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 14 THOMAS C. HEBRANK

15 **UNITED STATES DISTRICT COURT**
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **SECURITIES AND EXCHANGE**
 18 **COMMISSION,**

19 Plaintiff,

20 v.

21 **LOUIS V. SCHOOLER and FIRST**
 22 **FINANCIAL PLANNING**
 23 **CORPORATION d/b/a WESTERN**
 24 **FINANCIAL PLANNING**
 25 **CORPORATION,**

26 Defendants.

Case No. 3:12-cv-02164-GPC-JMA

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AUTHORITY TO
PURSUE CLAIMS AGAINST
LINMAR BORROWERS

Date: July 26, 2013
 Time: 1:30 p.m.
 Ctrm.: 9D
 Judge: Hon. Gonzalo P. Curiel

NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),
3 and its subsidiaries and affiliates (collectively, "Receivership Entities"), submits this
4 Motion for Authority to Pursue Claims Against Linmar Borrowers ("Motion").

5 I. INTRODUCTION

6 As discussed in the Receiver's interim reports and in more detail below, prior
7 to the Receiver's appointment, Western made loans to certain LinMar entities. The
8 loans have all matured, but the LinMar entities have not repaid any portion of them.
9 The Receiver exchanged proposals for a repayment plan with Defendant Louis
10 Schooler, but several weeks have passed without a response to the Receiver's
11 proposal. Accordingly, the Receiver recommends that lawsuits be commenced to
12 collect on the loans.¹

13 Although the Preliminary Injunction Order authorizes the Receiver to pursue
14 claims and causes of action on behalf of the Receivership Entities, commencing
15 lawsuits involves considerable expense. Accordingly, in an abundance of caution,
16 the Receiver seeks authority to proceed with collection actions.

17 II. BACKGROUND FACTS

18 A. The LinMar Loans

19 Western made loans to LinMar Management, Inc., LinMar Shaw, LLC,
20 LinMar III, LLC, LinMar IV, LLC, and approximately 16 LinMar Tacoma entities
21 (collectively, "LinMar Borrowers"). The LinMar Borrowers are managed by
22 Mr. Schooler or entities he controls. With the exception of the LinMar Tacoma
23 loan, the loans are all unsecured. The Deed of Trust in favor of Western on the
24 LinMar Tacoma property is junior to other liens. Declaration of Thomas C.
25 Hebrank filed herewith ("Hebrank Declaration"), ¶ 2.

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28 ¹ This motion is not intended to close the door on discussions of a repayment plan.
The Receiver remains open to such discussions.

1 The Receiver's understanding is that the LinMar Borrowers, with the
 2 exception of LinMar Management, were each set up to purchase a piece of
 3 commercial property and that LinMar Management was set up to help manage
 4 properties for the other LinMar Borrowers and other LinMar entities. LinMar
 5 Management operates out of the same Sorrento Valley office space as Western.
 6 Hebrank Declaration, ¶ 3.

7 All of the loans have matured. On February 12, 2013, the Receiver issued a
 8 demand to the LinMar Borrowers for full repayment of the loans. At that time, the
 9 amounts due on each loan were as follows:

Borrower	Amount Due
LinMar Management Inc.	\$57,017.57
LinMar Shaw, LLC	\$263,708.02
LinMar III, LLC	
First Loan	\$18,997.85
Second Loan	\$50,725.34
Third Loan	\$18,530.71
Fourth Loan	\$7,068.29
Fifth Loan	\$41,711.67
LinMar III, LLC Total	\$137,033.86
LinMar IV, LLC	
First Loan	\$175,574.72
Second Loan	\$109,318.11
Third Loan	\$73,561.69
LinMar IV, LLC Total	\$358,454.52
LinMar Tacoma Entities	\$450,000.00
Grand Total	\$1,266,213.90

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24 Hebrank Declaration, ¶ 4.

25 No response to the Receiver's demand was received. Accordingly, in
 26 March 2013, the Receiver issued subpoenas to the LinMar Borrowers and
 27 Mr. Schooler seeking documents relevant to his investigation of the loans. In early
 28

1 April 2013, Mr. Schooler produced a small portion of the requested documents.
2 Mr. Schooler later made a proposal for repayment of the loans. The Receiver sent a
3 counter-proposal to Mr. Schooler's counsel on April 24, 2013. To date, no response
4 to the Receiver's counter-proposal has been received. Hebrank Declaration, ¶ 5.

5 **B. The LinMar Tacoma Receivership**

6 The LinMar Tacoma entities own a commercial building in Tacoma,
7 Washington known as the Provident Building. As noted above, the loan Western
8 made to the LinMar Tacoma entities is secured by a junior Deed of Trust on the
9 property. In November 2012, the Receiver's counsel was contacted by counsel for
10 2010-1 CRE Venture, LLC ("CRE Venture"), the senior secured lender on the
11 Provident Building. The LinMar Tacoma entities had defaulted on the loan to CRE
12 Venture. CRE Venture initiated a foreclosure proceeding in Washington state court
13 and obtained an order appointing a receiver. Hebrank Declaration, ¶ 6.

14 Based on information provided by CRE Venture, it appears CRE Venture is
15 owed approximately \$4 million and that the Provident Building, which is the
16 LinMar Tacoma entities' only asset, is worth substantially less than that.
17 Accordingly, the sale of the property is unlikely to produce a recovery for Western.
18 The Receiver will continue to monitor the state court proceedings in Washington,
19 but at this time, he does not recommend pursuing collection on the LinMar Tacoma
20 loan. Hebrank Declaration, ¶ 7.

21 **III. ARGUMENT**

22 **A. Broad Equitable Powers of the Court**

23 "The power of a district court to impose a receivership or grant other forms of
24 ancillary relief does not in the first instance depend on a statutory grant of power
25 from the securities laws. Rather, the authority derives from the inherent power of a
26 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
27 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
28 and efficient administration of the estate by the district court for the benefit of

1 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment
2 of a receiver is authorized by the broad equitable powers of the court, any
3 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
4 953 F.2d 1560, 1569 (11th Cir. 1992).

5 District courts have the broad power of a court of equity to determine the
6 appropriate action in the administration and supervision of an equity receivership.
7 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
8 Circuit explained:

9 A district court's power to supervise an equity receivership
10 and to determine the appropriate action to be taken in the
11 administration of the receivership is extremely broad. The
12 district court has broad powers and wide discretion to
13 determine the appropriate relief in an equity receivership.
14 The basis for this broad deference to the district court's
15 supervisory role in equity receiverships arises out of the
16 fact that most receiverships involve multiple parties and
17 complex transactions. A district court's decision
18 concerning the supervision of an equitable receivership is
19 reviewed for abuse of discretion.

20 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v.*
21 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad
22 deference' to the court's supervisory role, and 'we generally uphold reasonable
23 procedures instituted by the district court that serve th[e] purpose' of orderly and
24 efficient administration of the receivership for the benefit of creditors.").
25 Accordingly, the Court has broad equitable powers and discretion in the
26 administration of the receivership estate and disposition of receivership assets.

27 Here, the Receiver seeks authority to pursue actions to collect on loans made
28 by Western to the LinMar Borrowers (although, at this time, he does not intend to
pursue collection of the LinMar Tacoma loan). The loans were made, have matured,
and have not been repaid. The Receiver is not aware of any viable defenses to
collection. The Receiver has demanded payment and no payments have been made.
The Receiver has attempted in good faith to negotiate a repayment plan, but several

1 weeks have passed since his proposal was sent to Mr. Schooler's counsel and no
2 response has been received. Hebrank Declaration, ¶ 8.

3 Due to the failure of the LinMar Borrowers and Mr. Schooler to produce
4 subpoenaed documents, the Receiver does not know the exact ownership structure
5 of the LinMar Borrowers or the approximate value of their assets. Nevertheless, the
6 Receiver believes actions to collect should not be delayed by further efforts to
7 obtain this information. This and other information will be demanded through
8 discovery in the collection actions. Hebrank Declaration, ¶ 9.

9 The Receiver has consulted with Allen Matkins and believes that the legal
10 fees for each collection action could be as low as \$7,500 in the event of a prompt
11 settlement and as much as \$100,000 in the event of a full trial. However, the
12 Receiver believes it is unlikely that trials will be necessary and the cases will likely
13 be resolved with legal fees at the lower end of that range. As they do with all
14 matters, the Receiver and Allen Matkins will make every effort to minimize
15 administrative expenses associated with the proposed collection actions. Hebrank
16 Declaration, ¶ 10.

17 **IV. CONCLUSION**

18 WHEREFORE, the Receiver requests an order authorizing him to pursue
19 claims against the LinMar Borrowers.

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21 Dated: May 23, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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23 By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK

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