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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.  
15

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

19 Defendants.  
20  
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Case No. 8:09-cv-0818-DOC (RNBx)

**[AMENDED]**  
**RECEIVER'S OMNIBUS**  
**OBJECTION TO NOTEHOLDER**  
**CLAIMS**

Date: January 23, 2012  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on January 23, 2012, at 8:30 a.m., in  
3 Courtroom 9D of the above-entitled Court located at 411 West Fourth Street,  
4 Santa Ana, California 92701, a hearing will be held on the objections of Thomas A.  
5 Seaman ("Receiver"), Court-appointed permanent receiver for Medical Capital  
6 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding  
7 Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital"  
8 or the "Receivership Entities"), to certain noteholder claims ("Objection").

9 The Objection is based on the Memorandum of Points and Authorities below,  
10 and the Declaration of Thomas A. Seaman filed concurrently. The Objection and  
11 supporting papers are available at the Receiver's website,  
12 <http://www.medicalcapitalreceivership.com>, or may be reviewed at the Clerk's  
13 Office during normal business hours at 411 West Fourth Street, Santa Ana,  
14 California 92701.

15 **Procedural Requirements:** If you oppose this Motion, you are required to  
16 file your written opposition with the Office of the Clerk, United States District  
17 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on  
18 the undersigned not later than twenty-one (21) calendar days prior to the hearing.

19 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the  
20 above date, the Court may grant the requested relief without further notice. This  
21 Motion is made following the conference of counsel pursuant to L.R. 7-3.

22 **Meet and Confer:** The Receiver has met and conferred with counsel for the  
23 Securities and Exchange Commission ("SEC") prior to filing this pleading and the  
24 SEC does not object to the Receiver's approach to claim objections.

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

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4 Dated: November 28, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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6 By: /s/ Loraine L. Pedowitz

LORAIN L. PEDOWITZ  
Attorneys for Receiver  
Thomas A. Seaman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After carefully reviewing all claim information forms and supporting  
4 documentation submitted to the Receiver by the individuals and entities that  
5 invested in Medical Capital through the purchase of notes issued by the Medical  
6 Provider Financial/Funding Corporations ("Noteholders"), and reconciling the claim  
7 information with the books and records of the Receivership Entities, the Receiver  
8 objects to certain Noteholder claims on the grounds that they are invalid or  
9 overstated. The Receiver proposes that some claims be disallowed in their entirety,  
10 and that others be allowed in a reduced amount.

11 The Receiver also proposes that the allowed amount of Noteholder claims be  
12 calculated on a net loss basis. The claim information form mailed to each  
13 Noteholder stated the amount of all money transferred to the Receivership Entities  
14 by the Noteholder (money-in) and all money distributed to that Noteholder by the  
15 Receivership Entities (money-out). The Receiver's proposed allowed amount for  
16 each Noteholder is the difference between money-in and money- out, or the MIMO  
17 claim amount. To the extent the MIMO claim calculation results in a negative  
18 number; i.e., the Noteholder has already received more in returns than originally  
19 invested, the Receiver does not propose at this time seeking to recover those returns  
20 in excess of the amount invested. Rather, those Noteholders who would otherwise  
21 have a negative MIMO claim will not have an allowed claim and will not participate  
22 in distributions from the receivership estate. **In other words, in all instances on**  
23 **the attached spreadsheets, where the Proposed Claim Amount is a negative**  
24 **number reflected by parentheses around the number, the Receiver is proposing**  
25 **a zero allowed claim amount for that Noteholder.**

26 Noteholders who have contested the amounts listed in the Claim Information  
27 Forms are listed in Exhibit A. The proposed allowed MIMO claim amount is listed  
28 third from the right. The amounts claimed by the Noteholder are listed in the next

1 two columns. Noteholders who did not dispute the amounts contained in the Claim  
2 Information Forms are listed in Exhibit B. The proposed allowed amount of each  
3 uncontested Noteholder's claims is listed in the third column from the right.

4 Certain Noteholder also acted as brokers and received commissions from the  
5 Receivership Entities. The Receiver has included those commissions in the  
6 calculation of money-out for broker/Noteholders. Attached as Exhibit C is  
7 spreadsheet of the proposed claim amounts for broker/Noteholders.

8 The exhibits to this pleading are voluminous, particularly Exhibit B, which  
9 lists nearly 11,000 Noteholders that did not dispute the amounts listed in the claim  
10 information form.<sup>1</sup> Each Noteholder will also receive an individual notice with  
11 information the Receiver's calculation of their specific claim.

12 This Objection addresses only the allowed *amount* of Noteholder claims.  
13 The *priority* of such claims vis-à-vis other claims and the source of distributions on  
14 allowed claims will be addressed separately in the Receiver's proposed Distribution  
15 Plan. The allowed amount of a claim is not an indication that the distribution on  
16 account of that claim will be the full allowed amount. Rather, in all likelihood,  
17 Noteholders will receive a percentage of their allowed claims. Noteholders are  
18 advised to review the Distribution Plan closely for the Receiver's proposed priority  
19 of claims for purposes of distributions from the receivership estate.

## 20 II. PROCEDURAL AND FACTUAL BACKGROUND

21 On December 21, 2010, the Receiver filed his Motion for Order: (1) Setting  
22 Claims Bar Date; (2) Approving Proof of Claim and Claim Information Forms; and  
23 (3) Establishing Summary Procedures for Claim Administration ("Claim Procedures  
24 Motion"). There was no opposition to the Claim Procedure Motion, and on  
25 January 31, 2011, the Court entered the order granting the motion ("Claim  
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28 <sup>1</sup> Because the Exhibits are voluminous they have not been filed electronically, but  
will be filed manually or traditionally and will be available on the Receiver's  
website as well.

1 Procedures Order"). The Claim Procedures Order set the deadline to submit claims  
2 as May 1, 2011 ("Claims Bar Date"), approved the proof of claim and claim  
3 information forms proposed by the Receiver, and provided that disputes regarding  
4 claims will be determined by the Court using summary procedures. The approved  
5 claim forms and instructions were mailed to all known investors, trade creditors and  
6 former employees between February 18 and March 1, 2011.

7 On April 14, 2011, the Receiver applied for an order extending the Claims  
8 Bar Date because, among other things, many investors had not maintained updated  
9 addresses with the Receiver, and as a result, many of the claim information forms  
10 the Receiver mailed out were returned. On April 18, 2011, the Court entered an  
11 order extending the Claims Bar Date to June 15, 2011.

12 The Receiver's office received 11,711 Claim Information Forms from  
13 Noteholders, of which 10,942 did not dispute the amounts indicated in the Claim  
14 Information Form. The Receiver and his staff have reviewed each Noteholder claim  
15 and supporting documentation, investigated the basis for the claim, attempted to  
16 reconcile the claim with the Receivership Entities' books and records, and  
17 determined the proper amount of the claim. The Receiver's objections to Noteholder  
18 claims are discussed below.

19 As provided in the Claim Procedures Order, this Objection shifts the burden  
20 of proof to the applicable Noteholders to submit evidence sufficient to overcome the  
21 Objection. The Receiver proposes a summary procedure for resolving specific  
22 claim disputes described below in section IV.

23 As is well known to all interested parties, the Receivership Entities purported  
24 to be in the business of purchasing healthcare accounts receivable at a discount from  
25 healthcare providers, making other loans and investments, and managing the  
26 collection of such receivables/loans/investments. These activities were managed  
27 through its chief operating company, Medical Capital Corporation ("MCC"), a  
28 wholly owned subsidiary of Medical Capital Holdings, Inc. ("MCH"). Funds used



1 fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). As  
2 the appointment of a receiver is authorized by the broad equitable powers of the  
3 court, any distribution of assets must also be done equitably and fairly. *See SEC v.*  
4 *Elliot*, 953 F.2d 1560, 1570 (11th Cir. 1992).

5 The Ninth Circuit explained:

6 A district court's power to supervise an equity receivership and  
7 to determine the appropriate action to be taken in the  
8 administration of the receivership is extremely broad. The  
9 district court has broad powers and wide discretion to determine  
10 the appropriate relief in an equity receivership. The basis for  
11 this broad deference to the district court's supervisory role in  
12 equity receiverships arises out of the fact that most  
13 receiverships involve multiple parties and complex transactions.  
14 A district court's decision concerning the supervision of an  
15 equitable receivership is reviewed for abuse of discretion.

16 *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). (citations  
17 omitted); *see also Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.*,  
18 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the  
19 court's supervisory role, and 'we generally uphold reasonable procedures instituted  
20 by the district court that serve th[e] purpose' of orderly and efficient administration  
21 of the receivership for the benefit of creditors."). Accordingly, the Court has broad  
22 discretion in calculating and determining the allowed amounts of claims.

23 **A. Noteholder Claims Should Be "Netted"**

24 The Receiver proposes that Noteholder claims be calculated using a money-  
25 in/money-out, or "MIMO" formula that limits claims to each investor's net loss  
26 across all of their investments with the Receivership Entities. The MIMO formula  
27 has been endorsed by the Ninth Circuit Court of Appeals and other courts in cases  
28 where all investors are victims of the fraudulent scheme and where the assets of the  
receivership estate are insufficient to satisfy investor claims in full. *See Capital  
Consultants*, 397 F.3d at 738 (describing a net claim calculation as "an  
administratively workable and equitable method of allocating the limited assets of  
the receivership"); *Topworth*, 205 F.3d at 1116; *In re Tedlock Cattle Company Inc.*,



1 552 F.2d 1351, 1354 (9th Cir. 1977); *In re Taubman*, 160 B.R. 964, 980-82 (Bankr.  
2 S.D. Ohio 1993).

3 Many Noteholders purchased notes from more than one MP Entity. The  
4 Receiver recommends that Noteholders who purchased notes early in the scheme,  
5 and who received "profits" on their early notes (which were derived, in large part,  
6 from the monies invested by later Noteholders rather than actual profits earned on  
7 loans or accounts receivable purchases) should have those "profits" subtracted from  
8 their losses from later notes. Consistent with the assets of the MP Entities being  
9 pooled for distribution, the MIMO calculation should operate to "net" all notes for  
10 each Noteholder, including notes from multiple MP Entities. Noteholders who  
11 received "profits" on early notes should be put on equal footing with Noteholders  
12 who only purchased notes later in the scheme, and therefore had no "profits" to  
13 offset their losses. Likewise, Noteholder claims for anticipated or promised returns  
14 should not be allowed until all claims for lost principal have been paid. In the  
15 unlikely event sufficient assets are recovered to pay MIMO claims in full, the  
16 Receiver will seek a modification to address claims for additional amounts in an  
17 equitable manner.

18 **B. Proposed Allowed Noteholder Claim Amounts**

19 Attached hereto as Exhibit A is a spreadsheet listing the Noteholder claims  
20 for which there is no dispute about the amounts invested or returned. The  
21 Noteholders' names and proposed allowed MIMO claim amounts are listed.  
22 Exhibit B addresses the claims of Noteholders with respect to which there is a  
23 dispute over the amounts invested or returned. Exhibit B lists the Noteholder's  
24 name, the MIMO claim amount that the Receivership Entities' books and records  
25 reflect for each Noteholder (which amount was included with the claim information  
26 form mailed to each Noteholder), (c) the amount stated on the Noteholder's claim  
27 information form, and (d) the Receiver's proposed allowed amount of the claim.  
28 The Receiver's proposed allowed amount of claims is based on his careful review of

1 each claim, and his reconciliation of each claim with the Receivership Entities'  
2 books and records.

3 **C. Proposed Plan**

4 Attached as Exhibit A to the Seaman Declaration is a draft of the Receiver's  
5 Proposed Distribution Plan. As drafted, the Proposed Distribution Plan  
6 contemplates that the assets of the Receivership Entities will be combined for  
7 distribution purposes only, and treated as a single pool comprised of the  
8 Receivership Asset Proceeds as defined therein. The Receivership Asset Proceeds  
9 will consist of the approximate \$100,000,000 already marshaled by the Receiver and  
10 the proceeds of the remaining assets of the Receivership Entities. A second pool of  
11 funds to be distributed under the draft Proposed Distribution Plan will be the  
12 Litigation Fund comprised of the recoveries from the Related Litigation. ***No entity***  
13 ***or individual that may have held an equity interest in any of the Receivership***  
14 ***Entities will receive a Plan Distribution from any source.*** The draft Proposed  
15 Distribution Plan also generally contemplates that Noteholders holding Allowed  
16 Claims will share Pari Passu with each other in both the Litigation Fund and the  
17 Receivership Asset Proceeds. Non-investor Creditors will also receive distributions  
18 from both the Litigation Fund and the Receivership Asset Proceeds but will only  
19 receive pro rata distributions from each source on 50% of their Allowed Claim.<sup>2</sup>

20 In cases in which a fraudulent scheme has been perpetrated by one or more  
21 entities that raised money from investors, and funds raised or assets have been  
22 transferred between entities or commingled, the Ninth Circuit Court of Appeals has  
23 endorsed pooling assets for pro rata distribution. *See Topworth*, 205 F.3d at 1116;  
24 *United States v. Real Property Located at 13328 and 13324 State Highway 75 N.*,  
25 89 F.3d 551, 553-54 (9th Cir. 1996); *see also Elliott*, 953 F.2d at 1569-70.

26  
27 <sup>2</sup> This discussion is meant only as a general summary, For greater detail and  
28 specifics interested parties should review the Proposed Distribution Plan. The  
Receiver is not seeking approval of the Proposed Distribution Plan at this time,  
but is providing his proposed plan as context for his claim objections.

1 As discussed above, assets transferred between the MP Entities facilitated the  
2 payment of returns to Noteholders in the earlier MP Entities from later Noteholders'  
3 funds. As a matter of fairness and equity, the Receiver believes recoveries from  
4 assets held by the MP Entities should be pooled as described for distribution  
5 purposes, and Noteholders should share pro rata in distributions from the pools  
6 based on an allowed MIMO claim.

7 **IV. PROPOSED NOTEHOLDER CLAIM DISPUTE PROCEDURE**

8 The Receiver proposes the following procedures for disputes regarding  
9 Noteholder Claim objections.

10 To the extent that Noteholders oppose their proposed MIMO claim amount on  
11 the grounds that they oppose the netting function of the MIMO claim calculation,  
12 the Receiver suggests that issue should be addressed in the aggregate. The Receiver  
13 proposes that the following briefing schedule be established. Noteholders shall file  
14 and serve pleadings stating their opposition to the MIMO claim calculation on or  
15 before December 30, 2011. The Receiver and other interested parties shall file and  
16 serve any reply briefs on or before January 9, 2012. For the approximate 770  
17 Noteholders who returned claim information forms that dispute the money-in/money  
18 out amounts identified by the Receiver and/or the proposed allowed MIMO amount,  
19 the Receiver suggests the appointment of a special master or the Magistrate Judge,  
20 as the Court deems appropriate, to address these type of claim disputes. The  
21 Receiver proposes that his office provide each Noteholder who timely disputed the  
22 claim information amounts with a detailed statement of the Receiver's MIMO  
23 calculation. The Noteholder should be allowed 30 days to provide proof that the  
24 amounts the Noteholder contends are correct. If the Noteholder does not provide  
25 such evidence or a response, the Noteholder's claim should be allowed in the  
26 amount proposed by the Receiver in Exhibit B. If the Noteholder does respond and  
27 a dispute remains, those disputes should be referred to the special master or  
28 Magistrate Judge for resolution.

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**V. CONCLUSION**

Based on the foregoing, the Receiver requests entry of order allowing all Noteholders claims in the amounts listed under Proposed Claim Amount on Exhibits A, B and C, hereto, and adopting the procedures identified herein to address disputed claims.

Dated: November 28, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: /s/ Loraine L. Pedowitz  
LORAIN L. PEDOWITZ  
Attorneys for Receiver  
Thomas A. Seaman