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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

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

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

Date: July 25, 2014
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

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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 sixth interim fee
5 applications of the Receiver and Allen Matkins.

6 Defendants' objections to the fee applications of the Receiver and Allen
7 Matkins resemble a broken record. They continue to reiterate the same arguments
8 the Court has time and again rejected. Once again, Defendants insist the Receiver
9 certify that all mortgage payments have been made before any fees or costs of the
10 receivership are approved. The Court has already rejected this argument, finding it
11 both moot and unpersuasive. Docket No. 511, p. 6.

12 Once again, Defendants present no evidence indicating the Receiver failed to
13 make mortgage payments when cash was available to do so. At most, Defendants
14 have shown certain mortgage payments were made late. The Receiver repeatedly
15 warned this would occur as a result of Western's cash shortage.¹ As the Receiver
16 warned, certain payments were necessarily made late.² To prevent the situation
17 from getting worse, the Receiver promptly filed an Ex Parte Application on
18 November 22, 2013. Docket No. 519. The Ex Parte Application was granted on
19 December 10, 2013 (Docket No. 524), allowing the Receiver to bring all mortgages
20 current. Western now has sufficient cash to timely make all mortgage payments
21 moving forward.

23 ¹ Defendants falsely state that Schooler paid "the costs associated with the move of
24 the offices." Opp. fn. 3. The Receiver paid the costs to move Western's offices
25 after the sale of the 5186 Carroll Canyon Road property. Although the
26 Partnership Administrators may have chosen to office with Schooler, Western's
27 offices were relocated to an executive office suite in UTC.

28 ² As discussed in the Ex Parte Application, Defendants' conduct exacerbated and
accelerated Western's inability to timely make mortgage payments, including
their appeal of the liquidation of Western's interests in the GPs, Mr. Schooler's
refusal to repay any portion of the LinMar loans, and Mr. Schooler's failure to
honor his pledge to the Court to cover the monthly shortfall between amounts
collected from GPs and mortgage payments due.

1 The Court has also rejected Defendants' argument that GP payments on notes
2 to Western are connected to Western's payments on the underlying mortgages. The
3 Court has recognized this contention is without merit. Docket No. 524, p. 3. As the
4 three categories of GP note payments and mortgage payments demonstrate, GP note
5 payments were not used exclusively to make payments on mortgages for their
6 properties. In fact, note payments from GPs in categories 1 and 3 were historically
7 applied to mortgages unrelated to those GPs. *Id.*

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

25 Moreover, the Court has twice determined the hourly rates of the Receiver
26 and his counsel, which are discounted by 10% from their customary hourly rates, are
27 reasonable and consistent with professionals in their respective industries with
28 similar skill and experience working on SEC receivership matters.

1 Defendants present no basis on which to deny any portion of the fees
2 requested. The Receiver and his counsel have diligently and efficiently carried out
3 the Receiver's Court-ordered duties throughout the receivership. They should be
4 fairly compensated for their work.

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6 Dated: July 18, 2014

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: _____ /s/ Ted Fates

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TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK

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PROOF OF SERVICE

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

On July 18, 2014, I served the within document(s) described as:

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

on the interested parties in this action by:

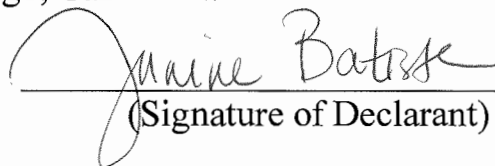
BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"): the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On July 18, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

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

Executed on July 18, 2014, at San Diego, California.

Janine L. Batiste
(Type or print name)


(Signature of Declarant)

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