

1 Eric J. Hougen (SBN 258968)
2 Law Offices of Eric J. Hougen
3 624 Broadway, Suite 303
4 San Diego, CA 92101
5 Telephone: (619) 702-1000
6 Facsimile: (619) 702-1005

7 Philip H. Dyson, Esq. (SBN 097528)
8 Law Office of Philip H. Dyson
9 8461 La Mesa Boulevard
10 La Mesa, CA 91942
11 (619) 462-3311

12 Edward Patrick Swan, Jr., Esq. (SBN 089429)
13 Jones Day
14 12265 El Camino Real, Suite 200
15 San Diego, CA 92130
16 Telephone: (858) 703-3132
17 Facsimile: (858) 314-1150

18 Attorneys for Defendants

19 **UNITED STATES DISTRICT COURT**
20 **SOUTHERN DISTRICT OF CALIFORNIA**

21 SECURITIES AND EXCHANGE
22 COMMISSION,

23 Plaintiff,

24 v.

25 LOUIS V. SCHOOLER and FIRST
26 FINANCIAL PLANNING
27 CORPORATION d/b/a WESTERN
28 FINANCIAL PLANNING
CORPORATION,

Defendants.

Case No. 12 CV 2164 GPC JMA

**DEFENDANTS' SUPPLEMENTAL
REPLY BRIEF IN SUPPORT OF
MOTION FOR MODIFICATION OF
PRELIMINARY INJUNCTION
ORDER TO REMOVE THOMAS C.
HEBRANK AS COURT-APPOINTED
RECEIVER**

Date: February 13, 2015

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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1 Defendants LOUIS V. SCHOOLER (“Mr. Schooler”) and FIRST
2 FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL
3 PLANNING CORPORATION (“Western”) (collectively “Defendants”) respectfully
4 submit this supplemental reply brief in support of their Motion for Modification of
5 this Court’s Preliminary Injunction to remove Thomas C. Hebrank (“Mr. Hebrank”)
6 as Court-Appointed Receiver and disqualify the law firm of Allen Matkins Leck
7 Gamble Mallory & Natsis LLP (“Allen Matkins”) from providing legal services to
8 the receivership.

9 I.

10 ARGUMENT

11 Mr. Hebrank admitted at his deposition that he had produced only those
12 emails that had not been purged and that he (unilaterally) considered important. *See*
13 Dkt. No. 860-1. Defendants then served a second set of requests for production of
14 documents on Plaintiff Securities and Exchange Commission (“SEC”) and a
15 subpoena *duces tecum* on Allen Matkins for production of their respective email
16 correspondence with each other (and in the SEC’s case, its correspondence with Mr.
17 Hebrank). Dkt. No. 867-1, pp. 8-13, 18-23.

18 The SEC did not produce any of the responsive documents until Friday,
19 February 6, 2015, three weeks after they were due. *See* Dkt. No. 970-1. Defendants
20 are still in the process of reviewing these documents that consist of 16,828 separate
21 files in electronic format, totaling 2.0 gigabytes.

22 However, the emails produced by Allen Matkins on the weekend of January
23 31-February 1, 2015 in response to Defendants’ subpoena *duces tecum* demonstrate
24 that the entanglement of Mr. Hebrank (and particularly his counsel) with the SEC is
25 even greater than had been thought, which means that there is no truly neutral,
26 independent receiver serving as an arm of the Court. Rather, Mr. Hebrank has been
27 coordinating arguments, modifying his conclusions, and changing specific language
28 at the direction and suggestion of the SEC. It has turned the role and purpose of the

1 receiver into an outright sham.

2 Mr. Hebrank has not been acting as an officer of the Court, but rather as an
3 agent of the SEC.¹ The investors, the general public, and the Court have specifically
4 looked to him for information to help sort through the conflicting positions of the
5 parties in this litigation. Numerous reports have been requested by the Court
6 specifically to assist it in weighing the SEC's arguments with those of the
7 Defendants. In order for that exercise to have the integrity demanded of the
8 position, the conclusions, arguments, proposals, and language choices are to be of a
9 truly neutral, independent party, not one that is fearful to file his purported
10 "independent" reports without getting input and the blessing of the SEC.

11 This behavior is outrageous. There is demonstrated evidence of an actual
12 conflict of interest in Mr. Hebrank's willingness to make last minute language
13 choices in his reports to satisfy an openly strategic concern of the SEC. Even in the
14 most benign light possible, the repeated practice of getting the SEC's approval of
15 the Receiver's supposed independent reports eviscerates the most basic guiding
16 principle regarding conflicts of interest: not only to avoid actual conflicts, but to
17 also avoid the appearance of any conflicts of interest.

18 There is no way to repair this Receiver. He no longer has any credibility and
19 any report, any statement, or any proposal he puts forth will carry with it the
20 obvious question of whether that is the conclusion of the Receiver (as the supposed
21 officer of the Court) or whether he is simply a mouth-piece for the SEC, carrying
22 their arguments, but with the additional cloak of purported independence.

23 Maintaining Mr. Hebrank in his position will call into doubt any and all
24

25 ¹ A receiver is an officer of the court. *Powell v. Maryland Trust Co.*, 125 F.2d 260,
26 271 (4th Cir.), cert. denied 316 U.S. 671 (1942). He is not an agent or employee of
27 either party to the litigation in which he was appointed. *Bowersock Mills & Power*
28 *Co. v. Joyce*, 101 F.2d 1000, 1002 (8th Cir. 1939); *Phelan v. Middle States Oil*
Corp., 154 F.2d 978, 991 (2d Cir. 1946).

1 conclusions reached by this Court. On many occasions throughout this litigation,
2 the Court has looked to and specifically tasked Mr. Hebrank, as a purportedly
3 neutral and disinterested arm of the Court, with preparing special reports and
4 recommendations to assist the Court in weighing the arguments presented by not
5 only the parties to the action, but also with regard to the investors.

6 The SEC took a very strong stand against the mere possibility of the GPs
7 being able to operate their own affairs. Everyone now knows, from the pattern of
8 continual strategic coordination together with specific emails between the SEC and
9 Mr. Hebrank discussing this very issue, it is not by coincidence that Mr. Hebrank
10 took an equally aggressive stance against the release of the GPs from receivership.

11 Because of Mr. Hebrank's constant and continual coordination with the SEC
12 on this and other points, he has lost the ability to stand before the Court and swear
13 he has reached his conclusions independent of the SEC's input. As a fiduciary for
14 the investors and as a neutral, independent arm of the Court, Mr. Hebrank was not
15 simply tasked with gathering information, but he was also tasked with doing his job
16 without even the appearance of a conflict of interest. He has failed to do this,
17 putting into question any and all of his conclusions, arguments, and proposals. At
18 this point, Mr. Hebrank's (and Allen Matkins') credibility cannot be restored no
19 matter how aggressively he is reprimanded. The genie is out of the bottle.

20 As discussed below, from the outset of this case, Mr. Hebrank and the SEC
21 have engaged in editing of each other's court filings; performing each other's legal
22 research; frequent conferences and phone calls to plot case strategy; and the
23 transmission of investors' messages received by Mr. Hebrank only to the SEC and
24 not to Defendants.

25 **A. Modifying Conclusions and Proposals Based on the SEC's Strategic**
26 **Goals**

27 Defendants have previously reported improper collaboration between Mr.
28 Hebrank and the SEC in the preparation of court filings. Dkt. No. 860-1, pp. 10-13.

1 The newly-produced Allen Matkins emails show the direct and acknowledged
2 influence of the SEC on Mr. Hebrank's filings, plus additional collaboration on both
3 sides' filings. The following are additional examples.

4 In September 2012, shortly after his client's appointment as Receiver, Ted
5 Fates, Esq., senior counsel at Allen Matkins, emailed the SEC's counsel, Molly
6 White and Sara Kalin, asking them to review a proposed declaration for Mr.
7 Hebrank to be filed in opposition to Defendants' emergency motion to dissolve the
8 temporary restraining order issued on September 6, 2012. Declaration of David L.
9 Herman ("Herman Decl."), Ex. 1.

10 On October 18, 2012, at 3:15 p.m., Mr. Puathasnanon emailed Mr. Hebrank
11 and Mr. Fates a copy of the SEC's brief in support of Mr. Hebrank's proposal for
12 Mr. Hebrank's review. Mr. Puathasnanon's email was copied to Ms. Kalin and to
13 the SEC's regional trial counsel, John Berry. Mr. Berry then emailed Mr. Hebrank,
14 Mr. Fates, and Mr. Puathasnanon at 3:23 p.m. that day, asking:

15 by the way, is it worth being more equivocal about Schooler's obligations to
16 continue to fund Western? in our papers, we just say he "probably" won't
17 have an legal obligation to fund in the future. Ted and Tom, in your report,
18 you are a bit more absolute, saying Schooler definitely won't be required to do
19 so. in the (granted, probably unlikely) event we may want to argue he is
20 obligated on some funding need, *it may be better to use softer language?*

21 Herman Decl., Ex. 5 (emphasis added)

22 Mr. Fates responded to Mr. Berry's email at 3:40 p.m. the same day with
23 "*Thanks John, good thought. We will soften that language.*" Herman Decl., Ex. 5
24 (emphasis added).² Mr. Puathasnanon then sent additional "suggestions" to Mr.
25 Fates at 4:17 p.m., to which Mr. Fates responded at 4:48 p.m. that "we will be filing

26 ² The times given are from the SEC's portion of the email correspondence threads,
27 which appear to be Pacific Daylight Time. The time shown on many of Mr. Fates'
28 emails in the threads appears to be Greenwich Mean Time, which is seven hours
ahead of Pacific Daylight Time.

1 in the next few minutes.” Herman Decl., Ex. 6.

2 As Defendants have previously noted, at 4:54 p.m. on October 18, 2012, Mr.
3 Hebrank filed his Second Report and Proposal, in which he wrote: “Although Mr.
4 Schooler has stated that he intends to continue to fund Western, *there is no*
5 *mechanism in place to compel him to make payments required to keep loans*
6 *current or to negotiate with lenders.”* Dkt. No. 59, 5:11-13. Mr. Hebrank’s final
7 language indicates a softening of the earlier version of the report, which
8 demonstrates Mr. Hebrank’s willingness to alter language to satisfy the SEC’s
9 strategic goals. See Dkt. No. 860-1, p. 7.³

10 On October 22, 2014, Susan McDonald, the SEC’s lead appellate counsel for
11 the interlocutory appeals filed in this case, sent an email to Mr. Fates saying “I hate
12 to have to say this” and then pointed out that the suggestion of proposing a property
13 firm “as an alternative to the receiver if the GPs are released [from receivership]”
14 would “be inconsistent with and undercut the holding that the interests are
15 securities.” Herman Decl., Ex. 38. These comments were with regard to the Report
16 and Recommendations Regarding General Partnerships (see Dkt. No. 852) that the
17 Court asked Mr. Hebrank to compile regarding (1) factual financial information for
18 each of the GPs to assist in identifying the GPs that could be released from
19 receivership, and (2) how such a transition would be handled. However, instead of
20 Mr. Hebrank putting together his independent recommendations to the Court, his
21 counsel was being urged to understand that certain recommendations (although
22 potentially in the best interests of the investors to whom the Receiver owes a
23 fiduciary duty) would undercut the SEC’s larger argument that the interests are
24 securities.

25 _____
26 ³ At the time that Mr. Hebrank received the emails containing the SEC’s draft
27 response and Mr. Berry’s suggestions to soften the language in his Second Report
28 and Proposal, Mr. Hebrank understood that he was supposed to be an independent,
neutral arm of the Court. Dkt. No. 860-1, pp. 7-8; Dkt. No. 860-5, pp. 31-33.

1 Noticeably absent from the Receiver's Report is the idea criticized by the
2 SEC in this email – the SEC's litigation strategy taking precedence over Mr.
3 Hebrank's own assessment. *Mr. Hebrank was willing to leave out of his report to*
4 *the Court a proposed course of action favorable to the investors simply because it*
5 *would have potential negative impact on some of the SEC's arguments.*

6 There has been no dividing line between Mr. Hebrank's neutral independent
7 fact gathering and reporting role and the pure strategic considerations of the SEC as
8 a plaintiff in the litigation. The suggestion that the SEC's argument regarding
9 whether the investments are securities should in any way be factored into Mr.
10 Hebrank's independent report to the Court on whether the investors are able and
11 capable of operating the GPs outside of a receivership is an abuse of the receiver's
12 role and demonstrates not only a lack of independence on the part of Mr. Hebrank,
13 but an active awareness and constant coordination of Mr. Hebrank's reports to serve
14 and further the SEC's strategic goals in this matter.

15 On November 7, 2012, Mr. Fates emailed the SEC's counsel with his
16 comments and suggestions for the SEC's response to Defendants' *ex parte*
17 application for an order releasing the asset freeze over Defendants. Herman Decl.,
18 Ex. 7.

19 On January 3, 2013, Mr. Fates emailed Mr. Puathasnanon and Ms. Kalin to
20 propose strategy for limiting Defendants' co-counsel, Eric Hougen, in his
21 representation of Western during this litigation. Herman Decl., Ex. 8. Mr.
22 Puathasnanon responded on January 5, 2013, by asking "*What other arguments are*
23 *you planning on making? I don't want to have to respond to all of their points if I*
24 *can join yours.*" Herman Decl., Ex. 9 (emphasis added).

25 On January 8, 2013, Ms. Kalin emailed Mr. Fates and Mr. Hebrank the SEC's
26 draft response to Defendants' objections to the proposed Preliminary Injunction
27 Order, and asked "Please let us know if you have any questions or comments."
28 Herman Decl., Ex. 11.

1 On February 25, 2013, Mr. Hebrank emailed Mr. Puathasnanon and Ms.
2 Kalin (with copy to Mr. Fates) a copy of the Receiver's Second Fee Applications,
3 and then included additional narrative in an email the following day. Herman Decl.,
4 Ex. 13. Ms. Kalin replied on February 26, 2013 that the SEC had no comments. *Id.*

5 On May 23, 2013, Mr. Fates emailed Mr. Puathasnanon and Ms. Fates asking
6 for their input on Mr. Hebrank's proposed motion for leave to sue the "LinMar
7 entities," a collection of businesses owned wholly or mostly by Mr. Schooler. Mr.
8 Puathasnanon responded that the motion looked fine to him. Herman Decl., Ex. 16.

9 On June 18, 2013, Mr. Fates sent the SEC counsel a draft of Mr. Hebrank's
10 report and recommendations regarding the valuation of the GPs' land holdings (see
11 Dkt. No. 203) and asked for the SEC's comments. Mr. Puathasnanon responded
12 that "the report looks great" and asked to schedule a call to discuss some questions
13 that he and Ms. Kalin had. Defendants were not privy to what was discussed.
14 Herman Decl., Ex. 18.

15 On July 9, 2013, after reviewing Defendants' opposition to Mr. Hebrank's
16 report and recommendations on the GPs' land holdings, Mr. Fates emailed Mr.
17 Puathasnanon to suggest the SEC's strategy: "[Y]ou may want to point out how
18 obviously self-serving this argument [Defendants' attack on the evidentiary value of
19 Mr. Hebrank's appraisals] is, considering that they sold the land to investors for
20 more than 9 times its aggregate appraised value." Herman Decl., Ex. 20.

21 On September 5, 2013, following this Court's modification of the Preliminary
22 Injunction Order to release the GPs (Dkt. No. 470), Mr. Fates emailed the SEC's
23 counsel to get their opinion on Mr. Hebrank's draft information packet that the
24 Court had directed to be prepared and sent to the investors. Herman Decl., Ex. 21.
25 The following day, Mr. Fates sent the SEC's counsel Mr. Hebrank's draft response
26 to Defendants' motion for partial reconsideration of the Court's order that requested
27 removal of the Court's condition that Western's GP equity interests be liquidated as
28 a condition of the GPs' release. Herman Decl., Ex. 22. On September 9, 2013, Ms.

1 Kalin sent Mr. Fates a draft of the SEC's opposition to Defendants' motion for
2 partial reconsideration for his comments. Herman Decl., Ex. 23.

3 On October 30, 2013, Mr. Fates sent the SEC's counsel a draft of Mr.
4 Hebrank's response to Defendants' motion for stay of this Court's order modifying
5 the Preliminary Injunction to release the GPs, and requested their comments.
6 Herman Decl., Ex. 24.

7 On November 1, 2013, Mr. Puathasnanon emailed Mr. Fates a draft of the
8 SEC's opposition to Defendants' motion for stay, stating "I wanted to get you
9 something to look at now." Herman Decl., Ex. 26. Later the same day, Mr.
10 Puathasnanon emailed Mr. Fates a copy of the updated version of the SEC's
11 opposition. Herman Decl., Ex. 27.

12 On November 14, 2013, Mr. Fates emailed Ms. McDonald with information
13 regarding the total number of GP investors for inclusion in the SEC's appellate
14 briefs. Herman Decl., Ex. 28. When Ms. McDonald requested additional
15 information in an email the following day, Mr. Fates responded that "I will try to get
16 that for you today." Herman Decl., Ex. 29. Shortly thereafter, Mr. Fates and Ms.
17 McDonald exchanged emails regarding the status of F-86 Partners, the GP that was
18 in the process of formation at the time of the filing of this lawsuit. Herman Decl.,
19 Ex. 31.

20 On May 9, 2014, Mr. Fates emailed to the SEC's counsel a draft brief
21 regarding Defendants' motion to remove Western from the receivership and the
22 Court's *sua sponte* reconsideration of the August 16, 2013 order releasing the raw-
23 land general partnerships ("GPs") from the receivership "so you can review and we
24 can discuss any comments you have" before filing. Herman Decl., Ex. 33.

25 Also on May 9, 2014, Mr. Fates reviewed, at the SEC's request, the SEC's
26 responses to Defendants' motion to remove Western from the receivership. Mr.
27 Fates commented that the SEC briefs "look good" and that he liked several of the
28 points the SEC raised. Herman Decl., Ex. 34.

1 On September 16, 2014, Mr. Fates sent the SEC's counsel his draft opposition
2 to Defendants' motion to enjoin Mr. Hebrank from interfering with the GP
3 investors' balloting and filing of responses with the Court, and asked for any
4 questions or comments on the draft opposition. Herman Decl., Ex. 35.

5 Lastly, on the afternoon of November 21, 2014, shortly before filing Mr.
6 Hebrank's report and recommendations regarding the GPs (Dkt. No. 852), Mr. Fates
7 emailed the current draft to Ms. Kalin and asked her to review it "and let us know
8 your thoughts." Herman Decl., Ex. 41.

9 **B. Legal Research**

10 Defendants have described the initial evidence of the SEC conducting legal
11 research for Mr. Hebrank. Dkt. No. 860-1, p. 14. However, the Allen Matkins
12 emails show that the SEC and Mr. Fates engaged in more frequent collaborative
13 legal research than had been previously known to Defendants. The following are
14 additional examples.

15 On January 7 and 8, 2013, Mr. Fates emailed Ms. Kalin with legal research
16 regarding three particular cases regarding the limitations on Mr. Hebrank's liability
17 in the proposed Preliminary Injunction Order. Herman Decl., Exs. 10, 12.

18 On October 21, 2014, Ms. McDonald emailed Mr. Fates and the SEC trial
19 counsel to provide her legal research on a "useful case I ran across" regarding pro
20 rata distributions from a common "pot" of assets versus distributions to investors
21 based on which property or GP they had invested in. Herman Decl., Ex. 36.

22 Also on October 21, 2014, Mr. Puathasnanon emailed Mr. Fates to describe
23 four SEC appellate and district-court cases that would be of interest for a strategy
24 call scheduled by Mr. Puathasnanon and Mr. Fates for the following day. Herman
25 Decl., Ex. 37.

26 **C. Strategy-Planning Emails, Calls, and Meetings**

27 Mr. Fates and Mr. Hebrank engaged in frequent emails, calls, and meetings
28 with the SEC's counsel to plan court filings and strategy. Although Defendants

1 have previously learned of some strategy meetings and calls (Dkt. No. 860-1, p. 22),
2 the extent of such strategizing was not more fully known until the Allen Matkins
3 emails were produced.

4 On October 12, 2012, Mr. Puathasnanon emailed Mr. Fates and Mr. Hebrank
5 asking if they were available for a conference call the following day to discuss Mr.
6 Hebrank's proposal and the Court's preliminary-injunction order of October 5,
7 2012, because the SEC's counsel "*have some additional thoughts and wanted to*
8 *get your input.*" Herman Decl., Ex. 2 (emphasis added).

9 On April 19, 2013, Mr. Hebrank emailed the SEC's counsel to schedule a call
10 for April 23, 2013 "regarding the preliminary results of the appraisals [on the GP-
11 held properties], potential options for disposition of land, and the ongoing collection
12 of amounts from investors." Herman Decl., Ex. 15. Ms. Kalin emailed Mr. Fates
13 and Mr. Hebrank on June 4, 2013 to discuss Defendants' motion to have the GPs
14 removed from the receivership. Herman Decl., Ex. 17.

15 On November 18, 2013, Mr. Fates emailed the SEC's counsel asking for a
16 conference call to discuss the status of the mortgages on some of the GPs'
17 properties, since "we need to address the mortgages in category two...with Judge
18 Curiel and *we'd like to get your thoughts on potential solutions.*" Herman Decl.,
19 Ex. 30 (emphasis added).

20 On October 22, 2014, following a strategy conference call with Mr. Fates and
21 the SEC trial counsel, Ms. McDonald sent a lengthy email to Mr. Fates describing
22 why the GPs could not be released from the receivership on the grounds that it "wld
23 [sic] be inconsistent w/ and undercut the holding that the interests are securities" and
24 that the GPs could not be managed by "a stooge chosen by Schooler or his agents."
25 Herman Decl., Ex. 38. Ms. McDonald then continued, in a October 23, 2014 email
26 to Mr. Fates, to share her thoughts on maintaining the receivership over the GPs
27 including the dissolution of the GPs and liquidation of their property holdings.
28 Herman Decl., Ex. 39. These ideas were included in Mr. Hebrank's Report and

1 Recommendations Regarding General Partnerships. See Dkt. No. 852, pp. 25-27,
2 32 (Receiver opposed to releasing any GPs from receivership).

3 *The very report requested by this Court for the purpose of weighing the*
4 *various factors and arguments put forth by the SEC and Defendants, was in fact a*
5 *recital of legal research and strategic arguments provided to Mr. Hebrank by the*
6 *SEC and included an unsolicited new proposal that was also a point of argument*
7 *and strategy the SEC wanted to advance.* The Receiver's Report and
8 Recommendations Regarding General Partnerships was not the neutral report
9 requested by the Court, but rather was a second bite at the apple for the SEC – a
10 chance to put their legal research and strategic considerations under the Receiver's
11 letterhead, giving it the air of independent conclusion, when in fact it was
12 coordinated collusion.

13 **D. Sharing Investors' Communications Only with the SEC**

14 The Allen Matkins emails also show that Mr. Hebrank's practice of sharing
15 investor communications only with the SEC (and vice versa) was more frequent
16 than was previously known to Defendants. See Dkt. No. 860-1, pp. 20-22.

17 On October 16, 2012, Mr. Hebrank forwarded to the SEC – but did not share
18 with Defendants' counsel – emails from investors Fred Carr and Beverly Patterson.
19 Herman Decl., Exs. 3, 4. Ms. Kalin wrote to Mr. Hebrank in response, "*III* *if you*
20 *want to continue passing these on as you did below, that would be great.*" Herman
21 Decl., Ex. 4 (emphasis added).

22 On January 27, 2014, Ms. Kalin forwarded to Mr. Hebrank and Mr. Fates an
23 email from an investor in a limited liability company in the state of Washington,
24 regarding an entity in that state purportedly owned by Mr. Schooler, but which was
25 unconnected to the GPs. Herman Decl., Ex. 32. The email was never provided to
26 Defendants.

27 **E. The SEC's Late-Produced Emails**

28 On December 12, 2014, Defendants served the SEC with a second set of

1 requests for production, requesting all email communications between the SEC
2 (including, but not limited to, the past and present counsel of record for the SEC in
3 this case) and (1) anyone at Allen Matkins (including but not limited to Mr. Fates)
4 and (2) Mr. Hebrank and/or his assistants and contractors. Herman Decl., ¶ 3.
5 Defendants' requests stated that all responsive documents were to be produced
6 within 30 days of service. *Id.*

7 However, *the SEC did not produce its documents in response to*
8 *Defendants' requests for production until Friday, February 6, 2015, which was*
9 *three weeks after the specified deadline for production* (even allowing for five
10 additional days for service by mail). Herman Decl., ¶ 4. *The SEC's production*
11 *consisted of 16,828 separate files* in electronic format, totaling 2.0 gigabytes. *Id.*

12 Because of the amount of time needed to review the emails produced by Allen
13 Matkins and the SEC's overly-delayed document production, Defendants are unable
14 to include any of the SEC's emails as exhibits to this supplemental reply brief.
15 Defendants reserve the right to lodge the SEC's emails with the Court in future
16 filings.

17 II.

18 CONCLUSION

19 For the reasons stated above and in their Motion and Reply (Dkt. Nos. 860,
20 860-1, and 967), Defendants respectfully request that this Court modify the
21 Preliminary Injunction to remove Mr. Hebrank and appoint a new receiver, and to
22 disqualify Allen Matkins from providing any further receivership-related legal
23 services in this case.

24 The emails that were produced by Allen Matkins after the filing of
25 Defendants' reply brief demonstrate that the collusion between Mr. Hebrank, Allen
26 Matkins, and the SEC is even greater than what Defendants discovered through Mr.
27 Hebrank's deposition testimony and production of those documents that Mr.
28 Hebrank elected not to delete.

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Therefore, Mr. Hebrank must be removed immediately, and Allen Matkins must be immediately disqualified from providing further legal services in support of the receivership.

DATE: February 9, 2015

Respectfully submitted,

/s/Philip H. Dyson
Philip H. Dyson, Esq. (SBN 097528)
Law Office of Philip H. Dyson
8461 La Mesa Boulevard
La Mesa, CA 91942
Counsel for Defendants

CERTIFICATION

I hereby certify that on the 9th day of February 2015, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following counsels of record:

Sam S. Puathasnanon, Esq.
Sara D. Kalin, Esq.
Lynn Dean, Esq.
Securities and Exchange Commission
444 S. Flower Street, 9th Floor
Los Angeles, CA 90071

Ted Fates, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, CA 92101

/s/Philip H. Dyson
Philip H. Dyson

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