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7 THOMAS C. HEBRANK

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

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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

**RESPONSE TO OPPOSITION TO  
SEVENTH INTERIM FEE  
APPLICATIONS OF THE  
RECEIVER AND HIS COUNSEL**

Date: August 8, 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 seventh interim fee  
5 applications of the Receiver and Allen Matkins.

6 Defendants once again simply repeat the same objections to the fee  
7 applications of the Receiver and Allen Matkins the Court has time and again  
8 rejected. As usual, Defendants insist the Receiver certify that all mortgage  
9 payments have been made before any fees or costs of the receivership are approved.  
10 The Court has already rejected this argument, finding it both moot and unpersuasive.  
11 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.<sup>1</sup> As the Receiver  
16 warned, certain payments were necessarily made late. To prevent the situation from  
17 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.

22 Defendants now submit a declaration from Louis Schooler attached to which  
23 is an e-mail message from Robert Schafer, the holder of certain junior secured  
24 promissory notes on GP properties. Along with Mr. Schooler, Mr. Schafer was  
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26  
27 <sup>1</sup> Defendants falsely state that Schooler paid "the costs associated with the move of  
28 the offices." Opp. fn. 3. The Receiver paid the costs to move Western's offices  
after the sale of the 5186 Carroll Canyon Road property. Although the  
Partnership Administrators may have chosen to office with Schooler, Western's  
offices were relocated to an executive office suite in UTC.

1 associated with Receivership Entity Real Asset Locators, Inc. and apparently  
2 performed services of some kind in connection with Western's acquisition of land  
3 parcels such that he was purportedly owed a fee for which he took the secured  
4 promissory notes. In the e-mail, which is dated February 15, 2014, Mr. Schafer  
5 contends the Receiver has not made any note payments to him for December,  
6 January, or February 2014. This is simply wrong. Note payments were made to  
7 Mr. Schafer *and cashed by him* in each of those months. Declaration of Geno  
8 Rodriguez filed herewith, ¶ 3. In fact, Mr. Schafer recently called the Receiver's  
9 office claiming the Receiver had not made any payments to him in 2014.  
10 Mr. Rodriguez pointed out to Mr. Schafer that, in fact, all of the required note  
11 payments had been made *and cashed by him*. Mr. Schafer later acknowledged he  
12 was wrong in a voicemail left for Mr. Rodriguez. *Id.* at ¶ 4. Accordingly,  
13 Mr. Schafer apparently has no understanding of payments he has received and  
14 cashed and his February 15, 2014 e-mail simply confirms that.

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

22 Finally, the Court has repeatedly rejected Defendants' arguments that the fees  
23 requested by the Receiver and his counsel are unreasonable and that Western and  
24 the GPs have not benefitted from the Receiver's performance of his duties. The  
25 Court appointed the Receiver, having determined it was necessary and appropriate  
26 to preserve and protect the assets of the Receivership Entities. The Receiver has  
27 diligently and properly performed his Court-ordered duties throughout the  
28 receivership, including (a) marshaling and protecting assets of the Receivership

1 Entities, (b) significantly reducing Western's operating expenses, (c) ensuring that  
2 bills and necessary expenses are paid, (d) preparing tax returns and issuing K-1s to  
3 investors, (e) maximizing the value of Western's assets through sales of gold coins,  
4 automobiles, and office furniture and equipment, (f) protecting the Receivership  
5 Entities' interests with respect to pending litigation and other legal matters affecting  
6 GP properties, (g) taking appropriate actions to pursue collection of loans Western  
7 made to the LinMar Borrowers, (h) conducting a detailed forensic accounting and  
8 analysis of real estate assets as instructed by the Court, and (i) keeping the Court and  
9 interested parties apprised of his activities through regular interim reports. As the  
10 Court has observed, Western and the GPs have benefitted substantially from these  
11 activities.

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

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

20 The Court now has before it the Fifth Interim Fee Applications of the  
21 Receiver and his counsel, covering the third quarter of 2013 (Dkt. Nos. 525-526),  
22 the Sixth Interim Fee Applications of the Receiver and his counsel, covering the  
23 fourth quarter of 2013 (Dkt. No. 566-567), the Second Interim Fee Application of  
24 Duffy Kruspodin & Company, covering all work performed in 2013 (Dkt. No. 568),  
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1 and the Seventh Interim Fee Applications of the Receiver and his counsel, covering  
2 the first quarter of 2014 (Dkt. Nos. 600-601). The Receiver respectfully requests  
3 rulings on these pending fee applications.

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5 Dated: August 1, 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 August 1, 2014, I served the within document(s) described as:

- **RECEIVER'S RESPONSE TO OPPOSITION TO SEVENTH 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 August 1, 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:

- Lynn M Dean - deanl@sec.gov; larofiling@sec.gov; berryj@sec.gov; cavallones@sec.gov
- Philip H. Dyson - phildysonlaw@gmail.com; jldossegger2@yahoo.com; phdtravel@yahoo.com
- Edward G. Fates - tfates@allenmatkins.com; bcrfilings@allenmatkins.com; jbatiste@allenmatkins.com
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- Edward P. Swan, Jr - pswan@jonesday.com; dpippin@jonesday.com

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

Executed on August 1, 2014, at San Diego, California.

Ted Fates  
\_\_\_\_\_  
(Type or print name)

/s/ Ted Fates  
\_\_\_\_\_  
(Signature of Declarant)