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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

LOUIS V. SCHOOLER and FIRST
FINANCIAL PLANNING
CORPORATION, dba Western
Financial Planning Corporation,

Defendants.

Case No. 3:12-cv-2164-GPC-JMA

**ORDER GRANTING
RECEIVER’S EX PARTE
APPLICATION FOR
AUTHORITY TO USE FUNDS IN
CERTAIN GENERAL
PARTNERSHIP ACCOUNTS TO
COVER SHORTFALL IN FUNDS
NECESSARY TO MAKE
MORTGAGE PAYMENTS,
PENDING RESOLUTION OF
APPEAL**

(ECF NO. 519)

This is a civil enforcement action initiated by the Securities and Exchange Commission (“Commission”), in which the Commission alleges defendants Louis V. Schooler (“Schooler”) and First Financial Planning Corporation d/b/a Western Financial Planning Corporation (“Western”) defrauded investors through the sale of unregistered securities tied to interests in real property. On March 13, 2013, the Court entered a preliminary injunction and appointed Thomas C. Hebrank (“Receiver”) as permanent receiver to operate and manage the affairs of Western, its subsidiaries, and the several general partnerships (“GPs”) that Western formed in connection with the sale of the aforementioned interests in real property.

1 On August 16, 2013, the Court granted in part and denied in part Defendants'
2 Motion to Modify Preliminary Injunction Order, in which Defendants requested that
3 the Court remove the GPs from the receivership. (ECF No. 470.) In ordering that the
4 GPs should be removed from the receivership, the Court imposed certain conditions
5 on their removal. (Id.) Defendants appealed one such condition, (ECF No. 499), and
6 the Court thereafter stayed the removal of the GPs from the receivership pending the
7 outcome of Defendants' appeal. (ECF No. 513.) In the meantime, the Commission has
8 also appealed the Court's August 16, 2013 Order as to the removal of the GPs from the
9 receivership in the first place. (ECF No. 514.)

10 Presently before the Court is the Receiver's Ex Parte Application for Authority
11 to Use Funds in Certain General Partnership Accounts to Cover Shortfall in Funds
12 Necessary to Make Mortgage Payments, Pending Resolution of Appeal. (ECF No.
13 519.) The Receiver reports that Western has insufficient cash to make payments on the
14 notes secured by mortgages on the GP properties ("underlying notes"). The Receiver
15 has provided a projected cash flow for Western for the weeks of November 22, 2013,
16 through January 3, 2014. (ECF No. 519 at 12.) The projection shows Western's net
17 income to be \$5,141 for the week ending on November 22, 2013; a shortfall of \$33,947
18 for the week ending on November 29, 2013; \$14,296 for the week ending on December
19 6, 2013; a shortfall of \$21,306 for the week ending on December 13, 2013; a shortfall
20 of \$12,135 for the week ending on December 20, 2013; \$3,532 for the week ending on
21 December 27, 2013; and \$14,796 for the week ending on January 3, 2014. The
22 shortfalls for the weeks ending on November 29, December 13, and December 20,
23 2013, are largely due to the payments owed on the underlying notes.

24 At this time, Western's only source of income is from GPs that are repaying
25 loans they acquired from Western to finance their initial investments.¹ As explained

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27 ¹ Other potential sources of income include payments from GPs that borrowed money from
28 Western to cover shortfalls in funds used to pay their operational expenses. Many of these GPs,
however, do not currently have funds in their accounts to repay the amounts owed to Western. Only

1 by the Receiver, these payments from the GPs to Western fall into three categories:

- 2 1. payments from GPs that have no mortgages on their property interests;
- 3 2. payments from GPs that have mortgages on their property interests, but
4 whose payments to Western are insufficient to make the required
5 mortgage payments; and
- 6 3. payments from GPs that have mortgages on their property interests, and
7 whose payments to Western exceed the required mortgage payments.

8 The difference between the amount category-2 GPs pay Western on a monthly basis
9 and the monthly mortgage payments owed in this category 2 is currently -\$30,859.
10 That is, category-2 GPs owe Western less than Western owes to the holders of the notes
11 secured by category-2 GP properties. Thus, as explained by the Receiver, the GP
12 payments in categories 1 and 3 have always been used to make up the shortfall in
13 category 2. Though, under this approach, there is still a \$3,093 monthly shortfall in the
14 funds Western has available to pay on the underlying notes.² (See ECF No. 508-1 at
15 6-9.)

16 Based on the foregoing, the Receiver proposes that category-2 GPs pay a pro-
17 rata share of the shortfall to Western so Western can make payment on the notes
18 secured by these category-2 GPs' properties in a timely manner. (ECF No. 519 at 5.)
19 The Receiver proposes, for example, that "the four GPs that own the Washoe 4
20 property would each pay \$550.25 per month to Western to cover the \$2,201 Shortfall
21 so Western can add the \$2,201 to the \$7,082 collected on GP notes and make the two
22 Mortgage Payments for Washoe 4 totaling \$9,283." (Id.) The Receiver has provided
23 a spreadsheet showing that each of the category-2 GPs has a sufficient account balance

24 _____
25 recently did billing resume for these GPs, and it is unknown how investors will respond to this billing.
26 Repayment of the money Western loaned the LinMar Borrowers is another source of potential income.
27 After being unable to agree on a repayment plan, however, the Receiver, with the Court's permission,
brought suit against the LinMar Borrowers on behalf of Western. These suits are in their beginning
stages, and their duration and results are uncertain.

28 ² As Defendants note, the Court previously miscalculated the shortfall as \$10,360.

1 to contribute to payments on the underlying notes. (ECF No. 519 at 14-15.) In the
2 aggregate, the category-2 GPs have an account balance of \$3,133,614, with the lowest
3 individual balance being \$44,086. (Id.)

4 Defendants have filed a response in opposition. (ECF No. 520.) Of note,
5 Defendants assert that one of the underlying notes is due to be paid in full as of
6 December 2013, reducing the monthly shortfall from \$3,093 to \$1,042. Defendants
7 assert that the shortfall will be completely eliminated as of March 2015. This, of
8 course, does nothing to remedy the current shortfall.

9 Defendants make further representations regarding settlement offers made with
10 regard to the LinMar Loans—loans Western made to the LinMar Borrowers and which
11 are now the subject of three related actions filed in this Court.³ Defendants' imply that
12 Western would have sufficient funds to make payments on the underlying notes if the
13 Receiver had accepted the LinMar Borrowers' global settlement offer of repaying their
14 loans at \$12,000 per month. Said offer, however, came with several conditions
15 regarding how the Receiver was to allocate the repaid funds. Having reviewed the
16 conditions (see ECF No. 520-2 at 12-13), the Court agrees with the Receiver that they
17 are unreasonable. It is not for the LinMar Borrowers to dictate to the Receiver how
18 funds owed to a receivership estate should be allocated.

19 Finally, Defendants provide letters from several underlying note holders
20 indicating that late fees have accrued and that Western has been declared to be in
21 default.

22 It is the goal of this Court to preserve the GPs' interests in the GP properties
23 until the GPs can take complete, independent, and fully informed control of their
24 interests. Thus, Defendants' provision of letters indicating that late fees have accrued
25 and that Western has been declared to be in default are concerning. The latest of the
26

27 ³ Hebrank v. LinMar III, LLC, 3:13-cv-2180-GPC-JMA; Hebrank v. LinMar Mgmt., Inc., 3:13-
28 cv-2179-GPC-JMA; and Hebrank v. LinMar IV, LLC, 3:13-cv-2181-GPC-JMA.

1 letters that Defendants have provided, however, is dated November 6, 2013, and the
2 Receiver has provided documentation showing that all of the underlying notes are
3 current as of the date the Receiver filed the instant Ex Parte Application. (See ECF No.
4 519 at 14-15.)

5 Defendants have previously represented that, in the event Western is unable to
6 make payments on the underlying notes, the GPs would be able to step in and make
7 payments on Western's behalf in order to avoid foreclosure.⁴ Until the GPs who
8 borrowed money from Western to cover operational shortfalls can repay their debts to
9 Western and/or until the Receiver recoups the loans made to the LinMar Borrowers,
10 it appears the only option to ensure that the mortgages on the properties owned by the
11 category-2 GPs are paid is to require those category-2 GPs to contribute to the monthly
12 shortfall. See SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005)
13 (explaining district court's "extremely broad" power to supervise an equity receivership
14 and determine appropriate action to be taken in administration of receivership).

15 Based on the foregoing, the Receiver's Ex Parte Application, (ECF No. 519), is
16 **GRANTED**. Starting in November 2013 and lasting until the stay of the Court's
17 August 16, 2013 Order is lifted, the Receiver is authorized to transfer amounts
18 necessary to cover the shortfall from accounts for the category-2 GPs listed on Exhibit
19 A to the Receiver's Ex Parte Application to Western's accounts. In any given month,
20 the amount transferred from each GP account shall be the GP's pro-rata share of the
21 difference between note payments made to Western by all GPs for a property and the
22 mortgage payments due in that month for that property. Any amount transferred from
23 a category-2 GP account shall be used for no purpose other than to make payments on

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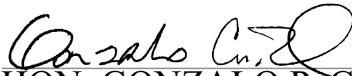
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27 ⁴ The Court encourages either the Receiver or Defendants to lodge with the Court any
28 documents that support this representation.

1 the notes secured by these GPs' property interests.

2 **IT SO ORDERED.**

3 DATED: December 10, 2013

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5 HON. GONZALO P. CURIEL
6 United States District Judge
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