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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

**RECEIVER'S RESPONSE TO  
 OPPOSITION TO FOURTH  
 INTERIM FEE APPLICATIONS OF  
 THE RECEIVER AND HIS  
 COUNSEL**

Date: November 8, 2013  
 Time: 1:30 p.m.  
 Ctrm: 2D  
 Judge: Hon. Gonzalo P. Curiel

**[NO ORAL ARGUMENT UNLESS  
 REQUESTED BY THE 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"), its  
3 subsidiaries, and other specifically identified entities (collectively, "Receivership  
4 Entities"), hereby replies to Defendants' objection to the fourth interim fee  
5 applications of the Receiver and his counsel.

## 6 I. INTRODUCTION

7 Once again, Defendants cast a series of wholly unsupported and false  
8 accusations at the Receiver in an attempt to deny the Receiver and his counsel  
9 compensation for their work in carrying out the Receiver's Court-ordered duties.  
10 Defendants also continue their campaign to impede the receivership by doing  
11 everything in their power to ensure Western has no funds available to pay Court-  
12 approved fees and costs of the receivership. The Court should reject Defendants'  
13 efforts to circumvent the fee application process and undermine the Court's orders.  
14 Defendants' objection presents no basis on which to deny any portion of the fees  
15 requested. The Receiver and his counsel should be compensated for their work.

## 16 II. ARGUMENT

### 17 A. Defendants Continue to Make False Statements

18 Defendants have repeatedly made statements to the Court that have been  
19 established to be false. Here, Defendants contend, without any evidentiary support,  
20 that the GPs have been harmed by the Receiver's actions. This is absolutely false.  
21 The fact is that none of the GPs have suffered any late charges or penalties or have  
22 failed to timely make a property tax payment as a result of the Receiver's actions. In  
23 fact, all mortgage payments due as of October 25, 2013 have been made and the  
24 remaining payments due through today will be made in the next two weeks.  
25 Declaration of Thomas Hebrank filed herewith ("Hebrank Declaration"), ¶ 2.  
26 Exhibit A to the Hebrank Declaration provides the current status of each mortgage,  
27 broken down by category as discussed in Part II.C. below.

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1 Defendants accuse the Receiver of attempting to "thwart investors and  
2 Defendants from contacting beneficiaries of the Underlying Notes to confirm that  
3 payments have been made." Docket No. 505, p. 2. The Receiver is baffled by this  
4 wholly unsupported and false accusation. The Receiver has never attempted to  
5 prevent investors or Defendants from contacting note beneficiaries. Hebrank  
6 Declaration, ¶ 3. Defendants provide no evidentiary support, nor do they even state  
7 how the Receiver attempted to prevent such contact. There is no truth whatsoever to  
8 this accusation.

9 Defendants continue to pretend the Receiver has acted unilaterally throughout  
10 the receivership. They complain of actions expressly authorized and directed by the  
11 Court as though the Court has no rightful authority over Western or the GPs. This is  
12 obviously not the case and their strident tone is nothing more than a show for  
13 investors.<sup>1</sup> For example, Defendants complain the GPs have repaid portions of loans  
14 Western made to them. Defendants either ignore or pretend not to know that the  
15 Court *expressly instructed* the Receiver to collect loans Western made to the GPs.  
16 Docket No. 470, p. 26.

17 Finally, at the hearing held on July 26, 2013, Mr. Schooler's counsel made a  
18 specific pledge to the Court – that Mr. Schooler would cover the monthly shortfall  
19 between the amount Western collects from the GPs and the amount due on  
20 outstanding mortgages. The Court specifically noted this pledge in its August 16,  
21 2013 Order and quoted counsel for Defendants that "Schooler 'has made it clear to  
22 the SEC that [he is] absolutely committed to that \$1,300 cost coming in.'" Docket  
23 No. 470, p. 12, lines 7-12.

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26 <sup>1</sup> It should be noted that since the Receiver made the Court aware of the investor  
27 website established by Mr. Schooler on which various misrepresentations  
28 regarding the receivership are made (Docket No. 455, Exhibit A, p. 2),  
Mr. Schooler password protected the website. If Mr. Schooler were accurately  
representing the facts to investors, there would be no need to shield the website  
from public view.

1 On two occasions since the August 16, 2013 Order was issued, the Receiver  
2 has followed up with Mr. Schooler, through his counsel, regarding the monthly  
3 shortfalls and Mr. Schooler's pledge. Mr. Schooler has refused to honor the pledge  
4 and his counsel has stated he actually meant something different. It is clear at this  
5 point Mr. Schooler is prepared to make misrepresentations, false accusations, and  
6 pledges to the Court he has no intention of honoring. His statements should be  
7 viewed in this light and his objection to the fourth interim fee applications should be  
8 given no weight.

9 **B. Defendants Continue Their Efforts to Circumvent the Court's**  
10 **Orders and Impede the Receivership**

11 Since the Court rejected his effort to have Western removed from the  
12 receivership in its November 30, 2012 Order Re Receiver's Second Report and  
13 Proposal, Mr. Schooler (with his team of lawyers and substantial personal resources)  
14 has systematically done everything in his power to ensure, regardless of the Court's  
15 orders on fee applications, there are no funds available to pay the Receiver and his  
16 counsel. This end run around the fee application process is designed to undermine  
17 the Court's orders and impede the Receiver's performance of his duties.

18 Defendants' appeal and motion for stay pending appeal is part of this tactic.  
19 After asking the Court to remove the GPs from the receivership, Defendants sought  
20 partial reconsideration and then appealed the August 16, 2013 Order. The sole  
21 aspect of the August 16, 2013 Order they challenge is the conversion of Western's  
22 equity interests to cash. Such conversion would generate cash that would be  
23 available to pay Court-approved fees and costs of the receivership. The appeal  
24 should be seen for what it is – a tactic to undermine the receivership – and the  
25 pending motion for stay should be rejected.

26 Mr. Schooler's refusal to repay the LinMar loans is another part of this tactic.  
27 The Receiver has tried on several occasions to settle Western's claims against the  
28 LinMar Borrowers. The Receiver has made very reasonable settlement offers, all of

1 which have been rejected. Mr. Schooler simply refuses to repay any portion of the  
2 loans without restrictions on the use of funds repaid. Once again, the restrictions are  
3 designed to prevent there from being any cash available to pay Court-approved fees  
4 and costs.

5 In their objection, Defendants complain that certain GPs have low account  
6 balances and may be unable to make future property tax payments. However, upon  
7 entry of the August 16, 2013 Order, the Receiver immediately authorized and  
8 instructed Alice Jacobson and Beverly Schuler, the two former Western employees  
9 who now handle the day-to-day operations of the GPs as independent contractors  
10 ("Partnership Administrators") to resume operational billing. The Receiver  
11 instructed the Partnership Administrators to include amounts the Court ordered the  
12 Receiver to collect in the billings. Docket No. 470, p. 26 (directing the Receiver to  
13 collect on loans Western made to the GPs to finance the purchase of GP units and to  
14 cover shortfalls in operational funds). This instruction was given more than two  
15 months ago. Yet, the Partnership Administrators have not collected a single dollar  
16 from investors. Hebrank Declaration, ¶ 4.

17 In July, Defendants argued vehemently that suspending operational billing for  
18 even a month or two would harm the GPs. Docket No. 407, p. 22. Yet, the  
19 Partnership Administrators were authorized to resume operation billing more than  
20 two months ago and they have not collected a single dollar.

21 The real reason the Partnership Administrators have not collected anything  
22 from investors comes back to Mr. Schooler and his determination to prevent the  
23 Receiver from being paid. As previously reported to the Court, once the  
24 5186 Carroll Canyon Road building was sold in September, the Partnership  
25 Administrators immediately moved into new office space provided by Mr. Schooler.  
26 The Partnership Administrators have intentionally delayed issuing bills to investors  
27 in order to keep the GP account balances artificially low. By doing so, if  
28 Mr. Schooler is unsuccessful in staying the conversion of Western's equity interests

1 to cash, Western will receive as little as possible from GP accounts. Under the  
2 August 16, 2013 Order, GPs that have insufficient funds to pay taxes and other bills  
3 coming due in the 90 days following the conversion pay Western nothing and  
4 Western's equity interests are nonetheless extinguished.

5 It is clear now that Defendants misled the Court by stating that temporarily  
6 suspending operational billing would immediately harm the GPs. Not a single dollar  
7 has been collected from investors more than five months since operational billing  
8 was temporarily suspended by the Receiver despite the Court's order two and a half  
9 months ago that operational billing resume.

10 The Receiver believes the Partnership Administrators, who are being used as  
11 pawns to implement Mr. Schooler's tactics, may not be fit to run the day-to-day  
12 operations of the GPs. The Receiver has recently reiterated his instruction to the  
13 Partnership Administrators to resume operational billing, including to collect the  
14 amounts the Court has ordered be collected from the GPs. Hebrank Declaration, ¶ 4.  
15 If the Partnership Administrators continue to disobey the Court's orders and the  
16 Receiver's instructions pursuant to those orders, the Receiver will seek immediate  
17 authority to terminate the Partnership Administrators and replace them with someone  
18 capable of carrying out the day-to-day operations of the GPs consistent with the  
19 Court's orders.

20 There is no evidence supporting Defendants' various false accusations in their  
21 objection to the fee applications. The Receiver has properly carried out his Court-  
22 ordered duties throughout this case. It is the Court via the fee application process  
23 that decides what the Receiver and his counsel are paid, not Mr. Schooler via his  
24 transparent tactics. The Court should reject Mr. Schooler's efforts to circumvent the  
25 Court's orders and impede the receivership.

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1           **C. There is no Connection Between Amounts Collected From Investors**  
 2           **and Amounts Owed on Mortgages**

3           As the Court has directed, all payments on mortgages on GP properties have  
 4 been made and will continue to be made as cash is available. However, because  
 5 Defendants continue to knowingly misrepresent the facts regarding investor note  
 6 payments and mortgage payments, it is necessary to clarify these issues.

7           Defendants have stated on several occasions there is a direct relationship  
 8 between amounts investors pay on their notes and amounts owed on mortgages. This  
 9 is false. In fact, there is no connection at all. As it pertains to mortgages on GP  
 10 properties, investor note payments fall into three categories:

11           1) Investors in GPs that have no mortgages at all on their property interests.  
 12 There are three GPs in this category.

13           2) Investors in GPs that have mortgages on their property interests, but the  
 14 amount collected from investors in that GP are insufficient to make the mortgage  
 15 payment. There are seven GPs in this category.

16           3) Investors who own units in GPs that have mortgages on their property  
 17 interests, but the amount collected from investors in that GP exceed the mortgage  
 18 payment. There are three GPs in this category.

19 Hebrank Declaration, ¶ 5, Exhibit A.

20           It is only because of the note payments from investors in categories one and  
 21 three that there is anything close to sufficient funds to make the mortgage payments  
 22 for GPs in category two.<sup>2</sup> Hebrank Declaration, ¶ 6. Even factoring in the note  
 23 payments from investors in categories one and three, there is an aggregate shortfall  
 24 every month. The exact amount of the shortfall fluctuates depending on the timing  
 25 of mortgage payments and collections from investors, but for October 2013 it was  
 26 approximately \$3,000. Hebrank Declaration, ¶ 7.

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28 <sup>2</sup> The amount collected from investors in category two is approximately \$31,000  
 less than the mortgage payments due for GPs in category two.



1 Defendants argue investors have an "express understanding" that their note  
2 payments will be used to make the mortgage payment on their GP's property interest.  
3 Docket No. 505, p. 5. For this to be true, all GPs would have to be in category three,  
4 which Defendants know is not the case. Moreover, if such an "express  
5 understanding" existed, then Defendants themselves violated the understanding  
6 consistently prior to the receivership. Funds collected on investor notes in categories  
7 one and three, which have no connection to the GPs in category two, have always  
8 been used to make mortgage payments for GPs in category two. Hebrank  
9 Declaration, ¶ 6. Once again, Defendants knowingly misrepresent the facts.

10 **D. The Fee Applications Should Be Approved**

11 The Court has consistently rejected Defendants' arguments that the fees  
12 requested by the Receiver and his counsel are unreasonable and that Western and the  
13 GPs have not benefitted from the Receiver's performance of his duties. The Court  
14 appointed the Receiver because it determined it was necessary and appropriate to  
15 preserve and protect the assets of the Receivership Entities. The Receiver has  
16 diligently and properly performed his Court-ordered duties throughout the  
17 receivership, including (a) marshaling and protecting the assets of the Receivership  
18 Entities, (b) significantly reducing Western's operating expenses, (c) keeping  
19 mortgages, property taxes, and other bills current despite a constant cash shortage,  
20 (d) preparing tax returns and timely issuing all K-1s to investors, (e) maximizing the  
21 value of Western's assets through sales of gold coins, automobiles, and office  
22 furniture and equipment, (f) protecting the Receivership Entities' interests with  
23 respect to pending litigation matters, (g) taking appropriate actions to pursue  
24 collection of loans Western made to the LinMar Borrowers, (h) conducting a detailed  
25 forensic accounting and analysis of real estate assets as instructed by the Court, and  
26 (i) keeping the Court and interested parties apprised of his activities. As the Court  
27 has observed, Western and the GPs have benefitted substantially from these  
28 activities.



