

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-21160-CIV-MORENO

SCHECK INVESTMENTS, L.P., ELENA  
PARRALES, individually and on behalf of,  
FRANOVA INVESTMENT LTD., THE  
PMT IRREVOCABLE TRUST, JUAN  
MANUEL PONCE DE LEON URIBE,  
individually and for all those similarly  
situated,

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC.,  
RAINY CONSULTING CORP., et al.,

Defendants.

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**NOTICE OF PENDENCY OF CLASS ACTION,  
PROPOSED SETTLEMENT AND FAIRNESS HEARING**

**THIS NOTICE EXPLAINS YOUR RIGHTS  
PLEASE READ IT CAREFULLY**

**THIS IS NOT A LAWSUIT AGAINST YOU.  
IT IS THE PARTIAL SETTLEMENT OF A LAWSUIT IN WHICH YOU  
MAY BE ENTITLED TO RECEIVE MONETARY COMPENSATION**

**TO: ALL PERSONS WHO PURCHASED OR HELD INVESTMENTS IN VIATICAL SETTLEMENTS  
OR LIFE SETTLEMENTS FROM MUTUAL BENEFITS CORPORATION OR VIATICAL  
BENEFACTORS, LLP.**

**IF YOU HAVE RECEIVED THIS NOTICE, YOU HAVE ALREADY BEEN IDENTIFIED FROM  
THE RECORDS OF MUTUAL BENEFITS CORPORATION AS BEING A CLASS MEMBER**

**I. PURPOSE OF NOTICE**

The Plaintiffs in the above-captioned class action ("Action") pending before the Honorable Federico Moreno in the United States District Court for the Southern District of Florida ("Court"), has preliminarily approved the following settlements: (i) with Defendants Peter J. Lombardi and P.J.L. Consulting Inc. (collectively, the "Lombardi Parties"); (ii) with Defendants Anthony M. Livoti, Jr., P.A. and Anthony M. Livoti, Jr. (collectively, the "Livoti Parties"); (iii) with Defendant Mark Pettyjohn and Diversified Financial Products, Inc. (collectively, the "Pettyjohn Parties") (with all of the above-listed Defendants sometimes collectively referenced herein as the "Settling Parties"). Plaintiffs have agreed to these settlements (collectively, the "Settlements") to resolve all claims in connection with the Settling Parties' involvement or association with Mutual Benefits

Corporation ("MBC"). **The proposed Settlements are only with the above-listed Defendants. The Plaintiffs shall continue to pursue all their claims against the non-settling defendants for their involvement with MBC.** The Settlements are described in more detail in Section IV below. The proposed Settlements are subject to approval by the Court at a final approval hearing.

The purpose of this Notice is to inform members of the Settlement Class (described below) of their rights. The provisions of this Notice are qualified and subject in their entirety to the terms of the applicable Stipulations of Settlement, copies of which are available for review in the manner provided in Section IX below. Capitalized terms used but not defined herein have the meanings given to them in the Stipulations of Settlement.

## **II. THE SETTLEMENT CLASS**

The "Settlement Class" or "Class," which this Court has conditionally certified for the purposes of the Settlements, consists of all persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby. Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees.

## **III. BACKGROUND OF THIS LITIGATION**

From late 1994, MBC operated as a viatical and life settlement provider, raising money from the Class to purchase viatical and life settlement contracts. MBC promised Plaintiffs guaranteed, fixed rates of return ranging from 12% to 72%, depending upon the term of investment chosen by the investor. The life expectancy of the viator, which MBC represented would be determined by independent medical doctors, in turn, was to be used to determine the total rate of return. No registration was filed with the Securities and Exchange Commission ("SEC") or Florida's Division of Securities in connection with the investment contracts offered by MBC. From late 1994 through the present, MBC raised at least \$1 billion from over 30,000 investors through the offer and sale of securities in the form of fractionalized interests in viatical and life settlement contracts.

Beginning in 1994, MBC included in its offering and sales materials to Plaintiffs a Purchase Agreement in which it represented to Plaintiffs that "MBC will escrow funds sufficient to pay future premiums due under a given life insurance policy for a minimum of the projected life expectancy relied upon by MBC of the respective insured, or longer at MBC's discretion . . ." The Trust Agreement represented that a five-tiered system existed for the payment of premiums:

Future premiums on a policy will be paid or satisfied by (1) application for disability premium waiver when applicable, (2) payment by the TRUSTEE from funds designated for the particular policy at the time of closing; (3) payment by the TRUSTEE from the reserve funds described above; (4) Viatical Services, Inc., up to the amount of funds in its premium reserve account, or any other service company that provides premium coverage as part of its service, or (5) pro rata by the PURCHASERS.

The Trust Agreement also represented that "The TRUSTEE has agreed to hold future premiums he receives at the time of closing for the projected life expectancy of any policy in a separate interest bearing account(s)." Finally, the Trust Agreement represented that if at any time the Trustee "cannot confirm that future premiums will be satisfied from the sources outlined [above] then the Trustee will notify the Purchaser ninety (90) days before the next premium is due." The Purchase and Trust Agreements assured the Class that segregated premium escrow

accounts would be created for each viator policy, of several levels of additional premium reserves which would be escrowed by MBC and Viatical Services, Inc., and that Plaintiffs would be notified within 90 days if these specifically identified premium escrows and reserves were inadequate to fund future premiums for any given policy. The purchase agreement represented that Livoti would serve as trustee, and he signed each agreement.

Between 1994 and 1997 MBC and Lombardi acting as its President, did not open premium escrow accounts to pay future premiums. MBC paid premiums on the policies from its own operating accounts, and instructed the Post Purchase Premium Escrow Banks to use escrowed premium funds from new viatical settlements to fund premium payments for older insurance policies, which had exceeded their life expectancies. As the viators began to outlive their life expectancies Plaintiffs allege that Livoti and Lombardi became aware that the escrowed premium accounts for thousands of individual policies were inadequate. Plaintiffs further allege that Livoti began diverting premiums in escrow from newer policies to cover premium deficiencies in earlier policies. The Class was not informed of the shortfalls.

Plaintiffs also allege that the Pettyjohn Parties benefitted from the sale of unregistered securities and are liable to disgorge sales commissions earned on such policies.

Lead Plaintiffs, the Receiver, and Class Counsel have concluded that it would be in the best interests of the Class to enter into the Settlement Agreements with the Settling Parties because the Settlements would be a fair, reasonable, and adequate resolution of this Action. **The Settlements call for an immediate and total recovery of \$1,684,624 from several of the Defendants in Plaintiffs' suit.** By achieving a class settlement against the Settling Parties, the Class Members will receive a considerable amount of money without the uncertainty, delay, and expense of protracted litigation. Furthermore, the Settlements shall provide Lead Plaintiffs and Class Counsel with funds to pursue the litigation against non-settling defendants. In addition, the Settlements have significant value as they should increase the likelihood of future settlements, especially given the Settling Parties' commitment to cooperate with the Class Counsel in the ongoing prosecution of the non-settling defendants.

The Settling Parties, while continuing to deny vigorously Plaintiffs' claims and any liability with respect to such claims, nevertheless recognize the costs and uncertainties attendant upon further litigation of the claims in this Action, and have therefore concluded that it is desirable to enter into the proposed Settlements to avoid further expenses.

#### **IV. PROPOSED SETTLEMENT OF THIS ACTION**

After extensive negotiations among the attorneys for the parties in this Action, the parties have agreed to the Settlements, subject to final approval by the Court. The parties agree that the Settlements shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations in the Action. The terms and conditions of the Settlements are incorporated in Stipulations of Settlement, which are on file with the Court. The following is a summary description of each of the Stipulations of Settlement governing the Settlements with the Settling Parties.

##### **The Settlement Fund**

The primary terms of the Stipulation of Settlement as to the Lombardi Parties are as follows. First, Lombardi will pay the greater of **One Million Five Hundred Thousand Dollars** (\$1,500,000.00) or all proceeds from the liquidation of certain personal and business assets to be forfeited by Lombardi (the "Lombardi Settlement Fund"), which will consist of (i) Commcare Pharmacy, Inc.; (ii) Ocean Bay Condominium Unit # 63; and (iii) \$400,000.00 from the sale of the single family residence located at 3090 N.E. 44<sup>th</sup> Street, Fort Lauderdale, Florida (each property as more particularly described in the Stipulation for Settlement as to the Lombardi Parties).

Second, Lombardi and PJJ will each provide the Receiver and Class Counsel with an affidavit or other acceptable representation attesting that they do not have within their possession, custody or control, assets that would be subject to execution other than those specifically disclosed as Exhibit A to the Stipulation of Settlement. Third, Lombardi will fully cooperate with any investigation conducted by the Receiver or Class Counsel, subject to any asserted constitutional privilege against self-incrimination.

The primary terms of the Stipulation of Settlement as to the Livoti Parties are as follows. First, Livoti will pay **One Hundred Forty Thousand Dollars** (\$140,000) (the "Livoti Settlement Fund"), which will consist of Ninety Thousand Dollars (\$90,000) from the proceeds of his insurance policies and Fifty Thousand Dollars (\$50,000) from personal assets. Second, Livoti and Livoti, P.A. will each provide the Receiver and Class Counsel with an affidavit or other acceptable representation attesting that they do not have within their possession, custody or control, assets that would be subject to execution other than those specifically disclosed in the attached Exhibit to the Settlement Agreement.

The primary terms of the Stipulation of Settlement as to the Pettyjohn Parties are as follows. First, Mark Pettyjohn will pay **Forty-Four Thousand, Six Hundred and Twenty-Four Dollars** (\$44,624) (the "Pettyjohn Settlement Fund") from the assets of Diversified Financial Products, Inc., which payment shall be due within thirty (30) calendar days following the entry of an order preliminarily approving this settlement.

The Lombardi Settlement Fund, the Livoti Settlement Fund and the Pettyjohn Settlement Fund (collectively, the "Settlement Fund") amount to a total of **One Million Six Hundred Eighty-Four Thousand Six Hundred Twenty-Four Dollars** (\$1,684,624). **The Settlement Fund, net of attorneys' fees and expenses as awarded by the Court, and the net of the expenses for administering the Settlement (the "Net Settlement Fund"), will be transferred to the Receiver for future distribution to the Class. Specifically, if the Court grants final approval of this Settlement at the Fairness Hearing, the Receiver, in consultation with Plaintiffs and Class Counsel, shall then submit a proposed Distribution Plan to the Court. After proper notice to the Class, the Receiver shall seek final approval of the Distribution Plan. If approved, distribution of the Net Settlement Fund would immediately proceed in accordance with the approved Distribution Plan.**

#### **Other Relief/Cooperation**

The Settling Parties have agreed to cooperate with the prosecution of the other non-settling Defendants in this Action.

#### **Attorneys' Fees and Costs**

The award of attorneys' fees to Class Counsel is a matter committed to the sole discretion of the Court. The respective Stipulations of Settlement provide that Class Counsel will apply for (1) an award not to exceed thirty percent (30%) of the Settlement Fund, and (2) reimbursement of their reasonable expenses and costs incurred in connection with prosecuting this Action (the "Fee Request"). Any award made by the Court in response to the Fee Request shall be paid from the Settlement Fund. The fairness, reasonableness, and adequacy of the Settlement may be considered and ruled upon by the Court independently of any award of attorneys' fees and costs.

## V. RELEASE AND DISCHARGE OF CLAIMS

The following is a summary of the Release agreed to by the Settling Parties as part of the Settlements: the Settling Parties shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, which Class Members, whether or not they make a claim on or participate in the Settlement Fund, ever had, now have or hereafter can, shall or may have, which arise out of the Settling Parties' involvement or association with MBC, and all of its past, present or future parent companies, subsidiaries, divisions, affiliates, predecessors or successors; and each and all of the preceding entities' officers, directors, shareholders, employees, partners, agents, attorneys, representatives, heirs, executors, personal representatives, administrators and assigns, if any.

## VI. YOUR RIGHT TO BE EXCLUDED FROM THE SETTLEMENT

If the Settlements are finally approved, you will be bound by the final judgment and release as entered by the Court unless you exclude yourself from the Settlements. Thus, if you are a Class Member, you have a choice whether or not to remain a member of the Class. This choice will have consequences that you should understand before making your decision. **IF YOU WANT TO REMAIN A MEMBER OF THE CLASS, AND RECEIVE YOUR SHARE OF THE SETTLEMENT RECOVERY PURSUANT TO A COURT APPROVED DISTRIBUTION PLAN, YOU ARE NOT REQUIRED TO DO ANYTHING AT THIS TIME.** By remaining a Class Member, you cannot assert in any other lawsuit, any claims against the Settling Parties arising out of their involvement or association with MBC. Also, by remaining a Class Member, you will have the opportunity to, at a later date, receive a distribution in accordance with the Distribution Plan approved by the Court.

**If you want to be excluded from the Class and do not want to share in the settlement recovery, you must make a written request for exclusion from the Class and send it, via first class mail, to:**

Settlements Exclusion  
c/o Ramon Enriquez  
Podhurst Orseck, P.A.  
25 West Flagler Street, Suite 800  
Miami, Florida 33130

Your request for exclusion **must be received by no later than October 4, 2007**. It should include (1) your name; (2) your address; and (3) a statement that you want to be excluded from the Class for purposes of this Settlement. **By making the election to be excluded, you will not share in any recovery to be paid to the Class as a result of the Settlement of this Action, you will not be entitled to appear at the Fairness Hearing discussed in Section VII below, and you will not be bound by the Release set forth in the Stipulation of Settlement.**

## VII. THE FAIRNESS HEARING

The Court has scheduled a hearing to be held on **Friday, October 19, 2007 at 2:00 p.m.** before the Honorable Federico Moreno, Judge of the United States District Court for the Southern District of Florida, at the United States Courthouse, 10th Floor, Courtroom IV, 99 Northeast Fourth Street, Miami, Florida 33132, for the purpose of determining whether to: finally approve the terms of the Settlements, approve Class Counsel's motion for attorneys' fees and costs, finally certify the Settlement Class, and such other matters that the Court deems

appropriate to consider ("Fairness Hearing"). The time and date of the Fairness Hearing may be continued or rescheduled by the Court without further notice. Furthermore, the Court may approve the proposed Settlements at or after the Fairness Hearing with any modification agreed to by the Settling Parties and without further notice to the Class.

If you wish to comment in support of, or in opposition to, the Settlements or motion for attorneys' fees and costs, you may do so, but **you must first mail** your comments and/or objections in writing, postage prepaid, to Class Counsel and Counsel for the Settling Parties at the addresses below, **and file your comments and/or objections with the Court no later than October 4, 2007**. You must include your name and current address with your comments and/or objections.

If you also wish to be heard at the Fairness Hearing in person or through your own attorney, you or your attorney must file a written Notice of Appearance with the Clerk of the Court for the United States District Court for the Southern District of Florida, 301 North Miami Avenue, Room 150, Miami, Florida 33128, on or before **October 4, 2007**, and include a statement of the position to be asserted and the reasons for your position, together with copies of any supporting papers or briefs. Your notice must include in a prominent location the name of the case (*Scheck Investments, et. al. v. Kensington Management, Inc., et. al.*) and the case number (04-21160-CIV-MORENO). You must also mail a copy of your Notice of Appearance along with all accompanying papers to Class Counsel and Counsel for the Settling Parties (addresses below).

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Counsel for the Pettyjohn Parties

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Except as provided herein, no person shall be entitled to contest the terms and conditions of the Settlements, or to object to counsel's motion for attorneys' fees and costs, and persons who fail to object as provided herein shall be deemed to have waived and shall be foreclosed forever from raising any such objections. You need not appear at the hearing in order to object.

#### **VIII. TERMINATION**

The Stipulation of Settlement as to the Lombardi Parties shall terminate (1) at the option of either party if the Court, or any appellate court(s) modifies or denies approval of any portion of the Stipulation; (2) at the option of either party if a court does not enter and confirm the Final Order of Judgment; (3) at the option of the Lombardi Parties in the event that investors holding claims for net out-of-pocket losses in the aggregate of One Hundred Million Dollars (\$100,000,000) elect to opt-out of the Settlement.

The Stipulation of Settlement as to the Livoti Parties shall terminate (1) at the option of either party if the Court, or any appellate court(s) modifies or denies approval of any portion of the Stipulation; (2) at the option of either party if a court does not enter and confirm the Final Order of Judgment; (3) at the option of the Livoti Parties in the event that investors holding claims for net out-of-pocket losses in the aggregate of One Hundred Million Dollars (\$100,000,000) elect to opt-out of the Settlement.

The Stipulation of Settlement as to the Pettyjohn Parties shall terminate (1) at the option of either party if the Court, or any appellate court(s) modifies or denies approval of any portion of the Stipulation; (2) at the option of either party if a court does not enter and confirm the Final Order of Judgment; (3) at the option of the Pettyjohn Parties in the event that investors holding claims for net out-of-pocket losses in the aggregate of Ten Million Dollars (\$10,000,000) elect to opt-out of the Settlement.

#### **IX. ADDITIONAL INFORMATION**

The above is only a summary of the Settlements. A copy of the Stipulations of Settlement, which include the applicable Releases, as well as other pleadings, are on public file with the Clerk of the Court for the United States District Court for the Southern District of Florida, 301 North Miami Avenue, Room 150, Miami, Florida 33128. In addition, Class Counsel will file with the Court their motion for attorneys' fees and costs as previously described on or before **October 12, 2007**. The Stipulations of Settlement and counsel's motion for attorneys' fees and costs will be available for inspection during normal business hours at the Office of the Clerk.

The Stipulations of the Settlement, as well as additional information, can also be reviewed at the Receiver's Website: [www.mbcreceiver.com](http://www.mbcreceiver.com).

#### **PLEASE DO NOT CONTACT THE COURT REGARDING THE SETTLEMENT**

Dated: September 4, 2007

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA