

1 DAVID R. ZARO (BAR NO. 124334)
TED FATES (BAR NO. 227809)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 501 West Broadway, 15th Floor
San Diego, California 92101-3541
4 Phone: (619) 233-1155
Fax: (619) 233-1158
5 E-Mail: dzaro@allenmatkins.com
tfates@allenmatkins.com

6 Attorneys for Receiver
7 THOMAS C. HEBRANK

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
16 FINANCIAL PLANNING
CORPORATION,

17 Defendants.
18
19

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

**RECEIVER'S RESPONSE TO
OPPOSITIONS TO THIRD INTERIM
FEE APPLICATIONS OF THE
RECEIVER AND HIS COUNSEL**

Date: August 16, 2013
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

**NO ORAL ARGUMENT UNLESS
REQUESTED BY COURT**

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1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western") and
3 the General Partnerships set up by Western (collectively, "Receivership Entities"),
4 hereby replies to Defendants' response to the third interim fee applications of the
5 Receiver and his counsel ("Third Fee Applications") which cover the period from
6 January 1, 2013 through March 31, 2013 ("Third Application Period").

7 I. INTRODUCTION

8 Defendants continue their attempts to blame the Receiver for the financial
9 condition of Western and the General Partnerships ("GPs"). Defendants would have
10 the Court and investors believe that it was not the \$80 million taken from investors,
11 including more than \$20 million paid to Mr. Schooler in salaries alone, or the fact
12 that the properties were sold to investors at vastly inflated prices, but instead the
13 \$50,001 in Western's equity that has been reduced to cash (or approximately
14 \$150 dollars per month per GP) that has put the GPs and their investors in the
15 position they are in today. The Court should not be influenced by this fallacy, even
16 if some investors have been.

17 Mr. Schooler has drained Western of more than \$80 million in cash, failed to
18 repay loans made to entities he controls, and refused to put capital back into Western.
19 This has left Western with no cash. By his actions, Mr. Schooler has created the
20 current situation in which cash in GP accounts is one of the only sources of funding.
21 Mr. Schooler then complains the GPs are harmed by having to help pay the costs of
22 the receivership. If not for Mr. Schooler's actions, Western would have ample funds
23 with which to make mortgage payments, financially support the GPs as it did in the
24 past, and pay the costs of the receivership.

25 Mr. Schooler's actions should be seen for what they are – an attempt to blame
26 the Receiver for the GPs' financial situation and have the GPs removed from the
27 receivership so investors will not recognize the losses they are facing. This in turn
28 will make it harder to prove investors were harmed by his conduct. Mr. Schooler

1 continues to sit on the enormous amounts of cash he obtained from Western at the
2 expense of investors while he employs this litigation tactic.

3 Whether or not Mr. Schooler violated securities laws, considering Western's
4 financial condition and its affect on the GPs, there is absolutely no justification for
5 refusing to put capital back into Western or, at the very least, to repay past due loans
6 to entities he controls. His objective is plain – to create a cash crisis and blame the
7 receivership for it. Mr. Schooler should not be rewarded for his selfish actions that
8 directly harm investors. His opposition to the Third Fee Applications should be
9 given no weight.

10 Furthermore, Mr. Schooler's arguments that the fees of the Receiver and his
11 counsel are unreasonable are directly contradicted by the amounts Western paid
12 Mr. Schooler and Western's counsel, Eric Hougen, while the company was under
13 Mr. Schooler's control. Western paid Mr. Schooler more than \$20 million in salaries
14 alone and paid Western's counsel, Eric Hougen, more than \$32,000 per month. In
15 contrast, the Receiver and his counsel combined have been paid \$132,627 to date,
16 and now seek payment of \$169,735, for a total of \$296,735 over seven months (or
17 about \$42,294 per month). Mr. Schooler would have paid himself approximately
18 \$1,855,000 and Mr. Hougen approximately \$228,000 over the same time period
19 (approximately \$2.083 million total).

20 Moreover, the Receiver has numerous duties that go above and beyond
21 managing Western and its ordinary legal affairs, including providing detailed reports
22 and recommendations to the Court, conducting a forensic accounting, and seeking
23 Court approval regarding sales of assets, notices to investors, schedules of investor
24 claims, and other matters specific to the receivership. Therefore, Defendants have no
25 grounds to object to the fees sought by the Receiver and his counsel, which are a
26 small fraction of amounts Western paid Mr. Schooler and Mr. Hougen.

27 Finally, although they disagree with the Receiver's proposal in his Real Estate
28 Report and argue that the GPs should be removed from the receivership, once again

1 Defendants cannot identify any unreasonable or excessive time entries or work
2 performed by the Receiver or his counsel outside the Receiver's Court-ordered
3 duties. Nevertheless, Defendants argue the Receiver and his counsel should not be
4 paid. To the contrary, the Court has determined that interim payments to receivers
5 and their counsel for reasonable fees incurred in the performance of their Court-
6 ordered duties are customary and appropriate. Defendants have presented no basis
7 on which to deny any portion of fees or costs requested. Accordingly, the fee
8 applications should be approved.

9 **II. THE REQUESTED FEES AND COSTS ARE REASONABLE**

10 Defendants address only two of the five factors the Court determined should
11 be considered in connection with interim fee applications – the complexity of tasks,
12 and the quality of the work performed, including the results obtained and the benefit
13 to the receivership estate. Defendants do not deny that the other three factors – the
14 fair value of time, labor, and skill measured by conservative business standards, the
15 burden the receivership estate may safely be able to bear, and the Commission's
16 opposition or acquiescence – all weigh in favor of approving the Third Fee
17 Applications.

18 **A. Complexity of Tasks**

19 The complexity of tasks performed by the Receiver and his counsel should be
20 weighed in relation to the number of hours billed. A less complex task should be
21 completed in less time. Therefore, the proper question is whether the number of
22 hours billed is reasonable in relation to the tasks completed. The Receiver and Allen
23 Matkins have provided detailed bills with their Third Fee Applications. Defendants
24 have not identified a single instance in which the amount of time billed by the
25 Receiver or Allen Matkins to complete a task is excessive. Nor have defendants
26 identified any work performed by the Receiver or Allen Matkins that was not
27 necessary and appropriate for the Receiver's performance of his duties under the
28 Court's orders.

1 Defendants have twice argued that the tasks handled by the Receiver are not
2 complex. The Court has twice overruled the objection, finding that the Receiver's
3 tasks in this case are significantly complex. Although the Court has stated it
4 considers the work of the Receiver's counsel to be minimally complex, it has not
5 determined this to be a basis on which to deny approval of any fees. Rather, the
6 Court has twice determined that the discounted hourly rates of the Receiver and his
7 counsel represent the fair value of their time, labor, and skill, and the amounts billed
8 for each task are not unreasonable.

9 As discussed in prior interim fee applications, the notes and other financial
10 obligations between and among the numerous GPs, their investors, Western, and the
11 various third party lenders are quite complex. Indeed, the Court asked the Receiver
12 to help clarify these financial affairs in its Order Re Receiver's Second Report and
13 Proposal (Docket No. 59, pp. 9-10) and the Receiver has done so in his various
14 reports filed since that Order.

15 More importantly, however, the Receiver's tasks go far beyond administering
16 the GPs. During the Third Application Period, the Receiver, with the assistance of
17 counsel, (a) investigated and protected the real properties and other assets of the
18 Receivership Entities, including Western, (b) conducted the first phase of his forensic
19 accounting and prepared Part One of his Forensic Accounting Report (Docket
20 No. 182) (c) operated Western and the GPs, including handling issues relating to
21 bank accounts, loan payments, operating expenses, taxes and employees,
22 (c) communicated with investors about the status of the receivership and their
23 investments, (d) provided a detailed interim report on the status of the receivership to
24 the Court and interested parties, and (e) protected the Receivership Entities' interests
25 in various pending legal proceedings. These tasks are significantly complex and the
26 time spent to complete each task is reasonable. Therefore, this factor supports
27 approval of the Third Fee Applications.

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1 **B. Quality of Work Performed**

2 Defendants do not dispute the quality of work performed, but argue only that
3 the Receiver's work has not benefitted the GPs. Defendants made the same objection
4 to the First and Second Interim Fee Applications and the Court overruled it, finding
5 that the quality of work performed by the Receiver and his professionals has been
6 satisfactory, "the Receiver and his professionals have maintained the status quo of
7 the receivership entities, which the Court finds has benefitted the receivership
8 entities during these turbulent initial phases of litigation" [Docket No 169, p. 10], and
9 "the Court has found the Receiver's reports and submissions to be helpful in
10 determining the appropriate course of action in this case" [Docket No. 190, pp.8-9].
11 The Court also noted that it expected the Receiver would soon be able to fully clarify
12 the financial affairs of the Receivership Entities.

13 Despite the termination of sales of GP ownership units and Mr. Schooler's
14 refusal to put funds back into Western, essentially leaving Western with no cash over
15 the last 11 months, and the recent suspension of investor billing due to the inequity
16 of demanding investors make payments for which they will only see pennies in
17 return, the Receiver has continued to maintain the status quo of the Receivership
18 Entities. This includes making all payments on seller financing secured by GP
19 properties (other than payments discussed below that the Receiver recommends be
20 suspended), ensuring all GP property tax and property insurance payments have been
21 timely made (with the exception of property tax payments in default prior to the
22 receivership), and paying for all appraisals obtained pursuant to the Court's Order Re
23 Receiver's Second Report and Proposal. Docket No. 59. Considering Western has
24 virtually no cash or other liquid assets, is now facing securities fraud charges by the
25 Securities and Exchange Commission ("Commission"), and many GPs have had zero
26 account balances since prior to the receivership, this is a major achievement and has
27 provided a tremendous benefit to GPs and their investors during these tumultuous
28 times.

1 In addition, the Receiver's Third Interim Report (Docket No. 80), Fourth
2 Interim Report (Docket No. 184), Forensic Accounting Report: Part One (Docket
3 No. 182), and Real Estate Valuation Report (Docket No. 203) provide substantial
4 detail and clarification of the financial affairs of the Receivership Entities, the
5 financial obligations between and among Western, the GPs, their investors, and the
6 various third party lenders, and the assets and liabilities of each entity. Part Two of
7 the Receiver's Forensic Accounting Report detailing the uses of the approximately
8 \$80 million Western obtained from investors will be filed in the next 10 days.

9 Moreover, the Receiver has completed sales of the gold coins and automobiles
10 owned by Western, has obtained authority to sell the office furniture and equipment
11 owned by Western and relocate the remaining employees (Docket No. 451), and,
12 subject to Court approval, has settled the pending Nevada litigation on terms
13 favorable to the GPs involved (Docket No. 256), thereby generating and conserving
14 cash for seller financing payments and GP expenses.

15 Finally, during the Third Application Period, the Receiver was able to keep in
16 place the key personnel necessary to complete the 2012 tax returns for all GPs and
17 issue all K-1s to investors in time for them to file their personal tax returns. This is
18 another substantial benefit to investors. Accordingly, this factor supports approval of
19 the Third Fee Applications.

20 **C. Remaining Factors**

21 The remaining three factors the Court determined should be considered in
22 connection with interim fee applications, which Defendants ignore in their objection,
23 also support approval of the Third Fee Applications. The Court has twice
24 determined the discounted hourly rates of the Receiver and his counsel represent the
25 fair value of their time, labor, and skill. With regard to the receivership estate's
26 ability to bear the fees, as discussed below, the Receiver will endeavor to use only
27 Western cash to pay approved fees and costs. If, however, it is necessary to reduce
28 Western's equity in the GPs, the GP bank accounts continue to have an aggregate

1 balance of more than \$5.81 million.¹ With regard to the Commission's position, the
2 Commission has no opposition to the Third Fee Applications. Docket No. 464.
3 Accordingly, the remaining three factors all support approval of the Third Fee
4 Applications.

5 III. SOURCE OF INTERIM FEE PAYMENTS

6 The Receiver believes his proposed source of payment – the assets of Western,
7 including Western's equity interests in the GPs – continues to be the most equitable
8 manner of addressing the administrative expenses of the receivership. The Receiver
9 will continue to use every effort to avoid having to reduce Western's equity in the
10 GPs. By selling Western assets, collecting on loans Western made to LinMar entities
11 (totaling more than \$1.26 million) and other entities, and pursuing other potential
12 sources of cash, this may be possible. To the extent it is not, however, the Receiver
13 should be authorized to reduce Western's equity in the GPs, as he was in the First and
14 Second Fee Orders. Although not all GPs currently have cash in their accounts, the
15 Receiver will ensure the reduction in Western's equity interests is spread across the
16 GPs as evenly as possible such that all GPs are treated as fairly as possible. The
17 specific reduction in Western's equity in each GP will be stated in the Receiver's
18 reports to the Court, which are posted on the Receiver's website. Investors can
19 review the reports and object if they believe an adjustment or reallocation should be
20 made.²

21 Moreover, although Western has very little cash at the moment, it is very
22 possible that in the future Western's liquid assets, after reserving sufficient cash to
23 make payments on seller financing secured by GP properties, will be sufficient to
24 cover costs of the receivership.

25
26 ¹ GP account balances as of June 30, 2013 will be included with the Receiver's
Fifth Interim Report, which will be filed shortly.

27 ² Defendants continue to argue the GPs have yet to be given an opportunity to be
28 heard by the Court. The Court rejected this argument outright in the Second Fee
Order. Docket No. 190, p. 10.

IV. PROPERTY TAX PAYMENTS

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2 Defendants' false allegations aside, not one GP has failed to make a property
3 tax payment as a result of converting Western's equity to cash or making loan
4 payments to Western, nor are any GPs in danger of being unable to make such
5 payments in the near future as a result of such transactions. The Receiver has
6 proposed that investor voting take place within 60 days of the Court's ruling on the
7 Real Estate Valuation Report. If, however, the Court decides that investor voting
8 will not take place in the near future, and depending on Western's recoveries from
9 other sources, some GPs may be unable to make property tax payments in the future.
10 The Receiver will closely monitor the cash needs of each GP and will advise the
11 Court if and when GPs are unable to make property tax payments such that the
12 appropriate source of funding can be determined (investor billing or otherwise).

V. RELATED PARTY MORTGAGES

13
14 As noted above, the Receiver has continued to make all payments on seller
15 financing secured by GP properties, other than Underwater Mortgages (discussed
16 below). In addition to the seller financing mortgages, however, there are mortgages
17 on certain GP properties in favor of Robert Schafer, one of the principles of
18 Receivership Entity Real Asset Locators, Inc. ("RAL"), and attorney John Gavin.
19 The Receiver is investigating the nature and propriety of these purported debts and
20 mortgages. Mr. Schooler is an officer of RAL, was an authorized signatory on its
21 bank accounts, and received more than \$1.5 million in wages and benefits from
22 RAL. Mr. Schafer received more than \$410,000 from RAL and more than
23 \$1.26 million from Western. RAL used Western's office address as its address.
24 Mr. Gavin received payments from Western totaling \$195,000. The Court
25 determined that there was a sufficient nexus between Western and RAL to include
26 RAL in the receivership. Docket No. 174, p. 21.

27 It is not clear why Mr. Schafer or Mr. Gavin would be owed further monies
28 from Western or why those obligations should be secured by mortgages on the GP

1 properties. The Receiver recommends that receivership estate funds be conserved for
 2 the benefit of investors facing enormous losses and that payments on these related
 3 party mortgages be suspended until such time as the propriety of the purported debts
 4 and mortgages has been determined. There should be no adverse consequences to
 5 the GPs from suspending these payments. The stay of legal proceedings in the
 6 Preliminary Injunction Order protects the GPs from Mr. Schafer or Mr. Gavin taking
 7 any legal action. Further, the Court, in its broad authority and discretion regarding
 8 the administration of equity receiverships, can disallow any claim for late charges or
 9 penalties that might accrue during the Receiver's investigation of these related party
 10 debts and mortgages.

11 VI. UNDERWATER MORTGAGES

12 As Exhibit A to the Real Estate Report shows, the debt secured by mortgages
 13 on the Dayton IV and Yuma III properties vastly exceeds the appraised value of the
 14 land. Docket No. 203-2. The following table summarizes the relevant data from the
 15 Real Estate Report:

16 Property	Mortgages	Appraised Value	Amount Debt Exceeds Value
17 Dayton IV	\$1,109,920	\$160,000	\$949,920
18 Yuma III	\$415,077	\$141,000	\$310,077

19
 20 When the debt secured by a piece of property vastly exceeds the value of the
 21 property, it is common in commercial transactions to negotiate a short sale or deed in
 22 lieu of foreclosure with the lender rather than continuing to make mortgage payments
 23 that, in all likelihood, will never benefit the property owner. The Receiver
 24 recommends payments on mortgages secured by the Dayton IV and Yuma III
 25 properties ("Underwater Mortgages") be suspended and receivership estate resources
 26 thereby be conserved for the benefit of investors.³ The values of these properties

27
 28 ³ The Receiver is holding checks for payments due on these mortgages in July pending further instructions from the Court.

1 would have to increase so dramatically before investors would see any recovery that
2 continuing to make mortgage payments is essentially throwing money away. In the
3 unlikely event the GPs that collectively own these two properties vote to retain their
4 respective property interests, those GPs can bill their investors for the amounts
5 sufficient to reinstate the loans after they separate from the receivership.

6 **VII. INVESTOR NOTE PAYMENTS**

7 Defendants have argued that only a small number of investors have stopped
8 making their note payments and the shortfall between amounts Western collects from
9 GP notes and amounts due under mortgages on the GP properties is approximately
10 \$1,300 per month. This is incorrect. In the post-receivership period alone (*i.e.* not
11 including payments that were cut off prior to the receivership), approximately
12 12% of investor note payments have been cut off (approximately \$12,700 per
13 month). The Receiver continues to receive correspondence from investors indicating
14 they intend to cut off their note payments. Moreover, the monthly shortfall between
15 amounts Western collects from GP notes and amounts due under mortgages on the
16 GP properties has ranged between \$15,000 and \$27,000 per month during the
17 receivership.

18 **VIII. RETENTION OF WESTERN PERSONNEL**

19 Defendants have argued that by retaining a few Western personnel, the
20 Receiver is implicitly "vouching for" all actions taken prior to the receivership. This
21 is not the case. As the Court is well aware and for the reasons discussed above,
22 Western has been in a constant state of cash crisis throughout the receivership.
23 Western has not had funds available to hire and train new employees. The retained
24 employees have knowledge of the Receivership Entities and their operations. The
25 most economical course of action was to retain and supervise them until votes are
26 taken and decisions are made regarding the GPs and their property interests.

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IX. CONCLUSION

Over the last 11 months, the Receiver, with the assistance of counsel, has diligently, competently, and efficiently performed all of his Court-ordered duties. To date, the Receiver has been paid 83% of fees incurred during the first four months of the receivership (90% for his first fee application and 80% for his second fee application) and his counsel has been paid 74% of fees incurred during the same period (80% for its first fee application and 70% for its second fee application).

As the Court no doubt understands, the Receiver must pay his employees and other costs on a bi-weekly or monthly basis, and therefore must essentially finance the receivership for extended periods of time. For these reasons, it is customary and appropriate to allow interim payments of receivership fees and costs. The Receiver and his counsel have provided valuable services to the receivership estate pursuant to the Court's orders and should be compensated, subject to the proposed holdbacks, for their work during the first quarter of 2013. Accordingly, the Receiver requests the Third Fee Applications be approved.

Dated: August 9, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates
TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK

1 I am employed in the County of San Diego, State of California. I am over the
2 age of eighteen (18) and am not a party to this action. My business address is
3 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

4 On August 9, 2013, I served the within document(s) described as:

5 **➤ RECEIVER'S RESPONSE TO OPPOSITIONS TO THIRD
6 INTERIM FEE APPLICATIONS OF THE RECEIVER AND HIS
7 COUNSEL**

8 on the interested parties in this action by:

9 **BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):** the
10 foregoing document(s) will be served by the court via NEF and hyperlink to the
11 document. On August 9, 2013, I checked the CM/ECF docket for this
12 bankruptcy case or adversary proceeding and determined that the following
13 person(s) are on the Electronic Mail Notice List to receive NEF transmission at
14 the email addressed indicated below:

- 15 • Philip H. Dyson - phildysonlaw@gmail.com; jldossegger2@yahoo.com;
16 phdtravel@yahoo.com
- 17 • Edward G. Fates - tfates@allenmatkins.com; bcrfilings@allenmatkins.com;
18 jbatiste@allenmatkins.com
- 19 • Eric Hougen - eric@hougenlaw.com
- 20 • Sara D. Kalin - kalins@sec.gov
- 21 • Sam S Puathasnanon - puathasnanons@sec.gov; irwinma@sec.gov;
22 cavallones@sec.gov
- 23 • Edward P. Swan, Jr. - pswan@jonesday.com; dpippin@jonesday.com

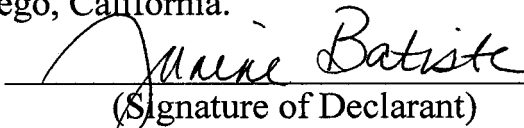
24 **BY MAIL:** I placed a true copy of the document in a sealed envelope or
25 package addressed as indicated on the attached Service List on the above-
26 mentioned date in San Diego, California for collection and mailing pursuant to
27 the firm's ordinary business practice. I am familiar with the firm's practice of
28 collection and processing correspondence for mailing. Under that practice it
would be deposited with the U.S. Postal Service on that same day in the ordinary
course of business. I am aware that on motion of party served, service is
presumed invalid if postal cancellation date or postage meter date is more than
one day after date of deposit for mailing in affidavit.

BY OVERNIGHT DELIVERY: I deposited in a box or other facility regularly
maintained by an overnight courier service, or delivered to a courier or driver
authorized by said express service carrier to receive documents, a true copy of
the foregoing document(s) in sealed envelopes or packages designated by the
express service carrier, addressed as indicated in the attached service list on the
above-mentioned date, with fees for overnight delivery paid or provided for.

I declare under penalty of perjury under the laws of the United States that the
foregoing is true and correct.

Executed on August 9, 2013, at San Diego, California.

Janine L. Batiste
(Type or print name)


(Signature of Declarant)