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

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 v.

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

20 Defendants.

CASE NO. SACV 09-818 DOC (RNBx)

**[PROPOSED] ORDER APPROVING
 SETTLEMENT AGREEMENT WITH
 WELLS FARGO BANK, N.A. AND
 THE BANK OF NEW YORK
 MELLON**

21
 22 The Motion by Receiver Thomas Seaman (the "Receiver") for
 23 Approval of Settlement with Wells Fargo Bank, N.A. ("Wells Fargo") and The
 24 Bank of New York Mellon ("BNYM") (collectively, the "Trustees") came on for
 25 hearing on August 27, 2012. Appearances were entered on the record.

26 The Court, having considered the declarations and pleadings filed in
 27 support of and in opposition to the Motion, and the oral argument of counsel,
 28

1 hereby grants the Motion based on the following findings of fact and conclusions of
2 law.

3 **FINDINGS OF FACT**

4 **The Medical Capital Notes**

5 1. Medical Capital Holdings, Inc. (“MCH”) created a series of
6 wholly-owned special purpose corporations (“SPCs”) to sell unregistered notes (the
7 “Notes”) to investors pursuant to a private placement memorandum. These SPCs
8 included Medical Provider Financial Corporation I (“MP I”), Medical Provider
9 Financial Corporation II (“MP II”), Medical Provider Financial Corporation III
10 (“MP III”), Medical Provider Financial Corporation IV (“MP IV”), Medical
11 Provider Funding Corporation V (“MP V”) and Medical Provider Funding
12 Corporation VI (“MP VI”) (collectively, “the MedCap SPCs”).

13 2. Medical Capital Corporation (“MCC”) served as the
14 administrator for each of the MedCap SPCs.

15 3. Each of MP I, MP II, MP IV, and MP VI entered into a separate
16 Note Issuance and Security Agreement (“NISA”) with BNYM pursuant to which
17 BNYM agreed to serve as indenture trustee for the initial series of promissory notes
18 sold by that entity. MP IV also entered into a supplemental NISA with BNYM
19 whereby BNYM agreed to serve as indenture trustee for a second series of MP IV
20 promissory notes. Each of these NISAs provides for the payment of fees to BNYM
21 as trustee, and for indemnification against expenses and liabilities under specified
22 conditions.

23 4. Each of MP III and MP V entered into a separate NISA with
24 Wells Fargo pursuant to which Wells Fargo agreed to serve as indenture trustee for
25 the initial series of promissory notes sold by that entity. MP III also entered into a
26 supplemental NISA with Wells Fargo whereby Wells Fargo agreed to serve as
27 indenture trustee for a second series of MP IV promissory notes. Each of these
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1 NISAs provides for the payment of fees to Wells Fargo as trustee, and for
2 indemnification against expenses and liabilities under specified conditions.

3 5. Pursuant to each NISA, the proceeds from the SPC's sale of the
4 associated series of notes (as well as sums earned on assets acquired with those
5 proceeds) were to be deposited into a trust account with the indenture trustee, and
6 thereafter disbursed by the indenture trustee in accordance with the terms of the
7 NISA. Pursuant to each NISA, the SPC was the owner of all sums deposited into
8 the trust account (as well as the owner of all assets acquired with the note proceeds
9 and all other items that the NISA identifies as collateral for the repayment of the
10 associated notes), although the SPC granted a security interest therein to the
11 indenture trustee.

12 6. Each note sold by the MedCap SPCs expressly incorporated the
13 terms of the associated NISA.

14 **The SEC Action And Appointment Of The Receiver**

15 7. This action commenced on July 16, 2009 when the United States
16 Securities and Exchange Commission (the "SEC") filed a complaint alleging
17 federal securities fraud against MCH, MCC, MP VI, Sidney M. Field and Joseph J.
18 Lampariello in connection with the offer and sale of MP VI Notes (the "SEC
19 Action").

20 8. On August 18, 2009, the Court entered an order ("the
21 Receivership Order") appointing the Receiver as a permanent receiver for MCH,
22 MCC, MP VI, and their subsidiaries and affiliates, including MP I, MP II, MP III,
23 MP IV, and MP V (collectively, the "Receivership Entities"). The Receivership
24 Order expressly provides the Receiver with the full powers of an equity receiver,
25 including but not limited to full power over all funds, assets and choses in action
26 belonging to the Receivership Entities. *See* Doc. No. 44.

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1 9. Pursuant to the Receivership Order, Wells Fargo and BNYM
2 have turned over to the Receiver all collateral for the Notes they previously held as
3 trustees under the NISAs.

4 **The Masonek Action**

5 10. On September 11, 2009, seven individuals who allege that they
6 are holders of Notes issued by MP II, MP III, MP IV, MP V, and MP VI initiated a
7 putative class action lawsuit against the Trustees in the United States District Court
8 for the Central District of California, in an action captioned *Masonek v. Wells*
9 *Fargo Bank, N.A.*, Case No. SACV09-1048 DOC (RNBx). Thereafter, four other
10 putative class action lawsuits were filed in the Central District of California based
11 on substantially the same allegations. Pursuant to an Order issued by the Court on
12 October 21, 2009, all of those actions were consolidated into the *Masonek v. Wells*
13 *Fargo Bank, N.A.* action (the “Masonek Action” or “Class Action”).

14 11. The currently operative complaint in the Masonek Action (the
15 “Masonek Complaint”) alleges a single cause of action for breach of contract. In
16 particular, the Masonek Complaint alleges that: (1) the holders of the MedCap
17 Notes (the “Noteholders”) are intended third-party beneficiaries of the NISAs; (2)
18 Wells Fargo and BNYM breached the NISAs by improperly disbursing funds from
19 the trust accounts (i) for unauthorized administrative fees, (ii) for the acquisition of
20 impermissible assets on which the SPCs lost money, (iii) for the acquisition of
21 overvalued assets, (iv) for the acquisition of fake assets, and (v) after an Event of
22 Default should have been declared; and (3) the Noteholders suffered injury due to
23 those alleged breaches because the SPCs have failed to pay the principal and
24 interest owed under the notes and do not have the assets with which to do so, and
25 because the breaches reduced the assets available to the SPCs.

26 12. Prior versions of the complaint in the Masonek Action also had
27 included claims for (1) breach of fiduciary duty; (2) aiding and abetting breach of
28 fiduciary duty; (3) negligence; (4) unjust enrichment; and (5) Violation of

1 California Business & Professions Code Section 17200, *et seq.* The Court
2 dismissed all of these additional claims pursuant to motions to dismiss brought by
3 the Trustees under Federal Rule of Civil Procedure 12(b)(6). *See* Doc. No. 143 in
4 *In re Medical Capital Securities Litigation*, Case No. 8:10-ml-02145-DOC-RNB
5 (“*In re Medical Capital*”) (filed 2/7/11); Doc. No. 53 in *In re Medical Capital* (filed
6 8/31/10).

7 **The Abbate Action**

8 13. On or about November 25, 2009, nearly 1,700 individuals who
9 purported to be holders of Notes issued by MP II, MP III, MP IV, MP V, and MP
10 VI initiated a mass action lawsuit against Wells Fargo and BNYM in the Circuit
11 Court of the 17th Judicial Circuit in and for Broward County, Florida, in an action
12 captioned *Abbate v. Wells Fargo Bank, N.A.*, Case No. 09-63927 (the “Abbate
13 Action”). On or about December 29, 2009, the Abbate Action was removed to the
14 United States District Court for the Southern District of Florida and, on or about
15 August 31, 2010, the action was transferred to the Central District of California, in
16 an action captioned *Abbate v. Wells Fargo Bank, N.A.*, Case No. SACV10-6561
17 DOC (RNBx).

18 14. The currently operative portion of the currently operative
19 complaint in the Abbate Action (the “Abbate Complaint”) alleges a single cause of
20 action for breach of contract. In particular, like the Masonek Complaint, the
21 Abbate Complaint alleges that: (1) the plaintiff Noteholders are intended third-
22 party beneficiaries of the NISAs; (2) Wells Fargo and BNYM breached the NISAs
23 by improperly disbursing funds from the trust accounts (i) for unauthorized
24 administrative fees, (ii) for the acquisition of impermissible assets on which the
25 SPCs lost money, (iii) for the acquisition of overvalued assets, (iv) for the
26 acquisition of fake assets, and (v) after an Event of Default should have been
27 declared; and (3) the plaintiff Noteholders suffered injury due to those alleged
28 breaches because the SPCs have failed to pay the principal and interest owed under

1 the plaintiffs' Notes and do not have the assets with which to do so, and because the
2 breaches reduced the assets available to the SPCs.

3 15. Prior versions of the complaint in the Abbate Action also had
4 included claims for (1) violation of Section 10(b) of the Securities and Exchange
5 Act and Rule 10(b)(5); (2) breach of fiduciary duty; (3) negligence; (4) breach of
6 the implied covenant of good faith and fair dealing; and (5) declaratory relief. The
7 Court dismissed all of these additional claims pursuant to motions to dismiss
8 brought by the Trustees under Federal Rule of Civil Procedure 12(b)(6). *See* Doc.
9 No. 227 in Abbate Action (filed 11/17/11); Doc. No. 196 in Abbate Action (filed
10 4/25/11).

11 The Bain Action

12 16. On or about December 17, 2009, more than 100 individuals who
13 purported to be holders of Notes issued by MP II, MP III, MP IV, MP V, and MP
14 VI initiated a mass action lawsuit against Wells Fargo and BNYM in the United
15 States District Court for the Eastern District of California, in an action captioned
16 *Bain v. Wells Fargo Bank, N.A.*, Case No. CV09-2218 LJO-GSA (the "Bain
17 Action"). On or about April 16, 2010, the United States Judicial Panel on
18 Multidistrict Litigation issued an order transferring the Bain Action to the Central
19 District of California for coordinated pretrial proceedings with the Masonek Action
20 and other related actions.

21 17. The original complaint in the Bain Action included claims for
22 (1) breach of fiduciary duty; (2) negligence; (3) unjust enrichment; and (4)
23 Violation of California Business & Professions Code Section 17200, *et seq.*

24 18. On June 11, 2012, pursuant to the parties' stipulation and the
25 Court's order, plaintiffs filed an amended complaint (the "Bain Complaint")
26 alleging a single cause of action for breach of contract. In particular, like the
27 Masonek Complaint and the operative portion of the Abbate Complaint, the Bain
28 Complaint alleges that: (1) the plaintiff Noteholders are intended third-party

1 beneficiaries of the NISAs; (2) Wells Fargo and BNYM breached the NISAs by
2 improperly disbursing funds from the trust accounts (i) for unauthorized
3 administrative fees, (ii) for the acquisition of impermissible assets on which the
4 SPCs lost money, (iii) for the acquisition of overvalued assets, (iv) for the
5 acquisition of fake assets, and (v) after an Event of Default should have been
6 declared; and (3) the plaintiff Noteholders suffered injury due to those alleged
7 breaches because the SPCs have failed to pay the principal and interest owed under
8 the plaintiffs' Notes and do not have the assets with which to do so, and because the
9 breaches reduced the assets available to the SPCs.

10 **The Certification Of A Noteholder Class In *Masonek***

11 19. On July 26, 2011, the Court issued an order in the *Masonek*
12 Action certifying a class consisting of all persons who (i) purchased or otherwise
13 acquired notes issued by one or more of MP II, MP III, MP IV, MP V and MP VI
14 and (ii) did not receive some or all of their principal or interest payments.

15 20. Pursuant to a Court Order entered on December 8, 2011, Class
16 Notice thereafter was mailed to 11,889 class members, was published, and was
17 posted on the website www.medicalcapitalclass.com. The Class Notice advised
18 class members of the procedures for opting out of the class, and the opt-out
19 deadline of March 30, 2012. The Class Administrator received opt-out requests on
20 behalf of 1,578 Noteholders, of whom some are Noteholders who are not now
21 named plaintiffs in either the *Abbate* or *Bain* actions. According to the Receiver's
22 records, these Noteholders who are not now named plaintiffs in either the *Abbate* or
23 *Bain* actions have substantial claims for unpaid principal.

24 **The Receiver's Investigation, Pursuit And Settlement Of**
25 **The MedCap SPCs' Claims Against The Trustees**

26 21. The Receivership Order specifically authorized, empowered,
27 and directed the Receiver to employ attorneys, accountants, and others to
28 investigate and, where appropriate, institute, pursue, and prosecute all claims and

1 causes of action related to the activities of the Receivership Entities. *See* Doc. No.
2 44.

3 22. On May 20, 2010, the Court approved the appointment of
4 Shartsis Friese LLP as Conflicts Counsel to the Receiver to investigate and pursue
5 potential claims against the Trustees. *See* Doc. No. 260 in SEC Action.

6 23. After a careful review of the Receivership Entities' own records,
7 the Receiver, in consultation with Conflicts Counsel, concluded that the Receiver
8 had grounds to bring claims on behalf of the MedCap SPCs against both Wells
9 Fargo and BNYM, and sought Court approval to do so. The Receiver further
10 concluded "that it is in the best interests of the Receivership Entities and their
11 stakeholders for the Receiver to pursue claims against the Trustees" because "the
12 Receiver is ideally-situated to effectively and cost efficiently pursue such claims, in
13 that the Receiver has standing to pursue claims directly on behalf of the
14 Receivership Entities, has in-house forensic accounting expertise and professional
15 staff, has a discounted hourly fee arrangement with experienced litigation counsel,
16 and any recovery on behalf of the plaintiff Receivership Entities would be available
17 for all of their creditors." *See* Doc. No. 416. On October 12, 2010, the Court
18 issued an order authorizing the Receiver to file claims against the Trustees, if
19 deemed proper by the Receiver. *See* Doc. No. 428.

20 24. The Receiver intended to pursue claims against the Trustees,
21 and Conflicts Counsel drafted a complaint alleging claims based on the Trustees'
22 breaches of duties under the NISAs, which focused on payments of administrative
23 fees and acquisition of purported Eligible Receivables and Non-Receiveable Assets
24 where the relevant documentation was deficient under the NISAs or where that
25 documentation demonstrated that the asset was worthless or could not be acquired
26 consistent with the terms of the NISAs.

27 25. In December 2010, after consulting with the SEC, the Receiver
28 and his counsel decided to explore potential settlement with the Trustees rather than

1 proceed immediately with litigation, and negotiated agreements tolling the statutes
2 of limitations with each of the Trustees. The Receiver was concerned about the
3 costs and risks of litigating against the Trustees, and also concerned that the
4 ongoing Noteholder lawsuits against the Trustees were exposing the Receivership
5 Estate to the Trustees' ever-mounting indemnity claims.

6 26. The Receiver worked with each of the Trustees to obtain their
7 documents informally, rather than through more time-consuming and costly formal
8 discovery procedures. The Receiver and Conflicts Counsel conducted extensive
9 review of these voluminous documents, as well as further analysis of the NISAs
10 and applicable law.

11 27. The Receiver and each of the Trustees then agreed to pursue
12 mediation, and jointly retained a respected mediator, Charles Bakaly, Jr. of JAMS,
13 to assist in those efforts. In the course of and for the purpose of this mediation
14 process, the Receiver and/or Conflicts Counsel held a separate series of in-person
15 meetings and telephone conferences with each of the Trustees and/or their
16 respective counsel, including a day-long in-person session with the mediator and
17 each of the Trustees in January and March of 2012, as well as a number of joint
18 telephone conferences. This process resulted in a signed settlement agreement (the
19 "Settlement").

20 28. On June 11, 2012, the Receiver filed an action against the
21 Trustees on behalf of the MedCap SPCs alleging that the Trustees breached the
22 NISAs by improperly disbursing funds from the trust accounts (i) for unauthorized
23 administrative fees, (ii) for the acquisition of impermissible assets on which the
24 SPCs lost money, (iii) for the acquisition of overvalued assets, (iv) for the
25 acquisition of fake assets, and (v) after an Event of Default should have been
26 declared. *See Thomas Seaman v. Wells Fargo Bank, N.A.*, Case No. _____ (the
27 "Receiver Action").

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1 (b) entry of judgment in each of the Masonek, Abbate and Bain Actions pursuant to
2 summary judgment motions to be filed by the Trustees on the ground that the
3 plaintiffs in those actions lack the standing, power and authority to pursue their
4 pending claims (the “Judgments”);

5 (5) Upon entry of the Approval Order, each of Wells Fargo and
6 BNYM agrees to withdraw with prejudice the claims they previously filed against
7 the receivership estate;

8 (6) Upon entry of the Approval Order and the Judgments, Wells
9 Fargo, BNYM, and the Receiver agree to file a motion in the action instituted by
10 the Receiver seeking an order declaring the Settlement to be a good faith settlement
11 and seeking a “bar order” barring any person or entity from seeking implied
12 indemnity, equitable indemnity, or contribution from either Wells Fargo or BNYM
13 (the “Good Faith Settlement Order”); and

14 (7) Each of Wells Fargo and BNYM agrees that, once the Approval
15 Order, the Judgments, and the Good Faith Settlement Order are affirmed or no
16 longer subject to challenge on direct review, each of their settlement payments and
17 any interest earned thereon may be released from escrow to the Receiver.

18 However, if the Approval Order, the Judgments or the Good Faith Settlement Order
19 is not entered, or is overturned on appeal as to Wells Fargo and/or BNYM, Wells
20 Fargo and/or BNYM may elect to terminate the Settlement, obtain a return of any
21 funds placed into escrow and any interest earned thereon, and resume prosecution
22 of the previously withdrawn claim or claims against the receivership estate.

23 **The Benefits Of The Settlement To The Receivership Estate**
24 **And Its Creditors, Including The Noteholders**

25 31. The Settlement benefits the receivership estate and its creditors
26 by adding \$106 million in cash, which the Receiver proposes to distribute to the
27 Noteholders only.

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1 32. The Settlement benefits the receivership estate and its creditors
2 by avoiding the delay of discovery and a trial against Wells Fargo and BNYM.

3 33. The Settlement benefits the receivership estate and its creditors
4 by avoiding the additional costs of discovery, trial and appeal, which could total
5 \$10 million.

6 34. The Settlement benefits the receivership estate and its creditors
7 by avoiding the substantial risk that the Receiver would recover less than the cash
8 portion of the Settlement in light of the defenses Wells Fargo and BNYM assert
9 based upon (1) duty-limiting and potentially exculpatory provisions of the NISAs,
10 (2) the potentially duty-limiting course of performance of the NISAs, (3) the
11 potential lack of actual causation due to an apparent willingness of the Medical
12 Capital principals to engage in fraud and other factors, (4) the lack of actual or
13 proximate causation for investment losses caused by the general economic
14 downturn, and (5) the potential damages-limiting effect of various offsets.

15 35. The Settlement benefits the receivership estate and its creditors
16 by avoiding the significant risk posed by the claims asserted by Wells Fargo and by
17 BNYM against the receivership estate for disbursing agent fees, trustee fees, default
18 expenses, litigation expenses, and indemnity, including the risk that these claims
19 have priority over the claims of the Noteholders as asserted by Wells Fargo and
20 BNYM. These claims total some \$25 million to date, and could run as high as \$50
21 million for fees and expenses alone if the Receiver Action and/or Noteholder
22 Actions against Wells Fargo and BNYM were to be tried and then appealed.

23 36. The Settlement benefits the receivership estate and its creditors
24 by avoiding the significant risk of a delay in the distribution of other funds
25 marshaled by the Receiver to date due to the Court or the Court of Appeals
26 requiring the Receiver to hold back funds while the claims of Wells Fargo and/or
27 BNYM against the Receivership estate are litigated.

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CONCLUSIONS OF LAW

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2 1. Claims for any injuries to the Receivership Entities, including
3 claims against the Trustees, are property of the receivership estate created for the
4 Receivership Entities. This includes both direct claims by the Receivership
5 Entities, and any claims that otherwise would be available to creditors who
6 allegedly suffered indirect injury as a result of the injuries to the Receivership
7 Entities. Absent abandonment by the Receiver, the Receiver has the exclusive
8 standing, power, and authority to pursue and, subject to Court approval, to resolve
9 all claims belonging to the receivership estate for injuries to the Receivership
10 Entities. This exclusive standing, power, and authority precludes third parties
11 (including the Noteholders) from pursuing claims against the Trustees for any
12 indirect injury allegedly suffered as a result of any alleged injury to the
13 Receivership Entities.

14 2. The Settlement between the Receiver and Wells Fargo,
15 including all terms set out in the Settlement, is approved because it is fair and
16 equitable, and is in the best interests of the Receivership Entities and all their
17 creditors, including the Noteholders. This conclusion is based upon the Court's
18 consideration of (1) the probability of success against Wells Fargo in the Receiver
19 Action and the Noteholder Actions, and the probability of success by Wells Fargo
20 on the claims asserted by Wells Fargo against the receivership estate; (2) the
21 complexity of the foregoing litigation and the expense, inconvenience, and delay
22 necessarily accompanying a fully-litigated resolution; and (3) the paramount
23 interest of the creditors and a proper deference to their reasonable views. The Court
24 finds that the settlement is fair and equitable, and within the range of
25 reasonableness.

26 3. The settlement between the Receiver and BNYM, including all
27 terms set out in the Settlement, is approved because it is fair and equitable, and is in
28 the best interests of the Receivership Entities and all their creditors, including the

1 Noteholders. This conclusion is based upon the Court's consideration of (1) the
2 probability of success against Wells Fargo in the Receiver Action and the
3 Noteholder Actions, and the probability of success by BNYM on the claims
4 asserted by BNYM against the receivership estate; (2) the complexity of the
5 foregoing litigation and the expense, inconvenience, and delay necessarily
6 accompanying a fully litigated resolution; and (3) the paramount interest of the
7 creditors and a proper deference to their reasonable views. The Court finds that the
8 settlement is fair and equitable, and within the range of reasonableness.

9 4. In order to protect the Receiver's exclusive authority over the
10 property of the receivership estate, including the power to pursue, and with Court
11 approval to resolve, the MedCap SPCs' claims against the Trustees, it is necessary
12 and proper to issue the injunction required as a condition of the Settlement between
13 the Receiver and the Trustees.

14 5. All creditors of the Receivership Entities, including all
15 Noteholders, have been afforded adequate notice and opportunity to be heard to
16 satisfy all constitutional and statutory requirements, and are bound by this Order.

17 It is therefore ORDERED that:

18 1. The Settlement attached hereto as Exhibit A is approved in its
19 entirety.

20 2. The Settlement will not become effective until all the conditions
21 to effectiveness set forth therein are satisfied or waived in the manner specified
22 therein.

23 3. On or following the Effective Date of the Settlement, Wells
24 Fargo and BNYM shall have no further rights or duties under the NISAs, and no
25 further duties to the Noteholders, except (a) those rights and duties that survive the
26 termination of the NISAs by their express terms, and (b) the duty to reasonably
27 cooperate with the Receiver to effectuate the transfer, assignment or release of each
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1 of Wells Fargo's and BNYM's interests in any and all collateral of the Receivership
2 Entities, as lawfully directed to do by the Receiver.

3 4. The claims asserted against the receivership estate by Wells
4 Fargo and BNYM are deemed withdrawn with prejudice, subject to reinstatement
5 as set forth in the Settlement in the event the Settlement is terminated in accordance
6 with its terms.

7 5. All creditors of the Receivership Entities, including the
8 Noteholders, and anyone acting in concert with them are permanently enjoined
9 from pursuing existing actions or instituting new actions that assert claims against
10 Wells Fargo and/or BNYM seeking damages allegedly suffered as a result of Wells
11 Fargo's or BNYM's disbursement of funds from the trust accounts established for
12 each of the MedCap SPCs, any other alleged loss of or injury to the collateral
13 securing the promissory notes, or any other injury to any of the Receivership
14 Entities or their property; provided, however, this injunction shall not restrict any
15 party from responding to (1) the motions for summary judgment filed by the
16 Trustees in the Masonek Action, the Abbate Action, and the Bain Action on June
17 11, 2012, (2) the motions to stay discovery filed by the Trustees in the Masonek
18 Action, the Abbate Action, and the Bain Action on June 11, 2012, and (3) the good
19 faith settlement motion to be filed in the Receiver Action.

20 6. The Receiver will dismiss the Receiver Action with prejudice
21 within five (5) days following the Effective Date of the Settlement.

22
23 DATED: August __ __, 2012

24 By: _____
25 The Honorable David O. Carter
26 United States District Court Judge
27
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