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

**DECLARATION OF TED FATES IN
SUPPORT OF RECEIVER'S
MOTION FOR CIVIL CONTEMPT
AND SANCTIONS FOR VIOLATION
OF PRELIMINARY INJUNCTION
ORDER**

Date: January 16, 2015
Time: 1:30 p.m.
Ct. No.: 2D
Judge: Hon. Gonzalo P. Curiel

1 I, Ted Fates, declare as follows:

2 1. I am an attorney at the law firm of Allen Matkins Leck Gamble Mallory
3 & Natsis LLP, counsel of record for Plaintiff Thomas C. Hebrank ("Receiver"), the
4 court-appointed receiver for First Financial Planning Corporation d/b/a Western
5 Financial Planning Corporation ("Western"), in the above-captioned action. I make
6 this declaration in support of the Receiver's Motion for Civil Contempt and Sanctions
7 for Violation of Preliminary Injunction Order ("Motion"). I am a member in good
8 standing of the State Bar of California and have been admitted to practice before this
9 Court. I have personal knowledge of the facts set forth in this Declaration and, if
10 called as a witness, could and would testify competently to such facts under oath.

11 2. On September 3, 2014, the Receiver contacted the Partnership
12 Administrators and advised that the Receiver would need full access to the servers.
13 The Partnership Administrators responded that Schooler would not grant such access
14 and the Receiver would have to address the issue with Schooler's counsel.

15 3. On September 4, 2014, I sent a letter to Schooler's counsel demanding
16 immediate access to the Western server. I noted in my correspondence that the PI
17 Order requires Schooler to provide access and that failure to do so would violate the
18 PI Order. I also gave notice that the Receiver would seek sanctions if Schooler
19 violated the PI Order. Attached as **Exhibit A** is a true and correct copy of my letter
20 sent on September 4, 2014.

21 4. Schooler's counsel, Eric Hougen, responded to my letter by calling me
22 and demanding a full retraction of my letter, stating there was no basis to allege
23 Schooler had violated the PI Order and that Schooler was not denying the Receiver
24 access to the server. I told Mr. Hougen the Receiver would provide a date and time
25 for Geno Rodriguez from the Receiver's office and the Receiver's IT specialist to
26 visit the Vista office to access the server.

27

28

1 5. On September 8, 2014, I sent an e-mail to Schooler's counsel requesting
2 Mr. Rodriguez and the IT specialist have access to the server on September 11, 2014.
3 Attached as **Exhibit B** is a true and correct copy of my September 8, 2014 e-mail.

4 6. On September 10, 2014, Schooler's counsel, David Herman, responded
5 that "[b]ecause it is unclear what exactly will be performed by Mr. Hebrank and/or
6 Mr. Rodriguez and the IT technician, Messrs. Dyson and Hougen will need to be
7 present to oversee the process and ensure that only non-confidential electronically-
8 stored information belonging to Western (and not to Mr. Schooler, the LinMar
9 entities, or other entities not within the scope of the receivership) is accessed."

10 Mr. Herman also stated that the server access would need to be conducted on
11 September 15, 2014, due to Mr. Hougen and Mr. Dyson's schedules. Attached as
12 **Exhibit C** is a true and correct copy of Mr. Herman's September 10, 2014 e-mail.

13 7. I responded the same day, stating that September 15, 2014, would not
14 work because the Receiver's IT specialist was leaving for vacation that day. Instead,
15 the Receiver proposed that the server be picked up on Friday, September 12, 2014,
16 and returned on Monday, September 15, 2014. *See* **Exhibit C**.

17 8. On September 11, 2014, Schooler's counsel called me and stated that
18 there are files unrelated to Western on the server that need to be removed before the
19 server could be turned over. Schooler's counsel stated they would promptly review
20 the files on the server with the aid of an IT technician and remove the non-Western
21 files. On behalf of the Receiver, I agreed on the condition that a log of the files
22 removed be provided, to which Schooler's counsel agreed. It was agreed that the file
23 review and removal would be completed promptly and certainly before the
24 Receiver's IT specialist returned from vacation on September 29, 2014.

25 9. On September 17, 2014, Mr. Herman e-mailed me and advised that
26 Mr. Dyson had been inspecting the "computers and servers at Western Financial's
27 offices and will continue his inspection tomorrow with the aid of an IT technician."
28 Mr. Herman stated that Mr. Dyson would contact me the next day with a status

1 update. Attached as **Exhibit D** is a true and correct copy of Mr. Herman and my
2 email communication from September 17 to September 29, 2014.

3 10. On September 22, 2014, I followed up, requesting an update on the
4 status of the file review and removal. *See Exhibit D.* Schooler's counsel did not
5 respond.

6 11. On September 29, 2014, I followed up again, stating the Receiver's IT
7 specialist was back from vacation and ready to pick up the server, that Schooler had
8 had ample time since September 4, 2014, to remove the non-Western files, and
9 therefore the Receiver's IT person would pick up the server at the Vista office the
10 following day. *See Exhibit D.*

11 12. That same day, Mr. Dyson responded, stating the server would not be
12 available for pick up, that he was not feeling well, and that he would get back to me
13 tomorrow if he was in. *See Exhibit D.*

14 13. On September 30, 2014, I had two telephone calls with Schooler's
15 counsel. During those calls, Schooler's counsel stated they had made a copy of
16 Western's server, were reviewing the copy, and would then have the non-Western
17 files removed. Schooler's counsel acknowledged the file review and removal had
18 taken far too long and agreed the server would be provided on October 8, 2014,
19 regardless of whether the non-Western files had been removed by that time.
20 Schooler's counsel stated that a copy of the Western server had been made and would
21 be reviewed in order to identify non-Western files.¹ In order to avoid seeking Court
22 intervention and incurring costs associated with a contempt motion, the Receiver
23 agreed to October 8, 2014, as the absolute deadline to produce the server.

24 14. On October 7, 2014, I sent an e-mail to Mr. Dyson to confirm the server
25 would be made fully available to the Receiver the following morning. Mr. Dyson
26 responded saying only he would "not be able to make that time" and would address it

27 _____
28 ¹ Schooler never requested permission to make a copy of the Western server and
such permission was never granted.

1 further with me the next day. I responded that the Receiver had been waiting more
2 than a month and if Schooler could not provide a set time on October 8 or October 9,
3 the Receiver would be forced to seek relief from the Court. Attached as **Exhibit E** is
4 a true and correct copy of Mr. Dyson and my October 7, 2014 correspondence.

5 15. On October 8, 2014, Mr. Dyson responded, stating that a copy of the
6 server had been made, but the non-Western files had not been removed. I responded
7 the same day, again advising that if full access to the server was not provided on
8 October 9, 2014 the Receiver would seek an order compelling Schooler to comply
9 with the PI Order. I noted that their promise to provide the Western server no later
10 than October 8, 2014 had been broken, which Mr. Dyson did not deny. Attached as
11 **Exhibit F** is a true and correct copy of Mr. Dyson and my October 8, 2014 e-mails.

12 16. Before the hearing held on October 10, 2014, Mr. Dyson told me a copy
13 of the Western server would probably be ready by October 15, 2014. At the
14 conclusion of the hearing, I attempted to raise this issue with the Court, but
15 Schooler's counsel objected and the Court declined to take up the matter. I explained
16 the Receiver was hoping to avoid incurring the expense of a motion.

17 17. As of the date of this motion, almost two months from when access to
18 the Western server was requested, Schooler has not granted such access.

19 18. Along with attorney Josi Swonetz, I prepared the Motion in support of
20 which this declaration is submitted. My discounted hourly rate is \$463.50/hr. and
21 Ms. Swonetz's is \$387/hr. The Receiver respectfully requests the Court issue an
22 order for sanctions against Schooler in the amount of \$11,294.55, for the attorney
23 fees incurred as a result of Schooler's failure to comply with the PI Order, including,
24 but not limited to, the fees incurred in bringing this Motion. Attached as **Exhibit G**
25 is a summary of the time billed related to the recovery of the Western server. *Intel*
26 *Corp. v. Terabyte Int'l*, 6 F3d 614, 623 (9th Cir. 1993) (summaries of billing records
27 are sufficient to establish fees incurred so long as underlying records are made
28

1 available pursuant to Federal Rule of Evidence 1006). A breakdown of the attorney
 2 fees incurred is provided below.²

Attorney	Hourly Rate	Hours Billed	Total Fees Incurred
Fates	\$463.50	15.10	\$6,998.85
Swonetz	\$387.00	11.10	\$4,295.70
Total:	\$431.09 (Blended)	26.20	\$11,294.55

10 I declare under penalty of perjury that the foregoing is true and correct.
 11 Executed this 31st day of October, 2014, at San Diego, California.

13 */s/ Ted Fates*
 14 _____
 15 TED FATES

28 ² The Receiver will provide an update on fees incurred in his reply brief.

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EXHIBIT A

EXHIBIT A

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
501 West Broadway, 15th Floor | San Diego, CA 92101-3541
Telephone: 619.233.1155 | Facsimile: 619.233.1158
www.allenmatkins.com

Ted Fates
E-mail: tfates@allenmatkins.com
Direct Dial: 619.235.1527 File Number: 372640-00002/SD822142.01

Via Email and First Class Mail

September 3, 2014

Philip H. Dyson, Esq.
8461 La Mesa Boulevard
La Mesa, California 91941

Eric J. Hougen, Esq.
Law Offices of Eric J. Hougen
624 Broadway, Suite 303
San Diego, California 92101

**Re: SEC v. Louis V. Schooler and First Financial Planning Corporation
d/b/a Western Financial Planning Corporation**

**United States District Court, Southern District of California
Case No. 12-cv-02164-GPC-JMA**

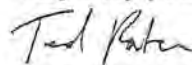
Dear Counsel:

This afternoon, Geno Rodriguez of Thomas Hebrank's company, E3 Advisors, spoke to Alice Jacobson and Beverly Schuler ("Partnership Administrators") and requested access to Western's computer servers located at the Carlsbad office space Louis Schooler has made available to the Partnership Administrators. The Partnership Administrators stated that Mr. Schooler would not allow the Receiver to have access to the servers.

As you know, the servers are property of Western and the data on them is critical to the ongoing operations of the General Partnerships. By refusing to grant the Receiver access to the servers, Mr. Schooler has violated the Preliminary Injunction Order. Accordingly, the Receiver demands Mr. Schooler immediately provide complete and unfettered access to the servers. If he refuses to do so, the Receiver will seek immediate relief from the Court, including sanctions for Mr. Schooler's willful violation of the Preliminary Injunction Order.

Please discuss this matter with Mr. Schooler and confirm by tomorrow, September 5, 2014, that the Receiver has immediate access to the servers.

Very truly yours,



Ted Fates

EGF/jlb
cc: Thomas C. Hebrank

From: Batiste, Janine
Sent: Thursday, September 04, 2014 12:21 PM
To: 'Dyson, Philip H. Esq.'; 'Hougen, Eric J. Esq.'
Cc: Fates, Ted; 'Thomas Hebrank'
Subject: Western - Letter from Ted Fates
Attachments: 2014-09-03 Ltr to Dyson-Hougen Re Access to Servers.pdf

Gentlemen,

Please see attached letter from Ted Fates.

Janine L. Batiste

Secretary to Debra A. Riley, Robert R. Barnes,
Ted Fates, and Josi Kennon Swonetz
Allen Matkins Leck Gamble Mallory & Natsis LLP
Tel: 619.233.1155
Fax: 619.233.1158
jbatiste@allenmatkins.com

www.allenmatkins.com

Allen Matkins

EXHIBIT B

EXHIBIT B

From: Fates, Ted
Sent: Monday, September 08, 2014 1:37 PM
To: 'Eric Hougen'; 'Dyson, Philip H. Esq.'
Cc: 'Thomas Hebrank'; Pat Swan; 'Geno Rodriguez'
Subject: RE: Western - Letter from Ted Fates

Mr. Dyson and Mr. Hougen,

Pursuant to my conversation with Mr. Hougen last week, we are requesting access to Western's servers for Geno Rodriguez and an IT specialist at 11:00 AM on Thursday 9/11. Please confirm they will be provided access at that time.

Thanks,

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 233-1155 (main)
(619) 235-1527 (direct)
(619) 886-4466 (mobile)
(619) 233-1158 (fax)

Allen Matkins
DRILLING INTO THE FUTURE WITH SUCCESS

From: Eric Hougen [mailto:eric@hougenlaw.com]
Sent: Friday, September 05, 2014 11:01 AM
To: Fates, Ted; 'Dyson, Philip H. Esq.'
Cc: 'Thomas Hebrank'; Pat Swan
Subject: RE: Western - Letter from Ted Fates

Ted,

I understood from our telephone conversation yesterday that you were going to issue a full retraction of your letter dated September 3, 2014 and transmitted by email to Phil and me yesterday, September 4, 2014. Instead, your email below does not retract your letter, and the very serious accusations you made in your letter against Mr. Schooler remain. Your letter unequivocally states that "By refusing to grant the Receiver access to the servers, Mr. Schooler has violated the Preliminary Injunction Order." You had sufficient information prior to writing your letter to know that this statement is and was inaccurate and false.

You wrote this letter despite the fact that neither yourself, Mr. Hebrank, Mr. Rodriguez, nor anyone from either your office or Mr. Hebrank's office had any communication whatsoever with Mr. Schooler or any of Mr. Schooler's representatives regarding any access to anything at Mr. Schooler's Vista office – and that nobody from Mr. Hebrank's office or your office made any effort to communicate with Mr. Schooler or his counsel regarding the request for access. As you confirmed yesterday, there has been no communication or statement from Mr. Schooler denying access and there has been no action by Mr. Schooler or anyone who represents Mr. Schooler denying access.

However, rather than communicate the request for access to Phil or me, whom you know represent Mr. Schooler, you instead make very serious accusations based on misquoted, unverified third-party hearsay from individuals whom you

know do not represent Mr. Schooler and do not have authority to speak on his behalf. In addition, the statements attributed to the partnership administrators are not accurate, but regardless, you know that a statement from one of them cannot constitute a breach of the Preliminary Injunction Order by Mr. Schooler.

We demand an immediate retraction of your letter in full – especially with regard to your accusation that he is in violation of the Court's order. Failure to do so will be interpreted as a willful effort on your part to continue to maintain false accusations regarding our client.

In the future we expect any requests pertaining to Mr. Schooler to be directed to us. We have cooperated fully with the Receiver, and Mr. Schooler will continue to respect and abide by the Court's orders in this matter.

Sincerely,
Eric Hougen

Law Offices of Eric J. Hougen
624 Broadway, Suite 303
San Diego, CA 92101
(619) 702-1000 (office)
(619) 702-1005 (fax)
eric@hougenlaw.com

From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Friday, September 05, 2014 2:08 AM
To: Dyson, Philip H. Esq.; Hougen, Eric J. Esq.
Cc: Thomas Hebrank
Subject: RE: Western - Letter from Ted Fates

Mr. Dyson and Mr. Hougen,

I understand from my call with Mr. Hougen today that Mr. Schooler is prepared to grant the Receiver and his agents full access to the servers located at the office space in Vista. Apparently, Alice and Beverly miscommunicated Mr. Schooler's response to the Receiver's request for access when they spoke to Geno Rodriguez yesterday.

We will be in touch shortly with a proposed date and time, but anticipate it will be early next week.

Ted Fates
Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 233-1155 (main)
(619) 235-1527 (direct)
(619) 886-4466 (mobile)
(619) 233-1158 (fax)

Allen Matkins
DRAGGING COMPANIES TO SUCCESS

From: Batiste, Janine
Sent: Thursday, September 04, 2014 12:21 PM
To: Dyson, Philip H. Esq.; Hougen, Eric J. Esq.

Cc: Fates, Ted; Thomas Hebrank

Subject: Western - Letter from Ted Fates

Gentlemen,

Please see attached letter from Ted Fates.

Janine L. Batiste

Secretary to Debra A. Riley, Robert R. Barnes,
Ted Fates, and Josi Kennon Swonetz
Allen Matkins Leck Gamble Mallory & Natsis LLP
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EXHIBIT C

EXHIBIT C

From: Fates, Ted
Sent: Wednesday, September 10, 2014 8:14 PM
To: 'David Herman'
Cc: 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler; Western Financial server inspection

Mr. Herman,

Monday 9/15 does not work for the Receiver's IT person. He actually leaves that day for vacation. We propose instead to have the IT person pick up the server on Friday and return it Monday morning. This should not require Mr. Dyson or Mr. Hougen to be present because the IT person will not have access to anything other than the Western server.

If this poses a problem, please let us know right away. Otherwise, we will be in touch tomorrow with the time on Friday for the server to be picked up.

Thanks, Ted

From: dlherman1975@hotmail.com [mailto:dlherman1975@hotmail.com] **On Behalf Of** David Herman
Sent: Wednesday, September 10, 2014 9:26 AM
To: Fates, Ted
Subject: SEC v. Schooler; Western Financial server inspection

Dear Mr. Fates:

I have received your letter and email re: accessing the servers at the Western Financial offices this Thursday, the 11th.

Because it is unclear what exactly will be performed by Mr. Hebrank and/or Mr. Rodriguez and their IT technician, Messrs. Dyson and Hougen will need to be present to oversee the process and ensure that only non-confidential electronically-stored information belonging to Western (and not to Mr. Schooler, the LinMar entities, or other entities not within the scope of the receivership) is accessed.

Both Mr. Hougen and Mr. Dyson are out of the office for most of this week and therefore the server access will need to be conducted on Monday, September 15, not Thursday the 11th. A proposed time will be sent soon.

David L. Herman, Attorney
Law Office of Philip H. Dyson
8461 La Mesa Boulevard
La Mesa, CA 91942
p: (619) 462-3311
f: (619) 462-3382
david@phildysonlaw.com

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EXHIBIT D

EXHIBIT D

From: Philip H. Dyson [phildysonlaw@gmail.com]
Sent: Monday, September 29, 2014 12:30 PM
To: Fates, Ted; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Ted,

That is not confirmed. I just came into the office and am leaving in 15 minutes because I am not feeling well. I will get back to you tomorrow on this if I am in.

Phil

PHILIP H. DYSON

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phil@phildysonlaw.com
www.phildysonlaw.com

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From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Monday, September 29, 2014 11:31 AM
To: David Herman; Philip H. Dyson
Cc: Eric Hougen; Thomas Hebrank; Geno Rodriguez
Subject: RE: SEC v. Schooler: status of server inspection

David and Phil,

The Receiver's IT person is back and ready to pick up the Western server. Since we requested access to the server on September 4, 2014, Mr. Schooler has had plenty of time to remove his personal, non-Western files. Therefore, we request that the server be made immediately available for pick up and that, as agreed, a list of files removed be produced. The Receiver's IT person is available to pick up the server at the Vista office tomorrow at 10:00 am. Please confirm the server will be made available at that time.

Thanks, Ted

From: Fates, Ted
Sent: Monday, September 22, 2014 8:34 AM
To: 'David Herman'
Cc: Philip H. Dyson; Eric Hougen; Thomas Hebrank; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

David and Phil,

Please provide an update on the status of your work to remove Mr. Schooler's personal files from the Western server.

Thanks, Ted

From: dlherman1975@hotmail.com [mailto:dlherman1975@hotmail.com] **On Behalf Of** David Herman
Sent: Wednesday, September 17, 2014 4:00 PM
To: Fates, Ted
Cc: Philip H. Dyson; Eric Hougen
Subject: SEC v. Schooler: status of server inspection

Dear Ted,

Phil has been inspecting the computers and server at Western Financial's offices and will continue his inspection tomorrow with the aid of an IT technician. He will contact you tomorrow with a status update.

David L. Herman, Attorney
Law Office of Philip H. Dyson
8461 La Mesa Boulevard
La Mesa, CA 91942
p: (619) 462-3311
f: (619) 462-3382
david@phildysonlaw.com

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EXHIBIT E

EXHIBIT E

From: Fates, Ted
Sent: Tuesday, October 07, 2014 2:13 PM
To: Philip Dyson
Cc: David Herman; Eric Hougen; Thomas Hebrank; Geno Rodriguez
Subject: RE: SEC v. Schooler: status of server inspection

Phil,

The Receiver has been waiting over a month to have access to the server, which belongs to Western. If you cannot provide a set time tomorrow or Thursday for the Receiver to have access, we will be forced to seek relief from the court.

Please let us know as soon as possible.

Thanks, Ted

From: Philip Dyson [mailto:phildysonlaw@gmail.com]
Sent: Tuesday, October 07, 2014 2:02 PM
To: Fates, Ted
Cc: David Herman; Eric Hougen; Thomas Hebrank; Geno Rodriguez
Subject: Re: SEC v. Schooler: status of server inspection

Ted. I just finished depositions with the SEC this morning, and will not be able to make that time. I will address it further with you tomorrow.

Phil

Sincerely,

Philip H. Dyson
phil@phildysonlaw.com
T 619.462.3311
F 619.462.3382

On Oct 7, 2014, at 12:15 PM, Fates, Ted <tfates@allenmatkins.com> wrote:

Phil,

Please confirm that Geno Rodriguez and the Receiver's IT person will have full access to the Western server tomorrow at 10:00 am at the Vista offices.

Thanks, Ted

From: Philip H. Dyson [mailto:phildysonlaw@gmail.com]
Sent: Thursday, October 02, 2014 1:12 PM
To: Fates, Ted; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Ted,

We finally got an IT guy to make a copy tomorrow, which we will analyze over the weekend and the first of the week. Right now Wednesday looks good, and I will give you an update according to our review.

Phil

PHILIP H. DYSON

Attorney At Law
8461 La Mesa Boulevard
La Mesa, CA 91942
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Fax 619.462.3382
phil@phildysonlaw.com
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From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Thursday, October 02, 2014 11:37 AM
To: Philip H. Dyson; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Phil and Eric,

Per our calls on Tuesday, Geno Rodriguez and the Receiver's IT person will be at the Vista offices at 10:00 am on Wednesday 10/8. Please confirm they will have full access to the Western server at that time.

Regards, Ted

From: Fates, Ted
Sent: Tuesday, September 30, 2014 11:52 AM
To: 'Philip H. Dyson'; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Phil,

I just called your office and was told you are in a meeting. Please call me as soon as you can.

Thanks, Ted

Ted Fates

Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 233-1155 (main)
(619) 235-1527 (direct)
(619) 886-4466 (mobile)
(619) 233-1158 (fax)

<image001.gif>

From: Philip H. Dyson [<mailto:phildysonlaw@gmail.com>]
Sent: Monday, September 29, 2014 12:30 PM
To: Fates, Ted; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Ted,

That is not confirmed. I just came into the office and am leaving in 15 minutes because I am not feeling well. I will get back to you tomorrow on this if I am in.

Phil

PHILIP H. DYSON

Attorney At Law
8461 La Mesa Boulevard
La Mesa, CA 91942
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Fax 619.462.3382
phil@phildysonlaw.com
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From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Monday, September 29, 2014 11:31 AM
To: David Herman; Philip H. Dyson
Cc: Eric Hougen; Thomas Hebrank; Geno Rodriguez
Subject: RE: SEC v. Schooler: status of server inspection

David and Phil,

The Receiver's IT person is back and ready to pick up the Western server. Since we requested access to the server on September 4, 2014, Mr. Schooler has had plenty of time to remove his personal, non-Western files. Therefore, we request that the server be made immediately available for pick up and that, as agreed, a list of files removed be produced. The Receiver's IT person is available to pick up the server at the Vista office tomorrow at 10:00 am. Please confirm the server will be made available at that time.

Thanks, Ted

From: Fates, Ted
Sent: Monday, September 22, 2014 8:34 AM
To: 'David Herman'
Cc: Philip H. Dyson; Eric Hougen; Thomas Hebrank; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

David and Phil,

Please provide an update on the status of your work to remove Mr. Schooler's personal files from the Western server.

Thanks, Ted

From: dlherman1975@hotmail.com [mailto:dlherman1975@hotmail.com] **On Behalf Of** David Herman
Sent: Wednesday, September 17, 2014 4:00 PM
To: Fates, Ted
Cc: Philip H. Dyson; Eric Hougen
Subject: SEC v. Schooler: status of server inspection

Dear Ted,

Phil has been inspecting the computers and server at Western Financial's offices and will continue his inspection tomorrow with the aid of an IT technician. He will contact you tomorrow with a status update.

David L. Herman, Attorney
Law Office of Philip H. Dyson
8461 La Mesa Boulevard
La Mesa, CA 91942
p: (619) 462-3311
f: (619) 462-3382
david@phildysonlaw.com

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EXHIBIT F

EXHIBIT F

From: Philip Dyson [phildysonlaw@gmail.com]
Sent: Wednesday, October 08, 2014 4:21 PM
To: Fates, Ted
Cc: Thomas Hebrank; David Herman; Eric Hougen; Geno Rodriguez
Subject: Re: SEC v. Schooler: status of server inspection

Ted. I am sorry not I must stick to my previous email.

Phil

Sincerely,

Philip H. Dyson
phil@phildysonlaw.com
T 619.462.3311
F 619.462.3382

On Oct 8, 2014, at 3:32 PM, Fates, Ted <tfates@allenmatkins.com> wrote:

Phil,

Your proposal is unacceptable. The Receiver has been asking for access to Western's server for over a month. Mr. Schooler has had more than enough time to remove non-Western files. During our call last week, you and Eric agreed the Receiver would have full access to the server no later than today regardless of the status of the non-Western file removal. The Receiver delayed seeking relief from the Court based on that agreement, which you have broken.

If Mr. Schooler refuses to grant the Receiver full access to the Western server at the Vista offices tomorrow at 10:00 am, then on Friday we will request an order compelling him to comply with the Preliminary Injunction Order.

Regards, Ted

From: Philip H. Dyson [<mailto:phildysonlaw@gmail.com>]
Sent: Wednesday, October 08, 2014 12:13 PM
To: 'Thomas Hebrank'; Fates, Ted
Cc: 'David Herman'; 'Eric Hougen'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Dear Ted,

Let me give you an update.

Our IT guy finished copying the servers on Monday morning. Both David and I were in SEC depositions all day Monday and till 1 p.m. Tuesday. Yesterday afternoon and today we have been looking at the files on the servers. There are many files which are not Western Based which should be excised from the servers before you copy them. I am beginning the process of indexing those files and as agreed will present you a log of those categories of files which will be removed.

There are also some directories which are obvious Western documents. We will put them on a separate hard drive and supply them to you as we are completing this process.

I will supply you with a hard drive by next Tuesday which should have on most, if not all Western Files. I will then turn to the server and the removal of the Non-Western files or the segregation of non-Western files from Western Files.

I, like you wish it was done sooner, but I have just been tasked last week with completing this request. Again, you have reason to be frustrated, but I can only work so fast and will work thru this weekend to complete this task.

Phil

PHILIP H. DYSON

Attorney At Law
8461 La Mesa Boulevard
La Mesa, CA 91942
Tel 619.462.3311
Fax 619.462.3382
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From: Thomas Hebrank [<mailto:thebrank@ethreadvisors.com>]
Sent: Wednesday, October 08, 2014 10:06 AM
To: Fates, Ted; Philip Dyson
Cc: David Herman; Eric Hougen; Geno Rodriguez
Subject: RE: SEC v. Schooler: status of server inspection

I think it is obvious at this point that they do not plan to cooperate. Please proceed with seeking relief from the Court.

Thomas C. Hebrank
E3 Advisors

From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Tuesday, October 07, 2014 2:13 PM
To: Philip Dyson
Cc: David Herman; Eric Hougen; Thomas Hebrank; Geno Rodriguez
Subject: RE: SEC v. Schooler: status of server inspection

Phil,

The Receiver has been waiting over a month to have access to the server, which belongs to Western. If you cannot provide a set time tomorrow or Thursday for the Receiver to have access, we will be forced to seek relief from the court.

Please let us know as soon as possible.

Thanks, Ted

From: Philip Dyson [mailto:phildysonlaw@gmail.com]
Sent: Tuesday, October 07, 2014 2:02 PM
To: Fates, Ted
Cc: David Herman; Eric Hougen; Thomas Hebrank; Geno Rodriguez
Subject: Re: SEC v. Schooler: status of server inspection

Ted, I just finished depositions with the SEC this morning, and will not be able to make that time. I will address it further with you tomorrow.

Phil

Sincerely,

Philip H. Dyson
phil@phildysonlaw.com
T 619.462.3311
F 619.462.3382

On Oct 7, 2014, at 12:15 PM, Fates, Ted <tfates@allenmatkins.com> wrote:

Phil,

Please confirm that Geno Rodriguez and the Receiver's IT person will have full access to the Western server tomorrow at 10:00 am at the Vista offices.

Thanks, Ted

From: Philip H. Dyson [mailto:phildysonlaw@gmail.com]
Sent: Thursday, October 02, 2014 1:12 PM
To: Fates, Ted; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Ted,

We finally got an IT guy to make a copy tomorrow, which we will analyze over the weekend and the first of the week. Right now Wednesday looks good, and I will give you an update according to our review.

Phil

PHILIP H. DYSON
Attorney At Law
8461 La Mesa Boulevard
La Mesa, CA 91942
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Fax 619.462.3382
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From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Thursday, October 02, 2014 11:37 AM
To: Philip H. Dyson; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Phil and Eric,

Per our calls on Tuesday, Geno Rodriguez and the Receiver's IT person will be at the Vista offices at 10:00 am on Wednesday 10/8. Please confirm they will have full access to the Western server at that time.

Regards, Ted

From: Fates, Ted
Sent: Tuesday, September 30, 2014 11:52 AM
To: 'Philip H. Dyson'; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Phil,

I just called your office and was told you are in a meeting. Please call me as soon as you can.

Thanks, Ted

Ted Fates
Senior Counsel
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 233-1155 (main)
(619) 235-1527 (direct)
(619) 886-4466 (mobile)
(619) 233-1158 (fax)

<image001.gif>

From: Philip H. Dyson [<mailto:phildysonlaw@gmail.com>]
Sent: Monday, September 29, 2014 12:30 PM
To: Fates, Ted; 'David Herman'
Cc: 'Eric Hougen'; 'Thomas Hebrank'; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

Ted,

That is not confirmed. I just came into the office and am leaving in 15 minutes because I am not feeling well. I will get back to you tomorrow on this if I am in.

Phil

PHILIP H. DYSON

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From: Fates, Ted [<mailto:tfates@allenmatkins.com>]
Sent: Monday, September 29, 2014 11:31 AM
To: David Herman; Philip H. Dyson
Cc: Eric Hougen; Thomas Hebrank; Geno Rodriguez
Subject: RE: SEC v. Schooler: status of server inspection

David and Phil,

The Receiver's IT person is back and ready to pick up the Western server. Since we requested access to the server on September 4, 2014, Mr. Schooler has had plenty of time to remove his personal, non-Western files. Therefore, we request that the server be made immediately available for pick up and that, as agreed, a list of files removed be produced. The Receiver's IT person is available to pick up the server at the Vista office tomorrow at 10:00 am. Please confirm the server will be made available at that time.

Thanks, Ted

From: Fates, Ted
Sent: Monday, September 22, 2014 8:34 AM
To: 'David Herman'
Cc: Philip H. Dyson; Eric Hougen; Thomas Hebrank; 'Geno Rodriguez'
Subject: RE: SEC v. Schooler: status of server inspection

David and Phil,

Please provide an update on the status of your work to remove Mr. Schooler's personal files from the Western server.

Thanks, Ted

From: dlherman1975@hotmail.com [mailto:dlherman1975@hotmail.com] **On Behalf Of** David Herman
Sent: Wednesday, September 17, 2014 4:00 PM
To: Fates, Ted
Cc: Philip H. Dyson; Eric Hougen
Subject: SEC v. Schooler: status of server inspection

Dear Ted,

Phil has been inspecting the computers and server at Western Financial's offices and will continue his inspection tomorrow with the aid of an IT technician. He will contact you tomorrow with a status update.

David L. Herman, Attorney
Law Office of Philip H. Dyson
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EXHIBIT G

EXHIBIT G

SEC v. Schooler
(Case No. 3:12-cv-02164-GPC-JMA)
SUMMARY OF FEES INCURRED

DATE	DESCRIPTION	ATTORNEY	TIME	AMOUNT
9/3/2014	Discuss issues regarding access to Western servers with Receiver and G. Rodriguez; prepare letter to Schooler's counsel regarding same	Fates	0.90	\$417.15
9/4/2014	Finalize and send letter regarding access to computer servers to Schooler's counsel; calls with Hougen and Receiver regarding the same; email to E. Hougen regarding scheduling access	Fates	0.90	417.15
9/5/2014	Discuss server access issues with G. Rodriguez; review correspondence from Schooler's counsel regarding same	Fates	0.30	139.05
9/8/2014	Communication with G. Rodriguez regarding server access issues; communication with Schooler's counsel regarding same	Fates	0.40	185.40
9/10/2014	Review correspondence from Schooler's counsel regarding Western server access; discuss same with G. Rodriguez and prepare response	Fates	0.50	231.75
9/11/2014	Call Schooler's counsel regarding Western server access; discuss same with Receiver	Fates	0.40	185.40
9/15/2014	Communication with Schooler's counsel regarding Western server access issues; discuss same with Receiver	Fates	0.30	139.05
9/17/2014	Communication with Schooler's counsel regarding server access issues	Fates	0.10	46.35

DATE	DESCRIPTION	ATTORNEY	TIME	AMOUNT
9/22/2014	Communication with Schooler's counsel regarding server access issues	Fates	0.20	92.70
9/30/2014	Communication with Schooler's counsel regarding Western server access issues	Fates	0.20	92.70
9/30/2014	Communication with Schooler's counsel regarding Western server access issues and discuss same with G. Rodriguez	Fates	1.20	556.20
10/7/2014	Communication with Schooler's counsel regarding Western server access	Fates	0.20	92.70
10/8/2014	Discuss Western server access issues with Receiver and communications with Schooler's counsel regarding same; review facts and prepare argument regarding Western server access and discuss same with Receiver and G. Rodriguez	Fates	2.40	1112.40
10/9/2014	Discuss server access issues with Receiver and prepare argument regarding same; discuss issues with SEC's counsel	Fates	0.90	417.15
10/13/2014	Discuss Western server issues with Receiver; work on motion regarding same	Fates	0.70	324.45
10/14/2014	Review email from Schooler's counsel regarding Western server issue; discuss same with Receiver and prepare response	Fates	0.60	278.10
10/16/2014	Initial work on motion re turnover server	Fates	0.30	139.05
10/16/2014	Draft motion for civil contempt	Swonetz	1.20	464.40
10/21/2014	Draft motion for civil contempt	Swonetz	4.40	1702.80
10/22/2014	Work on motion for contempt and sanction re failure to turn over Western server	Fates	3.10	1436.85
10/23/2014	Finalize motion for civil contempt and supporting declarations	Swonetz	4.30	1664.10
10/24/2014	Revise motion for civil contempt and supporting declarations	Swonetz	1.20	464.40

DATE	DESCRIPTION	ATTORNEY	TIME	AMOUNT
10/24/2014	Work on contempt motion against Schooler	Fates	0.20	92.70
10/28/2014	Discuss contempt motion regarding server with Receiver	Fates	0.30	139.05
10/31/2014	Finalize motion for civil contempt and supporting declarations	Fates	1.00	463.5
TOTAL			26.20	\$11,294.55