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6
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THOMAS A. SEAMAN

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.
15

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

20 Defendants.

Case No. SA CV09-0818 DOC (RNBx)

NOTICE OF MOTION AND MOTION
FOR: (1) APPROVAL OF FINAL
ACCOUNT AND REPORT (2)
AUTHORIZATION OF FINAL
DISTRIBUTIONS; (3)
AUTHORIZATION TO DESTROY
BOOKS AND RECORDS; AND (4)
DISCHARGE OF RECEIVER.
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
THOMAS SEAMAN IN SUPPORT

Date: November 7, 2016
Time: 8:30 a.m.
Ctrm: 9C
Judge: Hon. David O. Carter

21
22 **TO THE HONORABLE DAVID O. CARTER, JUDGE OF THE UNITED**
23 **STATES DISTRICT COURT AND INTERESTED PARTIES:**

24 **PLEASE TAKE NOTICE** that on November 7, 2016, at 8:30 a.m., in
25 Courtroom 9D of the above-entitled Court located at 411 West Fourth Street,
26 Santa Ana, California 92701, a hearing will be held on the motion of Thomas A.
27 Seaman ("Receiver"), Court-appointed permanent receiver for Medical Capital
28 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding

1 Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital"
2 or the "Receivership Entities"), for an order approving the Receiver's amended final
3 account and report, authorizing the Receiver make a final distribution to investors
4 and creditors consistent with the Receiver's previously approved plan of distribution,
5 authorizing the Receiver to destroy books and records and turn over unclaimed
6 funds to the United States Treasury, and discharging the Receiver from his duties
7 upon the final distribution of funds and the closing of the estate.

8 The pleadings are available at the Receiver's website,
9 <http://www.medicalcapitalreceivership.com>, or may be reviewed at the Clerk's
10 Office during normal business hours at 411 West Fourth Street, Santa Ana,
11 California 92701.

12 **Procedural Requirements:** Pursuant to the minute order entered by the
13 Court on September 29, 2016 (Dkt. No. 1390), if you oppose the requested relief,
14 you are required to file your written opposition with the Office of the Clerk, United
15 States District Court, 411 West Fourth Street, Santa Ana, California 92701, and
16 serve the same on the undersigned not later than seven (7) calendar days from
17 today's date.

18 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by
19 the above date, the Court may grant the requested relief without further notice.

20 This request is made following the conference of counsel pursuant to
21 L.R. 7-3, which took place between July 26 and August 8, 2016.

22
23 Dated: October 7, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

24
25 By: /s/ Michael R. Farrell

26 Michael R. Farrell
27 Attorneys for Receiver
28 THOMAS A. SEAMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Thomas A. Seaman, duly appointed Receiver herein, respectfully submits this
3 amended motion for an order approving the Receiver's final account and report,
4 authorizing the Receiver make a final distribution to investors and creditors
5 consistent with the Receiver's previously approved plan of distribution, authorizing
6 the Receiver to destroy books and records and turn over unclaimed funds to the
7 United States Treasury, and discharging the Receiver from his duties upon the final
8 distribution of funds and the closing of the estate.

9 In accordance with the Court's ruling of September 29, 2016, the Receiver
10 has recalculated Stratose's final distribution. The revised calculation is set forth in
11 Exhibit C. Following completion of the revised Stratose calculations, and Stratose's
12 concurrence with the new distribution amount, an investor claimant whose claim of
13 \$53,050 was to become disallowed contacted the Receiver on October 6, 2016. The
14 Receiver has removed the investor from the list of disallowed claims and included
15 the investor in the final distribution recommendation. Another claimant, whose
16 distribution had been reserved pending final documentation of third party
17 recoveries, provided the required documentation which precludes them from
18 receiving a final distribution. The list of claimants has been revised accordingly.

19 Finally, following the filing of the original motion to conclude the
20 receivership, the Receiver collected approximately \$153,000 from the Capitol
21 Health bankruptcy, as anticipated. The Receiver therefore amended the final
22 account and report and final distributions taking into account the new Stratose final
23 distribution, the addition of the claim that was going to be disallowed, the
24 elimination of fully satisfied claim, and receipt of the Capital Health money
25 collections. Stratose's distribution has increased by approximately \$90,000 and the
26 total distribution to remaining claimants increased by approximately \$60,000. The
27 total amount to be distributed is \$34,201,052.41.

28

1 The amended Receiver's Final Account and Report is included herein. The
2 Final Fee Applications of the Receiver and his professionals will not be amended for
3 the cost of recalculating the final distributions or this amended report, and will
4 simply be re-filed. The Receiver respectfully requests approval of the fee
5 applications in connection with the relief sought in this amended motion. All assets
6 have been monetized or otherwise disposed of, all litigation has been resolved and
7 substantially all outstanding claim issues have been concluded. A receiver is no
8 longer needed and the Receiver therefore requests that he be discharged of his
9 duties.

10 **Receiver's Final Account & Report**

11 **I. INTRODUCTION**

12 The Receiver was appointed in the Securities and Exchange Commission
13 enforcement action brought July 2009 against Medical Capital Holdings, Inc.
14 ("MCH"), Medical Capital Corporation ("MCC"), Medical Provider Funding
15 Corporation VI ("MPFC VI") and their subsidiaries and affiliates are sometimes
16 collectively referred to herein as "Medical Capital" and together with Sidney M.
17 Field, and Joseph J. Lampariello, "Defendants." Medical Capital raised
18 approximately \$1.76 billion from investors since November 2003 through special
19 purpose entities known as MPFC I through MPFC VI. At the time of the Receiver's
20 appointment, approximately 9,000 MPFC noteholders were owed approximately
21 \$1.079 billion, while the collective cash on hand was approximately \$2.9 million.
22 Under the direction and supervision of the Court, the Receiver recovered gross
23 receipts in excess of \$210 million and will have distributed over \$151 million to
24 noteholders and claimants. Noteholders also received over \$180 million from the
25 bond indenture trustees, and over \$101 million from broker dealers.

26 At the outset of the case, the Court made clear the need for transparency and
27 the active role the Court intended to take in supervising the receivership. The
28 Receiver was ordered to file monthly reports. These reports kept the Court and

1 interested parties apprised of the status of the receivership on a continuous basis.
2 The following summarizes and provides highlights of these reports and provides an
3 accounting of the funds recovered and expended by the receivership and the
4 recovery for claimants.

5 Upon his appointment, the Receiver encountered multifaceted variables
6 attendant to the demise of a Ponzi-like scheme. The MPFCs' purported loan
7 portfolio of \$500,000,000 was not performing and loan collateral was at risk.
8 Medical Capital had ceased funding obligations to borrowers. Debt assets requiring
9 immediate attention included loans on four Orange County hospitals at risk of
10 failing, a credit facility to an internet email provider that Medical Capital could not
11 fund, a nuclear accelerator in Texas the borrower had abandoned, a nearly
12 completed feature film that could not be distributed, a defunct hospital in Georgia
13 whose Certificate of Need was in jeopardy, a failed hospital in Queens, New York
14 and dozens of other loans requiring collection and resolution.

15 The Receiver also was faced with a pending sale of a large assisted living
16 facility to which Medical Capital had taken title through foreclosure, and whose
17 operator appeared to be misappropriating operating income. Medical Capital owned
18 operating companies that had been damaged by the Ponzi-like behavior of their
19 owners, who had stripped the companies of needed working capital. The companies
20 required immediate management and turnaround expertise in order keep them in
21 business and preserve their value.

22 One of the companies, National Health Care Benefit Systems, was a medical
23 claims repricing company, and the other, Vivavision, provided visual entertainment
24 programming to mobile devices. There were also equity interests in companies such
25 as Single Touch Interactive Technology and the Denton nuclear accelerator facility,
26 among others.

27 The sheer size of the fraud and massive loss of noteholders' equity also raised
28 the possibility that the Defendants could not have perpetuated their fraud without the

1 assistance of others. The Receiver analyzed the functions of the company and the
2 role played by professionals and financial institutions. As time progressed, it
3 became clear, in the Receiver's view, that certain attorneys and the bond indenture
4 trustees had damaged the MPFCs. The Receiver recommended that he pursue
5 litigation to recover funds for the benefit of noteholders against three law firms and
6 the two banks that served as indenture trustees, which recommendation was
7 approved by the Court.

8 II. FORENSIC ACCOUNTING

9 In reviewing Medical Capital's books and records, it became clear that the
10 financial statements were not reliable or accurate and a forensic accounting of
11 sources and uses of investor funds would be required. The Receiver and his staff
12 conducted the accounting, which entailed over twenty billion dollars of transactions
13 in 258 separate bank accounts, covering the period from November 2003 through
14 the time of Receiver's appointment. Over 15,000 bank statements were input and
15 reconciled. The Receiver filed his Forensic Accounting Report in December, 2011.
16 The accounting is organized in a relational database and allowed the Receiver to
17 account for and identify assets, identify recipients of ill-gotten gains, determine the
18 cost basis of loans and investments, determine investor claims; and analyze and
19 quantify damages in the litigation against the bond indenture trustees and certain
20 former counsel.

21 The Receiver's forensic accounting clearly indicated that the Receivership
22 Entities had engaged in Ponzi-like behavior by transferring cash from newer MPFCs
23 in exchange for the assets of earlier MPFCs, which assets were either non-
24 performing, overvalued, or fake. But for these transfers, the earlier MPFCs would
25 not have had liquidity sufficient to pay returns, much less return principal, to note
26 holders.

27
28

1 **III. CLAIMS PROCESS**

2 The claims on the receivership estate were voluminous and diverse. The
3 estate received claims from the investors, as well as claims from employees,
4 contractors, judgment creditors, borrowers, insiders, and taxing authorities, among
5 others. The Receiver established a claims process and his team received and
6 processed over 8,000 claims. In November 2011, the Receiver filed his Proposed
7 Plan of Distribution (the "Plan"). A number of objections were filed, many of which
8 related to the Plan's provision to reduce noteholder claims by any payments the
9 noteholder may have received from Medical Capital, as well as the provision
10 reducing claims by amounts received from third parties, such as broker-dealers,
11 FINRA, or the bond indenture trustees. Other objections related to the Plan's offset
12 losses by profits the investor may have received on matured notes. The Receiver
13 filed Omnibus Objections to claims and worked to resolve numerous disputes. The
14 Court ordered that noteholder claims were to be calculated on a money-in, money-
15 out basis ("MIMO") whereby claims were calculated by subtracting from the
16 amount invested all interest and principal payments received prior to the TRO,
17 recoveries from third parties, and net gains on other Medical Capital notes. In
18 September 2012, the Court entered an order approving an Amended Distribution
19 Plan based on the MIMO claim calculations. In February 2014, the Receiver made
20 the first interim distribution. The total amount distributed was \$117,432,579.46 and
21 can be broken down by the type of claim as follows:

22

23	Priority wage claims	\$271,621.74
24	Priority creditor claims	\$1,015,664.42
25	Noteholders	\$114,508,255.28
26	Non-priority wage claims	\$38,058.34
27	<u>Non-priority creditor claims</u>	<u>\$1,626,581.83</u>
28	Total	\$117,432,579.46

Accounting

Exhibit A provides financial statements for the duration of the receivership.

Sources of recovery. The gross receipts to the receivership estate were \$210,719,093.30 and can be summarized as follows.

Asset sales	\$118,668,893.60
Litigation settlement proceeds	\$32,106,572.50 ¹
Operating company revenues	\$23,430,825.80
Loan collections	\$15,755,763.32
Income tax refunds	\$11,606,480.30
Funds seized	\$4,559,300.37
Accounts receivable collections	\$2,718,122.60
Rental income	\$561,519.34
Property tax refunds	\$501,184.58
Disgorgement proceeds	\$400,000.00
Interest income	\$209,026.51
Insurance proceeds	\$201,404.38

A narrative discussion of the some of the more significant recoveries follows.

Asset sales. The Receiver recovered \$118,668,893.60 from the sale of assets, comprised primarily of loans, operating companies, real estate, and other assets. Noteworthy among the asset sales was the sale of the IHHI loans for \$70,000,000. At the time of the Receiver’s appointment, IHHI was threatening litigation against Medical Capital alleging Medical Capital failed to fund credit facilities and collected accounts receivable it had not advanced. The Receiver negotiated a discounted pay-off of the loan and mutual releases, but structured the discounted pay-off as a sale and subject to over bidding. The Receiver agreed to sell the loans for \$55,000,000 subject to Court approval and overbid. The Receiver then

¹ Net of contingent legal fees

1 identified over- bidders and, with the Court's assistance, created a sense of urgency
2 which culminated in the Court conducting on overbid process that resulted in a final
3 sales price of \$70,000,000.

4 The artful use of overbidding was also demonstrated by the Court in the sale
5 of National Health Care Benefits ("NHBC"). NHBC was losing money when the
6 Receiver was appointed. At that time, the company's sparse liquidity was quickly
7 being withdrawn by Medical Capital. Moreover, NHBC had lost a lawsuit for unfair
8 trade practices brought by its key competitor (who later became a claimant in the
9 receivership). Vendor relationships were evaporating and the company faced its
10 own demise. The Receiver held off the judgment creditor, renegotiated trade debt,
11 stabilized operations and brought the company first to break-even, then to a modest
12 profit at which time the business was appraised for \$3.4 million (another appraisal
13 put the value at \$1.9 million). The Receiver agreed to sell NHBC for \$3.2 million
14 subject to Court approval and an overbid process. The Receiver then worked hard
15 to identify potential over-bidders to participate in the auction to be conducted by the
16 Court. Judge Carter conducted the overbid process at which 47 overbids brought the
17 sales price to \$7.05 million.

18 Other noteworthy sales include the Homestretch, then the largest yacht in
19 Newport Beach, for \$1.6 million, TRACE Life Sciences (the nuclear accelerator in
20 Denton, Texas) for \$1.375 million; Vivavision for \$1 million; , the Parkway
21 Hospital note for \$5.39 million, Castle Hill retirement home for \$13.753 million,
22 and Southwest Atlanta hospital for \$5.1 million.

23 Litigation settlement proceeds. The Receiver sued three law firms and
24 resolved all of the matters prior to trial. The Court approved the resolutions. Legal
25 fees to prosecute the actions were almost entirely incurred on a contingent basis in
26 accordance with the Court's direction.

27 The Receiver also sought and received Court approval to sue the banks that
28 acted as bond indenture trustees for Medical Capital. The Receiver sued Bank of

1 New York Mellon ("BNY") and Wells Fargo Bank ("Wells") (collectively the
2 "Banks") for breach of contract, breach of their duties as bond indenture trustees,
3 and aiding and abetting breaches of fiduciary duty in connection with their roles as
4 bond indenture trustees for the MPFCs. The Receiver engaged in substantive
5 settlement discussions with Wells prior to filing the complaint, which took place
6 over the course of many months. The Receiver's forensic accounting gave him the
7 ability to quantify the damages arising from the alleged breaches and provided a
8 framework for a resolution. The parties engaged in mediation and ultimately the
9 Receiver reached an agreement to settle the matter with Wells for \$49 million. With
10 the Wells settlement in hand, the Receiver then engaged BNY in a mediation that
11 resulted in a settlement of \$57 million, for a combined total of \$106 million. Both
12 settlements were subject to Court approval. The Court considered the Receiver's
13 proposed settlements with the indenture trustees in December, 2012. At the hearing
14 to approve the settlements, Bank of New York Mellon announced a proposed
15 separate settlement with the class and mass action plaintiffs that fully released BNY,
16 and BNY withdrew its joinder of the Receiver's motion to approve the settlements.
17 At the same time, the Court denied Wells' summary judgment motion, effectively
18 denying approval of the Receiver's settlements. Ultimately, the noteholder plaintiffs
19 settled with both Banks for an aggregate of approximately \$219 million, of which
20 the noteholders received approximately \$180 million after attorneys' fees. While
21 the Receiver's proposed settlement was not the one ultimately implemented, the
22 process he initiated narrowed the legal arguments and gave the noteholders a
23 meaningful starting point for discussions that ultimately lead to very significant
24 settlements.

25 Operating company revenues. The Receiver operated NHBC for over 3 years
26 during which time the company had revenue of \$20.8 million. The Receiver also
27 identified a distributor for the movie the Perfect Game, which generated \$1.5
28 million in revenues, a dismal financial result. The Receiver also operated

1 Vivavision for approximately one year during which time Vivavision had revenue of
2 \$1.147 million. The total revenue of entities operated by the Receiver was
3 \$23,430,825.80.

4 Loan collections. The Receiver collected \$15.8 million from the loans made
5 by Medical Capital, only two of which were not in monetary default at the time of
6 the Receiver's appointment. The balance of the loans required aggressive collection
7 efforts, including the filing of a number of collection actions. Some of the larger
8 and more complex problem loans administered by the Receiver include Lavipharm,
9 a pharmaceutical company to whom Medical Capital lent \$46 million. Medical
10 Capital had forgiven \$16 million of debt prior to the Receiver's appointment. Of the
11 remaining \$30 million, the Receiver collected \$5.635 million before the FDA denied
12 approval of Lavipharm's product and the borrower stopped making payments. The
13 note recently sold for \$140,000. Other larger and more complex loans include
14 TEEM/Anthony Macaluso and Pyramid Technologies/Mavusi.

15 Income tax refunds. Through the forensic accounting discussed above, the
16 Receiver also found that Medical Capital's investing and lending activities were not
17 profitable, contrary to the Entities' reporting of profits on their financial statements
18 and income tax returns. Moreover, the Entities had paid the income taxes on their
19 overstated income. The Receiver used the forensic accounting to prepare and file
20 amended tax returns for 2004, 2005, 2006, 2007 and 2008, as well as the pre-
21 receiver 2009 return. These amended returns resulted in tax refunds of \$11.6
22 million, including interest of approximately \$266,000 on the refunds. The refunds
23 were paid only after a year-long IRS audit and the approval of a congressional
24 oversight committee.

25 Accounts receivable collections. The Receiver collected \$2.7 million from
26 medical accounts receivable Medical Capital had purchased from medical providers
27 and others. The Receiver learned that many of Medical Capital's purported accounts
28 receivable were owed by defunct companies or were bogus, or were overvalued.

1 Rental income. The Receiver collected rental income of \$561,519.34
2 primarily from the Southwest Atlanta hospital property prior to its sale.

3 Property tax refunds. The Receiver successfully renegotiated property taxes
4 on the Southwest Atlanta hospital and recovered \$501,184.58.

5 Disgorgement proceeds. Defendant Sid Field paid the receivership \$400,000
6 in connection with his consent to the SEC's final judgment.

7 Interest income. Notwithstanding the very low interest rate environment
8 during the receivership, the Receiver invested excess cash in treasury bills and
9 certificates of deposit and earned \$209,026.51.

10 Expenses of the receivership. The Profit & Loss statement provided as
11 Exhibit A sets forth the disbursements of the Receivership. Total disbursements
12 were \$172,723,666.21 and may be summarized as follows:

13 Distributions to noteholders and claimants	\$117,432,579.46
14 NHBC, Vivavision, Perfect Game expenses	\$22,868,133.67
15 Operating expenses	\$12,688,681.17
16 Professional fees and expenses	\$15,077,942.69
17 <u>Receivers' fees</u>	<u>\$4,656,329.22</u>
18 Total disbursements	\$172,723,666.21

19 Fee reserve. The Receiver wishes to establish a small reserve of \$45,000 for
20 fees to administer the post distribution inquiries of noteholder and claimants. In the
21 Receiver's experience, the making of a distribution triggers investor inquiries and
22 other issues related to checks returned by the post office due to a wrong address, or
23 deceased recipients. The Receiver has no way to accurately estimate the cost of this
24 work and requests that the Court establish a reserve of \$45,000 for these costs.
25 Similarly, the Receiver wishes to reserve \$5,000 for Allen Matkins' post-closing
26 fees. If the costs exceed \$45,000 and \$5,000 reserves, the Receiver and his counsel
27 will absorb the additional cost. If the costs are less than the reserve, the Receiver
28

1 will turn over the unused portion to the Securities and Exchange Commission for
2 turnover to the United States Treasury.

3 Expense reserve. The Receiver will continue to incur certain operating
4 expenses after the filing of this final account and report. These expenses are for the
5 storage warehouse, as well as the cost to destroy books & records and digital
6 records. The Receiver anticipates the need for an operating expense reserve of
7 \$20,021.77 which is comprised of:

8	Storage fees	\$5,950.20
9	Utilities, alarm	\$1,395.00
10	Document destruction	\$3,150.00
11	Postage	\$4,230.00
12	Bank charges	\$600.00
13	Payroll service fees	\$500.00
14	Payroll taxes on employee dist.	\$996.57
15	Computer destruction	\$2,000.00
16	<u>Contingency</u>	<u>\$1,200.00</u>
17	Total expense reserve	\$20,021.77

18 If the costs are less than the reserve, the Receiver will turn over the unused portion
19 to the Securities and Exchange Commission for turnover to the United States
20 Treasury.

21 Available Cash and Disposition of Funds. The Receiver is holding cash in the
22 amount of \$37,995,427.09. If the Court approves the Receiver's, his counsel's, and
23 the tax accountant's fee applications as submitted, and allows the Receiver a reserve
24 of \$45,000 to administer investor inquiries after the final distribution, a reserve of
25 \$5,000 for additional legal fees, and allows an expense reserve of \$20,021.77 to
26 close the receivership, there will be \$34,200,867.99 available for distribution to
27 claimants. The foregoing may be summarized as follows:

28	Cash on hand	\$37,995,427.09
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1	Pay agent distributions	\$95,090.67
2	Crowe Horwath fee app	\$412,974.21
3	Receiver 23 rd fee app	\$283,180.00
4	Receiver's holdback	\$517,628.95
5	Allen Matkins 23 rd fee app	\$403,083.60
6	Allen Matkins holdback	\$2,012,579.90
7	Allen Matkins post-closing reserve	\$5,000.00
8	Receiver fee reserve for final dist.	\$45,000.00
9	<u>Expense reserve</u>	<u>\$20,021.77</u>
10	Final distribution	\$34,200,867.99

11 The Receiver has previously distributed \$117,432,579.46. As a result, and in
 12 accordance with the Plan of Distribution, final distributions to claimants will be
 13 made *in pari passu*, with all claimants receiving the same pro rata share of the final
 14 distribution, whether they were an employee, noteholder, priority creditor, or non-
 15 priority creditor. The claims of each of these categories and their respective
 16 collective pro rata share and total amount to be distributed can be summarized as
 17 follows:

	Net Claims	Pro rata share	Final distribution
18 Noteholders	\$546,138,809.38	98.6%	\$33,750,473.57
19 Creditors	\$7,295,937.59	1.3%	\$439,137.05
20 <u>Employees</u>	<u>\$181,892.55</u>	<u><0.1%</u>	<u>\$11,257.37</u>
21 Total	\$553,616,639.52	100.0%	\$34,200,867.99

22
23
24 **INVESTOR RECOVERY ANALYSIS**

25 The total of all MIMO investor claims is \$831,130,893. Investors received
 26 payments from broker-dealers, the bond indenture trustees, and from the Receiver.
 27 Investor recoveries can be summarized as follows:

28	Gross MIMO claims before 3 rd party recoveries	\$831,130,893
----	-----------------------------------------------------------	---------------

1	Third party recoveries ² :	
2	Net amount recovered from broker-dealers	\$102,035,159
3	Net amount recovered from Trustees	\$180,921,848
4	Disallowed claims ³	\$1,906,026.72
5	Net MIMO claims of the receivership	\$546,267,859
6	Funds distributed to investors by the Receiver:	
7	First distribution	\$117,432,579
8	Final distribution	\$34,200,868
9	Total paid by the Receiver	\$151,633,447
10		
11	% of gross MIMO claims	18.2%
12	% of net MIMO claims	27.7%
13		
14	Total funds recovered from all sources	\$434,590,454
15	% of gross MIMO claims	52.3%

17 **CLOSING THE RECEIVERSHIP ESTATE**

18 Books & records. The Receiver is currently in possession of voluminous
19 books and records that are stored at a warehouse in Santa Ana. The Receiver is also
20 in possession of Medical Capital's digital records. The Receiver seeks authority to
21 destroy all the books and records of Medical Capital. The Receiver will continue to
22 maintain his work product files for a period of seven years following conclusion of
23 the receivership.

24
25 _____
26 ² These amounts are understated to the extent that a claimant received more than
their claim from third parties

27 ³ The claims of investors who did not return a third party recovery certification form
or did not cash their first distribution checks have been deemed disallowed in
28 accordance with the Plan of Distribution. The Receiver made exhaustive efforts
to contact these claimants without success, with exception of the investor
referenced above who contacted the Receiver October 6, 2016.

1 Taxes. The Receiver created a Qualified Settlement Fund (“QSF”) for the
2 receivership estate. All assets of the receivership entities were transferred to the
3 QSF at their then current market value and taxable gains and losses were calculated
4 accordingly and reflected in the QSF tax returns. The Receiver will file the 2016
5 QSF returns as required. The cost to prepare the returns has been included in the
6 Receiver’s and his tax accountants’ final fee applications. The receivership estate
7 does not have any tax liabilities. The Receiver has requested Prompt Assessment
8 from the IRS confirming that no taxes are owed, as well as a closing letter. Upon
9 receipt of the closing letter, the Receiver will make the final distribution to investors
10 and claimants.

11 Claims. Once the final distribution is made the Receiver will not have the
12 ability to modify or correct the amount of a claim or the total amount distributed.
13 The Receiver therefore seeks Court confirmation that the claim and distribution
14 amounts are deemed to be final. Exhibit C provides a list of claimants, the amount
15 of their MIMO claim, the amount their claim was reduced due to third party
16 recoveries, and the amount that they will receive from the final distribution.
17 Investors and Claimants were provided these amounts in the Receiver’s original
18 motion. Many investors contacted the Receiver with questions and objections.
19 These objections have all been addressed. The original motion also included a list
20 of disallowed claimants in one final attempt to locate the missing claimants. One
21 such claim, discussed above, has been removed from the list of disallowed claims.
22 The Receiver is filing a revised proposed order accordingly.

23 Unclaimed funds. Given the large volume of checks to be issued, there is a
24 strong chance that some checks will not be negotiated or may be returned for any
25 number of reasons. The Receiver recommends that all checks that are not
26 negotiated within 90 days be voided and the funds paid to the Securities and
27 Exchange Commission for turnover to the United States Treasury.

28

1 90 days, and any funds received following the final distribution, to the Securities
2 and Exchange Commission for turnover to the United States Treasury; 7) approving
3 the Receiver's Final Account & Report as amended herewith and finding the
4 Receiver's actions during his administration are ratified, confirmed and approved as
5 being right and proper and in the best interest of the receivership estate and parties
6 to this action; 8) discharging the Receiver from all further duties, liabilities and
7 responsibilities, including those that may be imposed by state, municipal or local tax
8 or corporate authorities, upon the lodging of a declaration with the Court affirming
9 the faithful completion of his duties as ordered herein; 9) retaining the jurisdiction
10 of this Court over receivership matters; and any other orders that Court may deem
11 fair and just.

12
13 Respectfully submitted,



14
15 Thomas A. Seaman, Receiver

16 Dated: October 6, 2016

17 ALLEN MATKINS LECK GAMBLE
18 MALLORY & NATSIS LLP

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