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

11
12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 LOUIS V. SCHOOLER and FIRST
17 FINANCIAL PLANNING
18 CORPORATION d/b/a WESTERN
19 FINANCIAL PLANNING
20 CORPORATION,

21 Defendants.

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

**INVESTORS' OBJECTION TO
ISSUANCE OF ORDER APPROVING
FIFTEENTH INTERIM REPORT**

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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1 **I. Procedural Statement**

2 This objection is filed by 192 investors (“Investors”) holding partnership interests
3 in the 87 general partnerships (“GPs”) in the receivership.¹ The May 18, 2016, order
4 (Dkt. No. 1296) granted Investors’ motion to intervene “to the extent that Investors seek
5 to oppose the Receiver’s orderly sale motion regarding its proposal for the disposition of
6 receivership assets.” Dkt. No. 1296 at 7, 11.

7 Investors opposed the Receiver’s orderly sale motion on the ground, among others,
8 that the plan could not be approved in the absence of current and accurate financial data
9 as required by various authorities (Dkt. 1235 at 8-16), including the Securities and
10 Exchange Commission’s Standardized Fund Accounting Report: Civil – Receivership
11 Fund (“SFAR”). *Id.* at 11-12. Although the Court granted the Receiver’s motion, it also
12 directed the Receiver “to withdraw and resubmit Receiver’s Fourteenth Interim Report,
13 ECF No. 1189, and submit all future fee reports, consistent with SFAR.” Dkt. No. 1304
14 at 24.

15 On June 23, 2016, the Receiver filed his Fifteenth Interim Report (Dkt. No. 1319),
16 but that document, contrary to the Court’s order, did not comply with SFAR. The Court
17 has issued orders approving each of the Receiver’s prior 13 interim reports. Since the
18 Receiver did not serve opposing counsel with a proposed order as instructed by the
19 Court’s website,²³ Investors could not use the procedure contemplated by these
20 instructions (an email to chambers) to object. Investors therefore submit this opposition
21 to any order approving the Receiver’s Fifteenth Interim Report.

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24 ¹ The names of the investors filing this opposition are listed in Attachment 1 filed
25 herewith.

26 ² See:

27 [https://www.casd.uscourts.gov/Court%20Info/SitePages/EmailAddressesForProposedOrd
28 ers.aspx,](https://www.casd.uscourts.gov/Court%20Info/SitePages/EmailAddressesForProposedOrders.aspx)

³ *Id.* “Opposing counsel will have one business day to e-mail chambers any objections
to the proposed order.”

1 II. The Fifteenth Interim Report Fails to Comply with SFAR or the Order

2 Investors seek an order addressing the issue whether the Receiver's Fifteenth
3 Interim Report and its attached SFAR comply with the Court's order of May 25, 2016,
4 Dkt. No. 1304. Investors contend the SFAR provided and the Fifteenth Interim Report
5 fail to provide the breakdown of receipts and disbursements required by the SFAR
6 instructions, case law, and established accounting practices. See: *SEC v. Harris*, 2015
7 U.S. Dist. LEXIS 11975, 5-6 (N.D. Tex. 2015); *Hitner v. Diamond State Steel Co.*, 207 F.
8 616, 622 (D. Del. 1913). This again raises an old issue: what are the sources, categories,
9 and recipients of the cash flowing through the receivership? As the Receiver has done
10 with his prior 14 interim reports, he has again withheld this information.

11 In relation to "Increase to Fund Balance," a synonym for receipts, the SFAR shows
12 one receipt for the three-month period, "Miscellaneous-Other" of \$766,481. The Receiver
13 picked the least descriptive category, and then merged all receipts, whatever their nature,
14 into that line item ("miscellaneous-other"). This catchall category applies when the
15 receipt falls outside another more specific category. Other SFAR line items likely apply
16 and would yield some information regarding the character of the receipt.

17 To begin with, there are two specific line items for the sale of assets, Line 5,
18 "Business Asset Liquidation," which should cover the sale of any GP or Western asset,
19 and Line 6, "Personal Asset Liquidation," which should cover the sale of Louis
20 Schooler's assets. Neither the SFAR filed with the Revised Fourteenth Interim Report,
21 which covered the period from inception of the receivership through the end of 2015, nor
22 the SFAR filed with the Fifteenth Interim Report, specify any sales of assets under Line 5
23 or 6. The Receiver reported earlier the Court-approved sales of Western's automobiles
24 (\$46,280, Dkt. No. 481 at 3), gold coins (\$43,290, *Id.*), and office furniture and
25 equipment (\$23,865.25, Dkt. No. 517 at 5). Consequently, the Receiver's failure to
26 specify these sales raises the issue: what other items are not being properly reported?
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1 Further, there is a line item for “Third Party Litigation Income,” Line 7. The
2 Receiver has reported the recovery of funds from LinMar entities (\$205,000, Dkt. No.
3 1189 at 2). Again, neither SFAR has reported the LinMar “litigation income.”

4 Further, the GPs receive two types of cash receipts each month from investors:
5 note payments and operational fees. Western also receives note and loan repayments
6 from the GPs and, Investors believe, cash directly from investors. In his Third Interim
7 Report, the Receiver explained that “Western has almost no cash and no source of
8 income other than note payments from the GPs.” Dkt. No. 80 at 10. Western treats note
9 repayments as business income in its receipts and disbursements statements. Dkt. 1319,
10 Ex. B. Accordingly, both of these renewable sources of income (notes and operational fee
11 payments) should be listed under Line 2, “Business Income.”

12 Finally, the rest of the Fifteenth Interim Report only underscores the gap that
13 pervades all of the Receiver’s interim reports, including the most recent one. This report,
14 like all the rest, provides a breakdown by category for only a fraction of the funds that
15 pass through the Receiver’s hands.

16 The starting point is the Receiver’s statement that the \$766,481 in receipts
17 excludes all “in/out transactions.” Dkt. No. 1319, Exhibit C, at 20. Hence, \$766,481 is the
18 net sum of incoming cash to the Receiver. The only breakdown by category for these
19 receipts is found in a companion statement, Western’s receipts and disbursements for the
20 first quarter of 2016 (*Id.*, Exhibit B at 17) which states \$171,987.71 went to the Receiver
21 through Western. The Western statement also provides a breakdown by category and
22 month for the quarter of the sources of the \$171,987.71: \$168,134.75 came from GP note
23 repayments, \$1,087.09 from legacy commissions, and \$2,765.87 from miscellaneous. *Id.*

24 If \$171,987.71 of the \$766,481 went to the Receiver through the Western
25 receivership entities, then the Receiver must have received the rest (\$594,493.29) through
26 the GP receivership entities or directly from investors. As to these funds, 78% of the
27 incoming cash to the Receiver for the first quarter of 2016, the Fifteenth Interim Report
28 provides no breakdown whatsoever. This is the same gap that pervades the Receiver’s

1 prior 14 interim reports. At least, compliance with SFAR would have provided a
2 minimum breakdown. We have previously contended the Receiver is obligated to provide
3 a true breakdown of his receipts and disbursements. See: *Harris*, 2015 U.S. Dist. LEXIS
4 11975 at 5-6 and *Hitner*, 207 F. at 622.

5 In relation to disbursements, which are listed as “Decreases in Fund Balance,”
6 Investors are unable to discern whether the categories are accurate without voluntary
7 production of the books and records, which the Receiver has refused to do, or through
8 discovery, which the Court has denied.

9 We should point out, however, that the Receiver listed \$771,206 in Line 10a,
10 “Disbursement to Receiver or Other Professionals,” in the SFAR filed with his *Revised*
11 *Fourteenth* Interim Report (Dkt. No. 1315, Exhibit C at 16) and \$122,115 in same line
12 item of the SFAR filed with his Fifteenth Interim Report, a total of \$893,321. Dkt. No.
13 1319, Exhibit C at 20.

14 We are unable to reconcile this amount (\$893,321) of disbursements to the
15 Receiver and his consultants, as reported in the two recently filed SFARs (Dkt. Nos.
16 1315, Exhibit C at 16 and 1319, Exhibit C at 20) with the amounts paid to the Receiver
17 and the other receivership professionals as stated in the Receiver’s opposition to
18 Investors’ accounting motion, the sum of \$1,370,424.99. Dkt. No. 1292 at 15.

19 In his two recently filed SFARs, the Receiver claims to have paid himself and
20 “other professionals” \$893,321 for the 42-month period from the inception of his
21 receivership through the first quarter of 2016. Dkt. Nos. 1315, Exhibit C at 16 and 1319,
22 Exhibit C at 20. On the other hand, in his opposition brief to Investors’ accounting
23 motion, the Receiver reported that, “through September 30, 2015,” he paid (1) himself
24 \$636,772.5, (2) his attorneys \$463,126.45, and (3) his accountants \$270,526.04, a total of
25 \$1,370,424.99 for a period within the 42 months, but six months shorter. Dkt. No. 1292 at
26 15. Consequently, according to the Receiver’s opposition to Investors’ accounting
27 motion, Dkt. No. 1292 at 15, he and his team received almost *half a million dollars*
28 (*\$477,103.99*) more for the period ending six months earlier, on September 30, 2015. The

two tables below show the Receiver's statements in his opposition (Dkt. No. 1292 at 15) and in his two recently filed SFARs.

Period	Professional	Incurred	Paid	Withheld	On hold
9/6/12 to 9/30/15	Receiver	\$1,072,363.24	\$636,772.50	\$226,213.74	\$209,377.71
9/6/12 to 9/30/15	Allen Matkins	\$807,808.88	\$463,126.45	\$172,829.73	\$171,852.71
9/6/12 to 9/30/15	Duffy (Western tax prep)	\$46,687.52	\$46,687.52		
9/6/12 to 9/30/15	Duffy (GP tax prep)	\$303,686.52	\$223,838.52	\$79,848.00	
	Total	\$2,230,546.16	\$1,370,424.99	\$478,891.47	\$381,230.42

Period	Recipient	Document	Amount
9/6/12 to 12/31/15	Disbursement to Receiver and other Professionals	Revised 14th Report	\$771,206.00
1/1/2016 3/31/16	Disbursement to Receiver and other Professionals	15th Report	\$122,115.00
9/6/12 3/31/16		Total Payments	\$893,321.00

Investors request the Court to order the Receiver to file interim reports and SFARs that address and clarify these issues.

DATED: June 27, 2016

Respectfully submitted,

By: /s/ Gary J. Aguirre
 GARY J. AGUIRRE
 Attorney for Investors