteholders and well as information obtained from other sources and have  
8 prepared Exhibit 1 which lists each Noteholder's proposed setoff or indicates that  
9 the setoff is still to be determined. However, because most of the Third Party  
10 Recoveries were obtained through settlements which were subject to confidentiality  
11 agreements or orders, Exhibit 1 is necessarily being filed under seal.

12 Responses to the second mailing of Third Party Recovery forms helped to  
13 resolve many issues, but not all. The following is a general description of the  
14 categories of issues that arose in the process of obtaining and reviewing the Third  
15 Party Recovery information.

16 **Resolved Third Party Recoveries:**

17 Prior to the second mailing of Third Party Recovery forms, approximately  
18 6,430 Noteholders had provided definitive and complete information under penalty  
19 perjury, and the Receiver had no conflicting information. After the June 28<sup>th</sup>  
20 mailing, approximately 1,065 additional Noteholders provided Third Party Recovery  
21 information under penalty of perjury that was definitive and complete, and  
22 consistent with information the Receiver had obtained from other sources. For these  
23 Noteholders, the amounts they provided are reflected Exhibit 1-A. Since the  
24 Receiver agreed with the information reported, no further notice has been given to  
25 this category of Noteholders. Many of the Noteholders in this category participated  
26 in the Securities America ("SAI") class action and reported information consistent  
27 with the information provided by the class action claims administrator.

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1           **Adjusted Third Party Recovery Amounts Due to Incomplete or**  
2 **Inconsistent Information:**

3           Some Noteholders, including some who had participated in the SAI class  
4 action, reported information that was inconsistent with the information the Receiver  
5 had obtained from other reliable sources. In those instances, the Receiver's staff  
6 and/or counsel investigated and attempted to reconcile the information through  
7 contacting the Noteholder, and/or cross checking against other sources of  
8 information. If, upon further investigation, the information provided by the  
9 Noteholder appeared accurate that information was accepted and is reflected in  
10 Exhibit 1-A.

11           If, however, the information provided by the Noteholder did not appear  
12 accurate and/or was not supported by any documentation, and the Receiver had  
13 reliable information about the Noteholder's Third Party Recovery, the Receiver used  
14 this third party information in calculating the Noteholder's offset. Noteholders in  
15 this category included Noteholders who had received a distribution check from the  
16 SAI claims administrator, but had not reported the amount, or acknowledged  
17 receiving a distribution from the class action, but asserted that the class action  
18 settlement did not qualify as third party recovery. Other Noteholders in this  
19 category had participated in FINRA arbitrations and had reported results that were  
20 not consistent with information the Receiver has obtained from FINRA and other  
21 sources. The proposed offset amount for each of these Noteholders is listed in  
22 Exhibit 1-B.

23           Some Noteholders reported Third Party Recoveries but did not identify the  
24 amount of attorney fees'. Others indicated that the recovery included amounts for  
25 securities issued by entities other than the MP Entities but did not include a  
26 breakdown. In many instances, the Receiver's staff were able to resolve these issues  
27 by speaking with the Noteholders or their counsel. If that effort was not successful,  
28 the Receiver used information obtained from FINRA, or attorneys involved in the

1 arbitrations to calculate the Noteholder's net recovery on their Medical Capital  
2 investments. For example, where the settlement amount was attributable to multiple  
3 securities, the Receiver allocated the settlement recovery according to unpaid  
4 principal balance, and included in his offset recommendation only the amount  
5 allocated to the Medical Capital investment.

6 **Offsets Greater Than MIMO Claim Amount:**

7 For a small number of Noteholders (35), their Third Party Recovery net of  
8 attorneys' fees was an amount greater than their MIMO allowed claim. In those  
9 instances the Noteholder now has zero claim amount and will receive no further  
10 distributions from the Receivership Estate. Noteholders falling into this category  
11 are identified in Exhibit 1-C.

12 **Pending Third Party Claims and Unresolved Offsets:**

13 As of this filing, approximately 31 Noteholders have reported that they are  
14 pursuing Third Party Recoveries which have not yet been resolved. Thus, these  
15 Noteholders cannot report the final amount of their Third Party Recoveries. In  
16 addition, there are approximately 269 Noteholders that provided Third Party  
17 Recovery information that was incomplete or inconsistent and the Receiver was  
18 unable to resolve the discrepancy from other sources, or from whom updated  
19 address information is needed. The Receiver is pursuing additional information  
20 from these Noteholders and anticipates reaching a resolution with many of the  
21 Noteholders.

22 **Failure to Report:**

23 As of this filing, approximately 200 Noteholders have not returned a Third  
24 Party Recovery form. Of that amount, 66 Noteholders received a distribution from  
25 the SAI class action. For those 66 Noteholders, the Receiver has used the  
26 distribution amount provided by the claims administrator and those Noteholders  
27 claims are included in Exhibit 1-B. For the remaining 134 Noteholders, the  
28 Receiver will set an appropriate reserve in the amount of their estimated distribution

1 on their allowed MIMO claim and continue to attempt to investigate the status of  
2 their Third Party Recoveries.

3 **Conclusion**

4 The Receiver has made every effort to obtain accurate reliable information  
5 concerning Third Party Offsets and made reasonable assumptions to arrive at fair  
6 and equitable figures for each Noteholder's recommended offset amount.

7 Accordingly, the Receiver requests that the Court approve the offset amounts listed  
8 in Exhibit 1.

9 August 1, 2013

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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By:           /s/ Loraine L. Pedowitz

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Thomas A. Seaman

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**PROOF OF SERVICE**

On August 1, 2013, I served the document(s) described as:

**RECEIVER'S REPORT ON AND REQUEST TO APPROVE OFFSETS TO NOTEHOLDER CLAIMS ON ACCOUNT OF THIRD PARTY RECOVERIES** on the interested parties in this action by:

**BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):** the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On August 1, 2013, I checked the CM/ECF docket for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

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16  **BY MAIL:** I placed a true copy of the document in a sealed envelope or  
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 22 ordinary course of business. I am aware that on motion of party served,  
 23 service is presumed invalid if postal cancellation date or postage meter date is  
 24 more than one day after date of deposit for mailing in affidavit.

25 I declare under penalty of perjury under the laws of the United States of  
 26 America that the foregoing is true and correct.

27 Executed on August 1, 2013, at San Diego, California.

28 \_\_\_\_\_  
 Loraine L. Pedowitz

(Type or print name)

\_\_\_\_\_  
 /s/ Loraine L. Pedowitz

(Signature)