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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

IN RE: MEDICAL CAPITAL
SECURITIES LITIGATION

) Lead Case No. SA-10-ML-02145
) DOC (RNBx)

_____)
This document relates to:

) **NOTICE OF SETTLEMENT
) WITH DEFENDANT WELLS
) FARGO BANK, N.A.**

Case No. SA-CV-09-1048 DOC (RNBx)

) CTRM.: 9D
) JUDGE: Hon. David O. Carter

Case No. SA-CV-10-6561 DOC (RNBx)

Case No. SA-CV-10-0548 DOC (RNBx)

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Pursuant to Local Rule 16-15.7, PLEASE TAKE NOTICE that the parties in
3 the above-captioned actions have reached an agreement to settle all claims between
4 Plaintiffs and Defendant Wells Fargo Bank. The Settlement Agreement, which is
5 subject to Court-approval, is attached hereto.

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Dated: April 30, 2013

COTCHETT, PITRE & MCCARTHY, LLP

/s/ Mark C. Molumphy
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17

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 SOUTHERN DIVISION

21 *In re: MEDICAL CAPITAL
22 SECURITIES LITIGATION*

CASE NO. SA 10-ML-2145 DOC (RNB)

23 This document relates to:
24 NO. SACV 09-1048 DOC (RNB)
25 NO. SACV 10-00548 DOC (RNBx)
26 NO. SACV 10-6561 DOC (RNB)
27

**STIPULATION OF SETTLEMENT
BETWEEN NOTEHOLDER
PLAINTIFFS AND WELLS FARGO
BANK, N.A.**

28

1 Wells Fargo Bank, N.A. (“Wells Fargo”), on the one hand, and plaintiffs in
2 the action captioned *Masonek v. Wells Fargo Bank, N.A.*, Case No. SACV 09-1048
3 DOC (RNBx) (the “Masonek Plaintiffs”), plaintiffs in the action captioned *Bain v.*
4 *Wells Fargo Bank, N.A., et al.*, Case No. SACV 10-00548 DOC (RNBx) (the “Bain
5 Plaintiffs”), and plaintiffs in the action captioned *Abbate v. Wells Fargo Bank, N.A.*,
6 Case No. SACV 10-6561 DOC (RNBx) (the “Abbate Plaintiffs” and, together with
7 the Masonek Plaintiffs and the Bain Plaintiffs, the “Plaintiffs”), on the other hand,
8 by and through their respective counsel, in consideration for and subject to the
9 promises, terms, and conditions contained in this Stipulation of Settlement, hereby
10 stipulate and agree, subject to Court approval pursuant to Rule 23 of the Federal
11 Rules of Civil Procedure, as follows. Wells Fargo, the Masonek Plaintiffs, the Bain
12 Plaintiffs, and the Abbate Plaintiffs are collectively referred to herein as the
13 “Parties” and individually as a “Party” to this Stipulation of Settlement.

14 **I. RECITALS**

15 1. Medical Provider Financial Corporation I (“MP I”), Medical Provider
16 Financial Corporation II (“MP II”), Medical Provider Financial Corporation III
17 (“MP III”), Medical Provider Financial Corporation IV (“MP IV”), Medical
18 Provider Funding Corporation V (“MP V”), and Medical Provider Funding
19 Corporation VI (“MP VI”) (collectively, the “MedCap SPCs”) are wholly owned
20 subsidiaries of Medical Capital Holdings, Inc. (“MCH”). Each MedCap SPC sold
21 promissory notes (the “Notes”) to investors (the “Noteholders”). Medical Capital
22 Corporation (“MCC”) served as the administrator for each of the MedCap SPCs.

23 2. Each of MP III and MP V entered into separate Note Issuance and
24 Security Agreements (“NISAs”) with Wells Fargo pursuant to which Wells Fargo
25 agreed to serve as indenture trustee for the initial series of Notes sold by that entity.
26 MP III also entered into a supplemental NISA with Wells Fargo whereby Wells
27 Fargo agreed to serve as indenture trustee for a second series of MP III Notes.

28

1 Wells Fargo also served as the disbursing agent for MPI, MP II, MP III, MP IV,
2 MP V and MP VI.

3 3. Each of MP I, MP II, MP IV and MP VI entered into separate NISAs
4 with The Bank of New York Mellon (“BNYM”) pursuant to which BNYM agreed
5 to serve as indenture trustee for the initial series of Notes sold by those entities.
6 MP IV also entered into a supplemental NISA with BNYM whereby BNYM agreed
7 to serve as indenture trustee for a second series of MP IV Notes.

8 4. On or about July 16, 2009, the U.S. Securities and Exchange
9 Commission (the “SEC”) brought a Complaint against MCH, MCC, MP VI, Sidney
10 M. Field, and Joseph J. Lampariello, in the United States District Court for the
11 Central District of California, in an action captioned *Securities & Exchange*
12 *Commission v. Medical Capital Holdings, Inc.*, Case No. SACV 09-818 DOC
13 (RNBx) (the “SEC Action”).

14 5. On or about August 18, 2009, the Court entered an order in the SEC
15 Action, appointing Thomas A. Seaman as permanent receiver (the “Receiver”) for
16 MCH and its affiliates (the “Receivership Entities”).

17 6. On or about September 11, 2009, seven individuals who are holders of
18 Notes issued by MP II, MP III, MP IV, MP V, and MP VI initiated a putative class
19 action lawsuit against Wells Fargo and BNYM in the United States District Court
20 for the Central District of California, in an action captioned *Masonek v. Wells*
21 *Fargo Bank, N.A.*, Case No. SACV 09-1048 DOC (RNBx). Thereafter, four other
22 putative class action lawsuits were filed in the Central District of California based
23 on substantially the same allegations. Pursuant to an Order issued by the Court on
24 or about October 21, 2009, all of those actions were consolidated into the *Masonek*
25 *v. Wells Fargo Bank, N.A.* action (the “Masonek Action” or the “Class Action”).
26 The operative complaint in the Masonek Action was filed on or about December
27 17, 2012.

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1 7. On or about December 17, 2009, more than 100 individuals who
2 purported to be holders of Notes issued by MP II, MP III, MP IV, MP V, and MP
3 VI initiated a mass action lawsuit against Wells Fargo and BNYM in the United
4 States District Court for the Eastern District of California, in an action captioned
5 *Bain v. Wells Fargo Bank, N.A.*, Case No. SACV 09-2218 LJO-GSA (the “Bain
6 Action”). On or about April 16, 2010, the United States Judicial Panel on
7 Multidistrict Litigation issued an order transferring the Bain Action to the Central
8 District of California for coordinated pretrial proceedings with the Masonek Action
9 and other related actions. As used herein, “Bain Plaintiffs” refers to all individuals
10 named as plaintiffs in the operative complaint in the Bain Action, filed on or about
11 January 18, 2013.

12 8. On or about November 25, 2009, nearly 1,700 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 Circuit
15 Court of the 17th Judicial Circuit in and for Broward County, Florida, in an action
16 captioned *Abbate v. Wells Fargo Bank, N.A.*, Case No. 09-63927 (the “Abbate
17 Action”). On or about December 29, 2009, the Abbate Action was removed to the
18 United States District Court for the Southern District of Florida and, on or about
19 August 31, 2010, the action was transferred to the Central District of California, in
20 an action captioned *Abbate v. Wells Fargo Bank, N.A.*, Case No. SACV 10-6561
21 DOC (RNBx). As used herein, “Abbate Plaintiffs” refers to all individuals named
22 as plaintiffs in the operative complaint in the Abbate Action, filed on or about
23 January 28, 2013.

24 9. The Masonek Action, the Bain Action, and the Abbate Action are
25 collectively referred to herein as the “Noteholder Actions.” Counsel for the
26 Plaintiffs in the Noteholder Actions are collectively referred to herein as “Plaintiffs’
27 Counsel.”

1 10. On or about July 26, 2011, the Court issued an order certifying a class
2 of Noteholders in the Masonek Action. On or about December 8, 2011, the Court
3 approved the form of class notice and class notice plan in the Masonek Action.
4 Pursuant to the class notice plan, class notice was mailed to absent class members
5 on or about January 31, 2012. Class notice and related documents were also
6 published on the website www.medicalcapitalclass.com. Absent class members
7 were given 60 days to opt out of the class—a period that expired on or about March
8 30, 2012.

9 11. The Receiver petitioned the Court for leave to initiate actions against
10 Wells Fargo and BNYM for damages allegedly suffered by the MedCap SPCs. The
11 Court granted such leave on or about October 12, 2010. In or about December of
12 2010, the Receiver entered into tolling agreements with Wells Fargo and BNYM.

13 12. On or about June 7, 2012, the Receiver, Wells Fargo, and BNYM
14 entered into a Settlement Agreement and General Release (the “Receiver
15 Settlement Agreement”). The Receiver Settlement Agreement was conditional,
16 among other things, on the Court’s granting of (i) the Receiver’s motion to approve
17 the settlement (the “Receiver’s Approval Motion”), and (ii) Wells Fargo and
18 BNYM’s motions for summary judgment in each of the Noteholder Actions (the
19 “Summary Judgment Motions”).

20 13. The Receiver’s Approval Motion and the Summary Judgment Motions
21 were filed on or about June 11, 2012. On or about June 11, 2012, the Plaintiffs in
22 the Noteholder Actions filed a motion for summary adjudication (“Plaintiffs’
23 Summary Adjudication Motion”).

24 14. On or about June 7, 2012, the Receiver filed an action against BNYM
25 and Wells Fargo in the United States District Court for the Central District of
26 California, captioned *Thomas A. Seaman v. Wells Fargo Bank, N.A., et al.*, Case
27 No. SACV 12-00926 (CJC)(RNBx) (the “Receiver Action”).

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1 15. While the Receiver's Approval Motion, the Summary Judgment
2 Motions, and Plaintiffs' Summary Adjudication Motion were pending, the Plaintiffs
3 and BNYM undertook extensive arms-length negotiations over the course of many
4 months, and engaged in lengthy mediation sessions and discussions with a
5 respected mediator, Hon. John W. Kennedy, Jr. (Ret.) of JAMS. As a result of
6 those undertakings, BNYM reached an agreement with the Plaintiffs that is set for a
7 Final Approval Hearing on June 24, 2013.

8 16. On February 11, 2013, the Plaintiffs and Wells Fargo filed Cross
9 Motions for Partial Summary Judgment, and Wells Fargo also requested Summary
10 Judgment. The Court issued an order on April 2, 2013 in which it granted and
11 denied the motions in part. While the motions were pending, and after the ruling,
12 Plaintiffs and Wells Fargo conducted settlement discussions with the Hon. Layn R.
13 Philips (Ret.), a respected mediator who assisted the parties in reaching the
14 resolution documented here.

15 17. Plaintiffs' Counsel has carefully considered the highly complex legal
16 and factual issues inherent in litigation against Wells Fargo, and weighed the
17 strength of the Plaintiffs' claims against the substantial uncertainties, delays,
18 expense, and other risks inherent in such litigation. In light of those factors and
19 others, Plaintiffs' Counsel has concluded that it is desirable and in the best interests
20 of the Plaintiffs to settle at this time upon the terms set forth in this Stipulation of
21 Settlement. The Plaintiffs, after consulting with their counsel and advisors, have
22 determined that the terms and conditions of this Stipulation of Settlement are fair,
23 reasonable, and adequate.

24 18. Wells Fargo vigorously denies all allegations of wrongdoing, fault,
25 liability, or damage of any kind to the Plaintiffs, and vigorously denies that it acted
26 improperly in any way in performing its role as indenture trustee under the NISAs
27 or as disbursing agent for entities affiliated with MCH. Wells Fargo believes that
28 the Noteholder Actions and the Receiver Action are without merit. Nevertheless,

1 Wells Fargo also has considered the risks and potential costs of litigation, on the
2 one hand, and the benefits of the proposed settlement, on the other hand, and
3 desires to settle now upon the terms and conditions set forth in this Stipulation of
4 Settlement.

5 19. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the
6 settlement of the claims of the Masonek Plaintiffs and the Class Members is subject
7 to Court approval. The settlement of the claims of the Bain Plaintiffs and the
8 Abbate Plaintiffs, on the other hand, does not require Court approval under Rule 23.

9 Now therefore, it is hereby agreed, by and between the Parties, and subject to
10 the approval of the Court of the Settlement as it relates to the Class Action, upon
11 the terms and conditions enumerated below, that any and all actions, causes of
12 action, suits, debts, covenants, contracts, controversies, agreements, promises,
13 damages, judgments, executions, claims, and demands whatsoever relating to or
14 arising from Wells Fargo's performance under the NISAs and its role as disbursing
15 agent for entities affiliated with MCH will be fully and finally compromised,
16 settled, and released.

17 **II. DEFINITIONS**

18 In addition to the foregoing defined terms, for purposes of this Stipulation of
19 Settlement and all Exhibits hereto, the following terms shall have the meanings as
20 set forth below:

21 20. "Abbate Counsel" means the law firms of Greenspoon Marder P.A.
22 and Schwartz and Janzen, LLP, who have any and all authority and capacity
23 necessary to execute this Stipulation of Settlement and bind all of the Abbate
24 Plaintiffs as if each of those individuals had personally executed this Stipulation of
25 Settlement.

26 21. "Abbate Final Order and Judgment" means an order and judgment
27 dismissing the Abbate Action with prejudice, substantially in the form attached
28 hereto as Exhibit F.

1 22. “Bain Counsel” means the law firm of Perkins, Mann & Everett.

2 23. “Bain Final Order and Judgment” means an order and judgment
3 dismissing the Bain Action with prejudice, substantially in the form attached hereto
4 as Exhibit E.

5 24. “Class” means, as defined by the Court:

6 All persons and entities who purchased or otherwise acquired
7 notes issued by one or more of MP II, MP III, MP IV, MP V,
8 and MP VI and did not receive some or all of their principal or
9 interest payments. Excluded from the Class are: (i) Defendants
10 Wells Fargo and BNYM, and their subsidiaries, parents,
11 affiliates, and controlled persons or entities, as well as their
12 family members, employees and representatives; and (ii) MCH,
13 MCC, Medical Tracking Services, Inc., and MP II, MP III, MP
14 IV, MP V, and MP VI, and their subsidiaries, parents, affiliates,
15 and controlled persons or entities, including specifically all of
16 their past or present officers or directors (including Sidney M.
17 Field and Joseph J. Lampariello), as well as their family
18 members, employees and representatives.

19 25. “Class Action Final Order and Judgment” means an order and
20 judgment fully and finally approving the Settlement in the Class Action and
21 dismissing the Class Action with prejudice, substantially in the form attached
22 hereto as Exhibit D.

23 26. “Class Member(s)” means any member of the Class who did not elect
24 exclusion or opt out from the Class and who did not otherwise receive Court
25 approval for his or her untimely request to opt out or be excluded from the Class.

26 27. “Class Counsel” means, collectively, Co-Lead Class Counsel and
27 Class Counsel Executive Committee (defined below).

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1 28. "Class Counsel Executive Committee" means the law firms of Milberg
2 LLP, Minami Tamaki, Law Office of Michael D. Liberty, and
3 Aitken*Aitken*Cohn, or as ordered by the Court.

4 29. "Co-Lead Class Counsel" means the law firms of Cotchett, Pitre &
5 McCarthy LLP and Westerman Law Corp., or as ordered by the Court.

6 30. "Court" means the United States District Court for the Central District
7 of California.

8 31. "Defense Counsel" means the law firm of Munger, Tolles & Olson
9 LLP.

10 32. "Effective Date" means the date on which the Final Orders and
11 Judgments (defined below) in the Noteholder Actions become "Final." As used in
12 this Stipulation of Settlement, "Final" means after all of the following conditions
13 have been satisfied:

14 a. the Final Orders and Judgments have been entered;

15 b. (i) if reconsideration and/or appellate review is not sought from
16 any of the Final Orders and Judgments, the expiration of the time for the filing or
17 noticing of any motion for reconsideration, appeal, petition, and/or writ; or (ii) if
18 reconsideration and/or appellate review is sought from any of the Final Orders and
19 Judgments: (A) the date on which the Final Orders and Judgments are affirmed and
20 are no longer subject to judicial review, or (B) the date on which the motion for
21 reconsideration, appeal, petition, or writ is dismissed or denied and the Final Orders
22 and Judgments are no longer subject to judicial review; or (iii) in the event that the
23 Court enters an order and final judgment in a form other than that provided above
24 ("Alternative Judgment") and none of the Parties elect to terminate this Settlement,
25 the date that such Alternative Judgment becomes Final and no longer subject to
26 judicial review; and

27 c. execution and delivery by Wells Fargo and the Receiver (with
28 copies to the Parties) of all of the documents called for by Paragraph 59.

1 33. “Fairness Hearing” means the hearing that is to take place after the
2 entry of the Preliminary Approval Order and after the Notice Date for purposes of:
3 (a) entering the Class Action Final Order and Judgment and dismissing the Class
4 Action with prejudice; (b) determining whether the Settlement should be approved
5 as fair, reasonable, adequate and in the best interests of the Class; and (c) to rule
6 upon application(s) by Class Counsel for an award of attorneys’ fees.

7 34. “Final Orders and Judgments” means, collectively, the Class Action
8 Final Order and Judgment, the Bain Final Order and Judgment, the Abbate Final
9 Order and Judgment, and, if the Court determines that California Code of Civil
10 Procedure Section 877.6, *et seq.*, applies, the Good Faith Settlement Order; provided
11 however, that the terms of Paragraph 32(b) hereto shall not apply to the Good Faith
12 Settlement Order. For avoidance of doubt and by way of illustration only, in the
13 event that an appeal is taken from the Good Faith Settlement Order but no appeal
14 has been taken from any other order and judgment that comprises the Final Orders
15 and Judgments and the time for appeal of such other orders and judgments has
16 expired, then the pendency of the appeal from the Good Faith Settlement Order
17 shall not delay the Effective Date.

18 35. “Good Faith Settlement Motion” means the motion to be filed by
19 Wells Fargo in the SEC Action seeking a declaration of good faith settlement and a
20 “bar order” as set forth in Paragraph 89 of this Stipulation of Settlement.

21 36. “Good Faith Settlement Order” means the Order entered by the Court
22 granting the Good Faith Settlement Motion substantially in the form attached hereto
23 as Exhibit G.

24 37. “Litigation Managers” means any and all litigation managers of the
25 Abbate Action, including but not limited to: Waverton Group, LLC and its
26 members, managers, employees and agents; and Signature Advisors LLC and its
27 principal David Rentz.

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1 38. "Long Form Notice" means the long form notice of settlement,
2 substantially in the form attached hereto as Exhibit B.

3 39. "Notice Date" means the date that the Long Form Notice and/or
4 Summary Notice is initially mailed or published (as appropriate).

5 40. "Medical Capital" means MCH and all of its subsidiaries and affiliates
6 including but not limited to MCC, the MedCap SPCs, and the Receivership
7 Entities.

8 41. "Preliminary Approval Order" means the Order Preliminarily
9 Approving Class Action Settlement, Approving Proposed Notice, and Scheduling
10 Fairness Hearing, substantially in the form attached hereto as Exhibit C.

11 42. "Released Claims" means all claims, rights, debts, demands, causes of
12 actions, suits, dues, sums of money, accounts, bonds, bills, covenants, contracts,
13 controversies, agreements, promises, judgments, variances, executions, obligations,
14 damages, losses, fees, costs, rights, matters, and issues, whether based on federal,
15 state, local, statutory, or common law, or any other law, rule, or regulation, or
16 whether based in equity, whether suspected or unsuspected, fixed or contingent,
17 accrued or un-accrued, liquidated or un-liquidated, matured or un-matured, class or
18 individual in nature, that have been, might have been, or could be asserted (or
19 threatened, alleged, or litigated) at law, in equity, or otherwise, at any time, in any
20 capacity, that were asserted or that could have been asserted in the Noteholder
21 Actions, the Receiver Action, or in any court of competent jurisdiction or other
22 tribunal or adjudicative body by anyone, which arise out of, touch upon, or relate in
23 any way whatsoever to Medical Capital, the NISAs, the Notes, or the
24 administration of the NISAs and all related agreements, from the beginning of time
25 through the date of entry of the Final Orders and Judgments.

26 43. "Released Parties" means (a) Wells Fargo's parent corporation,
27 subsidiaries, and affiliates, (b) all current and former directors, officers, and
28 employees of Wells Fargo and its parent corporation, subsidiaries, and affiliates,

1 but only in their capacity as such directors, officers, and employees, and (c) all
2 other agents and attorneys of Wells Fargo and its parent corporation, subsidiaries,
3 and affiliates, but only with respect to actions taken or omissions made by such
4 agents and attorneys on behalf of these entities in connection with Wells Fargo's
5 exercise of its rights and performance of its obligations under the NISAs, and as
6 disbursing agent for any and all entities affiliated with MCH. Released Parties do
7 not include (i) Mayer Hoffman McCann P.C., CBIZ, Inc., CBIZ MHM, LLC, CBIZ
8 Orange County, CBIZ San Diego or any of their past or present subsidiaries,
9 affiliates, parents, successors, and predecessors, (ii) the current or former directors,
10 officers, and employees of Mayer Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM,
11 LLC, CBIZ Orange County, CBIZ San Diego or any of their past or present
12 subsidiaries, affiliates, parents, successors, and predecessors, or (iii) all other agents
13 and attorneys of Mayer Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC,
14 CBIZ Orange County, CBIZ San Diego or any of their past or present subsidiaries,
15 affiliates, parents, successors, and predecessors.

16 44. "Settlement Fund" means the fund to be created by Plaintiffs' Counsel
17 for the purpose of maintaining the Settlement Payment, as set forth in Paragraph 53
18 of this Stipulation of Settlement.

19 45. "Settlement Payment" means the payment to be made by Wells Fargo
20 to the Settlement Fund, as set forth in Paragraph 54 of this Stipulation of
21 Settlement.

22 46. "Settlement" means the settlement evidenced by this Stipulation of
23 Settlement.

24 47. "Settlement Administrator" means the qualified third party selected by
25 the Masonek Plaintiffs and Wells Fargo, and approved by the Court in the
26 Preliminary Approval Order, to administer the Settlement, including providing
27 notice to Class Members. The Masonek Plaintiffs and Wells Fargo agree to
28

1 recommend that the Court appoint Kurtzman Carson Consultants LLC as
2 Settlement Administrator.

3 48. "Summary Notice" means the summary notice of settlement,
4 substantially in the form attached hereto as Exhibit A.

5 49. "Supplemental Agreement" means the separate, confidential
6 agreement among the Parties, pursuant to Paragraph 61 of this Stipulation of
7 Settlement, which is intended to be incorporated into this Stipulation of Settlement.
8 The Parties intend that the Supplemental Agreement shall be specifically disclosed
9 to the Court and offered for *in camera* inspection by the Court at or before entry of
10 the Preliminary Approval Order.

11 **III. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR**
12 **REVIEW**

13 50. As soon as is practicable but no later than May 10, 2013, Class
14 Counsel shall apply to the Court for entry of the Preliminary Approval Order
15 (substantially in the form attached hereto as Exhibit C), for the purpose of, among
16 other things:

17 a. Approving the Summary Notice and the Long Form Notice,
18 substantially in the form attached hereto as Exhibits A and B, respectively;

19 b. Preliminarily approving the Settlement as to the Class as being
20 fair, reasonable, and adequate and in the best interests of the Noteholders, such that
21 the Long Form Notice and Summary Notice should be provided pursuant to this
22 Stipulation of Settlement;

23 c. Scheduling the Fairness Hearing not earlier than ninety (90)
24 days following the Notice Date to determine whether the Settlement should be
25 approved as to the Class as fair, reasonable, adequate and in the best interests of the
26 Plaintiffs and the Class Members, and to determine whether the Class Action Final
27 Order and Judgment should be entered dismissing the Class Action with prejudice;

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1 d. Preliminarily approving the form of the Class Action Final
2 Order and Judgment;

3 e. Directing that notice of the Settlement and of the Fairness
4 Hearing shall be given to the Class Members as follows:

5 i. by mailing, on or before the Notice Date as
6 specified in the Preliminary Approval Order, the Long Form
7 Notice substantially in the form attached hereto as Exhibit B, to
8 the last known addresses of the Class Members;

9 ii. by publishing, on or before the Notice Date as
10 specified in the Preliminary Approval Order, a copy of the
11 Summary Notice substantially in the form attached hereto as
12 Exhibit A, in the Legal Section of *USA Today* ; and

13 iii. by providing a link in the Long Form Notice and
14 the Summary Notice to a website at the domain name
15 www.medicalcapitalclass.com that will contain the settlement
16 documents (including but not limited to the Long Form Notice),
17 a list of important dates, and any other information to which the
18 Parties may agree;

19 f. Providing that any objections by any Class Member to the
20 proposed Settlement contained in this Stipulation of Settlement, and/or the entry of
21 the Final Orders and Judgments, shall be heard and any papers submitted in support
22 of said objections shall be considered by the Court at the Fairness Hearing only if,
23 on or before the date(s) specified in the Long Form Notice, the Summary Notice,
24 and the Preliminary Approval Order, such objector files with the Court a notice of
25 the objector's intention to appear, and otherwise complies with the requirements in
26 Paragraphs 82 and 83 of this Stipulation of Settlement;

1 g. Establishing dates by which the Parties shall file and serve all
2 papers in support of the application for final approval of the Settlement and/or in
3 response to any valid and timely objections;

4 h. Providing that all Class Members will be bound by the Class
5 Action Final Order and Judgment dismissing the Class Action with prejudice;

6 i. Pending the Fairness Hearing, staying all proceedings in the
7 Noteholder Actions relating to Wells Fargo or any of the Released Parties, other
8 than proceedings necessary to carry out or enforce the terms and conditions of this
9 Stipulation of Settlement and the Preliminary Approval Order; and

10 j. Pending the Fairness Hearing, enjoining the Plaintiffs and Class
11 Members, or any of them, from commencing or prosecuting, either directly or
12 indirectly, any action asserting any of the Released Claims against Wells Fargo or
13 any of the Released Parties.

14 51. Following the entry of the Preliminary Approval Order, the Long Form
15 Notice and the Summary Notice shall be given and published in the manner
16 directed and approved by the Court.

17 52. The Parties agree that the notice plan contemplated by this Stipulation
18 of Settlement is valid and effective, that it provides reasonable notice to the Class
19 Members, and that it represents the best practicable notice under the circumstances.

20 **IV. THE SETTLEMENT PAYMENT, THE SETTLEMENT FUND, AND**
21 **ITS DISTRIBUTION**

22 53. A Settlement Fund shall be created by Plaintiffs' Counsel by opening
23 an interest bearing escrow account with one of the following banks: Société
24 Générale S.A., Deutsche Bank, ANZ Bank New Zealand Limited, BMO Harris
25 Bank, N.A., Bank of America, or RBS (and affiliates).

26 54. No later than ten (10) business days after entry of the Preliminary
27 Approval Order, Wells Fargo shall make the Settlement Payment to the Settlement
28 Fund in the amount of one-hundred and five million dollars (\$105,000,000).

1 a. Upon deposit of the Settlement Payment into escrow, the
2 Settlement Payment and any income or interest earned thereon shall be the “Gross
3 Settlement Fund.”

4 b. The Gross Settlement Fund will be divided in proportionate
5 shares as follows: 4% (\$4,200,000 plus proportionate interest) to the Bain
6 Plaintiffs, 16.46% (\$17,283,000 plus proportionate interest) to the Abbate
7 Plaintiffs, and 79.54% (\$83,517,000 plus proportionate interest) to the Class. Wells
8 Fargo played no role in calculating, and expresses no view regarding these shares.
9 Wells Fargo shall have no responsibility or liability whatsoever for how the
10 Settlement Fund or the Gross Settlement Fund is allocated as among the Bain
11 Plaintiffs, the Abbate Plaintiffs, and the Class.

12 c. The Gross Settlement Fund, net of any Taxes (as defined below)
13 on the income thereof, shall be used to pay (i) costs of notice and administration
14 referred to in Paragraph 56 hereof to be subtracted directly and only from the share
15 allocable to the Class, (ii) the attorneys’ fee and expense award referred to in
16 Paragraph 95a hereof and the service awards referred to in Paragraph 95b hereof,
17 both to be subtracted directly and only from the share allocable to the Class, and
18 (iii) the portions allocable to the Bain Plaintiffs and the Abbate Plaintiffs referred to
19 in Paragraph 54(b) hereof. The balance of the Gross Settlement Fund after the
20 above payments shall be the “Net Settlement Fund.” The Net Settlement Fund shall
21 be distributed to the Class as provided in Paragraphs 71–81 hereof. Any sums
22 required to be held in escrow hereunder prior to the Effective Date shall be held for
23 the purposes of this Settlement by the Settlement Administrator or its designated
24 affiliate as the escrow agent(s). All funds required to be held in escrow hereunder
25 shall be deemed to be in the custody of the Court and shall remain subject to the
26 jurisdiction of the Court until such time as the funds shall be distributed or returned
27 to Wells Fargo pursuant to this Stipulation of Settlement and/or further order of the
28 Court. The escrow agent(s) shall invest any funds held in escrow in short-term

1 United States Agency or Treasury Securities (or a mutual fund invested solely in
2 such instruments), or in a fully US Government-insured or FDIC-insured account,
3 and shall collect and reinvest any and all interest accrued thereon. The Parties
4 agree that the Settlement Fund is intended to be a Qualified Settlement Fund within
5 the meaning of Treasury Regulation § 1.468B-1 and that the Settlement
6 Administrator or its designated affiliate, as administrator of the Settlement Fund
7 within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible
8 for filing tax returns for the Settlement Fund and paying from the Settlement Fund
9 any Taxes owed with respect to the Settlement Fund. The Parties agree that the
10 Settlement Fund shall be treated as a Qualified Settlement Fund from the earliest
11 date possible, and agree to any relation-back election required to treat the
12 Settlement Fund as a Qualified Settlement Fund from the earliest date possible.
13 Defense Counsel agree to provide promptly to the escrow agent(s) the statement
14 described in Treasury Regulation § 1.468B-3(e).

15 d. All (i) taxes on the income of the Gross Settlement Fund and (ii)
16 expenses and costs incurred in connection with the taxation of the Gross Settlement
17 Fund (including, without limitation, expenses of tax attorneys and accountants)
18 (collectively, "Taxes") shall be paid out of the Gross Settlement Fund, shall be
19 considered to be a cost of administration of the Settlement, and shall be timely paid
20 from the Settlement Fund without prior Order of the Court.

21 55. The Parties agree that the Settlement Payment is the full extent of
22 Wells Fargo's payment obligation under this Stipulation of Settlement, and that the
23 Settlement Payment is an all-in settlement number, meaning that it includes all
24 attorneys' fees, litigation expenses, notice and administration costs, taxes, and costs
25 of any kind incurred by the Plaintiffs or the Class Members in connection with the
26 resolution of this matter, if any.

27 56. Class Counsel may pay from the portion of the Settlement Fund
28 apportioned to the Masonek Plaintiffs and the Class Members, without further

1 approval from Wells Fargo or further order of the Court, all notice and
2 administration costs actually and reasonably incurred. Such costs shall include,
3 without limitation, the actual costs of publication of the Summary Notice and
4 printing and mailing the Long Form Notice, the administrative expenses incurred
5 and fees charged by the Settlement Administrator in connection with providing
6 notice and processing any responses, and the fees, if any, of the escrow agent(s).
7 Before the Effective Date, Class Counsel shall not pay more than \$75,000 from the
8 portion of the Settlement Fund apportioned to the Masonek Plaintiffs and the Class
9 Members for notice and administration expenses without the approval of Wells
10 Fargo, which shall not be unreasonably withheld.

11 57. After the Effective Date, Plaintiffs' Counsel may distribute the
12 Settlement Fund to the Plaintiffs and/or the Class Members.

13 58.

14 a. Wells Fargo and Defense Counsel shall have no responsibility or
15 liability for the distribution of the Settlement Fund to the Plaintiffs or the Class
16 Members and shall not bear any cost or expense in connection with the distribution
17 of the Settlement Fund including but not limited to its allocation as between the
18 Masonek Plaintiffs and the Class, the Bain Plaintiffs, and the Abbate Plaintiffs.

19 b. The Masonek Plaintiffs, the Class Members, and their counsel
20 shall have no responsibility or liability for the distribution of the Settlement Fund to
21 the Bain Plaintiffs or the Abbate Plaintiffs or the Litigation Managers and shall not
22 bear any cost or expense in connection with the distribution of the Settlement Fund
23 to the Bain Plaintiffs or the Abbate Plaintiffs.

24 c. The Bain Plaintiffs and Bain Counsel shall have no
25 responsibility or liability for the distribution of the Settlement Fund to the Abbate
26 Plaintiffs, the Litigation Managers or the Class Members and shall not bear any cost
27 or expense in connection with the distribution of the Settlement Fund to the Abbate
28 Plaintiffs or the Class Members.

1 d. The Abbate Plaintiffs, the Litigation Managers, and Abbate
2 Counsel shall have no responsibility or liability for the distribution of the
3 Settlement Fund to the Bain Plaintiffs or the Class Members and shall not bear any
4 cost or expense in connection with the distribution of the Settlement Fund to the
5 Bain Plaintiffs or the Class Members.

6 **V. CONDITIONS OF THE SETTLEMENT RELATED TO THE**
7 **RECEIVER**

8 59. In addition to the conditions set forth in this Stipulation of Settlement,
9 the Settlement is conditional upon the following:

10 a. Release by the Receiver of Wells Fargo from all of Wells
11 Fargo's obligations under the Receiver Settlement Agreement;

12 b. Upon entry of the Final Orders and Judgments, release by the
13 Receiver of Wells Fargo and release by Wells Fargo of the Receiver and the
14 Receivership Entities in a form substantially similar to the releases in the Receiver
15 Settlement Agreement, and dismissal with prejudice of Wells Fargo from the
16 Receiver Action; and

17 c. Upon entry of the Final Orders and Judgments, Wells Fargo's
18 withdrawal of the Wells Fargo Claims, in the manner and as defined in the Receiver
19 Settlement Agreement.

20 **VI. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR**
21 **TERMINATION**

22 60. Wells Fargo and Plaintiffs shall each have the right to terminate the
23 Settlement and this Stipulation of Settlement by providing written notice of their
24 election to do so to all other Parties within thirty (30) days of: (a) the Court's
25 declining to enter the Preliminary Approval Order in any material respect; (b) the
26 Court's refusal to approve this Stipulation of Settlement or any material part of it;
27 (c) the Court's declining to enter the Final Orders and Judgments in any material
28 respect; (d) the date upon which the Final Orders and Judgments are modified or
reversed in any material respect by the Court of Appeals or the Supreme Court; or

1 (e) the date upon which an Alternative Judgment is modified or reversed in any
2 material respect by the Court of Appeals or the Supreme Court.

3 61. Class Members were previously notified of the pendency of the
4 Masonek Action as a class action and were given the opportunity to request
5 exclusion or remain in the Class. The proposed Preliminary Approval Order
6 annexed hereto as Exhibit C does not afford a new opportunity to request exclusion
7 to Class Members. In the event that the Court declines to enter the proposed
8 Preliminary Approval Order without affording a new opportunity to request
9 exclusion, then, in addition of any right of termination that may exist in accordance
10 with Paragraph 60 of this Stipulation of Settlement, Wells Fargo shall have the right
11 to terminate the Settlement pursuant to the terms of the Supplemental Agreement.

12 62. Except as otherwise provided herein, in the event the Settlement is
13 terminated, then the Parties shall be deemed to have reverted to their respective
14 positions in the Noteholder Actions as of the date of this Stipulation of Settlement
15 and, except as otherwise expressly provided, the Parties shall proceed in all respects
16 as if this Stipulation of Settlement and any related orders had not been entered, and
17 any portion of the Settlement Payment previously paid by or on behalf of Wells
18 Fargo, together with any interest earned thereon, less any Taxes due with respect to
19 such income, and less costs of administration and notice actually incurred and paid
20 or payable from the portion of the Settlement Fund apportioned to the Masonek
21 Plaintiffs and the Class Members (not to exceed \$75,000 without the prior approval
22 of Wells Fargo or the Court), shall be returned to Wells Fargo. In the event the
23 Settlement is terminated, the Parties will cooperate in good faith to determine a
24 reasonable pre-trial and trial schedule.

25 **VII. RELEASES**

26 63. Upon the Effective Date, the Plaintiffs, the Class Members, Plaintiffs'
27 Counsel, and the Litigation Managers, on behalf of themselves and their successors
28 and assigns, shall be deemed to have fully, finally, and forever released,

1 relinquished, and discharged Wells Fargo and the Released Parties from all of the
2 Released Claims. Notwithstanding the above, this release shall not extend to (a) the
3 obligations set forth in this Stipulation of Settlement; (b) the Receiver's accounts at
4 Wells Fargo, if any, relating to the Receivership Entities or any accounts held by
5 the Receiver; or (c) claims relating to accounts of any kind (including but not
6 limited to deposit, credit, and loan accounts) held at any time or that may hereafter
7 be opened by the Plaintiffs, the Class Members, Plaintiffs' Counsel, or the
8 Litigation Managers at Wells Fargo, its parent corporation, subsidiaries, or
9 affiliates, or at any of their predecessors or successors.

10 64. Upon the Effective Date, Wells Fargo, on behalf of itself, its parent
11 corporation, subsidiaries, and affiliates, and any of their successors and assigns,
12 shall be deemed to have fully, finally, and forever released, relinquished, and
13 discharged the Plaintiffs, the Class Members, Plaintiffs' Counsel, and the Litigation
14 Managers from all claims that arise out of or relate in any way to the institution,
15 prosecution, or settlement of the Noteholder Actions. Notwithstanding the above,
16 this release shall not extend to (a) the obligations set forth in this Stipulation of
17 Settlement; or (b) claims relating to accounts of any kind (including but not limited
18 to deposit, credit, and loan accounts) held at any time or that may hereafter be
19 opened by the Plaintiffs, the Class Members, Plaintiffs' Counsel, or the Litigation
20 Managers at Wells Fargo, its parent corporation, subsidiaries, or affiliates, or at any
21 of their predecessors or successors.

22 65. Each of the releases in Paragraphs 63 and 64 is intended to include
23 known and unknown claims arising out of, touching upon, or relating in any way to
24 Medical Capital, the NISAs, the Notes, or the administration of the NISAs and all
25 related agreements, and each of the releases in Paragraphs 63 and 64 is expressly
26 intended to cover and include all such injuries or damages, including all rights of
27 action thereunder. The Plaintiffs, the Class Members, Plaintiffs' Counsel, and the
28 Litigation Managers, on behalf of themselves and their successors and assigns,

1 expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the
2 California Civil Code, which provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
5 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
6 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
7 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
8 HER SETTLEMENT WITH THE DEBTOR.

9 66. The Plaintiffs, the Class Members, Plaintiffs' Counsel, and the
10 Litigation Managers, on behalf of themselves and their successors and assigns,
11 expressly waive and relinquish any and all rights and benefits that they may have
12 under, or that may be conferred upon them by, the provisions of Section 1542 of the
13 California Civil Code, or any other law of any state or territory that is similar,
14 comparable, or equivalent to Section 1542, to the fullest extent that they may
15 lawfully waive such rights or benefits pertaining to the Released Claims. In
16 connection with such waiver and relinquishment, the Plaintiffs, the Class Members,
17 Plaintiffs' Counsel, and the Litigation Managers, on behalf of themselves and their
18 successors and assigns, hereby acknowledge that they are aware that they or their
19 attorneys may hereafter discover claims or facts in addition to or different from
20 those that they now know or believe to exist with respect to claims released in this
21 Section VII, but that it is their intention to hereby fully, finally, and forever settle
22 and release all of the claims known or unknown, suspected or unsuspected, that
23 they have against Wells Fargo and the Released Parties. The Plaintiffs and the
24 Class Members, on behalf of themselves and their successors and assigns, expressly
25 acknowledge that they have been advised by their attorney(s) of the contents and
26 effect of Section 1542, and with knowledge the Plaintiffs and the Class Members,
27 on behalf of themselves and their successors and assigns, hereby expressly waive
28 whatever benefits they may have had pursuant to such section.

1 67. Wells Fargo, on behalf of itself and its parent corporation, subsidiaries,
2 affiliates, and any of their successors and assigns, expressly waives and relinquishes
3 any and all rights and benefits that it may have under, or that may be conferred
4 upon it by, the provisions of Section 1542 of the California Civil Code, or any other
5 law of any state or territory that is similar, comparable, or equivalent to Section
6 1542, to the fullest extent that they may lawfully waive such rights or benefits
7 pertaining to the claims released in this Section VII. In connection with such
8 waiver and relinquishment, Wells Fargo, on behalf of itself and its parent
9 corporations, subsidiaries, affiliates, and any of their successors and assigns hereby
10 acknowledges that it is aware that it or its attorneys may hereafter discover claims
11 or facts in addition to or different from those that it now knows or believes to exist
12 with respect to claims released in this Section VII, but that it is its intention to
13 hereby fully, finally, and forever settle and release all of the claims known or
14 unknown, suspected or unsuspected.

15 68. As a condition to this Stipulation of Settlement, the Plaintiffs,
16 Plaintiffs' Counsel, and the Litigation Managers expressly represent and warrant
17 that they have not assigned, sold, conveyed, transferred, or otherwise disposed of
18 any rights, claims, or remedies being released by this Stipulation of Settlement, or
19 attempted to do so. As a condition to this Stipulation of Settlement, Wells Fargo
20 expressly represents and warrants that it has not assigned, sold, conveyed,
21 transferred, or otherwise disposed of any rights, claims, or remedies being released
22 by this Stipulation of Settlement, or attempted to do so.

23 69. The Court shall retain jurisdiction over the Parties to this Stipulation of
24 Settlement with respect to the future performance of the terms of this Stipulation of
25 Settlement. In the event that any applications for relief are made, such applications
26 shall be made to the Court.

27 70. Upon the Effective Date: (a) the Stipulation of Settlement shall be the
28 exclusive remedy for any and all Released Claims of the Plaintiffs, the Litigation

1 Managers, and the Class Members against Wells Fargo and/or any of the Released
2 Parties; and (b) the Plaintiffs, the Litigation Managers, and the Class Members shall
3 be permanently barred and enjoined from initiating, asserting, or prosecuting
4 against Wells Fargo and/or any of the Released Parties in any federal or state court
5 or tribunal any and all Released Claims.

6 **VIII. ADMINISTRATION OF THE SETTLEMENT**

7 71. After the entry of the Preliminary Approval Order, Class Counsel shall
8 provide notice to the Class as provided in this Stipulation of Settlement and the
9 Preliminary Approval Order. Class Counsel shall make every effort to accomplish
10 the notice required to implement and obtain Court approval for this Settlement.

11 72. The Settlement Administrator shall administer the process of providing
12 notice, receiving and reviewing responses from the Class Members, calculating
13 distribution amounts for the Class Members pursuant to the Plan of Allocation, and
14 distributing the Settlement funds to the Class Members, subject to the jurisdiction
15 of the Court. Co-Lead Class Counsel shall be responsible for supervising the
16 administration of the Settlement and disbursement of the Net Settlement Fund
17 subject to Court approval. Co-Lead Class Counsel shall have the right, but not the
18 obligation, to waive what they deem to be formal or technical defects relating to
19 any distribution in the interests of achieving substantial justice.

20 73. For purposes of determining the extent, if any, to which a Class
21 Member shall be entitled to a distribution from the Settlement Fund, the Settlement
22 Administrator shall determine each eligible Class Member's *pro rata* share of the
23 Net Settlement Fund based upon their Recognized Loss compared to the total
24 Recognized Losses of all eligible Class Members (as set forth in the Plan of
25 Allocation set forth in the Long Form Notice attached hereto as Exhibit B, or in
26 such other plan of allocation as the Court approves). The Net Settlement Fund
27 from this Settlement will be distributed *pro rata* to eligible Class Members
28

1 regardless of the MedCap SPC in which they invested and may be based on unpaid
2 principal or MIMO.

3 74. This is not a claims-made settlement. The entire Net Settlement Fund
4 shall be distributed to eligible Class Members. Wells Fargo shall not be entitled to
5 get back any of the settlement monies once the Settlement becomes Final. Wells
6 Fargo shall have no involvement in reviewing or challenging distributions. The
7 distribution information will be reported to the Receiver. The Receiver has decided
8 that he will reduce distributions on allowed claims for his own distribution purposes
9 in implementing the Amended Distribution Plan based upon amounts that Class
10 Members and Noteholders in the Bain and Abbate Actions receive from this
11 Settlement.

12 75. Class Members who do not have Recognized Losses under the Plan of
13 Allocation may be rejected for distribution. Prior to such rejection, the Settlement
14 Administrator shall communicate with the Class Member in writing at the last
15 known mailing address to give the Class Member the chance to contest such
16 determination. The Settlement Administrator, under supervision of Co-Lead Class
17 Counsel, shall provide notice of the decision to reject a distribution, setting forth
18 the reasons therefore, and give notice of the Class Member's right to a review by
19 the Court if the Class Member so desires and complies with the requirements stated
20 in the Plan of Allocation. Any Class Member who is rejected for distribution by the
21 Settlement Administrator remains bound by this Stipulation of Settlement and the
22 releases herein and has no right to contend that the Stipulation of Settlement or the
23 releases herein are ineffective as to him or her owing to a lack of consideration.

24 76. Co-Lead Class Counsel will apply to the Court, on notice to Defense
25 Counsel, for a Class Distribution Order: (a) approving the Settlement
26 Administrator's administrative determinations concerning the distributions to Class
27 Members; (b) approving payment of any fees and expenses not previously applied
28 for, including the fees and expenses of the Settlement Administrator; and (c) if the

1 Effective Date has occurred, directing payment of the Net Settlement Fund to Class
2 Members.

3 77. Payment pursuant to the Class Distribution Order shall be final and
4 conclusive against all Class Members. No person or Class Member shall have any
5 claim against the Plaintiffs, Plaintiffs' Counsel, Co-Lead Class Counsel, the
6 Settlement Administrator or any other agent designated by Co-Lead Class Counsel,
7 Wells Fargo, or Defense Counsel, arising from distributions made substantially in
8 accordance with the Stipulation, the plan of allocation, or any order of the Court.
9 Plaintiffs and Wells Fargo, and their respective counsel, shall have no liability
10 whatsoever for the investment or distribution of the Settlement Fund or the Net
11 Settlement Fund, the plan of allocation, or the determination, administration,
12 calculation, or payment of any amount by the Settlement Administrator, the
13 payment or withholding of Taxes (including interest and penalties) owed by the
14 Settlement Fund, or any losses incurred in connection therewith.

15 78. All proceedings with respect to the administration, processing and
16 determination of distributions to Class Members and the determination of all
17 controversies relating thereto, including disputed questions of law and fact with
18 respect to such distributions, shall be subject to the jurisdiction of the Court. All
19 Class Members and Parties to this Settlement expressly waive trial by jury (to the
20 extent any such right may exist) and any right of appeal or review with respect to
21 such determinations.

22 79. To the extent that any monies remain in the Net Settlement Fund after
23 the Settlement Administrator has caused distributions to be made to all Class
24 Members whether by reason of un-cashed distributions or otherwise, then, after the
25 Settlement Administrator has made reasonable and diligent efforts to have Class
26 Members cash their distributions, any balance remaining in the Net Settlement
27 Fund six (6) months after the initial distribution of such funds shall be re-
28 distributed to Class Members who have cashed their initial distributions and who

1 would receive at least \$100.00 from such re-distribution, after payment of any
2 unpaid costs or fees incurred in administering the Net Settlement Fund for such re-
3 distribution. Additional payments may occur thereafter if Co-Lead Class Counsel,
4 in consultation with the Settlement Administrator, determine that additional re-
5 distributions, after the deduction of any additional fees and expense that would be
6 incurred, would be cost-effective. At such time as it is determined that the re-
7 distribution of funds remaining is not cost-effective, the remaining balance shall be
8 contributed to a designated non-profit organization(s), to be recommended by Co-
9 Lead Class Counsel and approved by the Court.

10 80. The Parties specifically agree that Wells Fargo shall not be liable for
11 the costs, fees, and expenses of providing notice to the Class Members or
12 administering the Settlement. Any costs, fees, and expenses associated with
13 providing notice to the Class Members, administering the Settlement as to the
14 Class, or distributing the Settlement Fund to the Class shall be the responsibility of
15 Class Counsel. Class Counsel may apply to the Court for reimbursement of such
16 expenses as set forth in Section XV hereto. Any costs, fees, and expenses
17 associated with administering the Settlement or distributing the Settlement Fund as
18 to the Abbate Plaintiffs shall be the responsibility of Abbate Counsel, and any
19 costs, fees, and expenses associated with administering the Settlement or
20 distributing the Settlement Fund as to the Bain Plaintiffs shall be the responsibility
21 of Bain Counsel.

22 81. Wells Fargo and the Released Parties are not and will not be obligated
23 to compute, estimate, or pay any taxes on behalf of any Plaintiff, any Class
24 Member, Plaintiffs' Counsel, the Litigation Managers, or the Settlement
25 Administrator.

26 **IX. OBJECTIONS BY CLASS MEMBERS, THE FAIRNESS HEARING,**
27 **AND THE CLASS ACTION FINAL ORDER AND JUDGMENT**
28

1 82. Any Class Member may object to the fairness, reasonableness, and/or
2 adequacy of the Settlement contained in this Stipulation of Settlement, the entry of
3 the Class Action Final Order and Judgment, and/or the amount of fees requested by
4 Class Counsel. Any Class Member who intends to object to the Settlement must
5 file with the Court a written objection and/or brief, and must serve a copy of the
6 written objection and/or brief by fax, U.S. mail or e-mail to Co-Lead Class Counsel
7 and Defense Counsel at the addresses set forth below, postmarked (or the
8 equivalent for fax or e-mail) no later than the date specified in the Preliminary
9 Approval Order. Objections must be served:

10 a. Upon Co-Lead Class Counsel at:

11 Mark C. Molumphy
12 COTCHETT, PITRE & McCARTHY LLP
13 San Francisco Airport Office Center
14 840 Malcolm Road, Suite 200
15 Burlingame, California 94010
16 Telephone: (650) 697-6000
17 Facsimile: (650) 697-0577
18 E-mail: mmolumphy@cpmlegal.com

19 Jeff S. Westerman
20 WESTERMAN LAW CORP.
21 1925 Century Park E. Ste. 2100
22 Los Angeles, CA 90067
23 Telephone: (310) 698-7450
24 Facsimile: (310) 201-9160
25 E-mail: jwesterman@jswlegal.com

26 b. Upon Defense Counsel at:

27 Lawrence C. Barth
28 MUNGER, TOLLES & OLSON, LLP
29 355 South Grand Avenue, Thirty-Fifth Floor
30 Los Angeles, CA 90071-1560
31 Telephone: (213) 683-9100
32 Facsimile: (213) 687-3702
33 E-mail: Lawrence.Barth@mto.com

34 83. Objecting Class Members must set forth their full name, current
35 address, and telephone number. Objecting Class Members must state in writing all
36 objections and the reasons for each objection, and state whether the objecting Class
37 Member intends to appear at the Fairness Hearing either with or without separate
38

1 counsel. No objection by a Class Member shall be received or considered by the
2 Court at the Fairness Hearing, no Class Member shall be entitled to appear at the
3 Fairness hearing (whether individually or through separate counsel) or entitled to
4 object to the Settlement, and no written objections or briefs submitted by any Class
5 Member shall be received or considered by the Court at the Fairness Hearing,
6 unless written notice of the objecting Class Member 's objection and/or intention to
7 appear at the Fairness Hearing and copies of any written objections and/or briefs
8 shall have been filed with the Court and served on the Settlement Administrator,
9 Class Counsel, and Defense Counsel on or before the date specified in the
10 Preliminary Approval Order.

11 84. Class Members who fail to file and serve timely written objections in
12 the manner specified above and in the Preliminary Approval Order shall be deemed
13 to have waived all objections and shall be foreclosed from making any objection
14 (whether by appeal or otherwise) to the Settlement.

15 85. On the date set forth in the Preliminary Approval Order, a Fairness
16 Hearing shall be conducted to determine final approval of the Settlement.

17 86. Upon final approval of the Settlement by the Court at or after the
18 Fairness Hearing, the Masonek Plaintiffs and Wells Fargo shall present the Class
19 Action Final Order and Judgment, substantially in the form attached to this
20 Stipulation of Settlement as Exhibit D, to the Court for approval and entry. All
21 Class Members will be bound by the Class Action Final Order and Judgment.

22
23 **X. THE BAIN FINAL ORDER AND JUDGMENT, AND THE ABBATE
FINAL ORDER AND JUDGMENT**

24 87. The Bain Plaintiffs and Wells Fargo shall jointly and timely move the
25 Court for entry of the Bain Final Order and Judgment, substantially in the form
26 attached to this Stipulation of Settlement as Exhibit E, to be heard at the Fairness
27 Hearing. The entry of the Bain Final Order and Judgment shall be conditioned
28 upon the approval and entry by the Court of the Class Action Final Order and

1 Judgment, substantially in the form attached to this Stipulation of Settlement as
2 Exhibit D. All Bain Plaintiffs will be bound by the Bain Final Order and Judgment.

3 88. The Abbate Plaintiffs and Wells Fargo shall jointly and timely move
4 the Court for entry of the Abbate Final Order and Judgment, substantially in the
5 form attached to this Stipulation of Settlement as Exhibit F, to be heard at the
6 Fairness Hearing. The entry of the Abbate Final Order and Judgment shall be
7 conditioned upon the approval and entry by the Court of the Class Action Final
8 Order and Judgment, substantially in the form attached to this Stipulation of
9 Settlement as Exhibit D. All Abbate Plaintiffs will be bound by the Abbate Final
10 Order and Judgment.

11 **XI. GOOD FAITH SETTLEMENT MOTION**

12 89. Wells Fargo shall timely file in the SEC Action the Good Faith
13 Settlement Motion, to be heard at the Fairness Hearing, seeking an order declaring
14 the Settlement to be a good faith settlement and seeking a “bar order” barring any
15 person or entity from seeking implied indemnity, equitable indemnity, or
16 contribution from Wells Fargo, to the extent any right exists. The Parties agree that
17 the Plaintiffs do not allege in the Noteholder Actions that Wells Fargo and BNYM
18 are joint tortfeasors claimed to be liable for the same tort or co-obligors on a
19 contract debt, and accordingly, Wells Fargo will not seek a bar of contribution
20 rights against BNYM, to the extent any exist. The Good Faith Settlement Motion
21 shall request that the Court enter the Good Faith Settlement Order in a form
22 substantially identical to Exhibit G hereto.

23 **XII. WELLS FARGO DOCUMENTS FILED UNDER SEAL**

24 90. Plaintiffs agree that they will not request to unseal those Wells Fargo
25 produced documents and deposition transcripts of Wells Fargo witnesses that are
26 currently filed under seal in the Noteholder Actions. If, for any reason, Plaintiffs
27 determine that they need to file a motion to unseal any such document, they will
28

1 first meet and confer with Wells Fargo and provide Wells Fargo an opportunity to
2 file responsive documents.

3 **XIII. NO ADMISSION OF LIABILITY; SETTLEMENT NOT EVIDENCE**
4 **AGAINST PARTIES**

5 91. The provisions contained in this Stipulation of Settlement are not and
6 shall not be deemed a presumption, concession or admission by Wells Fargo of any
7 default, liability, or wrongdoing as to any facts or claims alleged or asserted in the
8 Noteholder Actions or the Receiver Action, or in any actions or proceedings, nor
9 shall they be interpreted, construed, deemed, invoked, offered, or received in
10 evidence or otherwise used by any person in the Noteholder Actions or the Receiver
11 Action, or in any other action or proceeding, whether civil, criminal or
12 administrative. Wells Fargo does not admit that it or any of the Released Parties
13 has engaged in any wrongful activity or that any person has sustained any damage
14 by reason of any of the facts complained of in the Noteholder Actions or the
15 Receiver Action.

16 **XIV. BEST EFFORTS**

17 92. Class Counsel shall take all necessary actions to accomplish approval
18 of the Settlement and provision of notice to the Class.

19 93. The Parties and their counsel agree to cooperate fully with one another
20 and to use their best efforts to effectuate the Settlement, including without
21 limitation in seeking preliminary and final Court approval of the Stipulation of
22 Settlement and the Settlement embodied herein, seeking entry of the Final Orders
23 and Judgments, carrying out the terms of this Stipulation of Settlement, and
24 promptly agreeing upon and executing all such other documentation as may be
25 reasonably required to obtain final approval by the Court of the Settlement. In the
26 event that the Court fails to approve the Settlement or fails to issue the Final Orders
27 and Judgments, the Parties agree to use all reasonable efforts, consistent with this
28 Stipulation of Settlement, to cure any defect identified by the Court.

1 94. Each Party will cooperate with each other Party in connection with
2 effectuating the Settlement. Any requests for cooperation shall be narrowly tailored
3 and reasonably necessary for the requesting Party to recommend the Settlement to
4 the Court, and/or to carry out its terms.

5
6 **XV. ATTORNEYS' FEE AND EXPENSE AWARD AND SERVICE AWARDS**

7 95.

8 a. Class Counsel may submit an application to the Court for an
9 award of attorneys' fees, costs, and expenses, to be paid only out of the portion of
10 the Settlement Fund apportioned to the Masonek Plaintiffs and the Class Members
11 and to be noticed to be heard at the same time as the Fairness Hearing. Such
12 amounts as are awarded by the Court shall be payable from the Settlement Fund to
13 Co-Lead Class Counsel immediately upon award, notwithstanding the existence of
14 timely filed objections thereto, or potential for appeal therefrom, or collateral attack
15 on the Settlement or any part thereof, subject to Co-Lead Class Counsel's
16 obligation to make appropriate refunds or repayments to the Settlement Fund, plus
17 accrued interest at the same net rate as is earned by the Settlement Fund, if and
18 when, as a result of any appeal and/or further proceedings on remand, or successful
19 collateral attack, the Settlement is terminated or the fee or cost award is reduced or
20 reversed. In the event the Settlement is terminated or the Final Orders and
21 Judgments are reversed such that by order of the Court or by the terms of this
22 Stipulation of Settlement the Settlement Fund including any award of attorneys'
23 fees and expenses to Class Counsel shall be returned to Wells Fargo, then Class
24 Counsel agree to be jointly and severally liable for the return of all of the attorney'
25 fees, costs, and expenses distributed from the Settlement Fund to Class Counsel,
26 and Class Counsel agree that Wells Fargo may seek orders from the Court in aid of
27 the return of the money, including but not limited to attachment orders and related
28 remedies under California law, including temporary protective orders. Co-Lead

1 Class Counsel shall allocate the attorneys' fees amongst Class Counsel in a manner
2 in which they in good faith believe reflects the contributions of such counsel to the
3 prosecution and settlement of the Masonek Action. Wells Fargo shall have no
4 responsibility or liability for the allocation of such fees amongst Class Counsel.

5 b. Class Counsel and Class Representatives Steven Masonek,
6 Joann Hosking, Robert H. Ludlow, Michel Rapoport, Kathleen Darrow, John
7 Toungaian, and Peter Braunstein may submit an application to the Court for the
8 payment of service awards to each for the Class Representatives, to recognize their
9 efforts, time and expenses in connection with the prosecution of the Masonek
10 Action. Such amounts as are awarded by the Court shall be payable after the
11 Effective Date from the portion of the Settlement Fund apportioned to the Masonek
12 Plaintiffs and the Class Members.

13 96. The procedure for and the allowance or disallowance by the Court of
14 any application for attorneys' fees, costs, expenses, or reimbursement to be paid to
15 Class Counsel and application for service awards to be paid to the Class
16 Representatives are not part of the settlement of the Released Claims as set forth in
17 this Stipulation of Settlement, and are to be considered by the Court separately from
18 the Court's consideration of the fairness, reasonableness, and adequacy of the
19 settlement of the Released Claims as set forth in this Stipulation of Settlement.
20 Any such separate order, finding, ruling, holding, or proceeding relating to any such
21 applications for attorneys' fees and expenses and for service awards, or any
22 separate appeal from any separate order, finding, ruling, holding, or proceeding
23 relating to them or reversal or modification of them, shall not operate to terminate
24 or cancel this Stipulation of Settlement or otherwise affect or delay the finality of
25 the Final Orders and Judgments or the Settlement.

26 **XVI. MISCELLANEOUS PROVISIONS**

27 97. Wells Fargo warrants that, as to the payments made by or on behalf of
28 it, at the time of such payment that Wells Fargo made or caused to be made

1 pursuant to Paragraph 54 above, it was not insolvent, nor did nor will the payment
2 required to be made by or on behalf of it render it insolvent, within the meaning of
3 and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and
4 547 thereof. This warranty is made by Wells Fargo and not by Defense Counsel.

5 98. If a case is commenced in respect of Wells Fargo (or any insurer
6 contributing funds to the Settlement Payment on behalf of Wells Fargo) under Title
7 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or
8 other fiduciary is appointed under any similar law, and in the event of the entry of a
9 final order of a court of competent jurisdiction determining the transfer of money to
10 the Settlement Fund or any portion thereof by or on behalf of Wells Fargo to be a
11 preference, voidable transfer, fraudulent transfer or similar transaction and any
12 portion thereof is required to be returned, and such amount is not promptly
13 deposited to the Settlement Fund by others, then, at the election of Plaintiffs'
14 Counsel, the Parties shall jointly move the Court to vacate and set aside the releases
15 given and judgments entered in favor of Wells Fargo pursuant to this Stipulation of
16 Settlement which releases and judgments shall be null and void, and the Parties
17 shall be restored to their respective positions in the Noteholder Actions as of the
18 date of this Stipulation of Settlement, and any cash amounts in the Settlement Fund
19 shall be returned as provided in Paragraph 62 above.

20 99. The Recitals are contractual in nature and form a material part of this
21 Stipulation of Settlement.

22 100. The Section headings in this Stipulation of Settlement are for reference
23 only and do not form part of this Stipulation of Settlement.

24 101. This Stipulation of Settlement and its accompanying Exhibits
25 constitute a single integrated contract setting forth the entire agreement and
26 understanding of the Parties. No promise, inducement, or agreement other than that
27 expressed herein has been made by any Party. The Parties represent, understand,
28 and expressly agree that this Stipulation of Settlement sets forth all of the

1 agreements, covenants, and understandings of the Parties, superseding all other
2 prior and contemporaneous oral and written agreements, discussions, or promises,
3 if any. The Parties agree that no other agreements or covenants will be binding
4 upon the Parties unless set forth in a writing signed by the Parties or their
5 authorized representatives, and that each of the Parties is authorized to make the
6 representations and agreements herein set forth by or on behalf of each such Party.
7 Any and all previous agreements and understandings between or among the Parties
8 regarding the subject matter of this Stipulation of Settlement, whether written or
9 oral, are superseded by this Stipulation of Settlement.

10 102. The substantive laws of the State of California shall govern this
11 Stipulation of Settlement without regard to any choice of law analysis.

12 103. Any dispute arising out of or relating to this Stipulation of Settlement,
13 or arising out of or relating to the performance or any breach by the Parties
14 hereunder, or the interpretation hereof, shall be decided by the Hon. Layn Phillips
15 (Ret.), whose decision shall be final and binding. Each Party hereby waives any
16 right to a trial by jury on any such applications for relief.

17 104. This Stipulation of Settlement is freely and voluntarily executed by the
18 Parties and their legal representatives.

19 105. The Parties expressly acknowledge that no person has made any
20 promise, representation, or warranty whatsoever, express or implied, not contained
21 herein, concerning the subject matter hereof, to induce such Parties to execute this
22 Stipulation of Settlement, and further acknowledge that they are not executing this
23 Stipulation of Settlement in reliance upon any promise, representation, or warranty
24 not expressly contained herein.

25 106. The waiver by any Party of a breach of any term of this Stipulation of
26 Settlement shall not operate or be construed as a waiver of any subsequent breach
27 by any Party. The failure of a Party to insist upon strict adherence to any provision
28

1 of the Stipulation of Settlement shall not constitute a waiver or thereafter deprive
2 such Party of the right to insist upon strict adherence.

3 107. The Parties expressly represent and warrant that they have the
4 authority and capacity to execute this Stipulation of Settlement, to perform each of
5 the respective obligations required of the Parties, and to provide the releases set
6 forth herein. The individual(s) executing this Stipulation of Settlement represent
7 that he/she is authorized to do so on behalf of the respective Party.

8 108. Plaintiffs' Counsel, Defense Counsel, and the Litigation Managers
9 expressly represent and warrant that they have the authority and capacity to execute
10 this Stipulation of Settlement. Specifically, Abbate Counsel expressly
11 acknowledge that they have the authority and capacity to execute this Stipulation of
12 Settlement on behalf of each and every individual who is a plaintiff in the Abbate
13 Action, and that the execution of this Stipulation of Settlement binds all of the
14 Abbate Plaintiffs as if each of those individuals had personally executed this
15 Stipulation of Settlement. The Litigation Managers expressly represent and warrant
16 that they have the authority and capacity to grant, and did grant, Abbate Counsel
17 with the authority and capacity necessary to execute this Stipulation of Settlement
18 and bind all of the Abbate Plaintiffs as if each of those individuals had personally
19 executed this Stipulation of Settlement. Bain Counsel expressly acknowledge that
20 they have the authority and capacity to execute this Stipulation of Settlement on
21 behalf of each and every individual who is a plaintiff in the Bain Action, and that
22 the execution of this Stipulation of Settlement binds all of the Bain Plaintiffs as if
23 each of those individuals had personally executed this Stipulation of Settlement.
24 Class Counsel expressly acknowledge that they have the authority and capacity to
25 execute this Stipulation of Settlement on behalf of each and every individual who is
26 a named plaintiff in the Masonek Action, and that the execution of this Stipulation
27 of Settlement binds all of the Masonek Plaintiffs as if each of those individuals had
28 personally executed this Stipulation of Settlement.

1 109. This Stipulation of Settlement has been negotiated among and drafted
2 by the Parties. To the extent there is any uncertainty or ambiguity in this
3 Stipulation of Settlement, none of the Parties will be deemed to have caused any
4 such uncertainty or ambiguity. Accordingly, this Stipulation of Settlement shall not
5 be construed against the Party preparing it, but shall be construed as if all Parties
6 hereto, and each of them, jointly prepared it, and any uncertainty or ambiguity shall
7 not be interpreted against any one Party.

8 110. The Parties believe that this Stipulation of Settlement is a fair,
9 adequate, and reasonable settlement of the Noteholder Actions, and they have
10 arrived at this Settlement through arms-length negotiations, taking into account all
11 relevant factors, present and potential.

12 111. This Stipulation of Settlement may be executed in counterparts, each
13 of which shall be deemed an original and all of which, when taken together, shall
14 constitute one and the same instrument. The date of execution shall be the latest
15 date on which any Party signs the Stipulation of Settlement.

16 112. A facsimile, copy, or pdf signature on this Stipulation of Settlement
17 shall have the same force and effect as an original signature thereto. This
18 Stipulation of Settlement, regardless of whether it has original, facsimile, copy, or
19 pdf signatures, shall be binding and enforceable upon the affixing of such
20 signatures by the Parties to this Stipulation of Settlement.

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IN WITNESS WHEREOF, the Parties have caused this Stipulation of Settlement to be executed, by their duly authorized attorneys or representatives, as of April 25, 2013.

WESTERMAN LAW CORP.



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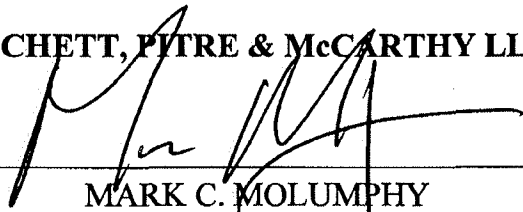
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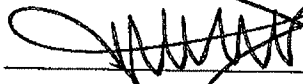
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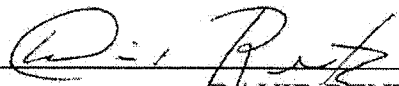
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SIGNATURE ADVISORS LLP (as to Paragraphs 1-19, 37, 54, 58a.-d., 59, 63, 64, 65, 66, 68, 70, 80, 81, 88, 93, 105, 107, 108 and 110 only)



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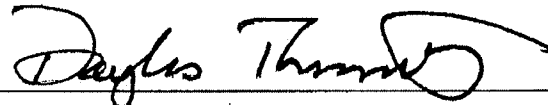
SIGNATURE ADVISORS LLP (as to Paragraphs 1-19, 37, 54, 58a.-d., 59, 63, 64, 65, 66, 68, 70, 80, 81, 88, 93, 105, 107, 108 and 110 only)

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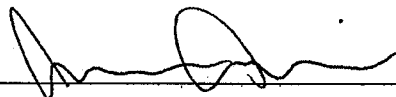
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Attorneys for WELLS FARGO BANK N.A.

EXHIBIT A

LEGAL NOTICE

If you purchased or acquired notes issued by Medical Provider Financial Corporation II, III or IV, and/or Medical Provider Funding Corporation V or VI, you could get a payment from a class action settlement.

This Notice is directed to persons and entities who purchased or acquired notes issued by one or more of the above-mentioned special purpose corporations owned by Medical Capital Holdings, Inc., also known as MP II, MP III, MP IV, MP V and/or MP VI. The United States District Court of the Central District of California has allowed or “certified” a class action lawsuit to move forward against Wells Fargo Bank, N.A. (“Wells Fargo”) and The Bank of New York Mellon (“BNYM”). The class action is known as *Masonek, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. SA-CV-09-01048 DOC (RNBx), and is part of the group of lawsuits known as *In re Medical Capital Securities Litigation*, Lead Case No. SA-10-ML-02145-DOC (RNBx). A proposed settlement has been reached between the Class and Wells Fargo, which will provide \$83,517,000 to pay eligible Class Members. If you qualify, you may get benefits from the settlement or object to it.

The Court authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the settlement.

WHO’S INCLUDED?

As described in prior notices, you are a Class Member if you purchased or acquired notes issued by MP II, III, IV, V and/or VI and did not receive some or all of your principal or interest payments. Excluded from the Class are: (a) Wells Fargo and BNYM, and their subsidiaries, parents, affiliates, and controlled persons or entities, as well as their family members, employees and representatives; and (b) Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Tracking Services, Inc., and MP II, MP III, MP IV, MP V, and MP VI, and their subsidiaries, parents, affiliates, and controlled persons or entities, including specifically all of their past or present officers or directors (including Sidney M. Field and Joseph J. Lampariello), as well as their family members, employees and representatives. You are also excluded if you previously decided to opt out of the Class.

If you are still not sure whether you are included in the Class, you can obtain more information, including a detailed notice, at www.medicalcapitalclass.com or by calling toll-free 1-877-287-0718.

WHAT’S THIS ABOUT?

This class action lawsuit alleges a breach of contract. Plaintiffs claim that Wells Fargo and BNYM, as hired trustees for Medical Capital, improperly disbursed millions of dollars in breach of their contractual duties to noteholders. Wells Fargo and BNYM deny any wrongdoing,

and each denies that it breached any contractual duties it may have owed to the noteholders or that it caused any injury to the noteholders, including the members of the Class. The Masonek Plaintiffs, on behalf of themselves and the Class, with the assistance of Class Counsel, negotiated a proposed settlement of the Class action lawsuit with Wells Fargo. The settlement is part of a global settlement of all claims against Wells Fargo, including claims by the Class, the Receiver, and Plaintiffs in two related mass actions. Wells Fargo will pay a total of \$105 million to settle all actions. The Class will receive \$83,517,000 of this total amount paid by Wells Fargo ("Class Settlement Fund"), which will be used to pay eligible Class Members, after payment of any fees or expenses approved by the Court. The \$83,517,000 is in addition to the \$90,675,600 paid to the Class by BNYM in connection with the prior settlement, for a combined \$174,192,600 for the Class in both settlements.

HOW DO YOU GET A PAYMENT?

Copies of the detailed notice, Stipulation of Settlement, and proposed plan of allocation, available at www.medicalcapitalclass.com, describe all of the details of the proposed settlement.

Class Counsel is proposing the same Plan of Allocation for this settlement with Wells Fargo that Class Counsel proposed for the settlement with BNYM. As proposed, your eligibility and share of the Class Settlement Fund will be based on the total principal you invested in notes issued by MP II, MP III, MP IV, MP V and/or MP VI, minus any principal returned and interest paid. This claim amount is referred to as your "Net Recognized Loss" and will equal the "Allowed" claim amount previously determined by the Receiver based on the Money-In/Money-Out ("MIMO") approach, and approved by the Court in the action brought by the SEC. As proposed, eligible Class Members will receive a pro rata payment from the Settlement based on their Net Recognized Loss, provided, however, that the amount of your Net Recognized Loss shall be reduced, dollar-for-dollar, by any amounts received by you, net of attorneys' fees, from any recovery from any broker litigation initiated by you or on your behalf. Any such set-off will be determined based on data received by the Receiver. All of the Settlement funds will be distributed.

WHAT ARE YOUR OPTIONS?

If you are a Class Member, you have to decide whether you want to take any action.

If you are in the Class, and the Wells Fargo settlement is approved, you will be legally bound by the Court's order and release of all claims against Wells Fargo relating to Medical Capital. You may object to the settlement by **Month 00, 2013**. The detailed notice describes how to object. The Court will hold a hearing in this case on **Month 00, 2013** to consider whether to approve the settlement and a request by the lawyers representing the Class for up to 20% of the Class Settlement Fund as attorneys' fees and for up to \$_____ in expenses, and possibly a request for up to \$_____ in total to the seven class representatives for their services as class representatives, to be paid from the Class Settlement Fund. You may ask to appear at the hearing, but you don't have to. The detailed notice, available at the website, explains how to object or give notice of your intent to appear. For more information, you can call toll-free 1-877-287-0718 or visit www.medicalcapitalclass.com.

1-877-287-0718

www.medicalcapitalclass.com

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**If you purchased or acquired notes issued by one or more of the
following:**

- Medical Provider Financial Corporation II (“MP II”)
- Medical Provider Financial Corporation III (“MP III”)
- Medical Provider Financial Corporation IV (“MP IV”)
- Medical Provider Funding Corporation V (“MP V”)
- Medical Provider Funding Corporation VI (“MP VI”)

You could get a payment from a class action settlement.

***A federal court authorized this notice. This is not a solicitation from
a lawyer***

Individuals who purchased notes issued by one or more of the aforementioned special purpose corporations affiliated with Medical Capital Holdings, Inc. (“MCH”) have sued Wells Fargo Bank, N.A. (“Wells Fargo”) and The Bank of New York Mellon (“BNYM”) alleging breach of contract. The United States District Court for the Central District of California has allowed the lawsuit to be treated as a class action on behalf of all noteholders who purchased or acquired notes issued by one or more of MP II, MP III, MP IV, MP V, or MP VI.

The Court-appointed Class Representatives, on behalf of themselves and the Court-certified Class (as defined below), have reached a proposed settlement of the class action lawsuit with Wells Fargo. The settlement is part of a global settlement of all claims

against Wells Fargo, including claims by the Class, the Court-appointed Receiver, and plaintiffs in two related mass actions. The Class will receive \$83,517,000 from Wells Fargo (“Class Settlement Fund”), which will be used to pay eligible Class Members. If approved, the settlement will resolve all claims in the Class Action against Wells Fargo. The Settlement with Wells Fargo is in addition to the prior settlement with BNYM. The settlement with BNYM is described in a Notice dated March 21, 2013 previously distributed to the Class. In addition, the Court-appointed lawyers for the Class will ask the Court for up to 20% of the Class Settlement Fund as attorneys’ fees and up to \$_____ in expenses and may ask the Court for up to \$_____ in total to the seven class representatives for their services as class representatives, to be paid from the Class Settlement Fund. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement with Wells Fargo.

If you are a Class Member, your legal rights are affected whether you act, or don’t act. Read this notice carefully.

Do Nothing	If you are a Class Member, you do not need to do anything to remain a Class Member and continue to be part of this lawsuit. If you are eligible, you will receive a payment from the Class Settlement Fund paid by Wells Fargo. You do not have to submit a claim form.
Object	Write to the Court about why you don’t like the settlement.
Go To Hearing	Ask to speak in Court about the fairness of the settlement.

Your rights and options – and the deadlines to exercise them – are explained in this notice.

The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this notice package?

The Court sent you this notice because you may be a member of the class. If so, you have a right to know about a proposed settlement of the class action against Wells Fargo, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the settlement allows. You will be informed of the progress of the settlement.

This package explains the lawsuit, the settlement with Wells Fargo, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this lawsuit about?

Judge David O. Carter of the United States District Court for the Central District of California is overseeing this class action, which is part of a group of lawsuits related to Medical Capital entities. The group of lawsuits is known as *In re Medical Capital Securities Litigation*, Lead Case No. SA-10-ML-02145-DOC (RNBx), and this class action is known as *Masonek, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. SA-CV-09-01048 DOC (RNBx).

This class action lawsuit alleges a breach of contract. There are two defendants: Wells Fargo and BNYM. Plaintiffs allege that Wells Fargo and BNYM, as hired trustees for MP II, MP III, MP IV, MP V, or MP VI, improperly disbursed millions of dollars in breach of their contractual duties to noteholders. Wells Fargo and BNYM deny any wrongdoing, and each denies that it breached any contractual duties it may have owed to the noteholders or that it caused any injury to the noteholders, including the members of the class. You can read the Plaintiffs' Fourth Amended Consolidated Class Action Complaint at www.medicalcapitalclass.com.

3. Is this class action related to other actions?

Right now, there are other lawsuits against Wells Fargo and BNYM pending in the United States District Court for the Central District of California relating to similar allegations as this case. Two actions, *James L. Abbate, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. SA-CV-10-06561 DOC (RNBx) and *Bain, et al. v. Wells Fargo Bank,*

N.A., et al., Case No. SA-CV-10-00548 DOC (RNBx), involve claims by individual noteholders who opted out of the class. These plaintiffs hired their own attorneys and are participating in the lawsuits in their individual capacity. Plaintiffs in the *Abbate* and *Bain* actions are not Class Members, and will not be paid from the Class Settlement Fund.

Lawsuits were also filed against certain of the brokers who sold the Medical Capital notes to individual investors. On August 4, 2011, a class of investors who bought their notes through Securities America and/or Ameriprise Financial settled their claims in the action known as *McCoy v. Cullum & Burks Securities, Inc.*, Case No. SA-CV-09-01084 DOC (RNBx) (“*McCoy*”). Other investors are choosing to pursue individual claims against their brokers through arbitration or litigation. Your participation as a Class Member in this case does not prevent you from being a party to the cases against the brokers.

Finally, in August 2009, Judge Carter appointed Thomas Seaman as the permanent Receiver for Medical Capital Holdings in a securities fraud enforcement action brought by the Securities and Exchange Commission. *SEC vs. Medical Capital Holdings, Inc.; Medical Capital Corporation; Medical Provider Funding Corporation VI; Sidney M. Field; and Joseph J. Lampariello*, Case No. SA CV09-0818 DOC(RNBx). The Receiver has separately agreed to dismiss his respective claims on behalf of the Receivership Estate against Wells Fargo, and Wells Fargo has agreed to release its claims against the Estate, if the Court approves the Wells Fargo settlement.

4. Why is this a class action?

In a class action lawsuit, one or more people called “Plaintiffs” or “Class Representatives” (in this case Steven Masonek, Joann Hosking, Robert H. Ludlow, Jr., on behalf of the Robert H. Ludlow, Jr. Revocable Trust 1999, Kathleen Darrow, Michel Rapoport, John Toungaian, and Peter Braunstein) sue on behalf of other people who have similar claims.

The people together are a “Class” or “Class Members.” The companies the Plaintiffs sued (in this case Wells Fargo and BNYM) are called the Defendants. One court resolves the issues for everyone in the Class.

The Court previously decided that this lawsuit can proceed as a class action and move towards a trial because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. You were sent a prior notice informing you of the Court’s decision.

More information about why the Court is allowing this lawsuit to be a class action is in the Court's Order Certifying the Class, which is available at www.medicalcapitalclass.com.

5. Why is there a settlement with Wells Fargo?

Plaintiffs and Wells Fargo agreed to a settlement. That way, they avoid the cost of trial, and the people affected will get compensation. The Class Representatives and the attorneys think the settlement is in the best interests of the Class.

WHO IS IN THE SETTLEMENT

To see if you will get money from this settlement, you have to determine if you are a Class Member and if you are eligible to receive a portion of the Class Settlement Fund.

6. How do I know if I am part of the Class?

The Court previously decided that everyone who fits this description is a Class Member:

All persons and entities who purchased or otherwise acquired notes issued by one or more of Medical Provider Financial Corporation II, III, and IV and Medical Provider Funding Corporation V and VI and did not receive some or all of their principal or interest payments.

7. Are there exceptions to being included in the Class?

You are not a Class Member if you previously opted out of the Class. You are also not a Class Member if you are one of the Defendants, their subsidiaries, parents, affiliates, controlled persons or entities, as well as their family members, employees and representatives. Also excluded are Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Tracking Services, Inc., and MP II, MP III, MP IV, MP V, and MP VI, and their subsidiaries, parents, affiliates, and controlled persons or entities, including specifically all of their past or present officers or directors (including Sidney M. Field and Joseph J. Lampariello), as well as their family members, employees, and representatives.

8. I'm still not sure if I am included?

If you are still not sure whether you are included in the Class, you can obtain free help at www.medicalcapitalclass.com or by calling or writing to the lawyers or administrator in this case, at the phone numbers or addresses listed below.

9. What does the settlement with Wells Fargo provide?

Wells Fargo has agreed to pay \$105 million to resolve all claims of all plaintiffs in the Class, *Bain* and *Abbate* actions. Of this total amount, \$83,517,000 will be paid to the Class, and will be divided among eligible Class Members, after payment of any fees and expenses awarded by the Court. This amount is referred to as the "Net Class Settlement Fund."

The \$83,517,000 is in addition to the \$90,675,600 paid to the Class by BNYM in connection with the prior settlement, for a combined \$174,192,600 for the Class in both settlements.

10. Which Class Members will receive a payment and how will it be calculated?

Class Counsel is proposing the same Plan of Allocation for this settlement with Wells Fargo that Class Counsel proposed for the settlement with BNYM.

Your share of the Net Class Settlement Fund will depend on how much you invested in notes issued by MP II, MP III, MP IV, MP V, and MP VI, whether you received any principal or interest distributions, and whether you received funds from other sources related to your losses, such as from other suits against your brokers. Here's how it works:

Your claim will be based on the total principal invested in notes issued by MP II, MP III, MP IV, MP V, and MP VI, minus any funds paid to you, including principal returned and interest paid. This claim amount is referred to as your "Net Recognized Loss" and will equal the "Allowed" claim amount previously determined by the Receiver based on the MIMO approach, and approved by the Court in the SEC action.

Class Members will receive a *pro rata* payment from the Net Class Settlement Fund based on their Net Recognized Loss, provided, however, that to the extent such

information is available from the Receiver, the amount of your Net Recognized Loss shall be reduced, dollar-for-dollar, by any amounts received by you, net of attorneys' fees, from any recovery from any broker litigation or arbitration initiated by you or on your behalf. Any such set-off will be determined based on data, if available, received by the Receiver from Class Members and counsel in the broker litigation described above and any other litigation or arbitration against brokers initiated by Class Members.

All of the Net Class Settlement Fund will be distributed. More information about the proposed plan of allocation is available at www.medicalcapitalclass.com.

HOW YOU GET A PAYMENT — NO CLAIM FORM NECESSARY

11. How and when can I get a payment?

You do not need to submit any claim form. If the settlement is approved and becomes final, eligible Class Members automatically will be mailed distributions from the Net Class Settlement Fund to the last addresses known to the Settlement Administrator. This notice is being mailed to that address. If this notice has been forwarded to you it is important that you notify the Settlement Administrator of the change of your address. Mail notices of your current address to:

In re Medical Capital Securities Litigation Address Changes
c/o KCC Class Action Services, Settlement Administrator
P.O. Box 6112
Novato, CA 94948-6112

The Court will hold a hearing on _____, 2013 to decide whether to approve the settlement. If the Court approves the settlement, and there are no appeals, the distribution will then occur. Please be patient.

12. Does the settlement provide for any release in return for the payment?

If you are a Class Member, and the settlement with Wells Fargo is approved, you will release all "Released Claims" (as defined in the Stipulation of Settlement) against the "Released Parties" (as defined in the Stipulation of Settlement).

“Released Claims” means all claims, rights, debts, demands, causes of actions, suits, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, judgments, variances, executions, obligations, damages, losses, fees, costs, rights, matters, and issues, whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, or whether based in equity, whether suspected or unsuspected, fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, matured or un-matured, class or individual in nature, that have been, might have been, or could be asserted (or threatened, alleged, or litigated) at law, in equity, or otherwise, at any time, in any capacity, that were asserted or that could have been asserted in the Noteholder Actions, the Receiver Action, or in any court of competent jurisdiction or other tribunal or adjudicative body by anyone, which arise out of, touch upon, or relate in any way whatsoever to Medical Capital, the NISAs, the Notes, or the administration of the NISAs and all related agreements, from the beginning of time through the date of entry of the Final Orders and Judgments.

“Released Parties” means (a) Wells Fargo’s parent corporation, subsidiaries, and affiliates, (b) all current and former directors, officers, and employees of Wells Fargo and its parent corporation, subsidiaries, and affiliates, but only in their capacity as such directors, officers, and employees, and (c) all other agents and attorneys of Wells Fargo and its parent corporation, subsidiaries, and affiliates, but only with respect to actions taken or omissions made by such agents and attorneys on behalf of these entities in connection with Wells Fargo’s exercise of its rights and performance of its obligations under the NISAs, and as disbursing agent for any and all entities affiliated with MCH. Released Parties do not include (i) Mayer Hoffman McCann P.C., CBIZ, Inc., CBIZ MHM, LLC, CBIZ Orange County, CBIZ San Diego or any of their past or present subsidiaries, affiliates, parents, successors, and predecessors, (ii) the current or former directors, officers, and employees of Mayer Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC, CBIZ Orange County, CBIZ San Diego or any of their past or present subsidiaries, affiliates, parents, successors, and predecessors, or (iii) all other agents and attorneys of Mayer Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC, CBIZ Orange County, CBIZ San Diego or any of their past or present subsidiaries, affiliates, parents, successors, and predecessors.

NO FURTHER EXCLUSION FROM THE CLASS

The Court previously certified this litigation to proceed as a class action on behalf of all persons and entities who purchased or otherwise acquired notes issued by one or more of MP II, MP III, MP IV, MP V, and MP VI and did not receive some or all of their principal or interest payments. As described in the prior notice of pendency and the prior

summary notice, Class Members were previously provided the opportunity, until March 12, 2012, to elect either to exclude themselves from the Class for all purposes or to remain as members of the Class and be bound by these proceedings. The settlement does not provide for any new right to be excluded from the Class with respect to the settlement with Wells Fargo. If the settlement is approved, it will be binding on all Class Members.

The persons and entities who previously requested exclusion from the Class are excluded from the Class for purposes of this settlement. Class Members who did not request exclusion in response to the notice of pendency may not now request exclusion from the Class.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court previously decided that the attorneys at **Cotchett, Pitre & McCarthy, LLP** and **Westerman Law Corp.** are qualified to represent the Class. Cotchett, Pitre & McCarthy, LLP and Westerman Law Corp. are referred to as “Co-Lead Class Counsel.” If you want to hire your own lawyer, you may do so at your own expense.

14. How will the lawyers and class representatives be paid?

Class Counsel will ask the Court for up to 20% of the Class Settlement Fund as attorneys’ fees and for up to \$_____ in expenses, to be paid from the Class Settlement Fund. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating a settlement with Wells Fargo. The Court may award less than these amounts.

In addition, to recognize their efforts, time, and expenses incurred on behalf of the Class in this lawsuit, Class Counsel may ask the Court to award the plaintiffs representing the Class service awards of up to \$_____ in total for their services as class representatives, to be paid from the Class Settlement Fund.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you disagree with the settlement or some part of it.

15. How do I tell the Court that I don't like the settlement?

If you're a Class Member, you can object to the settlement if you don't like any part of it, including the proposed plan of allocation or request for attorneys' fees and expenses and for service awards. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the Wells Fargo settlement in the *Masonek* Class Action. Be sure to include your name, address, telephone number, signature, and the reasons you object to the settlement. Mail the objection to the Court (and send a copy by fax, U.S. mail, or e-mail to Class Counsel and Defense Counsel), postmarked (or the equivalent for fax or e-mail) no later than _____, 2013, at the addresses listed below:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court for the Central District of California Ronald Reagan Federal Building and United States Courthouse 411 West Fourth Street Santa Ana, CA 92701-4516	Mark C. Molumphy Cotchett, Pitre & McCarthy, LLP San Francisco Airport Office Center 840 Malcolm Road, Suite 200 Burlingame, CA 94010 Telephone: (650) 697-6000 Facsimile: (650) 697-0577 E-mail: mmolumphy@cpmlegal.com Jeff S. Westerman Westerman Law Corp. 1925 Century Park East, Suite 2100 Los Angeles, CA 90067 Telephone: (310) 698-7450 Facsimile: (310) 201-9160 E-mail: jwesterman@jswlegal.com	Lawrence C. Barth Munger, Tolles & Olson LLP 355 South Grand Avenue Thirty-Fifth Floor Los Angeles, CA 90071- 1560 Facsimile: (213) 683-4017 E-mail: Lawrence.Barth@mto.com

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Wells Fargo settlement. You may attend and you may ask to speak, but you don't have to.

You can tell the Court that you disagree with the settlement or some part of it.

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at ____:____ __.m. on ____ day, _____, 2013, at the United States District Court for the Central District of California, located at Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, CA 92701-4516. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Carter will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

17. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you sent your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

18. May I speak at the hearing?

You may ask the court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in the *Masonek* Class Action." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than _____, 2013, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 15 above. You cannot speak at the hearing if you are not a Class Member.

GETTING MORE INFORMATION

19. Are there more details about the case or the settlement?

This notice summarizes the proposed settlement with Wells Fargo. More details are in the Stipulation of Settlement. You can get a copy of the Stipulation of Settlement, and find answers to common questions about the settlement and the class action, by visiting www.medicalcapitalclass.com.

Date: _____, 2013

EXHIBIT C

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14 Attorneys for Defendant
15 WELLS FARGO BANK, N.A.

16
17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 SOUTHERN DIVISION

20 *In re: MEDICAL CAPITAL*
21 *SECURITIES LITIGATION*

CASE NO. SA 10-ML-2145 DOC (RNB)

22 This document relates to:

23 NO. SACV 09-1048 DOC (RNB)
24 NO. SACV 10-00548 DOC (RNBx)
25 NO. SACV 10-6561 DOC (RNB)
26
27
28

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT,
APPROVING PROPOSED NOTICE,
AND SCHEDULING FAIRNESS
HEARING**

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS ACTION**

1 The Motion by the Plaintiffs in the case captioned *Masonek v. Wells Fargo*
2 *Bank, N.A.*, Case No. SACV 09-1048 DOC (RNBx) (the “Class Action”) for
3 Preliminary Approval of the Settlement with Wells Fargo Bank, N.A. (“Wells
4 Fargo”) came on for hearing on _____, 2013. Appearances were
5 entered on the record.

6 The Court, having reviewed and considered the Motion, hereby GRANTS the
7 Motion, and further finds and orders as follows:

8 1. The Noteholder Actions include: (1) the Class Action; (2) the case
9 captioned *Bain v. Wells Fargo Bank, N.A., et al.*, Case No. SACV 10-00548 DOC
10 (RNBx) (the “Bain Action”); and (3) the case captioned *Abbate v. Wells Fargo*
11 *Bank, N.A.*, Case No. SACV 10-6561 DOC (RNBx) (the “Abbate Action”). The
12 plaintiffs in the Class Action are referred to herein as the “Masonek Plaintiffs”; the
13 plaintiffs in the Noteholder Actions are collectively referred to herein as the
14 “Plaintiffs.”

15 2. The Plaintiffs in the Noteholder Actions, on the one hand, and Wells
16 Fargo, on the other hand, have agreed upon the terms and conditions of the
17 Settlement, as set forth in the Stipulation of Settlement, dated April ____, 2013,
18 which has been filed with the Court.

19 3. The definitions in the Stipulation of Settlement are hereby
20 incorporated as though fully set forth in this Order, and except where otherwise
21 noted, capitalized terms shall have the meanings attributed to them in the
22 Stipulation of Settlement.

23 4. The Court has carefully reviewed the Stipulation of Settlement, as well
24 as the files, records, and proceedings to date in the Noteholder Actions.

25 5. Because the Settlement meets the standards for preliminary approval,
26 the terms of the Settlement as set forth in the Stipulation of Settlement are
27 preliminarily approved as being fair, reasonable, and adequate.
28

1 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the
2 settlement of the claims of the Masonek Plaintiffs and the Class Members is subject
3 to Court approval. The settlement of the claims of the Bain Plaintiffs and the
4 Abbate Plaintiffs, on the other hand, does not require Court approval under Rule 23.
5 However, pursuant to the Stipulation of Settlement, the entry of the Abbate Final
6 Order and Judgment and the Bain Final Order and Judgment (Exhibits F and E
7 respectively to the Stipulation of Settlement), and the consequent dismissal with
8 prejudice of the Abbate Action and the Bain Action, is conditioned upon the
9 Court's approval and entry of the Class Action Final Order and Judgment (Exhibit
10 D to the Stipulation of Settlement). Accordingly, the findings of this Order are
11 limited to the Settlement as it applies to the Class Action, except that Paragraphs
12 15–16 and 29–31 below extend to all of the Noteholder Actions.

13 7. On or about July 26, 2011, this Court certified the Class. On or about
14 December 8, 2011, the Court approved the form of class notice and class notice
15 plan. Pursuant to the class notice plan, class notice was mailed to absent class
16 members on or about January 31, 2012 and a summary notice was published in the
17 Legal Section of *USA Today*. Class notice and related documents were also
18 published on the website www.medicalcapitalclass.com. Absent class members
19 were given 60 days to opt out of the class—a period that expired on or about March
20 30, 2012.

21 8. In light of the extensive notice program undertaken in connection with
22 class certification and the ample opportunity provided to Class Members to request
23 exclusion from the Class at that time, the Court is exercising its discretion in
24 accordance with Federal Rule of Civil Procedure 23(e)(4) and the circumstances of
25 this case to preclude Class Members from having a second opportunity to exclude
26 themselves from the Class in connection with the Settlement proceedings. The
27 previous class notice provided adequate information to Class Members about their
28 rights and the claims in the Class Action, and informed Class Members that they

1 would be bound by any judgments that the Court makes in this case if they did not
2 exclude themselves from the Class at that time.

3 9. The Masonek Plaintiffs have investigated the facts and law relating to
4 the matters alleged in their complaint, including extensive pretrial discovery,
5 pretrial motion practice, legal research as to the sufficiency of the claims, and an
6 evaluation of the risks associated with continued litigation, trial, and/or appeal(s).

7 10. The Settlement was reached in good faith and as a result of extensive
8 arm's length negotiations between counsel for Plaintiffs in the Noteholder Actions,
9 on the one hand, and counsel for Wells Fargo, on the other hand, occurring over
10 mediation sessions with the Honorable Layn R. Phillips (Ret.).

11 11. The Settlement confers substantial benefits upon the Plaintiffs and the
12 Class Members, particularly in light of the damages that the Masonek Plaintiffs and
13 Class Counsel believe are potentially recoverable or provable at trial, without the
14 costs, uncertainties, delays, and other risks and expenses associated with continued
15 litigation, trial, and/or appeal(s).

16 12. A Fairness Hearing shall be held before this Court at ____:____ __.m.
17 on _____, 2013, to determine whether the Stipulation of Settlement
18 should be approved as fair, reasonable, and adequate, and to determine whether the
19 Class Action Final Order and Judgment (Exhibit D to the Stipulation of Settlement)
20 should be entered dismissing the Class Action with prejudice as against Wells
21 Fargo and the Released Parties. The Court will also consider Class Counsel's
22 application for an award of attorneys' fees, costs, and expenses (the "Fee
23 Application") at that time.

24 13. Papers in support of final approval of the Stipulation of Settlement and
25 approval of the Fee Application shall be filed with the Court according to the
26 schedule set forth in Paragraph 26 below. The Fairness Hearing may be postponed,
27 adjourned, or continued by order of the Court without further notice to the Class.

28

1 14. After the Fairness Hearing, the Court may enter the Class Action Final
2 Order and Judgment (Exhibit D to the Stipulation of Settlement) in accordance with
3 the Stipulation of Settlement.

4 15. Pending the Fairness Hearing, all proceedings in the Noteholder
5 Actions relating to Wells Fargo or any of the Released Parties, other than
6 proceedings necessary to carry out or enforce the terms and conditions of the
7 Stipulation of Settlement and this Order, are stayed.

8 16. Pending final determination of whether the Settlement should be
9 approved, no Plaintiff or Class Member in any of the Noteholder Actions shall
10 commence or continue, directly, derivatively, in a representative capacity, or in any
11 other capacity, any action against Wells Fargo or any of the Released Parties in any
12 court or tribunal asserting any of the Released Claims.

13 17. The Court approves, as to form and content, the Long Form Notice and
14 Summary Notice, attached as Exhibits B and A, respectively, to the Stipulation of
15 Settlement.

16 18. Kurtzman Carson Consultants LLC is hereby appointed as Settlement
17 Administrator for the Settlement and shall perform all of the duties of the
18 Settlement Administrator set forth in the Stipulation of Settlement.

19 19. Class Counsel shall provide notice of the Settlement and of the
20 Fairness Hearing to the Class Members as follows:

- 21 a. by mailing, on or before three (3) weeks/twenty-one (21) days
22 after the entry of this Order, the Long Form Notice substantially
23 in the form attached as Exhibit B to the Stipulation of Settlement
24 to the last known addresses of the Class Members;
- 25 b. publishing, not later than thirty (30) days after the entry of this
26 Order, a copy of the Summary Notice substantially in the form
27 attached as Exhibit A to the Stipulation of Settlement in the
28 Legal Section of *USA Today*; and

1 c. providing a link in the Long Form Notice and the Summary
2 Notice to a website at the domain name
3 www.medicalcapitalclass.com that will contain the settlement
4 documents (including but not limited to the Long Form Notice),
5 a list of important dates, and any other information to which the
6 Parties may agree.

7 20. The Court finds that the Long Form Notice and the Summary Notice
8 are reasonable, and that they constitute due, adequate, and sufficient notice to all
9 persons entitled to receive notice, and that they meet the requirements of due
10 process and Rule 23 of the Federal Rules of Civil Procedure. The Court finds that
11 the manner of dissemination of the Long Form Notice and the Summary Notice
12 described in Paragraph 19 of this Order complies with Rule 23(d) of the Federal
13 Rules of Civil Procedure as it is a reasonable manner of providing notice to the
14 Class Members. The Court also finds that the manner of dissemination of the Long
15 Form Notice and the Summary Notice described in Paragraph 19 of this Order
16 complies with Rule 23(c)(2), as it is also the best practicable notice under the
17 circumstances, provides individual notice to all Class Members who can be
18 identified through a reasonable effort, and is reasonably calculated, under all the
19 circumstances, to apprise the Class Members of the terms of the Settlement, and
20 their right to object to the Settlement. At or before the Fairness Hearing, Co-Lead
21 Class Counsel shall file with the Court proof of dissemination of the Long Form
22 Notice and the Summary Notice. At or before the Fairness Hearing, Defense
23 Counsel shall file with the Court proof of compliance with the Class Action
24 Fairness Act of 2005, 28 U.S.C. § 1715.

25 21. Any Class Member may object to the Settlement contained in the
26 Stipulation of Settlement, the entry of the Class Action Final Order and Judgment,
27 and/or the amount of fees requested by Class Counsel in the Fee Application. Any
28 Class Member who intends to object to the Settlement must file with the Court a

1 written objection and/or brief no later than ten (10) weeks/seventy (70) days after
2 the entry of this Order, and must serve a copy of the written objection and/or brief
3 by fax, U.S. mail, or e-mail to Class Counsel and Defense Counsel at the addresses
4 set forth below postmarked (or the equivalent for fax or e-mail) no later than ten
5 (10) weeks/seventy (70) days after the entry of this Order. Objections must be
6 served:

7 **Upon Class Counsel at:**

8 Mark C. Molumphy
9 COTCHETT, PITRE & McCARTHY, LLP
10 San Francisco Airport Office Center
11 840 Malcolm Road, Suite 200
12 Burlingame, CA 94010
13 Facsimile: (650) 697-0577
14 E-mail: mmolumphy@cpmlegal.com

15 Jeff S. Westerman
16 WESTERMAN LAW CORP.
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19 Facsimile: (310) 201-9160
20 E-mail: jwesterman@jswlegal.com

21 **Upon Defense Counsel at:**

22 Lawrence C. Barth
23 MUNGER, TOLLES & OLSON LLP
24 355 South Grand Avenue
25 Thirty-Fifth Floor
26 Los Angeles, CA 90071-1560
27 Facsimile: (213) 683-4017
28 E-mail: Lawrence.Barth@mto.com

22. Class Members who object must set forth their full name, current address, telephone number, and signature. Objecting Class Members must state in writing all objections and the reasons for each objection, and state whether the objecting Class Member intends to appear at the Fairness Hearing either with or

1 without separate counsel. No Class Member shall be received or considered by the
2 Court at the Fairness Hearing (whether individually or through separate counsel) or
3 entitled to object to the Settlement, and no written objections or briefs submitted by
4 any Class Member shall be received or considered by the Court at the Fairness
5 Hearing, unless written notice of the objecting Class Member's intention to appear
6 at the Fairness Hearing and copies of any written objections and/or briefs have been
7 filed with the Court and served on Class Counsel and Defense Counsel as set forth
8 in Paragraph 21 of this Order.

9 23. Class Members who fail to file and serve timely written objections in
10 the manner specified in Paragraph 21 of this Order shall be deemed to have waived
11 all objections and shall be foreclosed from making any objection (whether by
12 appeal or otherwise) to the Settlement.

13 24. Class Counsel shall file papers in support of final approval of the
14 Settlement and their Fee Application no later than seven (7) weeks/forty-nine (49)
15 days after the entry of this Order.

16 25. Papers in response to objections to the Settlement and/or the Fee
17 Application shall be filed with the Court no later than two (2) weeks/fourteen (14)
18 days before the Fairness Hearing.

19 26. In summary, the dates of performance are as follows:

- 20 a. The Long Form Notice required to be sent by mail to the Class
21 per the Stipulation of Settlement shall be sent **no later than**
22 **three (3) weeks/twenty-one (21) days after the entry of this**
23 **Order;**
- 24 b. The Summary Notice shall be published within **thirty (30) days**
25 **after the entry of this Order;**
- 26 c. All objections to the Settlement and written notices of the
27 objecting Class Member's intention to appear at the Fairness
28

1 Hearing shall be filed and served **no later than ten (10)**
2 **weeks/seventy (70) days after the entry of this Order.**

3 d. Class Counsel shall file their papers in support of final approval
4 of the Settlement and their Fee Application **no later than seven**
5 **(7) weeks/forty-nine (49) days after the entry of this Order;**

6 e. Papers in response to objections to the Stipulation of Settlement
7 and/or the Fee Application shall be filed with the Court **no later**
8 **than two (2) weeks/fourteen (14) days before the Fairness**
9 **Hearing;** and

10 f. The Fairness Hearing shall be held on _____, 2013
11 at ____:_____.m..

12 27. These dates of performance may be extended by order of the Court, for
13 good cause shown, without further notice to the Class. Class Members should
14 check the settlement website at www.medicalcapitalclass.com regularly for updates
15 and further details regarding extensions of these dates of performance.

16 28. Class Counsel and Defense Counsel are hereby authorized to use all
17 reasonable procedures in connection with approval and administration of the
18 Settlement that are not materially inconsistent with this Order or the Stipulation of
19 Settlement, including making, without further approval of the Court, minor changes
20 to the form or content of the Long Form Notice, Summary Notice, and other
21 exhibits that they jointly agree are reasonable or necessary.

22 29. In the event the Stipulation of Settlement is not approved by the Court,
23 or for any reason the Parties fail to obtain the Final Orders and Judgments or any
24 conditions for settlement specified in the Stipulation of Settlement are not met, or
25 the Stipulation of Settlement is terminated pursuant to its terms for any reason or
26 the Effective Date does not occur for any reason, then the following shall apply:

27 a. All orders and findings entered in connection with the
28 Stipulation of Settlement shall be vacated and shall become null

- 1 and void and shall have no force and effect whatsoever, shall not
2 be used or referred to for any purposes whatsoever, and shall not
3 be admissible or discoverable in this or any other proceeding;
- 4 b. The Noteholder Actions relating to Wells Fargo shall return to
5 the procedural status quo before entry of this Order as if no
6 settlement had been negotiated or entered into;
- 7 c. All of the Court's prior Orders shall, subject to this Order,
8 remain in force and effect; and
- 9 d. The Parties shall cooperate in good faith to determine a
10 reasonable pre-trial and trial schedule.

11 30. Nothing contained in this Order is, or may be construed as, a
12 presumption, concession or admission by or against Wells Fargo or the Plaintiffs of
13 any default, liability, or wrongdoing as to any facts or claims alleged or asserted in
14 the Noteholder Actions, or any actions or proceedings, whether civil, criminal, or
15 administrative. Nothing in this Order or pertaining to the Stipulation of Settlement,
16 including any of the documents or statements generated or received pursuant to the
17 claims administration process, shall be used as evidence in any further proceeding
18 in the Noteholder Actions.

19 31. The Court shall retain jurisdiction over the Noteholder Actions related
20 to Defendants, the Parties, and the administration, enforcement, and interpretation
21 of the Settlement. Any disputes or controversies arising with respect to the
22 Settlement shall be presented by motion to the Court.

23 IT IS SO ORDERED.

24 Dated: _____, 2013

25 By:

26 Honorable David O. Carter
27 United States District Judge

28

EXHIBIT D

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14 Attorneys for Defendant
15 WELLS FARGO BANK, N.A.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

*In re: MEDICAL CAPITAL
SECURITIES LITIGATION*

CASE NO. SA 10-ML-2145 DOC (RNB)

This document relates to:
NO. SACV 09-1048 DOC (RNB)
NO. SACV 10-00548 DOC (RNBx)
NO. SACV 10-6561 DOC (RNB)

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL TO CLASS
ACTION SETTLEMENT; FINAL
JUDGMENT**

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL TO CLASS ACTION
SETTLEMENT; FINAL JUDGMENT**

1 The Motion by the plaintiffs in the case captioned *Masonek v. Wells Fargo*
2 *Bank, N.A.*, Case No. SACV 09-1048 DOC (RNBx) (the “Class Action”) for final
3 approval of the Settlement with Wells Fargo Bank, N.A. (“Wells Fargo”) and entry
4 of the Class Action Final Order and Judgment came on for hearing on
5 _____, 2013. Appearances were entered on the record.

6 The Court, having reviewed and considered the Motion, hereby GRANTS the
7 Motion, enters the Class Action Final Order and Judgment, and further finds and
8 orders as follows:

9 1. The Noteholder Actions include: (1) the Class Action; (2) the case
10 captioned *Bain v. Wells Fargo Bank, N.A., et al.*, Case No. SACV 10-00548 DOC
11 (RNBx) (the “Bain Action”); and (3) the case captioned *Abbate v. Wells Fargo*
12 *Bank, N.A.*, Case No. SACV 10-6561 DOC (RNBx) (the “Abbate Action”). The
13 plaintiffs in the Class Action are referred to herein as the “Masonek Plaintiffs”; the
14 plaintiffs in the Noteholder Actions are collectively referred to herein as the
15 “Plaintiffs.”

16 2. The Plaintiffs in the Noteholder Actions, on the one hand, and Wells
17 Fargo, on the other hand, have agreed upon the terms and conditions of the
18 Settlement, as set forth in the Stipulation of Settlement, dated April __, 2013, which
19 has been filed with the Court.

20 3. The Stipulation of Settlement, including all Exhibits thereto, is
21 expressly incorporated by reference into this Class Action Final Order and
22 Judgment and made a part hereof for all purposes. Except where otherwise noted,
23 all capitalized terms used in this Class Action Final Order and Judgment shall have
24 the meanings set forth in the Stipulation of Settlement.

25 4. On or about July 6, 2011, the Court certified a Class consisting of the
26 following Members:

27 All persons and entities who purchased or otherwise acquired
28 notes issued by one or more of MP II, MP III, MP IV, MP V,

1 and MP VI and did not receive some or all of their principal or
2 interest payments. Excluded from the Class are: (i) Defendants
3 Wells Fargo and BNYM, and their subsidiaries, parents,
4 affiliates, and controlled persons or entities, as well as their
5 family members, employees and representatives; and (ii) MCH,
6 MCC, Medical Tracking Services, Inc., and MP II, MP III, MP
7 IV, MP V, and MP VI, and their subsidiaries, parents, affiliates,
8 and controlled persons or entities, including specifically all of
9 their past or present officers or directors (including Sidney M.
10 Field and Joseph J. Lampariello), as well as their family
11 members, employees and representatives.

12 5. On or about December 8, 2011, the Court approved the form of class
13 notice and class notice plan in the Class Action. Pursuant to the class notice plan,
14 class notice was mailed to absent class members on or about January 31, 2012 and a
15 summary notice was published in the Legal Section of *USA Today*. Class notice
16 and related documents were also published on the website
17 www.medicalcapitalclass.com. Absent class members were given 60 days to opt
18 out of the class—a period that expired on or about March 30, 2012.

19 6. Excluded from the Class are those persons and entities listed in
20 Schedule 1 who opted out of the class in response to the January 2012 class notice
21 plan.

22 7. By order dated _____, 2013, this Court granted preliminary
23 approval of the Settlement with Wells Fargo.

24 8. In the Preliminary Approval Order, the Court approved the procedure
25 for giving notice of the Settlement to Class Members, and approved the forms of
26 notice, consistent with the requirements of Rule 23. Further, in light of the
27 extensive notice program undertaken in connection with class certification and the
28 ample opportunity provided to Class Members to request exclusion from the Class
at that time, the Court exercised its discretion in accordance with Rule 23 and
applicable law to preclude Class Members from having a second opportunity to

1 exclude themselves from the Class in connection with the Settlement proceedings.
2 The Court -approved notice program has occurred.

3 9. The Court held a duly noticed final Fairness Hearing on _____
4 ___, 2013 to consider: (1) whether the terms and conditions of the Settlement are
5 fair, reasonable, and adequate; (2) whether the Class Action Final Order and
6 Judgment should be entered dismissing the Masonek Plaintiffs' complaint with
7 prejudice; (3) whether and in what amount to award attorneys' fees and expenses to
8 Class Counsel; and (4) whether and in what amount to award service awards to
9 representatives of the class.

10 10. The Court has personal jurisdiction over Defendants, the Masonek
11 Plaintiffs, and all Class Members, and has subject-matter jurisdiction over the Class
12 Action, including, without limitation, jurisdiction to approve the proposed
13 Settlement, to settle and release all claims arising out of the transactions alleged in
14 the Masonek Plaintiffs' complaints, and to dismiss the Class Action on the merits
15 and with prejudice as against Wells Fargo.

16 11. The Court has determined that the proposed Settlement, as well as the
17 release of Wells Fargo and the Released Parties from the Released Claims, the
18 significant relief provided to the Plaintiffs and the Class Members as described in
19 the Stipulation of Settlement, the award of attorneys' fees and expenses requested,
20 and the service awards to representatives of the class are fair, reasonable, and
21 adequate.

22 12. The mail notice and publication notice in accordance with the terms of
23 the Stipulation of Settlement and this Court's Preliminary Approval Order:

- 24 a. constituted the best practicable notice to Class Members under
25 the circumstances;
- 26 b. were reasonably calculated, under the circumstances, to apprise
27 Class Members of (i) their right to object to any aspect of the
28 proposed Settlement (including the fairness, reasonableness or

1 adequacy of the proposed Settlement and/or the award of
2 attorneys' fees), (ii) their right to appear at the Fairness Hearing
3 (either on their own or through counsel hired at their own
4 expense), and (iii) the binding effect of the Class Action Final
5 Order and Judgment on all Class Members;

6 c. constituted reasonable, due, adequate, and sufficient notice to all
7 persons and entities entitled to be provided with notice; and

8 d. fully satisfied the requirements of the Federal Rules of Civil
9 Procedure, including Rule 23(c)(2) and (e) of the Federal Rules
10 of Civil Procedure, the Class Action Fairness Act of 2005, 28
11 U.S.C. § 1715, the United States Constitution (including the Due
12 Process Clause), the Rules of this Court, and any other
13 applicable law.

14 13. Class Counsel has filed with the Court proof of mailing of the Long
15 Form Notice and proof of publication of the Summary Notice. Wells Fargo's
16 Counsel has filed with the Court proof of compliance with the Class Action
17 Fairness Act of 2005.

18 14. The terms and provisions of the Stipulation of Settlement, including all
19 Exhibits, have been entered into in good faith and are hereby fully and finally
20 approved as fair, reasonable, and adequate as to, and in the best interests of, the
21 Plaintiffs and the Class Members, and in full compliance with all applicable
22 requirements of the Federal Rules of Civil Procedure, the United States
23 Constitution (including the Due Process Clause), and any other applicable law. The
24 Court finds that the Stipulation of Settlement is fair, reasonable, and adequate based
25 on the following factors, among other things:

26 a. There is no fraud or collusion underlying the Settlement, and it
27 was reached after good faith, arms-length negotiations,
28 warranting a presumption in favor of approval. *Officers for*

1 *Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir.
2 1982).

3 b. The complexity, expense, and likely duration of the litigation
4 favor settlement on behalf of the Class, which provides
5 meaningful benefits on a much shorter time frame than
6 otherwise possible. Based on the stage of the proceedings and
7 the amount of investigation and pre-trial discovery completed,
8 the Parties had developed a sufficient factual record to fully
9 evaluate their chances of success at trial and the proposed
10 Settlement.

11 c. The support of Class Counsel, who are highly skilled in class
12 action litigation such as this, and the Masonek Plaintiffs, who
13 have participated in this litigation and evaluated the proposed
14 Settlement, also favors final approval. *See Boyd v. Bechtel*
15 *Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979); *Class Plaintiffs*
16 *v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

17 d. The Settlement provides meaningful relief to the Class, and
18 certainly falls within the range of possible recoveries by the
19 Class.

20 The Masonek Plaintiffs and Wells Fargo are directed to consummate the Stipulation
21 of Settlement in accordance with its terms and conditions. The Court hereby
22 declares that the Stipulation of Settlement is binding on the Masonek Plaintiffs, all
23 Class Members, and Wells Fargo, and it is to be preclusive in all pending and future
24 lawsuits or other proceedings.

25 15. The Plan of Allocation is approved as fair and reasonable, and Class
26 Counsel and the Settlement Administrator are directed to administer the Settlement
27 in accordance with its terms and provisions.

28

1 16. The Court finds that the Parties and their counsel have complied with
2 each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all
3 proceedings herein.

4 17. Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, the
5 Court hereby awards Class Counsel attorneys' fees in the amount of
6 \$_____. The attorneys' fees are based on the amount of time Class
7 Counsel reasonably expended working on the Class Action. The Court further
8 authorizes Class Counsel to be reimbursed for expenses reasonably incurred for the
9 benefit of the Class in the amount of \$_____. These amounts shall be
10 paid out of the portion of the Settlement Fund apportioned to the Masonek
11 Plaintiffs and the Class Members, and shall be allocated by Co-Lead Class Counsel
12 pursuant to the Stipulation of Settlement. In the event that any dispute arises
13 relating to the allocation of fees amongst Class Counsel and any other attorneys for
14 Plaintiffs, Class Counsel will hold Wells Fargo harmless from any and all such
15 liabilities, costs, and expenses of such dispute.

16 18. The Court hereby awards \$_____ to Steven Masonek, \$_____
17 to Joann Hosking, \$_____ to Robert H. Ludlow, \$_____ to Michel
18 Rapoport, \$_____ to Kathleen Darrow, \$_____ to John Toungaian, and
19 \$_____ to Peter Braunstein for their services as class representatives, which
20 sums the Court finds to be fair and reasonable, to be paid in accordance with the
21 terms of the Stipulation of Settlement.

22 19. In making this award of attorneys' fees and reimbursement of
23 expenses, the Court has considered and found that:

- 24 a. the settlement has created a fund apportioned to the Masonek
25 Plaintiffs and the Class Members of \$83,517,000 in cash that is
26 already on deposit, plus interest thereon, and numerous Class
27 Members will benefit from the Settlement created by Class
28 Counsel;

- 1 b. Over _____ copies of the Long Form Notice were
2 disseminated to putative Class Members indicating that Class
3 Counsel were moving for attorneys' fees in the amount of for up
4 to 20% of the Class Settlement Fund as attorneys' fees and for
5 up to \$_____ in expenses, to be paid from the Class
6 Settlement Fund, and _____ objections were filed against the
7 terms of the proposed Settlement or the attorneys' fees and
8 expenses as requested by Class Counsel;
- 9 c. Class Counsel have conducted the litigation and achieved the
10 Settlement with skill, perseverance and diligent advocacy;
- 11 d. The action involves complex factual and legal issues and was
12 actively prosecuted over _____ years and, in the absence of a
13 settlement, would involve further lengthy proceedings with
14 uncertain resolution of the complex factual and legal issues;
- 15 e. Had Class Counsel not achieved the Settlement there would
16 remain a significant risk that the Class may have recovered less
17 or nothing from Wells Fargo;
- 18 f. Class Counsel have devoted over _____ hours from the
19 inception of this case, with a lodestar value of
20 \$_____, to achieve the settlements with Wells Fargo
21 and with BNYM; and
- 22 g. The amount of attorneys' fees awarded and expenses reimbursed
23 from the portion of the Settlement Fund apportioned to the
24 Masonek Plaintiffs and the Class Members are fair and
25 reasonable and consistent with awards in similar cases.

26 20. The Class Action (*Masonek v. Wells Fargo Bank, N.A.*, Case No.
27 SACV 09-1048 DOC (RNBx)) is hereby dismissed with prejudice and without
28 costs as against Wells Fargo and the Released Parties only.

1 21. Upon the Effective Date, the Masonek Plaintiffs, the Class Members,
2 and Class Counsel, on behalf of themselves and their successors and assigns, shall
3 be deemed to have, and by operation of this Class Action Final Order and Judgment
4 shall have, fully, finally, and forever released, relinquished and discharged all
5 Released Claims against Wells Fargo and the Released Parties, as those terms are
6 defined below.

7 a. “Released Claims” means all claims, rights, debts, demands,
8 causes of actions, suits, dues, sums of money, accounts, bonds,
9 bills, covenants, contracts, controversies, agreements, promises,
10 judgments, variances, executions, obligations, damages, losses,
11 fees, costs, rights, matters, and issues, whether based on federal,
12 state, local, statutory, or common law, or any other law, rule, or
13 regulation, or whether based in equity, whether suspected or
14 unsuspected, fixed or contingent, accrued or un-accrued,
15 liquidated or un-liquidated, matured or un-matured, class or
16 individual in nature, that have been, might have been, or could
17 be asserted (or threatened, alleged, or litigated) at law, in equity,
18 or otherwise, at any time, in any capacity, that were asserted or
19 that could have been asserted in the Noteholder Actions, the
20 Receiver Action, or in any court of competent jurisdiction or
21 other tribunal or adjudicative body by anyone, which arise out
22 of, touch upon, or relate in any way whatsoever to Medical
23 Capital, the NISAs, the Notes, or the administration of the
24 NISAs and all related agreements, from the beginning of time
25 through the date of entry of the Final Orders and Judgments.

26 b. “Released Parties” means (a) Wells Fargo’s parent corporation,
27 subsidiaries, and affiliates, (b) all current and former directors,
28 officers, and employees of Wells Fargo and its parent

1 corporation, subsidiaries, and affiliates, but only in their
2 capacity as such directors, officers, and employees, and (c) all
3 other agents and attorneys of Wells Fargo and its parent
4 corporation, subsidiaries, and affiliates, but only with respect to
5 actions taken or omissions made by such agents and attorneys
6 on behalf of these entities in connection with Wells Fargo's
7 exercise of its rights and performance of its obligations under
8 the NISAs, and as disbursing agent for any and all entities
9 affiliated with MCH. Released Parties do not include (i) Mayer
10 Hoffman McCann P.C., CBIZ, Inc., CBIZ MHM, LLC, CBIZ
11 Orange County, CBIZ San Diego or any of their past or present
12 subsidiaries, affiliates, parents, successors, and predecessors, (ii)
13 the current or former directors, officers, and employees of
14 Mayer Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC,
15 CBIZ Orange County, CBIZ San Diego or any of their past or
16 present subsidiaries, affiliates, parents, successors, and
17 predecessors, or (iii) all other agents and attorneys of Mayer
18 Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC, CBIZ
19 Orange County, CBIZ San Diego or any of their past or present
20 subsidiaries, affiliates, parents, successors, and predecessors.

21 c. Notwithstanding the above, this release shall not extend to (1)
22 the obligations set forth in the Stipulation of Settlement; (2) the
23 Receiver's accounts at Wells Fargo, if any, relating to the
24 Receivership Entities or any accounts held by the Receiver; or
25 (3) claims relating to accounts of any kind (including but not
26 limited to deposit, credit, and loan accounts) held at any time or
27 that may hereafter be opened by the Masonek Plaintiffs, the
28 Class Members, or Class Counsel at Wells Fargo, its parent

1 corporation, subsidiaries, or affiliates, or at any of their
2 predecessors or successors.

3 22. Upon the Effective Date, Wells Fargo, on behalf of itself, its parent
4 corporation, subsidiaries, and affiliates, and any of their successors and assigns,
5 shall be deemed to have, and by operation of this Class Action Final Order and
6 Judgment shall have, fully, finally, and forever released, relinquished, and
7 discharged the Masonek Plaintiffs, the Class Members, and Class Counsel from all
8 claims that arise out of or relate in any way to the institution, prosecution, or
9 settlement of the Noteholder Actions. Notwithstanding the above, this release shall
10 not extend to the (1) the obligations set forth in the Stipulation of Settlement; or (2)
11 claims relating to accounts of any kind (including but not limited to deposit, credit,
12 and loan accounts) held at any time or that may hereafter be opened by the
13 Masonek Plaintiffs, the Class Members, or Class Counsel at Wells Fargo, its parent
14 corporation, subsidiaries, or affiliates, or at any of their predecessors or successors.

15 23. Each of the releases in Paragraphs 21 and 22 is intended to include
16 known and unknown claims arising out of, touching upon, or relating in any way to
17 Medical Capital, the NISAs, the Notes, or the administration of the NISAs and all
18 related agreements, and each of the releases in Paragraphs 21 and 22 is expressly
19 intended to cover and include all such injuries or damages, including all rights of
20 action thereunder. The Masonek Plaintiffs, the Class Members, and Class Counsel,
21 on behalf of themselves and their successors and assigns, expressly, knowingly, and
22 voluntarily waive the provisions of Section 1542 of the California Civil Code,
23 which provides as follows:

24 **A GENERAL RELEASE DOES NOT EXTEND TO**
25 **CLAIMS WHICH THE CREDITOR DOES NOT**
26 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
27 **FAVOR AT THE TIME OF EXECUTING THE**
28 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

1 The Masonek Plaintiffs, the Class Members, and Class Counsel, on behalf of
2 themselves and their successors and assigns, expressly waive and relinquish any
3 and all rights and benefits that they may have under, or that may be conferred upon
4 them by, the provisions of Section 1542 of the California Civil Code, or any other
5 law of any state or territory that is similar, comparable, or equivalent to Section
6 1542, to the fullest extent that they may lawfully waive such rights or benefits
7 pertaining to the Released Claims. Wells Fargo, on behalf of itself and its parent
8 corporation, subsidiaries, affiliates, and any of their successors and assigns,
9 expressly waives and relinquishes any and all rights and benefits that it may have
10 under, or that may be conferred upon it by, the provisions of Section 1542 of the
11 California Civil Code, or any other law of any state or territory that is similar,
12 comparable, or equivalent to Section 1542, to the fullest extent that they may
13 lawfully waive such rights or benefits pertaining to the claims released in Paragraph
14 21 of this Class Action Final Order and Judgment.

15 24. Upon the Effective Date, the Stipulation of Settlement shall be the
16 exclusive remedy for any and all Released Claims of the Masonek Plaintiffs and/or
17 the Class Members. The Court thus hereby permanently bars and enjoins the
18 Masonek Plaintiffs, all Class Members, all of their successors and assigns, and all
19 persons acting on behalf of or in concert or participation with the Masonek
20 Plaintiffs or Class Members or their successors and assigns from: (a) filing,
21 commencing, asserting, prosecuting, maintaining, pursuing, continuing, intervening
22 in, or participating in, or receiving any benefits from, any lawsuit, arbitration, or
23 administrative, regulatory or other proceeding or order in any jurisdiction based
24 upon or asserting any of the Released Claims against Wells Fargo or any of the
25 Released Parties; or (b) bringing a class action on behalf of the Masonek Plaintiffs
26 or Class Members, seeking to certify a class that includes the Masonek Plaintiffs or
27 Class Members, or continuing to prosecute or participate in any previously filed
28 and/or certified class action in any lawsuit based upon, asserting, touching upon, or

1 relating in any way to any of the Released Claims against Wells Fargo or any of the
2 Released Parties.

3 25. Neither the Stipulation of Settlement, nor any of its terms and
4 provisions, nor any of the negotiations or proceedings connected with it, nor any of
5 the documents or statements referred to therein, nor any of the documents or
6 statements generated or received pursuant to the claims administration process,
7 shall be:

- 8 a. offered by any person or received against Wells Fargo or the
9 Released Parties as evidence or construed as or deemed to be
10 evidence of any presumption, concession, or admission by Wells
11 Fargo or the Released Parties of the truth of the facts alleged by
12 the Plaintiffs or any Class Member or the validity of any claim
13 that has been or could have been asserted in the Class Action or
14 in any litigation, or other judicial or administrative proceeding,
15 or the deficiency of any defense that has been or could have
16 been asserted in the Class Action or in any litigation, or of any
17 liability, negligence, fault or wrongdoing of Wells Fargo or the
18 Released Parties;
- 19 b. offered by any person or received against Wells Fargo or the
20 Released Parties as evidence of a presumption, concession or
21 admission of any fault, misrepresentation or omission with
22 respect to any statement or written document approved or made
23 by Wells Fargo or the Released Parties or any other wrongdoing
24 by Wells Fargo or the Released Parties;
- 25 c. offered by any person or received against Wells Fargo or the
26 Released Parties as evidence of a presumption, concession, or
27 admission with respect to any default, liability, negligence, fault,
28 or wrongdoing, or in any way interpreted, construed, deemed,

1 invoked, offered, received in evidence, or referred to for any
2 other reason against any of the settling parties, in any civil,
3 criminal, or administrative action or proceeding; provided,
4 however, that nothing contained in this paragraph shall prevent
5 the Stipulation of Settlement (or any agreement or order relating
6 thereto) from being used, offered, or received in evidence in any
7 proceeding to approve, enforce, or otherwise effectuate the
8 Settlement (or any agreement or order relating thereto) or this
9 Class Action Final Order and Judgment, or in which the
10 reasonableness, fairness, or good faith of the parties in
11 participating in the Settlement (or any agreement or order
12 relating thereto) is an issue, or to enforce or effectuate
13 provisions of the Settlement, this Class Action Final Order and
14 Judgment, or the releases as to Wells Fargo, the Released
15 Parties, the Masonek Plaintiffs, or the Class Members; or
16 d. offered by any person or received against any of the Masonek
17 Plaintiffs or any Class Member as evidence or construed as or
18 deemed to be evidence that any of their claims in the Class
19 Action lack merit.

20 Notwithstanding the foregoing, Wells Fargo and/or the Released Parties may file
21 the Stipulation of Settlement, this Class Action Final Order and Judgment, and/or
22 any of the documents or statements referred to therein in support of any defense or
23 claim that is binding on and shall have *res judicata*, collateral estoppel, and/or
24 preclusive effect in all pending and future lawsuits or other proceedings maintained
25 by or on behalf of the Masonek Plaintiffs and/or any Class Members, and each of
26 them, as well as their heirs, executors, administrators, successors, and/or assigns.

27 26. The Court has jurisdiction to enter this Class Action Final Order and
28 Judgment. Without in any way affecting the finality of this Class Action Final

1 Order and Judgment, the Court expressly retains exclusive and continuing
2 jurisdiction over Defendants, the Masonek Plaintiffs, and the Class, and all matters
3 relating to the administration, consummation and enforcement of the Stipulation of
4 Settlement and of this Class Action Final Order and Judgment, including, without
5 limitation, for the purpose of:

- 6 a. enforcing the terms and conditions of the Stipulation of
7 Settlement (following, and in conformity with, the resolution by
8 the Hon. Layn Phillips (Ret.) of any disputes, claims or causes
9 of action that, in whole or in part, are related to or arise out of
10 the Stipulation of Settlement, and/or this Class Action Final
11 Order and Judgment, including, without limitation: whether
12 claims or causes of action allegedly in any way are related to the
13 Class Action are or are not barred or released by this Class
14 Action Final Order and Judgment; and whether persons or
15 entities are enjoined from pursuing any claims against Wells
16 Fargo or the Released Parties);
- 17 b. entering such additional orders, if any, as may be necessary or
18 appropriate to protect or effectuate this Class Action Final Order
19 and Judgment and the Stipulation of Settlement (including,
20 without limitation, orders enjoining persons or entities from
21 pursuing any claims against Wells Fargo or the Released
22 Parties), or to ensure the fair and orderly administration of the
23 Settlement; and
- 24 c. entering any other necessary or appropriate orders to protect and
25 effectuate the Court's retention of continuing jurisdiction over
26 the Stipulation of Settlement, the Masonek Plaintiffs, the Class
27 Members, and Wells Fargo.
- 28

1 27. Without further order of the Court, the Parties may agree to reasonably
2 necessary extensions of time to carry out any of the provisions of the Stipulation of
3 Settlement.

4 28. There is no just reason for delay in the entry of this Class Action Final
5 Order and Judgment and immediate entry by the Clerk of the Court is expressly
6 directed pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure.

7 29. In the event that the Effective Date does not occur:

- 8 a. All orders, findings, and releases entered in connection with the
9 Stipulation of Settlement shall be vacated and become null and
10 void and shall have no force and effect whatsoever, shall not be
11 used or referred to for any purposes whatsoever, and shall not be
12 admissible or discoverable in this or any other proceeding;
- 13 b. The Class Action relating to Wells Fargo shall return to the
14 procedural status quo before entry of this Class Action Final
15 Order and Judgment as if no settlement had been negotiated or
16 entered into;
- 17 c. All of the Court's prior Orders shall, subject to this Class Action
18 Final Order and Judgment, remain in force and effect; and
- 19 d. The Parties shall cooperate in good faith to determine a
20 reasonable pre-trial and trial schedule.

21 IT IS SO ORDERED.

22 Dated: _____, 2013

23 By: _____
24 Honorable David O. Carter
25 United States District Judge

EXHIBIT E

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11

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UNITED STATES DISTRICT COURT

13

CENTRAL DISTRICT OF CALIFORNIA

14

SOUTHERN DIVISION

15

*In re: MEDICAL CAPITAL
SECURITIES LITIGATION*

CASE NO. SA 10-ML-2145 DOC (RNB)

16

This document relates to:

**[PROPOSED] BAIN FINAL ORDER
AND JUDGMENT**

17

NO. SACV 09-1048 DOC (RNB)

18

NO. SACV 10-00548 DOC (RNBx)

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NO. SACV 10-6561 DOC (RNB)

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**[PROPOSED] BAIN FINAL ORDER AND
JUDGMENT**

1 The Motion by the plaintiffs in the case captioned *Bain v. Wells Fargo Bank,*
2 *N.A., et al.*, Case No. SACV 10-00548 DOC (RNBx) (the “Bain Action”) for entry
3 of the Bain Final Order and Judgment in connection with the Settlement with Wells
4 Fargo Bank, N.A. (“Wells Fargo”) came on for hearing on _____,
5 2013. Appearances were entered on the record.

6 The Court, having reviewed and considered the Motion, hereby GRANTS the
7 Motion, enters the Bain Final Order and Judgment, and further finds and orders as
8 follows:

9 1. The Noteholder Actions include: (1) the case captioned *Masonek v.*
10 *Wells Fargo Bank, N.A.*, Case No. SACV 09-1048 DOC (RNBx) (the “Class
11 Action”); (2) the case captioned *Abbate v. Wells Fargo Bank, N.A.*, Case No.
12 SACV 10-6561 DOC (RNBx) (the “Abbate Action”); and (3) the Bain Action.
13 Plaintiffs in the Class Action are referred to herein as the “Masonek Plaintiffs”;
14 plaintiffs in the Bain Action are referred to herein as the “Bain Plaintiffs”; and
15 plaintiffs in the Abbate Action are referred to herein as the “Abbate Plaintiffs.” The
16 Masonek Plaintiffs, the Bain Plaintiffs, and the Abbate Plaintiffs are collectively
17 referred to herein as the “Plaintiffs.”

18 2. The Plaintiffs in the Noteholder Actions, on the one hand, and Wells
19 Fargo, on the other hand, have agreed upon the terms and conditions of the
20 Settlement, as set forth in the Stipulation of Settlement, dated April __, 2013, which
21 has been filed with the Court.

22 3. The Stipulation of Settlement, including all Exhibits thereto, is
23 expressly incorporated by reference into this Bain Final Order and Judgment and
24 made a part hereof for all purposes. Except where otherwise noted, all capitalized
25 terms used in this Bain Final Order and Judgment shall have the meanings set forth
26 in the Stipulation of Settlement.

27 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the
28 settlement of the claims of the Masonek Plaintiffs and the Class Members is subject

1 to Court approval. The settlement of the claims of the Bain Plaintiffs (and the
2 Abbate Plaintiffs), on the other hand, does not require Court approval under Rule
3 23. However, pursuant to the Stipulation of Settlement, the entry of this Bain Final
4 Order and Judgment (and the Abbate Final Order and Judgment), and the
5 consequent dismissal with prejudice of the Bain Action (and the Abbate Action), is
6 conditioned upon the Court's approval and entry of the Class Action Final Order
7 and Judgment.

8 5. The Court granted final approval of the Settlement after conducting a
9 duly noticed Fairness Hearing on or about _____, 2013, and found
10 the Settlement to be fair, reasonable and adequate, and in the best interests of the
11 Plaintiffs and the Class Members. On or about _____, 2013, the Court
12 approved and entered the Class Action Final Order and Judgment, which dismissed
13 the Class Action on the merits with prejudice and released Wells Fargo and the
14 Released Parties from the Released Claims including all claims arising out of the
15 transactions alleged in the Masonek Plaintiffs' complaints.

16 6. The Court has personal jurisdiction over Defendants and the Bain
17 Plaintiffs, and has subject-matter jurisdiction over the Bain Action, including,
18 without limitation, jurisdiction to release all claims arising out of the transactions
19 alleged in the Bain Plaintiffs' complaints and to dismiss the Bain Action on the
20 merits and with prejudice as against Wells Fargo.

21 7. The Bain Action (*Bain v. Wells Fargo Bank, N.A., et al.*, Case No.
22 SACV 10-00548 DOC (RNBx) (the "Bain Action")) is hereby dismissed with
23 prejudice and without costs as against Wells Fargo and the Released Parties.

24 8. Upon the Effective Date, the Bain Plaintiffs and Bain Counsel, on
25 behalf of themselves and their successors and assigns, shall be deemed to have, and
26 by operation of this Bain Final Order and Judgment shall have, fully, finally, and
27 forever released, relinquished and discharged all Released Claims against Wells
28 Fargo and the Released Parties, as those terms are defined below.

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- a. Released Claims means all claims, rights, debts, demands, causes of actions, suits, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, judgments, variances, executions, obligations, damages, losses, fees, costs, rights, matters, and issues, whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, or whether based in equity, whether suspected or unsuspected, fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, matured or un-matured, class or individual in nature, that have been, might have been, or could be asserted (or threatened, alleged, or litigated) at law, in equity, or otherwise, at any time, in any capacity, that were asserted or that could have been asserted in the Noteholder Actions, the Receiver Action, or in any court of competent jurisdiction or other tribunal or adjudicative body by anyone, which arise out of, touch upon, or relate in any way whatsoever to Medical Capital, the NISAs, the Notes, or the administration of the NISAs and all related agreements, from the beginning of time through the date of entry of the Final Orders and Judgments.
- b. Released Parties means (a) Wells Fargo's parent corporation, subsidiaries, and affiliates, (b) all current and former directors, officers, and employees of Wells Fargo and its parent corporation, subsidiaries, and affiliates, but only in their capacity as such directors, officers, and employees, and (c) all other agents and attorneys of Wells Fargo and its parent corporation, subsidiaries, and affiliates, but only with respect to actions taken or omissions made by such agents and attorneys on behalf of these entities in connection with Wells Fargo's

1 exercise of its rights and performance of its obligations under
2 the NISAs, and as disbursing agent for any and all entities
3 affiliated with MCH. Released Parties do not include (i) Mayer
4 Hoffman McCann P.C., CBIZ, Inc., CBIZ MHM, LLC, CBIZ
5 Orange County, CBIZ San Diego or any of their past or present
6 subsidiaries, affiliates, parents, successors, and predecessors, (ii)
7 the current or former directors, officers, and employees of
8 Mayer Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC,
9 CBIZ Orange County, CBIZ San Diego or any of their past or
10 present subsidiaries, affiliates, parents, successors, and
11 predecessors, or (iii) all other agents and attorneys of Mayer
12 Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC, CBIZ
13 Orange County, CBIZ San Diego or any of their past or present
14 subsidiaries, affiliates, parents, successors, and predecessors.

15 c. Notwithstanding the above, this release shall not extend to (1)
16 the obligations set forth in the Stipulation of Settlement; (2) the
17 Receiver's accounts at Wells Fargo, if any, relating to the
18 Receivership Entities or any accounts held by the Receiver; or
19 (3) claims relating to accounts of any kind (including but not
20 limited to deposit, credit, and loan accounts) held at any time or
21 that may hereafter be opened by the Bain Plaintiffs or Bain
22 Counsel at Wells Fargo, its parent corporation, subsidiaries, or
23 affiliates, or at any of their predecessors or successors.

24 9. Upon the Effective Date, Wells Fargo, on behalf of itself, its parent
25 corporation, subsidiaries, and affiliates, and any of their successors and assigns,
26 shall be deemed to have, and by operation of this Bain Final Order and Judgment
27 shall have, fully, finally, and forever released, relinquished, and discharged the
28 Bain Plaintiffs, and Bain Counsel from all claims that arise out of or relate in any

1 way to the institution, prosecution, or settlement of the Noteholder Actions.
2 Notwithstanding the above, this release shall not extend to (1) the obligations set
3 forth in the Stipulation of Settlement; or (2) claims relating to accounts of any kind
4 (including but not limited to deposit, credit, and loan accounts) held at any time or
5 that may hereafter be opened by the Bain Plaintiffs or Bain Counsel at Wells Fargo,
6 its parent corporation, subsidiaries, or affiliates, or at any of their predecessors or
7 successors.

8 10. Each of the releases in Paragraphs 8 and 9 is intended to include
9 known and unknown claims arising out of, touching upon, or relating in any way to
10 Medical Capital, the NISAs, the Notes, or the administration of the NISAs and all
11 related agreements, and each of the releases in Paragraphs 8 and 9 is expressly
12 intended to cover and include all such injuries or damages, including all rights of
13 action thereunder. The Bain Plaintiffs, and Bain Counsel on behalf of themselves
14 and their successors and assigns, expressly, knowingly, and voluntarily waive the
15 provisions of Section 1542 of the California Civil Code, which provides as follows:

16 **A GENERAL RELEASE DOES NOT EXTEND TO**
17 **CLAIMS WHICH THE CREDITOR DOES NOT**
18 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
19 **FAVOR AT THE TIME OF EXECUTING THE**
20 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
21 **MUST HAVE MATERIALLY AFFECTED HIS OR**
22 **HER SETTLEMENT WITH THE DEBTOR.**

23 The Bain Plaintiffs, and Bain Counsel on behalf of themselves and their successors
24 and assigns, expressly waive and relinquish any and all rights and benefits that they
25 may have under, or that may be conferred upon them by, the provisions of Section
26 1542 of the California Civil Code, or any other law of any state or territory that is
27 similar, comparable, or equivalent to Section 1542, to the fullest extent that they
28 may lawfully waive such rights or benefits pertaining to the Released Claims.

Wells Fargo, on behalf of itself and its parent corporation, subsidiaries, affiliates,
and any of their successors and assigns, expressly waives and relinquishes any and

1 all rights and benefits that it may have under, or that may be conferred upon it by,
2 the provisions of Section 1542 of the California Civil Code, or any other law of any
3 state or territory that is similar, comparable, or equivalent to Section 1542, to the
4 fullest extent that they may lawfully waive such rights or benefits pertaining to the
5 claims released in Paragraph 9 of this Bain Final Order and Judgment.

6 11. Upon the Effective Date, the Stipulation of Settlement shall be the
7 exclusive remedy for any and all Released Claims of the Bain Plaintiffs. The Court
8 thus hereby permanently bars and enjoins the Bain Plaintiffs, all of their successors
9 and assigns, and all persons acting on behalf of or in concert or participation with
10 the Bain Plaintiffs or their successors and assigns from: (a) filing, commencing,
11 asserting, prosecuting, maintaining, pursuing, continuing, intervening in, or
12 participating in, or receiving any benefits from, any lawsuit, arbitration, or
13 administrative, regulatory or other proceeding or order in any jurisdiction based
14 upon or asserting any of the Released Claims against Wells Fargo or any of the
15 Released Parties; or (b) bringing a class action on behalf of the Bain Plaintiffs,
16 seeking to certify a class that includes the Bain Plaintiffs, or continuing to prosecute
17 or participate in any previously filed and/or certified class action in any lawsuit
18 based upon, asserting, touching upon, or relating in any way to any of the Released
19 Claims against Wells Fargo or any of the Released Parties.

20 12. The Court hereby declares that the Stipulation of Settlement is binding
21 on the Bain Plaintiffs and Wells Fargo, and it is to be preclusive in all pending and
22 future lawsuits or other proceedings.

23 13. Neither the Stipulation of Settlement, nor any of its terms and
24 provisions, nor any of the negotiations or proceedings connected with it, nor any of
25 the documents or statements referred to therein, nor any of the documents or
26 statements generated or received pursuant to the claims administration process,
27 shall be:

28 a. offered by any person or received against Wells Fargo or the

1 Released Parties as evidence or construed as or deemed to be
2 evidence of any presumption, concession, or admission by Wells
3 Fargo or the Released Parties of the truth of the facts alleged by
4 the Plaintiffs or the validity of any claim that has been or could
5 have been asserted in the Bain Action or in any litigation, or
6 other judicial or administrative proceeding, or the deficiency of
7 any defense that has been or could have been asserted in the
8 Bain Action or in any litigation, or of any liability, negligence,
9 fault or wrongdoing of Wells Fargo or the Released Parties;

10 b. offered by any person or received against Wells Fargo or the
11 Released Parties as evidence of a presumption, concession or
12 admission of any fault, misrepresentation or omission with
13 respect to any statement or written document approved or made
14 by Wells Fargo or the Released Parties or any other wrongdoing
15 by Wells Fargo or the Released Parties;

16 c. offered by any person or received against Wells Fargo or the
17 Released Parties as evidence of a presumption, concession, or
18 admission with respect to any default, liability, negligence, fault,
19 or wrongdoing, or in any way interpreted, construed, deemed,
20 invoked, offered, received in evidence, or referred to for any
21 other reason against any of the settling parties, in any civil,
22 criminal, or administrative action or proceeding; provided,
23 however, that nothing contained in this paragraph shall prevent
24 the Stipulation of Settlement (or any agreement or order relating
25 thereto) from being used, offered, or received in evidence in any
26 proceeding to approve, enforce, or otherwise effectuate the
27 Settlement (or any agreement or order relating thereto) or this
28 Bain Final Order and Judgment, or in which the reasonableness,

1 fairness, or good faith of the parties in participating in the
2 Settlement (or any agreement or order relating thereto) is an
3 issue, or to enforce or effectuate provisions of the Settlement,
4 this Bain Final Order and Judgment, or the releases as to Wells
5 Fargo, the Released Parties, or the Bain Plaintiffs; or

6 d. offered by any person or received against any of the Bain
7 Plaintiffs as evidence or construed as or deemed to be evidence
8 that any of their claims in the Bain Action lack merit.

9 Notwithstanding the foregoing, Wells Fargo and/or the Released Parties may file
10 the Stipulation of Settlement, this Bain Final Order and Judgment, and/or any of the
11 documents or statements referred to therein in support of any defense or claim that
12 is binding on and shall have *res judicata*, collateral estoppel, and/or preclusive
13 effect in all pending and future lawsuits or other proceedings maintained by or on
14 behalf of the Bain Plaintiffs, and each of them, as well as their heirs, executors,
15 administrators, successors, and/or assigns.

16 14. The Court has jurisdiction to enter this Bain Final Order and
17 Judgment. Without in any way affecting the finality of this Bain Final Order and
18 Judgment, the Court expressly retains exclusive and continuing jurisdiction over
19 Defendants and the Bain Plaintiffs, and all matters relating to the administration,
20 consummation and enforcement of the Stipulation of Settlement and of this Bain
21 Final Order and Judgment, including, without limitation, for the purpose of:

22 a. enforcing the terms and conditions of the Stipulation of
23 Settlement (following, and in conformity with, the resolution by
24 the Hon. Layn Phillips (Ret.) of any disputes, claims or causes
25 of action that, in whole or in part, are related to or arise out of
26 the Stipulation of Settlement, and/or this Bain Final Order and
27 Judgment, including, without limitation: whether claims or
28 causes of action allegedly in any way are related to the Bain

1 Action are or are not barred or released by this Bain Final Order
2 and Judgment; and whether persons or entities are enjoined from
3 pursuing any claims against Wells Fargo or the Released
4 Parties);

5 b. entering such additional orders, if any, as may be necessary or
6 appropriate to protect or effectuate this Bain Final Order and
7 Judgment and the Stipulation of Settlement (including, without
8 limitation, orders enjoining persons or entities from pursuing
9 any claims against Wells Fargo or the Released Parties), or to
10 ensure the fair and orderly administration of the Settlement; and

11 c. entering any other necessary or appropriate orders to protect and
12 effectuate the Court's retention of continuing jurisdiction over
13 the Stipulation of Settlement, the Bain Plaintiffs, and Wells
14 Fargo.

15 15. Without further order of the Court, the Parties may agree to reasonably
16 necessary extensions of time to carry out any of the provisions of the Stipulation of
17 Settlement.

18 16. There is no just reason for delay in the entry of this Bain Final Order
19 and Judgment and immediate entry by the Clerk of the Court is expressly directed
20 pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure.

21 17. In the event that the Effective Date does not occur:

22 a. All orders, findings, and releases entered in connection with the
23 Stipulation of Settlement shall be vacated and become null and
24 void and shall have no force and effect whatsoever, shall not be
25 used or referred to for any purposes whatsoever, and shall not be
26 admissible or discoverable in this or any other proceeding;

27 b. The Bain Action relating to Wells Fargo shall return to the
28 procedural *status quo* before entry of this Bain Final Order and

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Judgment as if no settlement had been negotiated or entered into;

c. All of the Court's prior Orders shall, subject to this Bain Final Order and Judgment, remain in force and effect; and

d. The Parties shall cooperate in good faith to determine a reasonable pre-trial and trial schedule.

IT IS SO ORDERED.

Dated: _____, 2013

By: _____
Honorable David O. Carter
United States District Judge

EXHIBIT F

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10 Attorneys for Defendant
WELLS FARGO BANK, N.A.

11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 JAMES ABBATE, *et al.*,
16 Plaintiffs,

17 v.

18 WELLS FARGO BANK,
19 NATIONAL ASSOCIATION, *et al.*,
20 Defendants.
21

22 This document relates to:

- 23 NO. SACV 09-1048 DOC (RNB)
24 NO. SACV 10-00548 DOC (RNBx)
25 NO. SACV 10-6561 DOC (RNB)
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CASE NO. SACV 10-6561 DOC (RNB)

**[PROPOSED] ABBATE FINAL ORDER
AND JUDGMENT**

**[PROPOSED] ABBATE FINAL ORDER
AND JUDGMENT**

1 The Motion by the plaintiffs in the case captioned *Abbate v. Wells Fargo*
2 *Bank, N.A.*, Case No. SACV 10-6561 DOC (RNBx) (the “Abbate Action”) for
3 entry of the Abbate Final Order and Judgment in connection with the Settlement
4 with Wells Fargo Bank, N.A. (“Wells Fargo”) came on for hearing on
5 _____, 2013. Appearances were entered on the record.

6 The Court, having reviewed and considered the Motion, hereby GRANTS the
7 Motion, enters the Abbate Final Order and Judgment, and further finds and orders
8 as follows:

9 1. The Noteholder Actions include: (1) the case captioned *Masonek v.*
10 *Wells Fargo Bank, N.A.*, Case No. SACV 09-1048 DOC (RNBx) (the “Class
11 Action”); (2) the case captioned *Bain v. Wells Fargo Bank, N.A., et al.*, Case No.
12 SACV 10-00548 DOC (RNBx) (the “Bain Action”); and (3) the Abbate Action.
13 Plaintiffs in the Class Action are referred to herein as the “Masonek Plaintiffs”;
14 plaintiffs in the Bain Action are referred to herein as the “Bain Plaintiffs”; and
15 plaintiffs in the Abbate Action are referred to herein as the “Abbate Plaintiffs.” The
16 Masonek Plaintiffs, the Bain Plaintiffs, and the Abbate Plaintiffs are collectively
17 referred to herein as the “Plaintiffs.”

18 2. The Plaintiffs in the Noteholder Actions, on the one hand, and Wells
19 Fargo, on the other hand, have agreed upon the terms and conditions of the
20 Settlement, as set forth in the Stipulation of Settlement, dated April __, 2013, which
21 has been filed with the Court.

22 3. The Stipulation of Settlement, including all Exhibits thereto, is
23 expressly incorporated by reference into this Abbate Final Order and Judgment and
24 made a part hereof for all purposes. Except where otherwise noted, all capitalized
25 terms used in this Abbate Final Order and Judgment shall have the meanings set
26 forth in the Stipulation of Settlement.

27 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the
28 settlement of the claims of the Masonek Plaintiffs and the Class Members is subject

1 to Court approval. The settlement of the claims of the Abbate Plaintiffs (and the
2 Bain Plaintiffs), on the other hand, does not require Court approval under Rule 23.
3 However, pursuant to the Stipulation of Settlement, the entry of this Abbate Final
4 Order and Judgment (and the Bain Final Order and Judgment), and the consequent
5 dismissal with prejudice of the Abbate Action (and the Bain Action), is conditioned
6 upon the Court's approval and entry of the Class Action Final Order and Judgment.

7 5. The Court granted final approval of the Settlement after conducting a
8 duly noticed Fairness Hearing on or about _____, 2013, and found
9 the Settlement to be fair, reasonable and adequate, and in the best interests of the
10 Plaintiffs and the Class Members. On or about _____, 2013, the Court
11 approved and entered the Class Action Final Order and Judgment, which dismissed
12 the Class Action on the merits with prejudice and released Wells Fargo and the
13 Released Parties from the Released Claims including all claims arising out of the
14 transactions alleged in the Masonek Plaintiffs' complaints.

15 6. The Court has personal jurisdiction over Defendants and the Abbate
16 Plaintiffs, and has subject-matter jurisdiction over the Abbate Action, including,
17 without limitation, jurisdiction to release all claims arising out of the transactions
18 alleged in the Abbate Plaintiffs' complaints and to dismiss the Abbate Action on
19 the merits and with prejudice as against Wells Fargo.

20 7. The Abbate Action (*Abbate v. Wells Fargo Bank, N.A.*, Case No.
21 SACV 10-6561 DOC (RNBx)) is hereby dismissed with prejudice and without
22 costs as against Wells Fargo and the Released Parties.

23 8. Upon the Effective Date, the Abbate Plaintiffs, Abbate Counsel, and
24 the Litigation Managers, on behalf of themselves and their successors and assigns,
25 shall be deemed to have, and by operation of this Abbate Final Order and Judgment
26 shall have, fully, finally, and forever released, relinquished and discharged all
27 Released Claims against Wells Fargo and the Released Parties, as those terms are
28 defined below.

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- a. Released Claims means all claims, rights, debts, demands, causes of actions, suits, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, judgments, variances, executions, obligations, damages, losses, fees, costs, rights, matters, and issues, whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, or whether based in equity, whether suspected or unsuspected, fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, matured or un-matured, class or individual in nature, that have been, might have been, or could be asserted (or threatened, alleged, or litigated) at law, in equity, or otherwise, at any time, in any capacity, that were asserted or that could have been asserted in the Noteholder Actions, the Receiver Action, or in any court of competent jurisdiction or other tribunal or adjudicative body by anyone, which arise out of, touch upon, or relate in any way whatsoever to Medical Capital, the NISAs, the Notes, or the administration of the NISAs and all related agreements, from the beginning of time through the date of entry of the Final Orders and Judgments.
- b. Released Parties means (a) Wells Fargo’s parent corporation, subsidiaries, and affiliates, (b) all current and former directors, officers, and employees of Wells Fargo and its parent corporation, subsidiaries, and affiliates, but only in their capacity as such directors, officers, and employees, and (c) all other agents and attorneys of Wells Fargo and its parent corporation, subsidiaries, and affiliates, but only with respect to actions taken or omissions made by such agents and attorneys on behalf of these entities in connection with Wells Fargo’s

1 exercise of its rights and performance of its obligations under
2 the NISAs, and as disbursing agent for any and all entities
3 affiliated with MCH. Released Parties do not include (i) Mayer
4 Hoffman McCann P.C., CBIZ, Inc., CBIZ MHM, LLC, CBIZ
5 Orange County, CBIZ San Diego or any of their past or present
6 subsidiaries, affiliates, parents, successors, and predecessors, (ii)
7 the current or former directors, officers, and employees of
8 Mayer Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC,
9 CBIZ Orange County, CBIZ San Diego or any of their past or
10 present subsidiaries, affiliates, parents, successors, and
11 predecessors, or (iii) all other agents and attorneys of Mayer
12 Hoffman McCann P.C. CBIZ, Inc., CBIZ MHM, LLC, CBIZ
13 Orange County, CBIZ San Diego or any of their past or present
14 subsidiaries, affiliates, parents, successors, and predecessors.

15 c. Notwithstanding the above, this release shall not extend to (1)
16 the obligations set forth in the Stipulation of Settlement; or (2)
17 the Receiver's accounts at Wells Fargo, if any, relating to the
18 Receivership Entities or any accounts held by the Receiver; or
19 (3) claims relating to accounts of any kind (including but not
20 limited to deposit, credit, and loan accounts) held at any time or
21 that may hereafter be opened by the Abbate Plaintiffs, Abbate
22 Counsel, or the Litigation Managers at Wells Fargo, its parent
23 corporation, subsidiaries, or affiliates, or at any of their
24 predecessors or successors.

25 9. Upon the Effective Date, Wells Fargo, on behalf of itself, its parent
26 corporation, subsidiaries, and affiliates, and any of their successors and assigns,
27 shall be deemed to have, and by operation of this Abbate Final Order and Judgment
28 shall have, fully, finally, and forever released, relinquished, and discharged the

1 Abbate Plaintiffs, Abbate Counsel, and the Litigation Managers from all claims that
2 arise out of or relate in any way to the institution, prosecution, or settlement of the
3 Noteholder Actions. Notwithstanding the above, this release shall not extend to (1)
4 the obligations set forth in the Stipulation of Settlement; or (2) claims relating to
5 accounts of any kind (including but not limited to deposit, credit, and loan
6 accounts) held at any time or that may hereafter be opened by the Abbate Plaintiffs
7 or Abbate Counsel at Wells Fargo, its parent corporation, subsidiaries, or affiliates,
8 or at any of their predecessors or successors.

9 10. Each of the releases in Paragraphs 8 and 9 is intended to include
10 known and unknown claims arising out of, touching upon, or relating in any way to
11 Medical Capital, the NISAs, the Notes, or the administration of the NISAs and all
12 related agreements, and each of the releases in Paragraphs 8 and 9 is expressly
13 intended to cover and include all such injuries or damages, including all rights of
14 action thereunder. The Abbate Plaintiffs, Abbate Counsel, and the Litigation
15 Managers, on behalf of themselves and their successors and assigns, expressly,
16 knowingly, and voluntarily waive the provisions of Section 1542 of the California
17 Civil Code, which provides as follows:

18 **A GENERAL RELEASE DOES NOT EXTEND TO**
19 **CLAIMS WHICH THE CREDITOR DOES NOT**
20 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
21 **FAVOR AT THE TIME OF EXECUTING THE**
22 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
23 **MUST HAVE MATERIALLY AFFECTED HIS OR**
24 **HER SETTLEMENT WITH THE DEBTOR.**

25 The Abbate Plaintiffs, Abbate Counsel, and the Litigation Managers, on behalf of
26 themselves and their successors and assigns, expressly waive and relinquish any
27 and all rights and benefits that they may have under, or that may be conferred upon
28 them by, the provisions of Section 1542 of the California Civil Code, or any other
law of any state or territory that is similar, comparable, or equivalent to Section
1542, to the fullest extent that they may lawfully waive such rights or benefits

1 pertaining to the Released Claims. Wells Fargo, on behalf of itself and its parent
2 corporation, subsidiaries, affiliates, and any of their successors and assigns,
3 expressly waives and relinquishes any and all rights and benefits that it may have
4 under, or that may be conferred upon it by, the provisions of Section 1542 of the
5 California Civil Code, or any other law of any state or territory that is similar,
6 comparable, or equivalent to Section 1542, to the fullest extent that they may
7 lawfully waive such rights or benefits pertaining to the claims released in Paragraph
8 9 of this Abbate Final Order and Judgment.

9 11. Upon the Effective Date, the Stipulation of Settlement shall be the
10 exclusive remedy for any and all Released Claims of the Abbate Plaintiffs. The
11 Court thus hereby permanently bars and enjoins the Abbate Plaintiffs, all of their
12 successors and assigns, and all persons acting on behalf of or in concert or
13 participation with the Abbate Plaintiffs or their successors and assigns from: (a)
14 filing, commencing, asserting, prosecuting, maintaining, pursuing, continuing,
15 intervening in, or participating in, or receiving any benefits from, any lawsuit,
16 arbitration, or administrative, regulatory or other proceeding or order in any
17 jurisdiction based upon or asserting any of the Released Claims against Wells Fargo
18 or any of the Released Parties; or (b) bringing a class action on behalf of the Abbate
19 Plaintiffs, seeking to certify a class that includes the Abbate Plaintiffs, or
20 continuing to prosecute or participate in any previously filed and/or certified class
21 action in any lawsuit based upon, asserting, touching upon, or relating in any way
22 to any of the Released Claims against Wells Fargo or any of the Released Parties.

23 12. The Court hereby declares that the Stipulation of Settlement is binding
24 on the Abbate Plaintiffs and Wells Fargo, and it is to be preclusive in all pending
25 and future lawsuits or other proceedings.

26 13. Neither the Stipulation of Settlement, nor any of its terms and
27 provisions, nor any of the negotiations or proceedings connected with it, nor any of
28 the documents or statements referred to therein, nor any of the documents or

1 statements generated or received pursuant to the claims administration process,
2 shall be:

- 3 a. offered by any person or received against Wells Fargo or the
4 Released Parties as evidence or construed as or deemed to be
5 evidence of any presumption, concession, or admission by Wells
6 Fargo or the Released Parties of the truth of the facts alleged by
7 the Plaintiffs or the validity of any claim that has been or could
8 have been asserted in the Abbate Action or in any litigation, or
9 other judicial or administrative proceeding, or the deficiency of
10 any defense that has been or could have been asserted in the
11 Abbate Action or in any litigation, or of any liability,
12 negligence, fault or wrongdoing of Wells Fargo or the Released
13 Parties;
- 14 b. offered by any person or received against Wells Fargo or the
15 Released Parties as evidence of a presumption, concession or
16 admission of any fault, misrepresentation or omission with
17 respect to any statement or written document approved or made
18 by Wells Fargo or the Released Parties or any other wrongdoing
19 by Wells Fargo or the Released Parties;
- 20 c. offered by any person or received against Wells Fargo or the
21 Released Parties as evidence of a presumption, concession, or
22 admission with respect to any default, liability, negligence, fault,
23 or wrongdoing, or in any way interpreted, construed, deemed,
24 invoked, offered, received in evidence, or referred to for any
25 other reason against any of the settling parties, in any civil,
26 criminal, or administrative action or proceeding; provided,
27 however, that nothing contained in this paragraph shall prevent
28 the Stipulation of Settlement (or any agreement or order relating

1 thereto) from being used, offered, or received in evidence in any
2 proceeding to approve, enforce, or otherwise effectuate the
3 Settlement (or any agreement or order relating thereto) or this
4 Abbate Final Order and Judgment, or in which the
5 reasonableness, fairness, or good faith of the parties in
6 participating in the Settlement (or any agreement or order
7 relating thereto) is an issue, or to enforce or effectuate
8 provisions of the Settlement, this Abbate Final Order and
9 Judgment, or the releases as to Wells Fargo, the Released
10 Parties, or the Abbate Plaintiffs; or

- 11 d. offered by any person or received against any of the Abbate
12 Plaintiffs as evidence or construed as or deemed to be evidence
13 that any of their claims in the Abbate Action lack merit.

14 Notwithstanding the foregoing, Wells Fargo and/or the Released Parties may file
15 the Stipulation of Settlement, this Abbate Final Order and Judgment, and/or any of
16 the documents or statements referred to therein in support of any defense or claim
17 that is binding on and shall have *res judicata*, collateral estoppel, and/or preclusive
18 effect in all pending and future lawsuits or other proceedings maintained by or on
19 behalf of the Abbate Plaintiffs, and each of them, as well as their heirs, executors,
20 administrators, successors, and/or assigns.

21 14. The Court has jurisdiction to enter this Abbate Final Order and
22 Judgment. Without in any way affecting the finality of this Abbate Final Order and
23 Judgment, the Court expressly retains exclusive and continuing jurisdiction over
24 Defendants and the Abbate Plaintiffs, and all matters relating to the administration,
25 consummation and enforcement of the Stipulation of Settlement and of this Abbate
26 Final Order and Judgment, including, without limitation, for the purpose of:

- 27 a. enforcing the terms and conditions of the Stipulation of
28 Settlement (following, and in conformity with, the resolution by

1 the Hon. Layn Phillips (Ret.) of any disputes, claims or causes
2 of action that, in whole or in part, are related to or arise out of
3 the Stipulation of Settlement, and/or this Abbate Final Order and
4 Judgment, including, without limitation: whether claims or
5 causes of action allegedly in any way are related to the Abbate
6 Action are or are not barred or released by this Abbate Final
7 Order and Judgment; and whether persons or entities are
8 enjoined from pursuing any claims against Wells Fargo or the
9 Released Parties);

- 10 b. entering such additional orders, if any, as may be necessary or
11 appropriate to protect or effectuate this Abbate Final Order and
12 Judgment and the Stipulation of Settlement (including, without
13 limitation, orders enjoining persons or entities from pursuing
14 any claims against Wells Fargo or the Released Parties), or to
15 ensure the fair and orderly administration of the Settlement; and
16 c. entering any other necessary or appropriate orders to protect and
17 effectuate the Court's retention of continuing jurisdiction over
18 the Stipulation of Settlement, the Abbate Plaintiffs, and Wells
19 Fargo.

20 15. Without further order of the Court, the Parties may agree to reasonably
21 necessary extensions of time to carry out any of the provisions of the Stipulation of
22 Settlement.

23 16. There is no just reason for delay in the entry of this Abbate Final Order
24 and Judgment and immediate entry by the Clerk of the Court is expressly directed
25 pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure.

26 17. In the event that the Effective Date does not occur:

- 27 a. All orders, findings, and releases entered in connection with the
28 Stipulation of Settlement shall be vacated and become null and

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- void and shall have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;
- b. The Abbate Action relating to Wells Fargo shall return to the procedural *status quo* before entry of this Abbate Final Order and Judgment as if no settlement had been negotiated or entered into;
 - c. All of the Court’s prior Orders shall, subject to this Abbate Final Order and Judgment, remain in force and effect; and
 - d. The Parties shall cooperate in good faith to determine a reasonable pre-trial and trial schedule.

IT IS SO ORDERED.

Dated: _____, 2013

By: _____
Honorable David O. Carter
United States District Judge

EXHIBIT G

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3 Los Angeles, CA 90071-1560
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5 Attorneys for Defendant
WELLS FARGO BANK, N.A.
6
7

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

12
13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 v.

16 MEDICAL CAPITAL HOLDINGS,
17 INC., *et al.*,

18 Defendants.
19

Case No. SACV 09-818 DOC (RNBx)

**[PROPOSED] ORDER GRANTING
GOOD FAITH SETTLEMENT
MOTION**

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**[PROPOSED] ORDER GRANTING GOOD
FAITH SETTLEMENT MOTION**

1 The Good Faith Settlement Motion by Wells Fargo Bank, N.A. (“Wells
2 Fargo”) came on for hearing on _____, 2013. Appearances were
3 entered on the record.

4 The Court, having reviewed and considered the Motion, hereby GRANTS the
5 Motion in its entirety, and further finds and orders as follows:

6 1. The Noteholder Actions include: (1) the case captioned *Masonek v.*
7 *Wells Fargo Bank, N.A.*, Case No. SACV 09-1048 DOC (RNBx); (2) the case
8 captioned *Bain v. Wells Fargo Bank, N.A., et al.*, Case No. SACV 10-00548 DOC
9 (RNBx); and (3) the case captioned *Abbate v. Wells Fargo Bank, N.A.*, Case No.
10 SACV 10-6561 DOC (RNBx).

11 2. Plaintiffs do not allege in the Noteholder Actions that Wells Fargo and
12 BNYM are joint tortfeasors liable for the same tort, co-obligors on a contract debt,
13 or otherwise subject to a right of contribution among them and, accordingly, this
14 Order does not reduce any claims asserted by Plaintiffs in the Noteholder Actions.

15 3. The Plaintiffs in the Noteholder Actions, on the one hand, and Wells
16 Fargo, on the other hand, have agreed upon the terms and conditions of the
17 Settlement, as set forth in the Stipulation of Settlement, dated April __, 2013, which
18 has been filed with the Court.

19 4. The Stipulation of Settlement, including all Exhibits thereto, is
20 expressly incorporated by reference into this Order and made a part hereof for all
21 purposes. Except where otherwise noted, all capitalized terms used in this Order
22 shall have the meanings set forth in the Stipulation of Settlement.

23 5. The Settlement embodied in the Stipulation of Settlement was made
24 and entered into in good faith within the meaning and effect of California Code of
25 Civil Procedure Section 877.6 and applicable case law, including the factors set
26 forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal. 3d 488 (1985).
27 The consideration provided by Wells Fargo for the release provided to Wells Fargo
28 and the Released Parties satisfied the *Tech-Bilt* “ballpark” standard for finding that

1 the settlement was made in good faith. *Id.*

2 6. In accordance with California Code of Civil Procedure Section 877.6,
3 the Court finds that the Settlement embodied in the Stipulation of Settlement was
4 made in good faith and any and all joint tortfeasors or co-obligors shall be barred
5 from pursuing any claims against Wells Fargo or the Released Parties for
6 contribution, implied indemnity, or equitable indemnity that are based upon,
7 asserting, touching upon, or relating in any way to any of the Released Claims, to
8 the extent any such claims exist.

9 IT IS SO ORDERED.

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11
12 Dated: _____, 2013

13 By: _____
14 Honorable David O. Carter
15 United States District Judge

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