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1 JOSEPH W. COTCHETT (#36324)  
 jcotchett@cpmlegal.com  
 2 MARK C. MOLUMPBY (#168009)  
 mmolumphy@cpmlegal.com  
 3 LAURA SCHLICHTMANN (#169699)  
 lschlichtmann@cpmlegal.com  
 4 JORDANNA G. THIGPEN (#232642)  
 jthigpen@cpmlegal.com  
 5 **COTCHETT, PITRE & McCARTHY**  
 840 Malcolm Road, Suite 200  
 6 Burlingame, CA 94010  
 Telephone: (650) 697-6000  
 7 Fax: (650) 697-0577

8 *Attorneys for Plaintiffs and the Class*

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 7009 SEP 11 PM 2:34  
 CLERK U.S. DISTRICT COURT  
 CENTRAL DIST. OF CALIF.  
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 10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**  
 12 **SOUTHERN DIVISION**

14 **STEVEN MASONEK,**  
 15 **SANDRA MASONEK,**  
 16 **MARK MASONEK,**  
 17 **MARY ZAHARA,**  
 18 **JOANN HOSKING,**  
 19 **CINDY SWANSON and**  
 20 **ROBERT H. LUDLOW, JR., ON**  
 21 **BEHALF OF THE ROBERT H.**  
 22 **LUDLOW, JR. REVOCABLE**  
 23 **TRUST, individually and on behalf of**  
 24 **all those similarly situated,**

25 **Plaintiffs,**

26 v.

27 **WELLS FARGO BANK,**  
 28 **NATIONAL ASSOCIATION,**  
**BANK OF NEW YORK MELLON,**  
**and Does 1-10,**

**Defendants.**

Case No. SACV09 -1048 AG (RNBx)

**CLASS ACTION**

**COMPLAINT FOR:**

1. Breach of Fiduciary Duty;
2. Negligence;
3. Unjust Enrichment; and
4. Violation of Business & Professions Code Section 17200

**JURY TRIAL DEMANDED**

**BY FAX**

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1 **FIRST CAUSE OF ACTION**  
 (BREACH OF FIDUCIARY DUTY). . . . . 25

2 **SECOND CAUSE OF ACTION**  
 3 (NEGLIGENCE). . . . . 26

4 **THIRD CAUSE OF ACTION**  
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1 Plaintiffs allege as follows upon information and belief based, *inter alia*,  
2 upon investigation conducted by plaintiffs and their counsel, except as to those  
3 allegations pertaining to plaintiffs personally, which are alleged upon knowledge.  
4 This action is related to the action entitled, *Securities and Exchange Commission*  
5 *v. Medical Capital Holdings, Inc., et al.*, Case No. SACV09-818 (DOC), pending  
6 in this District before the Honorable David Carter. Pursuant to Section IX of the  
7 Court’s Preliminary Injunction Order in the *SEC* action, Plaintiffs have not  
8 included in this Complaint claims against MCH, MCC, its subsidiaries, and its  
9 affiliates, including Sidney Field and Joseph Lampariello, though reserve their  
10 right to the seek leave from the Court to amend the Complaint to add such claims.

11 **I. OVERVIEW**

12 1. This action arises from a massive breach of trust by those specifically  
13 charged with representing and protecting the interests of Plaintiffs and other  
14 investors in Medical Capital Holdings, Inc. (“MCH”).

15 2. Plaintiffs bring this action against defendants Wells Fargo Bank  
16 (“Wells Fargo”) and Bank of New York Mellon (“BNYM”) on behalf of a Class of  
17 persons and entities who purchased interests in notes issued by Medical Provider  
18 Funding Corporation II (“MP II”), Medical Provider Funding Corporation III  
19 (“MP III”), Medical Provider Funding Corporation IV (“MP IV”) , Medical  
20 Provider Funding Corporation V (“MP V”), and Medical Provider Funding  
21 Corporation VI (“MP VI”) and suffered damages (the “Class”).

22 3. MCH, based in Tustin, California, is a medical receivable financing  
23 company that makes money by purchasing accounts receivable from healthcare  
24 providers at a discount and collecting the debts owed. MCH operates through its  
25 wholly owned subsidiary, Medical Capital Corporation (“MCC”). MCH and MCC  
26 are run by Sidney Field (“Field”), the CEO, and Joseph Lampariello  
27 (“Lampariello”), the President and COO.

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1           4.       Since 2003, MCH raised over \$2.2 billion from investors, including  
2 plaintiffs and other Class members, supposedly to fund its operations. The money  
3 was raised through the offering of notes issued by five Special Purpose  
4 Corporations (“SPCs”) created by MCH: MP II, MP III, MP IV, MP V, and  
5 MP VI.

6           5.       Plaintiffs received Private Placement Memorandum (“PPMs”) for  
7 each SPC, which represented that investor funds within each SPC would be  
8 carefully segregated and used to pay for accounts receivable from medical  
9 providers. Investors were further assured that their funds would not be used to pay  
10 administrative fees to MCH and its affiliates.

11          6.       Critically, to ensure these promises were kept, investors were told that  
12 MCH had retained prominent banks – defendants Wells Fargo and BNYM – to  
13 serve as Trustees of the SPCs and to represent the interests of investors. For their  
14 work, the Trustees were paid substantial fees. Unfortunately, under the  
15 supposedly watchful eyes of the Trustees, MCH was a scam.

16          7.       As now revealed in a pending SEC enforcement action, in reports  
17 issued by the Court-appointed Receiver, and in correspondence from the Trustees  
18 to investors, MCH, MCC, Fields and Lampariello – for years – used the Trustee-  
19 controlled accounts as their personal piggy banks, improperly requesting and  
20 obtaining investor funds to pay themselves massive “administrative fees” of nearly  
21 \$325 million which they used to purchase lavish personal perquisites including a  
22 multi-million dollar, 118-foot yacht. MCH and its affiliates also invested in an  
23 array of non-medical projects that were placed under the personal supervision of  
24 Lampariello, including mobile phone and movie ventures, and commingled  
25 investor funds between the various SPCs, all in violation of the PPMs issued to  
26 investors. Despite controlling hundreds of millions of dollars, the SEC and  
27 Receiver further found that MCH and its affiliates operated without financial or  
28 accounting controls, failed to prepare financial statements in accordance with

1 GAAP, failed to perform annual appraisals of assets, and repeatedly obtained the  
2 Trustees' permission to pay themselves fees based on a formula that blatantly  
3 violated the PPMs' mandate that fees not come from investor funds. The Trustees,  
4 over and over again, without exception, willingly signed off on the requests.

5 8. All five SPCs are now in default to investors, failing to make interest  
6 and principle payments on almost \$1 billion worth of notes. Based on his review  
7 of internal records, and interviews with company employees, the Receiver recently  
8 reported to the Court that of approximately \$625 million of medical accounts  
9 receivable on the SPCs' collective books, just \$80 million is verifiable, and the  
10 remaining accounts – totaling \$542 million – “no longer exist.” Undoubtedly, the  
11 noteholders – Class members herein – will suffer substantial losses. By this  
12 action, Plaintiffs seek to recover damages for such losses.

13 **II. JURISDICTION AND VENUE**

14 9. The Court has jurisdiction over this action pursuant to 28 U.S.C.  
15 §§ 1332(d) and 1367(a). The amount in controversy exceeds \$5,000,000,  
16 exclusive of interest and costs, and there is diversity of citizenship between  
17 Plaintiffs and each of the Defendants.

18 10. Venue is proper in this district. MCH and MCC, which operated the  
19 SPCs, were also headquartered in this District. The related SEC action is pending  
20 in this District. Defendants maintained offices in this District. A substantial part  
21 of the events, acts, omissions and transactions complained of herein occurred in  
22 this District. At all relevant times herein, defendant conducted substantial  
23 business and/or committed violations of United States law by acts committed in  
24 this District.

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1 **III. PARTIES**

2 **A. Plaintiffs**

3 11. Plaintiff **Steven Masonek** is an individual and resident of Butte  
4 County, California. Plaintiff purchased an interest in the subject notes and, due to  
5 defaults on the notes, has been damaged.

6 12. Plaintiff **Sandra Masonek** is an individual and resident of Butte  
7 County, California. Plaintiff purchased an interest in the subject notes and, due to  
8 defaults on the notes, has been damaged.

9 13. Plaintiff **Mark Masonek** is an individual and resident of Butte  
10 County, California. Plaintiff purchased an interest in the subject notes and, due to  
11 defaults on the notes, has been damaged.

12 14. Plaintiff **Mary Zahara** is an individual and resident of Butte County,  
13 California. Plaintiff purchased an interest in the subject notes and, due to defaults  
14 on the notes, has been damaged.

15 15. Plaintiff **Joann Hosking** is an individual and resident of Butte  
16 County, California. Plaintiff purchased an interest in the subject notes and, due to  
17 defaults on the notes, has been damaged.

18 16. Plaintiff **Cindy Swanson** is an individual and resident of Butte  
19 County, California. Plaintiff purchased an interest in the subject notes and, due to  
20 defaults on the notes, has been damaged.

21 17. Plaintiff **Robert H. Ludlow, Jr., on behalf of the**  
22 **Robert H. Ludlow, Jr. Revocable Trust 1999** is an individual and resident of  
23 Santa Cruz County, California. Plaintiff purchased an interest in the subject notes  
24 and, due to defaults on the notes, has been damaged.

25 **B. Defendants**

26 18. Defendant **Wells Fargo Bank, National Association** (“Wells Fargo”)  
27 has its principal executive offices located in Minneapolis, Minnesota, and other  
28 affiliate offices in San Francisco and Los Angeles, California. Wells Fargo

1 promotes itself as providing corporate trust services, including “fiduciary and  
2 agency products,” since 1934.

3 19. Defendant **Bank of New York Mellon** (“BNYM”) is a Delaware  
4 corporation with its principal executive offices located in New York, New York,  
5 and other affiliate offices in Los Angeles, California. BNYM promotes itself as  
6 the “world’s leading provider of corporate trust and agency services.”

7 20. Defendants Wells Fargo and BNYM are collectively referred to  
8 herein as the “Trustees” or the “Defendants.”

9 21. Except as described herein, Plaintiffs are ignorant of the true names  
10 of defendants sued as Does 1 through 10 inclusive and, therefore, sue these  
11 defendants by such fictitious names. Plaintiffs will seek leave of the Court to  
12 amend this Complaint to allege their true names and capacities when they are  
13 ascertained. Plaintiffs allege that each of these Doe Defendants is responsible in  
14 some manner for the acts and occurrences alleged herein, and that Plaintiffs’  
15 damages were caused by such Doe Defendants.

16 22. Defendant, and the Doe Defendants, and each of them, are  
17 individually sued as participants, co-conspirators, and aiders and abettors in the  
18 improper acts, plans, schemes, and transactions that are the subject of this  
19 Complaint.

### 20 **C. Non-Parties**

21 23. Plaintiffs are aware of various non-parties that participated in the  
22 wrongdoing alleged herein. Many of these persons and entities, including some  
23 described below, have been named in the SEC’s related complaint and/or included  
24 in the Court’s Permanent Injunction Order which presently precludes noteholder  
25 investors from bringing legal claims against designated parties, including affiliates  
26 of MCH and MCC. Plaintiffs reserve their right to seek leave from the Court to  
27 amend their Complaint to add such non-parties at a future date, once the bar order  
28 is lifted.

1           24.    **Medical Capital Holdings, Inc.** (“MCH”) is a Nevada corporation  
2 with its principle place of business in Tustin, California. Through various wholly-  
3 owned operating subsidiaries and SPCs, MCH provides financing to healthcare  
4 providers by purchasing their accounts receivables and making secured loans to  
5 them. MCH uses the SPCs to raise money from investors to fund the financing.  
6 MCH uses the operating subsidiaries to underwrite, monitor, administer, and  
7 service these financings. In February 2001, the California Department of  
8 Corporations issued a Desist and Refrain Order against MCH from the further  
9 offer or sale of securities in the State of California.

10           25.    **Medical Capital Corporation** (“MCC”) is a Nevada corporation and  
11 wholly owned subsidiary of MCH, with its principal place of business in Tustin,  
12 California. MCC is the administrator for each of MCH’s SPCs, including MP II,  
13 III, IV, V and VI, and provides management, underwriting, and administrative  
14 services, such as bookkeeping, payroll, and accounting services, including  
15 administration of all investor promissory notes and interest payments. The  
16 directors of MCC are Field and Lampariello, as well as Lawrence J. Edwards.  
17 Field serves as MCC’s CEO and Lampariello serves as MCC’s President and  
18 COO. Other key employees of MCC include Alan Meister (Treasure and Chief  
19 Financial Officer) and Thomas Fazio (General Counsel). MCC’s primary source  
20 of revenue was the Administrative Fees paid through various SPCs.

21           26.    **Medical Tracking Services, Inc.** (“MTS”) is a wholly owned  
22 subsidiary of MCH. MTS is a Nevada Corporation. MTS provided data entry of  
23 receivables and receivable payments for the SPCs. When the SPCs received  
24 batches of receivables under receivable purchase agreements, claim information  
25 was directly uploaded from the provider to MTS, supposedly to audit the  
26 information and input the data into customized tracking software. As receivable  
27 payments came in from insurance companies, MTS would enter data on the

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1 payments into the tracking programs. MTS would then generate and provide  
2 reports to MCC and the SPCs on receivable collections.

3       27. **Sidney M. Field** is a resident of Villa Park, California. Field has  
4 been the CEO and director of MCH and its affiliates during the relevant period.  
5 Just before forming MCH, Field held an insurance license and owned FGS  
6 Insurance Agency, an Irvine-based auto insurer. According to California  
7 Department of Insurance lawsuits, in February 1987, Field and others arranged for  
8 Coastal Insurance Inc., which they controlled, to pay Field \$17.5 million for FGS.  
9 Two years later, just before it slipped into insolvency, Coastal sold FGS back to  
10 Field for \$206,000. California Insurance regulators called the deal a “sham  
11 transaction” that diverted cash from an ailing insurer to Field. Field’s insurance  
12 license was revoked. Regulators also warned Field and Coastal that they would  
13 not license FGS if Field remained involved. Despite that warning, Field allegedly  
14 continued to control FGS and to serve as a “de facto” director of Coastal. Under  
15 Field’s supervision, FGS agents allegedly used a deceptive practice called  
16 “sliming” to sell auto policies, altering the accident records of questionable drivers  
17 and falsifying information about car values and commute mileage so applicants  
18 could qualify for insurance. FGS also allegedly duped customers into paying  
19 interest rates of 21-40% when they financed their premiums. The Department of  
20 Insurance sued Field for civil racketeering in August 1990 and again three years  
21 later, this time for fraud, after he filed bankruptcy. Ultimately, FGS’ license was  
22 revoked and the Company was liquidated by a bankruptcy trustee.

23       28. **Joseph J. Lampariello** resides in Newport Beach, California.  
24 Lampariello has been the president, COO, and director of MCH and its affiliates  
25 during the relevant period. Like Field, Lampariello is a defendant in the pending  
26 SEC enforcement action.

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1           29.    **Medical Provider Financial Corporation II** (“MP II”) is a Nevada  
2 corporation and wholly-owned SPC of MCH that was formed in October 2003.  
3 From January 2004 to December 2005, MP II conducted two series of note  
4 offerings, raising approximately \$251.7 million through the issuance of about  
5 3,458 notes to investors. As of recently, MP II had \$88 million in outstanding  
6 notes and defaulted in paying \$43 million in principal and \$1.3 million in interest  
7 to its investors.

8           30.    **Medical Provider Financial Corporation III** (“MP III”) is a Nevada  
9 corporation and wholly-owned SPC of MCH that was formed in February 2005.  
10 From July 2005 to January 2008, MP III conducted two series of note offerings,  
11 raising a total of about \$552 million by issuing 5,318 notes to investors. MP III  
12 had \$109.4 million in outstanding notes, and as of May 2009, MP III had  
13 defaulted in paying principal on \$26.5 million in outstanding notes.

14           31.    **Medical Provider Financial Corporation IV** (“MP IV”) is a Nevada  
15 corporation and wholly-owned SPC of MCH that was formed in July 2005 and  
16 commenced operations in October 2006. From November 2006 through February  
17 2008, MP IV conducted two series of note offerings, raising a total of \$401.3  
18 million by issuing 4,222 notes to investors. As of May 2009, MP IV had \$400  
19 million in outstanding notes and defaulted in interest payments in January 2009  
20 and since March 2009.

21           32.    **Medical Provider Funding Corporation V** (“MP V”) is a Nevada  
22 corporation and wholly-owned SPC of MCH that was formed in September 2007.  
23 From November 2007 to about July 2008, MP V conducted a note offering, raising  
24 \$401.8 million by issuing 4,323 notes that begin to mature in November 2009. As  
25 of March 31, 2009, MP V had \$401.1 million in outstanding notes issued to 4,270  
26 investors. MP V recently failed to pay interest to investors and is in default of the  
27 notes.

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1           33.    **Medical Provider Funding Corporation VI** is a Nevada corporation  
2 and wholly-owned SPC of MCH that was formed in April 2008. From August  
3 2008 to the present, MP VI has conducted a note offering and, as of June 19, 2009,  
4 it had raised \$76.9 million through the issuance of notes to about 700 investors.  
5 MP VI recently failed to pay interest to investors and is in default of the notes.

6 **IV. STATEMENT OF FACTS**

7           **A. MCH's Business**

8           34.    MCH provides financing to healthcare providers by purchasing their  
9 accounts receivables at a discount and making secured loans to them. The  
10 business is managed through its chief operating company, MCC, a wholly owned  
11 subsidiary of MCH. MCC served as the Administrator for each SPC pursuant to  
12 an Administrative Service Agreement. MTS served as the Servicer for each SPC  
13 pursuant to a Master Servicing Agreement.

14           35.    MCC and MTS performed several functions of the SPCs, including  
15 (a) negotiating, executing and issuing promissory notes, (b) identifying and  
16 evaluating potential receivable purchase transactions, loans and other investments,  
17 (c) producing reports and statements to the Trustees for the release of monies for  
18 the funding of receivable purchases, loans and other investments, (d) handling  
19 healthcare provider and noteholder relations, (e) processing receivable payments  
20 and other loan investment payments through lockbox accounts to the Trustees, and  
21 (f) providing periodic reports to the Trustees.

22           36.    Defendants Wells Fargo and BNYM acted as trustees for the holders  
23 of notes issued by the SPCs under Note Issuance and Security Agreements  
24 (“NISAs”). Under the terms of the NISAs, each series of notes issued by the SPCs  
25 was supposedly secured by its own set of assets, which include specific  
26 receivables and all collections relating to the receivables. MCC and MTS, after  
27 collecting amounts related to the receivables, were then required to transfer the  
28 funds to the Trustees for deposit in the respective trust accounts.

1           37. The Trustee was to maintain a separate trust account for each series of  
2 notes for the benefit of the noteholders of that series of notes. Amounts relating to  
3 collateral or proceeds of collateral for a series of notes were to be deposited into  
4 the appropriate trust account. Once funds were deposited into the trust accounts,  
5 they were under the exclusive control of the Trustees. Neither MCC, MTS, or any  
6 of the SPCs had authority to make distributions from the funds in the trust  
7 accounts. Rather, the Trustee had exclusive authority to make distributions,  
8 consistent with representations made to noteholders in the PPMs and the terms of  
9 the NISAs.

10           38. For example, the NISAs established a priority of payments: first, to  
11 trustee fees, then to pay noteholders principal and interest, and only then, when  
12 appropriate, for administrative fees. Further, the Trustees were not permitted to  
13 approve and permit disbursements for administrative fees without certifying that  
14 all conditions had been satisfied and, even then, could not pay fees from investor  
15 funds.

16           39. In essence, the Trustees represented the noteholders' only line of  
17 defense and protection against misuse of their funds, particularly since the SPCs  
18 had no employees or offices of their own.

19           40. The NISAs also provided that they shall be governed by California  
20 law. Under California law, corporate trustees act as fiduciaries and are held to the  
21 highest standard of care and loyalty with regard to the duties of prudence, loyalty,  
22 avoidance of conflict of interest with trust beneficiaries, and avoidances of self-  
23 dealing in their administration of trusts.

24           **B. Solicitation of Investors**

25           41. MCH funded its operations by offering promissory notes issued by its  
26 SPCs to investors. Indeed, since December 2003, MCH raised approximately \$2.2  
27 billion from over 20,000 investors.

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1           42. The notes were sold as private placements. Plaintiffs and other  
2 prospective investors received a Private Placement Memorandum (“PPM”)  
3 explaining the transactions.

4           43. The SPCs sold notes with various maturities (one to seven years) and  
5 interest rates (8.5% to 10.5%). The PPMs described the terms of then notes, the  
6 nature of and limitations on the loans and investments that will be made with the  
7 proceeds, and the policies and procedures for the payment of fees. Importantly,  
8 the SPCs represented that after paying offering expenses of 4% to 8%, they would  
9 use the net offering proceeds to purchase healthcare receivables and make  
10 investments in other related business.

11           44. The SPCs also touted to investors the important role of independent  
12 and prominent “trustees” – Wells Fargo and BNYM – which were charged with  
13 representing the interests of noteholders, communicating with MCH and MCC,  
14 receiving reports, maintaining noteholder funds used to make investments, and  
15 releasing funds to the SPCs for appropriate and permitted purposes, including  
16 payment of interest and principal to noteholders and payment of appropriate fees.  
17 Defendant BNYM served as the Trustee for MP I, II, IV and VI. Defendant Wells  
18 Fargo served as the Trustee for MP III and V.

19           **C. Under The Trustees’ Watch, MCH Misappropriates Investor**  
20           **Funds**

21           **1. Overpayment of Administrative Fees**

22           **a. Improper Use of Investor Funds To Pay Fees**

23           45. On July 16, 2009, the SEC commenced an enforcement action against  
24 MCH, MCC, MP VI, Field and Lampariello (“SEC Defendants”), and detailed  
25 various violations of securities laws based on months-long investigation of MCH  
26 and its affiliated entities, including the overpayment of unauthorized  
27 administrative fees from accounts controlled by the Trustee BNYM.

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1           46. As described in the SEC complaint, while MCC was entitled to a fee  
2 for its services, the PPMs highlighted, under the heading “Restrictions on Use of  
3 Proceeds,” that the SPCs would not use “any proceeds from the sales of notes to  
4 pay administrative fees to [MCC] for the services it provides as administrator” and  
5 that such fees would rather be “paid out of amounts collected from the accounts  
6 receivables and proceeds from other investments.” The PPMs further represented  
7 that the SPCs believed that the administrative fees paid to MCC would be “no  
8 greater than those an independent third-party would charge for providing similar  
9 services.”

10           47. MCH and MCC did not use offering proceeds as represented in the  
11 PPMs and, instead, misappropriated a substantial amount of the investors’ funds to  
12 pay administrative fees to MCC. Indeed, according to the SEC’s complaint, as of  
13 June 19, 2009, MP VI’s administrative fees exceeded its collections by  
14 approximately \$18.5 million in direct contravention to its PPMs’ representations  
15 that administrative fees would solely be “paid out of amounts collected from the  
16 accounts receivable and proceeds from other investments.” These fees were  
17 distributed by the Trustee – BNYM – from investor funds, even though lockbox  
18 collections from medical accounts receivable plainly were insufficient to justify  
19 any such payments.

20           48. According to the SEC, in a May 27, 2009 Supplemental PPM, MCH  
21 and MCC further misrepresented that, “As of February 28, 2009, we have issued  
22 notes in the face amount of \$69,331,558.90. We have used \$65,558,703.02 of the  
23 proceeds to finance accounts receivable. We have applied \$3,264,410.12 to  
24 commissions and other expenses. The balance is on deposit in our trust account  
25 awaiting additional accounts receivable financing.” In fact, as of February 28,  
26 2009, MCH and MCC had paid \$21.7 million in administrative fees, which  
27 exceeded MP VI’s collections by \$16.9 million. In addition, according to the SEC,  
28 MCH and MCC actually spent approximately \$48.8 million on receivables, rather

1 than the \$65.5 million represented in the Supplemental PPM. All told, MCH and  
2 MCC took approximately 24% of the amount raised as administrative fees, far in  
3 excess of the collections on receivables, in MP VI.

4 49. After the SEC Complaint was filed, the Court appointed a Receiver to  
5 review the records of MCH and its affiliates. The Receiver traveled to the MCC  
6 premises in Tustin, secured the premises and called meeting of all MCC employees.  
7 The Receiver and his counsel then took several steps to investigate and secure the  
8 assets of the SPCs, including (1) interviewing former MCC employees and counsel  
9 (Fazio and various outside counsel) regarding the operations and assets of the  
10 SPCs, pending litigation and transactions, and the flow of funds into and out of the  
11 companies; and (2) locating and reviewing company documents pertaining to key  
12 non-receivable assets, pending litigation and various transactions.

13 50. As a result of his investigation, the Receiver has filed reports with the  
14 Court, including a Second Report recently filed on September 8, 2009, which  
15 confirm many of the SEC's original allegations regarding MP VI, as well as a much  
16 wider-scope of improprieties affecting MP II, III, IV and V, which had virtually  
17 identical restrictions on administrative fees.

18 51. According to the Receiver, MCC collected Administrator Fees in the  
19 amount of \$324.549 million from the various SPCs:

20	MP I	91,030,000
21	MP II	55,659,000
22	MP III	48,650,000
23	MP IV	56,565,000
24	MP V	48,030,000
25	<u>MP VI</u>	<u>24,615,000</u>
26	<b><u>Total</u></b>	<b><u>\$324,549,000</u></b>

27 The Receiver further prepared a breakdown of the Administrative Fees paid by  
28 year, revealing that the vast majority of fees were paid at the beginning of each

1 SPC's existence and well before significant medical accounts receivables had been  
2 collected by the respective SPC. Thus, just as with MP VI described in the SEC  
3 complaint, it appears that the Trustees allowed other SPCs to pay exorbitant  
4 administrative fees from investor funds, not from accounts receivable collections,  
5 and even though it was readily apparent that such payments exceeded amounts paid  
6 into lockbox accounts used to collect accounts receivable and were thus, facially  
7 improper.

8 52. In filings in the SEC action, Field and Lampariello acknowledge that  
9 fees were "specifically approved by the financial institution trustees" – i.e.,  
10 Defendants.

11 **b. Inflated Collateral Reports**

12 53. Further, collateral reports submitted to Defendants to justify payments,  
13 on their face, open and notoriously inflated the value of SPC assets, including the  
14 inclusion of assets that were incapable of valuation, the inclusion of assets valued  
15 far in excess of their market value, the inclusion of medical accounts receivable  
16 that had simply been transferred between various SPC accounts managed by  
17 Defendants, and the inclusion of medical accounts receivable from accounts that  
18 were obviously inflated and, in the majority of cases, no longer even exist.

19 54. As envisioned, the operation of each SPC was governed by, among  
20 other contracts, a NISA between the SPC and the Trustee. Pursuant to the NISA  
21 and Administrative Services Agreements, MCC could request payment of an  
22 Administrative Fee by providing a written certification by the SPC (prepared by  
23 MCC as Administrator) to the Trustee. The certification included the calculation of  
24 the Net Collateral Coverage Ratio, which was supposed to be derived by adding  
25 together the value of all cash, eligible receivables and collateral, then dividing that  
26 number by the amounts payable under the NISA and Notes issued thereunder  
27 (principal due at maturity and interest then due to noteholders). In valuing  
28 collateral, accounts receivable were only "eligible" to be included if they were

1 purchased within 180 days of the date the claim was submitted to the payor.  
2 Additionally, loans made by SPC's had to be valued using the lesser of the  
3 principal and interest due from the borrower or the value of the property securing  
4 them. If the Net Collateral Coverage Ratio was greater than 100% (i.e. the stated  
5 value of the assets exceeded the current liabilities), MCC took the position with the  
6 Trustee that it could request an Administrative Fee in an amount up to the entire  
7 balance in the account above and beyond that necessary to maintain the 100% ratio.

8         55. According to its agreements and disclosures, the SPCs (through MCC  
9 as administrator) were to have all real and personal property securing loans and  
10 investments appraised at least once a year by an independent appraiser. The SPC  
11 was to then certify each year that the required valuations had been completed.  
12 Each certification of the Net Collateral Coverage Ratio was to be based on the most  
13 recent valuations. Thus, MCC was only entitled to an Administrative Fee if, based  
14 on recent independent valuations, the Net Collateral Ratio was at least 100%, and  
15 only if such fees could be payable from valid and collected accounts receivable.

16         56. As of March 31, 2009, MCC, as administrator of the SPCs, controlled  
17 receivables, loans, or investments owned by the SPCs with a purported total value  
18 of over \$1.2 billion.

19         57. Despite raising about \$2.2 billion from investors and controlling over  
20 \$1 billion in purported assets, MCH and MCC did not keep the SPCs' financial  
21 statements in accordance with GAAP or even keep their accounting records in a  
22 manner that would allow GAAP financial statements to be generated. For example,  
23 according to the Receiver, at the time they purchased a batch of receivables, the  
24 SPCs recorded as revenue the amount that expected collections exceed the  
25 purchase price and never reconciled actual collections with expected collections.

26         58. Further, while the Receiver's most recent Report indicates that the  
27 medical accounts receivable were attributed to just 104 accounts, most of these  
28 accounts either did not exist or did not support the collateral values assigned to

1 them. According to the Receiver, the 104 accounts total about \$625 million.  
2 However, of those 104 accounts, only 42 could be verified, representing just \$80  
3 million of the total. Of the 42 verified accounts, just six contained accounts  
4 receivable aged under 180 days, representing \$6 million of the amounts owed. The  
5 remaining verified accounts, representing \$74 million of debt, were aged more than  
6 180 days (with the vast majority purchased between 2002 and 2006 and just two  
7 accounts showing receivables purchased in 2008).

8         59. Even more troubling, 53 of the 104 accounts – representing \$542  
9 million of the \$625 million total medical accounts receivable – could not be  
10 verified at all, i.e., they “no longer exist.” The Receiver further found that there  
11 were no MediTrak reports to support such accounts and, instead, that the MediTrak  
12 reports either indicate that the accounts were closed or do not list the accounts at  
13 all. The Receiver found that there were no active UCC-1 filings for the accounts  
14 and that there were no collections or advances on the accounts for years. The  
15 Trustees willfully and/or recklessly ignored all of this information and approved  
16 fees without question.

17         60. Of course, the Trustees had full power and discretion to require further  
18 verification and, in the exercise of their fiduciary duties, should have insisted upon  
19 additional information in the face of the red flags described above. In fact, in  
20 recent correspondence sent to noteholders, the Trustee Defendants have  
21 highlighted their efforts – in 2009 – to monitor the SPCs’ accounts receivable,  
22 including the engagement of third parties to value collateral. Defendants have  
23 further noted that, in certain circumstances, they have now refused requests by  
24 MCC to release funds from trust accounts to pay for accounts receivable due to  
25 MCC’s failure to provide sufficient information to make a reasonable  
26 determination about whether the funds would be paid back.

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1           61. The same overstatement of collateral values occurred with respect to  
2 non-medical receivables assets, which were consistently and grossly overstated in  
3 MCC's reports to the Trustee Defendants. For example, a substantial acquisition  
4 loan was listed at the amount of its outstanding balance despite the fact that the  
5 lender could only make interest payments by drawing down on its letter of credit  
6 extended by an MCC affiliate. MCC listed the entire balance due on other loans  
7 after foreclosure on the collateral, rather than the post-foreclosure value of the  
8 assets confirmed by appraisals. With the Trustee Defendants unwilling to consider  
9 or challenge such clear evidence and, instead, merely rubber stamping their  
10 requests for fees, MCC continued to seek and obtain administrative fees based on  
11 the submission of such inflated collateral reports.

12                           **2. Non-Medical And Non-Performing Investments**

13           62. The PPMs also stated that note proceeds would be used to purchase  
14 account receivables, make secured loans, pay sales commissions and other  
15 operating costs, provide funds for general operating purposes, and pay principal  
16 and interest on the notes.

17           63. However, as revealed in the SEC Complaint and the subsequent  
18 investigation by the Receiver – and with no challenge from the Trustees – MCC  
19 strayed from its core competency of purchasing and collecting medical receivables,  
20 and began using investor funds to make direct loans to healthcare providers. As  
21 time went on, MCC used a significant percentage of investor funds to make  
22 investments unrelated to the healthcare industry, including real estate, advertising,  
23 mobile phone technology, and even a feature film. Specific examples of such  
24 expenditures are described below.

25                           **a. The Perfect Game, LLC**

26           64. The Perfect Game, LLC (“TPG”) is a Nevada limited liability  
27 corporation whose primary asset is the rights to a film entitled The Perfect Game.  
28 The Perfect Game is about a Little League team from Mexico that won the Little

1 League World Series in 1957. MPIV owns a 40% interest in TPG and also made  
2 loans to TPG of about \$18 million. MCH holds 75% of the voting rights in TPG.  
3 TPG formed High Road Entertainment Group, LLC (“High Road”) to produce the  
4 film. MPIV owns a controlling interest in High Road.

5 65. According to the Receiver, as of June 30, 2009, MCC listed as  
6 collateral for MPIV.1 a “Non AR Purchase” owed by “TPG-LSA” in the amount of  
7 approximately \$16 million, and listed as collateral for MP IV.2 a “Non AR  
8 Purchase” owed by “TPG” in the amount of approximately \$8 million. However,  
9 the film has never even been shown and all efforts to distribute the film have failed.

10 **b. Vivavision, Inc.**

11 66. Vivavision, Inc. (“VVI”) is a California corporation whose primary  
12 business is marketing content for mobile phone applications. According to the  
13 Receiver’s interview of Fazio, the initial content being marketed by VVI was a live  
14 video feed of a hamster in a cage, though Field and Lampariello now claim it has  
15 significant potential. It appears that MCH or MPIII.2 purchased stock in VVI over  
16 time, beginning in November of 2005, and that MCH or MPIII.2 now own 99.4%  
17 of the company. VVI was also provided with a line of credit. As of June 30, 2009,  
18 MCC listed as collateral for MPIII.2 “Non AR Purchase” owed by “Vivavision” in  
19 the amount of approximately \$6.9 million. According to the Receiver, Vivavision  
20 is in default on its line of credit and no efforts have been made by MCC to date to  
21 execute on any collateral. The Receiver further reported that Fazio stated that this  
22 account was handled personally by Lampariello and that Fazio was not permitted to  
23 undertake collection activities.

24 **c. Single Touch Interactive, Inc.**

25 67. Single Touch Interactive, Inc. (“STI”) is a Nevada corporation whose  
26 primary business is providing mobile phone applications such as “shortcuts”  
27 dialing and ringtones. According to the Receiver, loans were apparently made to  
28 STI and its former majority shareholder, Anthony Macaluso, that were secured by

1 25 million shares of STI. Fazio also told the Receiver that this account was  
2 handled personally by Lampariello and that, after loan defaults occurred, there was  
3 a consensual foreclosure on the STI shares. As of June 30, 2009, MCC listed as  
4 collateral for MPIV.1 under “All Other Receivables, Supporting Receivables” an  
5 amount owed by STI of approximately \$5.4 million, and listed a “Non AR  
6 Purchase” owed by Macaluso in the amount of approximately \$10.5 million.

7 **d. Legacy Medical Center**

8 68. According to the Receiver’s interview of Fazio, Georgia Medical  
9 Provider Financial Corporation (“GMPF”) is a Georgia corporation and a wholly  
10 owned subsidiary of MPIV. Originally, loans were made to Southwest Doctors  
11 Group, LLC that were secured by an Atlanta hospital named Legacy Medical  
12 Center. When the borrower defaulted on the loans, the property was foreclosed. In  
13 January 2009, the hospital closed and was abandoned, without security.

14 69. Despite this condition, as of June 30, 2009, MCC listed as collateral  
15 for MP VI.1 a “Non AR Purchase” is the name of “Legacy/Southwest Doctors  
16 Group, LLC” in the amount of approximately \$21 million.

17 **e. Gulf Pines Hospital, Inc.**

18 70. This interest originated as a loan to Gulf Pines Hospital, Inc. (“GPH”)  
19 which was secured by stock pledge from the owner of the company. GPH owned a  
20 hospital building and the land on which it was built in Florida. The land has been  
21 given to GPH by the city, but the grant of the land contained a clause reverting  
22 ownership to the city if the property is ever used as anything other than a hospital.  
23 The borrower defaulted on the loan and MCC foreclosed on the stock. According  
24 to the Receiver’s interview of Fazio, GPH is now in bankruptcy.

25 71. As of June 30, 2009, MCC listed as collateral for MPII a “Non AR  
26 Purchase” in the names of “Gulf Pine Hospital/Real Estate” in the amount of  
27 approximately \$6.6 million.

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1                                   **f.     The Home Stretch**

2           72.    The Home Stretch is a 118 foot luxury yacht located in Newport  
3 Beach, California. The yacht is currently owned by Corporate Impressions, LLC  
4 (“CI”), a Delaware limited liability corporation and wholly owned subsidiary of  
5 MCH. Corporate Impressions reportedly employed a full-time captain and crew for  
6 sailing excursions, including by Field and Lampariello, and chartered the yacht for  
7 private trips. According to Corporate Impressions’ website, the yacht offers “a  
8 unique charter vacation,” features five staterooms, “an elegantly appointed master  
9 stateroom . . . fit for a king” and “elegant formal dining for 10 in the salon.”

10                                   **g.     Emark**

11           73.    According to the Receiver’s latest Report, MPVI made a loan to  
12 Emark, an internet advertising company. The OCWeekly, in an article entitled,  
13 *SEC Investigation of Medical Lender Sets Sail for a Party Yacht*, reported that  
14 Emark specializes in pornographic website advertising. OCWeekly also  
15 interviewed a former MCH executive who reportedly stated that the Emark account  
16 was “untouchable” and that there was no documentation for underwriting the loan.

17                                   **3.     Commingling of SPC Accounts**

18           74.    According to the Receiver, MCC records indicate that accounts  
19 receivable were regularly transferred between SPC accounts under the Trustees’  
20 control. The Receiver identified 301 such transfers, concluding that some of the  
21 receivables being purchased were already aged when purchased by the newer SPC.

22           75.    As discussed above, under the Security Agreements, receivables are  
23 only eligible to be included as collateral for the purposes of calculating the Net  
24 Collateral Coverage Ratio if they were purchased within 180 days of when the  
25 claim was submitted to the payor. It is an Event of Default under the Security  
26 Agreements if the Net Collateral Coverage Ration is less than 100%. Nonetheless,

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1 MCC based its requests for administrative fees on Collateral Reports showing a  
2 ratio of more than 100% and the Trustee Defendants routinely approved such  
3 requests.

4 76. The Trustee Defendants knew or recklessly disregarded that such  
5 transfers were occurring within the very accounts that they were charged with  
6 managing, and that such transfers indicated that there was insufficient collateral  
7 justifying payment of fees.

8 **D. Damages**

9 77. Beginning in August 2008 and continuing through the present, MP II  
10 through VI defaulted on their obligations to make payments of interest and/or  
11 principal to noteholders. According to the Receiver, over \$1 billion in principal is  
12 still owed to noteholders and “it appears that noteholder will almost certainly suffer  
13 significant losses on their investments.”

14 78. According to the Receiver, as of June 30, 2009, MCC reported  
15 collateral securing obligations to noteholders with an aggregate value of over \$1.1  
16 billion, but in July 2009 collected only approximately \$317,000. The Receiver also  
17 found the existing financial records of the SPCs to be generally unreliable based  
18 on, among other things, the failure to comply with GAAP accounting rules, and  
19 that accountants were in some cases given specific instructions as to how to  
20 account for various matters, calling into questions the resulting figures.

21 79. The Receiver further detailed the fees paid by, and the amounts owed  
22 to, noteholders for each of the SPCs, as follows:

23 **MPII**

24 80. MPII received total funds from investors in the amount of  
25 approximately \$251 million. MCC was paid administrative fees of approximately  
26 \$55.6 million. As of June 30, 2009, reports by MCC indicate that the outstanding  
27 balance payable on issued notes was approximately \$88 million.

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1           **MPIII**

2           81.   MPIII, which is divided into two series, received total funds from  
3 investors in the amount of approximately \$354 million. MCC was paid  
4 administrative fees of approximately \$48.6 million. As of June 30, 2009, reports  
5 by MCC indicate that the outstanding balance payable on issued notes was  
6 approximately \$109 million.

7           **MPIV**

8           82.   MPIV, which is divided into two series, received total funds from  
9 investors in the amount of approximately \$407 million. Investors have received  
10 principal in the amount of \$6.416 million and interest in the amount of \$58 million.  
11 MCC was paid administrative fees of approximately \$56.6 million. As of June 30,  
12 2009, reports by MCC indicate that the outstanding balance payable on issued  
13 notes was approximately \$401 million.

14           **MPV**

15           83.   MPV received total funds from investors in the amount of  
16 approximately \$403 million. Investors received principal in the amount of \$2.32  
17 million and interest in the amount of \$41.063 million. MCC was paid  
18 administrative fees of approximately \$48 million. As of June 30, 2 009, reports by  
19 MCC indicate that the outstanding balance payable on issued notes was  
20 approximately \$401 million.

21           **MP VI**

22           84.   MP VI received total funds from investors in the amount of  
23 approximately \$75 million. Investors received principal in the amount of \$.914  
24 million and interest in the amount of \$3.688 million. Of the amount raised by  
25 investors, \$9.326 million was used to purchase new accounts receivable and make  
26 other investments, and \$41.715 million was used to purchase assets from prior  
27 MP's. MCC was paid administrative fees of approximately \$24.6 million.

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1 As of June 30, 2009, reports by MCC indicate that the outstanding balance payable  
2 on issued notes was approximately \$74 million.

3 85. Making matters worse, Defendants' recent actions have only  
4 exacerbated Plaintiffs' losses and constitute further breaches of their fiduciary  
5 duties to Plaintiffs. According to recent Trustee correspondence, the Trustees have  
6 incurred substantial professional fees and expenses to try to determine the true  
7 scope of the SPCs' business and the true value of their assets, work they should  
8 have performed years ago.

9 86. Ironically, Defendant Wells Fargo now touts the fact that, in April  
10 2009, it negotiated a "Forebearance Agreement" on behalf of MP III noteholders  
11 whereby it agreed not to take action to enforce the rights of MP III noteholders, but  
12 preserved its ability to recover fees and expenses. While the Agreement was  
13 breached just days after it was signed, Wells Fargo's "Summary of Significant  
14 Terms" of the Agreement sent to noteholders failed to mention that Wells Fargo  
15 had negotiated its own release from claims made by MP III, as well as a mutual  
16 waiver of the right to jury trial between Wells Fargo, MCC, MTT and MP III  
17 covering all claims arising from the Forebearance Agreement and the underlying  
18 "Note Agreements."

19 **V. CLASS ALLEGATIONS**

20 87. Plaintiffs bring this action as a class action under Federal Rule of Civil  
21 Procedure, Rule 23. The Class is defined as follows:

22 All persons and entities who purchased notes in MP II, III, IV, V and  
23 VI and have suffered damages (the "Class").

24 Excluded from the Class are the Defendants herein, and the subsidiaries, parents,  
25 affiliates, or controlled persons or entities of Defendants, as well as their family  
26 members, employees or representatives.

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1           88. The members of the Class are so numerous that joinder of all members  
2 is impracticable. Plaintiffs are informed and believes that the notes were sold to  
3 approximately 20,000 Class members.

4           89. Plaintiffs' claims are typical of the claims of the members of the Class,  
5 as the Defendants served as Trustees over MP II, III, IV, V and VI and the claims  
6 are based upon similar conduct affecting all Class members.

7           90. Plaintiffs will fairly and adequately protect the interests of the  
8 members of the Class and have retained counsel competent and experienced in  
9 class and securities litigation. Plaintiffs have no interests which are contrary to or  
10 in conflict with those of the Class members which they seek to represent.

11           91. A class action is superior to other available methods for the fair and  
12 efficient adjudication of this controversy since joinder of all members is  
13 impracticable. Furthermore, as the damages suffered by individual members may  
14 be relatively small, the expense and burden of individual litigation make it virtually  
15 impossible for the Class members to individually seek redress for the wrongs done  
16 to them. Plaintiffs know of no difficulty which will be encountered in the  
17 management of this litigation which would preclude its maintenance as a class  
18 action.

19           92. There is a well-defined community of interest in the questions of law  
20 and fact involved in this case. Common questions of law and fact exist as to all  
21 members of the Class, and predominate over any questions affecting solely  
22 individual members of the Class. Among questions of law and fact common to the  
23 Class are:

- 24           a. whether Defendants breached their fiduciary duties;
- 25           b. whether Defendants committed negligence;
- 26           c. whether Defendants were unjustly enriched;
- 27           d. whether Defendants violated California Business & Professions  
28           Code § 17200 et seq., and

1 e. whether Class members were damaged and the measure of  
2 damages.

3 93. The names and address of the Class members are available from the  
4 business records of Defendants or from the various SPCs. Notice can be provided  
5 to the Class members by first class mail and by using other techniques customarily  
6 used in class actions.

7 **VI. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(BREACH OF FIDUCIARY DUTY)**

10 94. Plaintiffs hereby incorporate all of the foregoing paragraphs.

11 95. By virtue of their role as Trustees of the various SPCs, as described  
12 above, Defendants set out to create and did in fact create a special relationship of  
13 trust and confidence, and thereby owed Plaintiffs and Class members a fiduciary  
14 duty. A fiduciary relationship existed at all times herein.

15 96. Defendants breached their fiduciary duties by, among other things,  
16 failing to represent and protect the interests of noteholders, to properly maintain,  
17 segregate, protect and disburse noteholder funds put under their trust, and releasing  
18 funds to the SPCs for inappropriate and non-permitted purposes, including payment  
19 of fees in violation of PPM assurances and in the face of unverified and patently  
20 false collateral reports.

21 97. The Doe Defendants and other unnamed parties, and each of them,  
22 aided and abetted, encouraged, and rendered substantial assistance in  
23 accomplishing the wrongful conduct, their wrongful goals, and other wrongdoing  
24 complained of herein. In taking action, as particularized herein, to aid and abet and  
25 substantially assist the commission of these wrongful acts and other wrongdoings  
26 complained of, each of the Doe Defendants and other unnamed parties acted with  
27 an awareness of his/her/its primary wrongdoing and realized that his/her/its

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1 conduct would substantially assist the accomplishment of the wrongful conduct,  
2 wrongful goals, and wrongdoing.

3 98. Defendants' breaches of their fiduciary duties were a substantial factor  
4 in causing Plaintiffs and Class members harm.

5 99. As a result of the wrongful conduct of defendant, Plaintiffs and the  
6 Class have suffered and will continue to suffer economic losses and other general  
7 and specific damages, all in an amount to be determined according to proof.

8 WHEREFORE, Plaintiffs pray for relief as set forth below.

9 **SECOND CAUSE OF ACTION**

10 **(NEGLIGENCE)**

11 100. Plaintiffs hereby incorporate all of the foregoing paragraphs.

12 101. Defendants and their agents and employees were at all times under a  
13 duty to perform their work with due care and without negligence, and to act in such  
14 a manner as a reasonably prudent person would act under similar circumstances.  
15 Defendants further owed professional duties under applicable state and federal  
16 laws, industry standards, and professional codes of ethics.

17 102. In performing the acts and omissions outlined above, Defendants  
18 breached their duty of care to Plaintiffs and to the Class. Among other things, and  
19 without limiting the generality of the foregoing, Defendants:

20 (a) Failed to competently monitor and supervise their agents and  
21 employees;

22 (b) Failed to ensure that noteholder funds held in trust accounts were  
23 appropriately maintained, segregated, protected and disbursed; and

24 (c) Placed their own financial interests above those of the Plaintiffs and  
25 the Class.

26 103. Defendants' negligence was a substantial factor in causing Plaintiffs  
27 and Class members harm.

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1 104. As a result of the wrongful conduct of Defendants, Plaintiff and the  
2 Class have suffered and will continue to suffer economic losses and other general  
3 and specific damages, all in an amount to be determined according to proof.

4 WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **THIRD CAUSE OF ACTION**

6 **(UNJUST ENRICHMENT)**

7 105. Plaintiffs hereby incorporate all of the foregoing paragraphs.

8 106. As a direct and proximate result of the misconduct as set forth above,  
9 Defendants, by virtue of the fees and expenses paid to them by MCH, MCC or its  
10 affiliate SPCs, have been unjustly enriched. The funds should be returned to  
11 Plaintiffs.

12 WHEREFORE, Plaintiffs pray for relief as set forth below.

13 **FOURTH CAUSE OF ACTION**

14 **(VIOLATION OF BUS. & PROF. CODE § 17200)**

15 107. Plaintiffs hereby incorporate all of the foregoing paragraphs.

16 108. By their wrongful conduct, as set forth above, Defendants, and each of  
17 them, engaged in unfair, unlawful, and/or fraudulent acts in violation of section  
18 17200 et seq. of the California Business and Professions Code.

19 109. Defendants' practices are unlawful, unfair, and/or fraudulent business  
20 practices for the reasons described herein, including, without limitation, the  
21 violation of California trust laws reflected in the Probate Code.

22 110. Plaintiffs seek restitution from Defendants, and each of them, as a  
23 result of their unfair, unlawful, and/or deceptive business acts or practices.

24 WHEREFORE, Plaintiffs pray for relief as set forth below.

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1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for  
3 judgment as follows:

4 1. Declaring this action to be a proper class action pursuant to Rule 23 of  
5 the Federal Rules of Civil Procedure on behalf of the Class defined herein, and  
6 declaring Plaintiffs to be proper Class representatives and Plaintiffs' counsel as  
7 counsel for the Class;

8 2. Awarding Plaintiffs and all members of the Class compensatory  
9 damages and exemplary damages in an amount to be proven at trial;

10 3. Awarding Plaintiffs and members of the Class pre-judgment interest,  
11 as well as reasonable attorneys' fees, expert witness fees and other costs;

12 4. Awarding such other relief as this Court may deem just and proper.

13 **JURY DEMAND**

14 Plaintiffs demand a jury trial on all issues so triable.

15 Dated: September 9, 2009

COTCHETT, PITRE & McCARTHY

16  
17 By: 

18 MARK C. MOLUMPY  
19 *Attorneys for Plaintiffs and the Class*  
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