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

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPORT OF
INVESTORS' MOTION FOR AN
ACCOUNTING OR, IN THE
ALTERNATIVE, AN AUDIT
OF THE RECEIVERSHIP**

Date: April 29, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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1 **I. Introduction**

2 With this motion, Investors¹ seek an order directing the Receiver to post the
3 financial information specified below on the E3 Advisors website page for *SEC v.*

4 _____
5 ¹ Susan Graham, Terry Adkinson, Lawrence Berkel, Lawrence Berkel, IRA, Darla
6 Berkel, Mathew Berta, Allert Boersma, Charles Bojarski, Diane Bojarski, Jason Bruce,
7 Trisha Bruce, Daniel Burns, Susan Burns, Henrik Jonson, Carol Jonson, Henrik Jonson,
8 IRA, Curt & Janean Johnson Family Trust, Curt & Janean Johnson, jointly, Curt Johnson,
9 Curt Johnson, Roth IRA, Curt Johnson, Roth IRA, Stephen Dankworth, David and
10 Sandra Jones Trust, Debra Askeland, Dennis Gilman IRA, William R. Diehl, Marilyn L.
11 Duncan, Regis T. Duncan, Regis T. Duncan, IRA, Elizabeth Lamb, Judy Froning,
12 George Klinke, IRA, Mary Grant, Roderick C. Grant, Gary Hardenburg, Gary
13 Hardenburg, Roth IRA, Henrik Jonson, IRA, Stephen Hogan, Val Indihar, John Jenkins,
14 Mary J. Jenkins, IRA, Trustee, IRA, Trustee, Mary J. Jenkins, Trustee, John Lukens,
15 John Lukens, IRA, Karen J. Coyne IRA, Craig Lamb, Lea Leccese, Paul Leccese, Lloyd
16 Logan and Ida Logan, jointly, Lloyd Logan, IRA, William Loeber, Loretta J. Diehl,
17 Daryl R. Mabley, Elizabeth Q. Mabley, D & E Macy Family Revocable Living Trust,
18 Janice Marshall, Janice Marshall, IRA, Marc McBride, Marcia McRae, Mealey Family
19 Trust, Mildred Mealey, beneficiary of Duane Mealey IRA, Jeffrey Merder, Jeffrey
20 Merder, IRA, Rebecca Merder, Minner Trust, Jim Minner, Monique Minner, Reeta
21 Mohleji, Roger Moucheron, Shirley Moucheron, William R. Nighswonger, Eric W.
22 Norling, Eric W. Norling, IRA, Renee Norling, Chris Nowacki, IRA, Tamara and Chris
23 Nowacki, jointly, Tamara Nowacki, IRA, John R. Oberman, Neil Ormonde, IRA,
24 Nevada Ormonde, IRA, Thomas H. Panzer, Roth IRA, Thomas Herman Panzer Trust,
25 Thomas H Panzer, Trustee, Ronald Parkinen, Deidre Parkinen, Alfred L. Pipkin, Alfred
26 L. Pipkin, IRA, Prentiss Family Trust, Kenneth and Gail Prentiss Trustees, Robert
27 Indihar, Nick Ruddick, Salli Sue Sammut, IRA, Salli Sammut Trust, Salli Sue Sammut
28 Trustee, Paul R. Sarraffe, IRA, Ronald Scott, Ronald Scott, IRA, William L. Summers,
IRA, Carol D. Summers, William L. Summers, Robert Tuohy, Gwen Tuohy, Jeffrey J.
Walz, Steve P. White, IRA, Steve P. White, SEP IRA, W.C. Wilhoite, Karen Wilhoite,
W.C. Wilhoite, Roth IRA, Gerald Zevin, IRA, Judith Glickman Zevin, Gerald Zevin,
Judith Glickman Zevin, IRA, Robert Churchill IRA, Robert Churchill Family Trust,
Mark Clifton, Linda Clifton, Dennis and Diane Gilman, John and Mary Jenkins Trustees,
the Ormonde Family Trust, Ronald Askeland, Douglas Sahlin IRA, Edith Sahlin IRA,
George and Joan Trezek, Karen Coyne, James J. Coyne Jr. Trust, David Fife IRA, Leo
and Cindy Dufresne, Leo T. Dufresne Jr. IRA, Darla Berkel IRA, William Nighswonger
IRA, Juanita Bass, William V. and Carol J. Dascomb Trust, Robert Indihar IRA, Linda
Baldwin IRA, Baldwin Family Survivors' Trust, Juanita Bass IRA, Matthew and Jennifer
Berta, Randall S. Ingermanson IRA, Kimberly Dankworth, IDAC Family Group LLC,
Robert S. Weschler, Karie J. Wright, D.F. Macy IRA, Stephen and Polly Yue, David

1 *Schooler*. If he is unable to provide that information, Investors seek an order of the Court
2 directing an audit of the receivership.

3 Thomas C. Hebrank (“Hebrank”) is a certified public accountant and the court-
4 appointed receiver. According to Hebrank, he began his receivership with \$6.5 million²
5 in cash plus assets now valued at \$23.8 million.³ Since his appointment, Investors
6 estimate or perhaps more accurately, given the lack of financial records, guess that
7 Hebrank has received more than \$20 million in Western Financial Planning Corporation
8 (“WFPC”) accounts and spent more than \$20 million from WFPC accounts since his
9 appointment. Only six of Hebrank’s 14 interim reports contain this information, but those
10 six confirm deposits of approximately \$11.4 million and disbursements of approximately
11 \$11.7 million.⁴

12 Unless the Court grants this motion, no one except Hebrank and his attorneys will
13 ever know how much he spent or received. There is a simple reason: Hebrank keeps no
14 books and records. Investors use the term “books and records” in the same way the
15 Securities and Exchange Commission (“SEC”) does: journals, ledgers, books of account
16 and their computer-generated equivalents, especially where entries of original

17 Karp IRA, Iris Bernstein IRA, John and Mary Jenkins Trust, Lisa A. Walz, Ralph
18 Brenner, David Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional IRA, Kirsh
19 Family Trust UTD, The Knowledge Team Profit Sharing Plan, Joy A. de Beyer, Roth
20 IRA, Joy A. de Beyer, Traditional IRA, Joy de Beyer, Michael R. Wertz, Michael R.
21 Wertz, IRA, Catherine E. Wertz, Catherine E. Wertz IRA, Jeffrey Larsen, Gene Fantano,
22 Gwenmarie Hilleary, Arthur V. Rocco, Kristie L. Rocco, Arthur V. and Kristie L. Rocco
23 Living Trust; Bruce R. Hart IRA for Bruce R. Hart and Dixie L. Hart, Lynda Igawa,
24 Bruce A. Morey; Bruce A. Morey IRA, William c. Phillips; David Haack; David Haack
25 IRA, Cynthia J. Clarke, Douglas G. Clarke, Eben B. Rosenberger, Roger Hort, Daniel
26 Knapp, Judy Knapp, Edward Takacs and Monica Takacs.

27 ² See Receiver’s Notice of Motion and Motion for: (A) Authority to Conduct Orderly
28 Sale of General Partnership Properties; (B) Approval of Plan of Distributing Receivership
Assets; and (C) Approval of Procedures for the Administration of Investor Claims, Ex. B,
p. 34, (Dkt. No. 1181)

³ *Id.*, Ex. A, p. 32.

⁴ See Receiver’s Third through Ninth Interim Reports, Dkt. Nos. 80, 184, 481, 517, 547,
596, and 759.

1 transactions are entered. Hebrank does not keep these books and records on the assets the
2 Court orders have entrusted to him.

3 If a public company, an investment advisor, or an investment company failed to
4 keep books and records, each would face the wrath of the SEC: a complaint for a books
5 and records violation if the books and records were merely incomplete or not sufficiently
6 descriptive. See *Stillwater Liquidating LLC v. Gray (In re Gray)*, 2016 Bankr. LEXIS
7 804, 17-18 (Bankr. S.D.N.Y. Mar. 15, 2016)(“He is akin to a cash business that maintains
8 no records. The money comes in from somewhere and goes out to somewhere but there is
9 no way to tell how much Gray actually received, where it came from and where it went
10 to.”)

11 Investors’ proof that Hebrank keeps no books and records cannot be challenged. It
12 came from a source that has high credibility on what books and records Hebrank keeps:
13 his attorney in this case, Ted Fates. He conceded that fact,⁵ but not easily. It surfaced
14 after a month of Investors’ requests for Hebrank’s financial records.⁶

15 But there is more, much more. Investors do not seek a remedy merely because
16 Hebrank keeps no books. Here is the current list of accounting irregularities in Hebrank’s
17 accounting Investors have thus far discovered:

- 18 1. Hebrank keeps no books;
- 19 2. Hebrank has recently admitted he uses OPADS, the computer accounting
20 program for WFPC, but privacy concerns prevent production;
- 21 3. Hebrank only produces the bank statements for the GPs, but they tell little about
22 the transactions;
- 23 4. Hebrank has produced only some of WFPC’s bank statements for 2014 and
24 2015, which likewise tell little about the transactions;

27 ⁵ Aguirre Declaration filed herewith, ¶4, Ex. 2.

28 ⁶ *Id.*, ¶¶ 3-17 and Exhibits 1 through 13.

- 1 5. Hebrank produced no bank records for five Western entities he describes as
2 follows in his interim reports: WFPC Payroll, WFPC MMKT, WFPC FFP,
3 WFPC Las Vegas Prop Tax, and First Financial Planning;
- 4 6. Hebrank stopped providing the Court with summaries of his receipts and
5 disbursements for WFPC with his Ninth Interim Report for the period ending
6 June 2014 (Dkt. No. 759);
- 7 7. His financial representations in his February 4, 2016, motion (Dkt. No. 1181)
8 cannot be reconciled with other financial statements he filed with the Court.

9 For these reasons, Investors seek an order of the Court directing Hebrank to
10 provide the following financial records on the *SEC v. Schooler* page of E3 Advisors:

- 11 1. Corrected interim reports showing the receipts and disbursements by accounting
12 category each month for GP and Western's entities from September 6, 2012,
13 through the present;
- 14 2. The current statement of all property tax liabilities on each of the 23 properties,
15 indicating the amount of penalties and interest, including interest rate, which
16 comprise that liability;
- 17 3. The current statement of the amounts due under any mortgages and, if any are
18 in default, the amount of the default and the amount attributable to penalties;
- 19 4. The books and records (journals, ledgers, books of account, or the computer-
20 generated equivalent), to the extent they exist, for his receipts and
21 disbursements for the GPs and WFPC since his appointment.

22 If Hebrank claims he cannot provide this information, Investors in the alternative seek an
23 order directing an audit of the receivership.

24 **II. The Receiver's Interim Reports Give Few Clues of His Receipts and** 25 **Disbursements, Their Sources or How They Are Used**

26 There are accounting irregularities at every level of the Hebrank receivership: from
27 the top down or the bottom up. If we start from the top down, the best starting point is
28 the Receiver's 14 interim reports to the Court which he also published in the E3

1 Advisors' website for the case.⁷ Those reports provide summaries of the receipts and
2 disbursements for the 87 partnerships on a month-to-month basis and, until the Ninth
3 Interim Report (Dkt. No. 759), the receipts and disbursements for the various WFPC
4 entities. For reasons known only to Hebrank, he stopped providing the Court with
5 summaries of the receipts and disbursements for the WFPC entities with his Ninth
6 Interim Report on September 15, 2014, for the second quarter of 2014 (Dkt. No. 759).
7 That report showed a total of \$1.39 million in deposits and \$1.40 million in
8 disbursements.⁸ This interim report and the prior ones provide the Court and investors
9 with precious little information: just the amount of receipts in deposits, but no
10 information about the source and reason for the deposit and the same for disbursements.
11 Still, six of these interim reports, ending with the ninth, gave investors a sense of the
12 amount of funds passing through WFPC's bank accounts. After the ninth report, Hebrank
13 provided no statements of deposits and disbursements in his interim reports. For some
14 reason, Hebrank preferred that investors and the Court be unaware of the large sums of
15 cash he was receiving and spending—which had been running more than a million
16 dollars a month.

17 Hebrank also included with each of his reports—from the third to the fourteenth—
18 what he called a “Statement of Revenue and Expenses.” The Ninth Interim Report
19 included both the statement of receipts and disbursements⁹ and the “Statement of
20 Revenue and Expenses.”¹⁰

21 The difference in the amounts reported by the two statements merely illustrates
22 that both were useless in providing accurate information what Hebrank was doing with
23 investor's cash. The deposits and disbursements only told *how much money* was being
24 deposited and disbursed, but nothing about the categories of the expenditures, much less

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26 ⁷ <http://www.ethreadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-planning-corp-dba-western-financial-planning-corp/>.

27 ⁸ Dkt. No. 759, Ex. A, p. 13.

28 ⁹ *Id.*, Ex. A, pp. 11-13.

¹⁰ *Id.* 759, Ex. B, p. 15.

1 about individual transactions. In any case, Hebrank stopped providing the Court and
2 investors with WFPC's deposits and disbursements statements after the Ninth Interim
3 Report.

4 The "Statement of Revenues and Expenses" specified the categories of
5 expenditures, but failed to include approximately \$200,000 passing through Hebrank's
6 hands. A comparison of the two statements in the Ninth Interim Report illustrates this
7 point. The difference between the deposits (approximately \$1.385 million) and revenues
8 (approximately \$837,000) was \$548,000. Likewise, the difference between disbursements
9 (approximately \$1.398 million) and expenses (approximately \$802,782.39) was
10 \$594,784.27.¹¹ The "Income and Revenue Statement" provided some indications of the
11 sources of the funds and how they were spent, but only a small fraction of the funds
12 going through WFPC's bank accounts. On the other hand, the receipts and disbursements
13 statements told of the amounts being deposited and disbursed, but no information where
14 they came from, what they were for, where they went or why.

15 The fallacy here is that an income statement has any real significance in this case.
16 WFPC was comatose. Its only funds came from investors supporting its costs. Hebrank
17 describes the "note payments" as revenues. They are not. A company does not generate
18 income when a note it holds is paid. The revenue and expense statements are more a head
19 fake than useful financial tools. They gave the Court and investors the impression that
20 Hebrank was telling them how much he was actually spending, when they grossly
21 understated both.

22 **III. Hebrank Kept No Books and Records**

23 Going one level deeper, Hebrank keeps no books. He contends that void is filled
24 by bank statements. This is patently absurd. There is a point in having a receiver keep his
25 own books and records: he is responsible for them. He should have the source records or
26 vouchers that validate his original entries. On the requirement that a receiver keep

27 ¹¹ These calculations are based on the Receiver's information in Dkt. No. 759, Ex. A, p.
28 13 and Ex. B, p. 15.

1 accurate records of his transactions, a century of authority confirms this duty. Clark's
2 Treatise on the Law and Practice of Receivers speaks clearly to this point:

3 It is a receiver's duty to keep accounts of receipts and expenditures in the
4 shape of books and vouchers in such a manner as to furnish an intelligible
5 and perspicuous account of his act and transactions in order that the
6 bondholders, lien creditors and all creditors as well as the court may at any
time as occasion requires, ascertain the true condition of affairs.¹²

7 And Clark goes on level deeper. On the duty of a receiver to keep vouchers, Clark
8 again speaks clearly to the same point:

9 Receiver's Duty to Preserve Vouchers. It is the receiver's duty to keep an
10 accurate account of all money received and expended. Even in the absence
11 of objections by an interested party, a court should closely scrutinize the
12 accounts of a receiver before approving them. The correctness of the
13 expenditures should be made to appear from something more than the
14 statement made in the report itself. Vouchers should be demanded when any
15 payments except petty payments are made and these vouchers preserved and
filed with the receiver's report.¹³

16 A decision from the Delaware District, Court, *Hitner v. Diamond State Steel Co.*,
17 207 F. 616, 622 (D. Del. 1913), strikes a similar theme:

18 If there was one duty more incumbent upon them than another it was to keep
19 or have their books and vouchers kept in such manner as to furnish an
20 intelligible and perspicuous account of their acts and transactions in order
21 that the bondholders and general creditors, as well as the court, might at any
22 time as occasion required promptly and readily ascertain the true condition
23 of affairs....It goes without saying that the quarterly returns of merely
24 receipts and disbursements were wholly inadequate to furnish the data
25 requisite for the final settlement and adjustment of the affairs of the steel
26 company, and could not be deemed a compliance with the obligation resting
upon them as trustees to keep proper books of account and vouchers as
above stated. The fact that the quarterly accounts of the receivers largely

27 ¹² Ralph Ewing Clark, Treatise On The Law and Practice of Receivers, 3d Revised
Edition (1929), Section 544, at 614.

28 ¹³ *Id.*

1 failed to specify with particularity the items or classes of items for which
2 expenditures were made, and the items or classes of items for which moneys
3 were received by them, rendered it all the more important that the books and
4 vouchers, in contradistinction to the quarterly accounts, should be full,
5 [**17] detailed and explicit.

6 And a century later, the courts continued to recognize the need for receivers to keep
7 detailed accounting records of all deposits and expenditures. See also *Santa Barbara*
8 *Channelkeeper v. Seror*, 2010 U.S. Dist. LEXIS 109978 (C.D. Cal. Oct. 14, 2010)(“The
9 Receiver shall keep detailed accounting records of all deposits to and all expenditures
10 from the Receiver Trust Account, and shall maintain those accounting records until the
11 expiration the receivership.”)

12 It should come as no surprise that the National Conference of Commissioners on
13 Uniformed State Law have recommended the enactment of a Uniform Commercial Real
14 Estate Receivership Act mandating that a receiver shall “(1) prepare and retain
15 appropriate business records, including a record of each receipt, disbursement and
16 disposition of receivership property.”¹⁴

17 There is clarity that Hebrank keeps no books and records. Investors asked him
18 repeatedly to produce his books and records.¹⁵ He repeatedly gave us different excuses
19 for not producing them. Finally, after a month, his attorney conceded they did not exist.¹⁶

20 DATED: April 1, 2016

Respectfully submitted,

21 By: /s/ Gary J. Aguirre

GARY J. AGUIRRE

Aguirre Law, A.P.C.

gary@aguirrelawapc.com

22 Attorney for Investors

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25
26 ¹⁴ Section 12(c) of the Uniform Commercial Real Estate Receivership Act, available at
27 http://www.uniformlaws.org/shared/docs/appointment%20and%20powers%20of%20real%20estate%20receivers/UCRERA_Final%20Act_2015.pdf.

28 ¹⁵ See Aguirre Declaration filed herewith, ¶¶ 3-17 and Exhibits 1-13.

¹⁶ *Id.*, ¶ 4, Exhibit 2.

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12 SECURITIES AND EXCHANGE
13 COMMISSION,
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17 FINANCIAL PLANNING
18 CORPORATION d/b/a WESTERN
19 FINANCIAL PLANNING
20 CORPORATION,
21 Defendants.

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

**DECLARATION OF GARY J.
AGUIRRE IN SUPPORT OF
INVESTORS' MOTION FOR AN
ACCOUNTING OR, IN THE
ALTERNATIVE, AN AUDIT
OF THE RECEIVERSHIP**

Date: April 29, 2016
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

1 I, Gary J. Aguirre, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration and, if
3 called as a witness, could and would testify competently to such facts under oath.

4 2. I am the attorney for approximately 170 investors who bring this motion.
5 They have collectively invested in one or more partnerships that have ownership interest
6 in each of the properties that are the subject of the receivership in this matter.

7 3. By my email of February 22, 2016, I requested Ted Fates, counsel for the
8 Receiver, to produce various categories of documents including these two:

9
10 6. Records, e.g., journals, which indicate the amounts of payments
11 which were accelerated on existing loans from the 87 partnerships to
12 Western and records indicating how the Receiver used those funds;

13 7. All statements of receipts and disbursements, audited or unaudited,
14 and balance sheets, audited or unaudited, relating to the 87 partnerships,
15 consolidated or separate, or Western from the inception of the receivership
16 to the present.

17 In his reply, Mr. Fates stated he would not produce the requested documents until I
18 provided him with a list of my clients “including the General Partnerships in which they
19 hold ownership units? Once we have that, we will consider your requests below and get
20 back in touch.” A true and correct copy of my email and Mr. Fates’ reply is attached
21 hereto and incorporated by reference as Exhibit 1.

22 4. On March 23, I again requested in my email that Mr. Fates produce the same
23 accounting records. In his reply, Mr. Fates offered a new rationale for denying the
24 request:

25 6. No such documents exist.

26 7. No such statements exist. However, the Receiver will provide the tax
27 returns (not including investor K-1s) for the partnerships in which your
28 clients have an interest from inception of the receivership. Note, the
receipts and disbursements for every month from the Receiver’s
appointment up to and including December 2015 have been provided in the
Receiver’s fourteen interim reports, which are available from the

1 Receiver's website. There is also substantial information and projections
2 regarding receipts and disbursements included in the partnership
3 information packets, which are available from the Receiver's website.

4 A true and correct copy of my email and Mr. Fates' reply is attached hereto and
5 incorporated by reference as Exhibit 2.

6 5. By my email of February 25, 2016, I rephrased my request for financial
7 records as follows:

8 I also understand that neither you nor E3 Advisors have the records
9 described in paragraphs 6 and 7 of my February 22 email. The investors seek
10 a clear accounting of the receipts and disbursements while the Receiver had
11 control of the partnerships in which they were invested. One among many
12 questions raised by investors boils down to this: what did the Receiver do
13 with the funds generated by the acceleration of the loans owed by the
14 partnerships to Western? Were mortgages paid? Were liabilities of the
15 partnerships paid?

16 So that I obtain the necessary records to make this assessment, I will
17 rephrase the records I am requesting into two new categories:

18 1. All journals, ledgers, accounts, computer-generated records, which
19 record or reflect revenues received or disbursements made by any of the 87
20 partnerships identified on Attachment A from September 2012 to the
21 present.

22 2. All journals, ledgers, accounts, computer-generated records, which
23 record or reflect revenues received or disbursements made by Western
24 Financial from September 2012 to the present.

25 Since I do not know the exact way in which E3 Advisors maintained the
26 accounting records of its receivership, I cannot define the records sought
27 more tightly. However, to avoid any unnecessary inconvenience or expense,
28 I am willing to discuss alternative approaches to obtaining the records, if you
will provide me with an index of the accounting records maintained by E3
Advisors relating to the 87 partnerships and Western Financial.

Mr. Fates replied the next day by email:

With regard to your remaining requests, we understand your reference to
"acceleration of loans" to mean the GP payments to Western referenced on
Exhibit B to the attached Ex Parte Application. The amounts these GPs paid
Western were used to pay the underlying mortgages on the applicable

1 properties. If this is not what you are asking about, please let us know.
2 Once we have an understanding of what you're requesting, we can respond.

3 A true and correct copy of my email and Mr. Fates' reply is attached hereto and
4 incorporated by reference as Exhibit 3.

5 6. By my email of February 29, 2016, I pointed out that Mr. Fates had ignored
6 my request for the same records:

7 You did not respond to my question whether you would produce the
8 following records:

- 9 1. All journals, ledgers, accounts, computer-generated records, which
10 record or reflect revenues received or disbursements made by any of the
11 87 partnerships identified on Attachment A from September 2012 to the
12 present.
- 13 2. All journals, ledgers, accounts, computer-generated records, which
14 record or reflect revenues received or disbursements made by Western
15 Financial from September 2012 to the present.

16 A true and correct copy of my email reply is attached hereto and incorporated by
17 reference as Exhibit 4.

18 7. Mr. Fates replied to my request in Exhibit 4 by his email of March 1, 2016.
19 The part relevant to the requested financial records read:

20 Further, with regard to your enumerated requests below (1 and 2) -- which
21 you had said "boils down to this: what did the Receiver do with the funds
22 generated by the acceleration of the loans owed by the partnerships to
23 Western?" -- I stated in an email to you on Friday February 26th:

24 With regard to your remaining requests, we understand your reference to
25 "acceleration of loans" to mean the GP payments to Western referenced on
26 Exhibit B to the attached Ex Parte Application. The amounts these GPs paid
27 Western were used to pay the underlying mortgages on the applicable
28 properties. If this is not what you are asking about, please let us know.
Once we have an understanding of what you're requesting, we can respond.

A true and correct copy of Mr. Fates' email is attached hereto and incorporated by
reference as Exhibit 5.

8. By his email of March 9, 2016, Mr. Fates announced he had finally decided
to produce part of the requested records. His email read:

1 Although we have not heard from you regarding my 2/26/16 attempt to
2 clarify your request for financial statements, which I then repeated in my
3 3/1/16 email below, the Receiver has nonetheless gathered the available
4 2012 and 2013 financial statements for the GPs and we will provide them to
5 you today via Dropbox. These statements were prepared by Louise Cohen,
6 an independent contractor hired by the GPs prior to the Receiver's
7 appointment to prepare financial statements as necessary for federal and
8 state tax returns.

9 The receipts and disbursements for the GPs for 2014 and 2015, as well as
10 projections for 2016, are included in the information packets posted to the
11 Receiver's website. Receipts and disbursements for Western are included in
12 the interim reports filed by the Receiver for each quarter.

13 Later that day I received an email with a link to the records in Dropbox. A true and
14 correct copy of Mr. Fates' email is attached hereto and incorporated by reference as
15 Exhibit 6.

16 9. By my letter of March 14, 2016, I requested one more time, among other
17 things:

18 The general ledgers, journals and other booking and accounting records
19 showing the receipts and disbursements since the appointment of the
20 receiver to the present; the validity and accuracy of the projections in your
21 February 4 memo cannot be assessed without these records;

22 A true and correct copy of said letter is attached hereto and incorporated by reference as
23 Exhibit 7.

24 10. As a response to Exhibit 7, Mr. Fates emailed on the same day, March 14,
25 2016, stating:

26 The Receiver has provided you with the 2012 and 2013 financial statements
27 for all of the GPs, which were prepared by Louise Cohen, an independent
28 contractor that the GPs had used prior to the Receiver's appointment to
prepare financial statements for annual tax returns. The 2014 and 2015
receipts and disbursements, as well as 2016 projections, are included in the
information packets posted to the Receiver's website. Receipts and
disbursements for Western and subsidiaries are included in the Receiver's
quarterly reports filed with the Court (also available from the Receiver's
website). These are the documents that exist that reflect the receipts and
disbursements since the appointment of the Receiver.

1 A true and correct copy of Mr. Fates' email is attached hereto and incorporated by
2 reference as Exhibit 8.

3 11. I understood Mr. Fates' reply to be a refusal to provide the books and
4 records for the individual transactions. I therefore tried again with my email of March 14,
5 2016, which reads in relevant part:

6 I take your response below to be a refusal by the Receiver to open his books
7 of account for an inspection by those whose assets he has been entrusted to
8 protect, the investors and partners in the 87 partnerships.

9 As you know, the records you refer to below display only conclusions, not
individual transactions.

10 A true and correct copy of my email is attached hereto and incorporated by reference as
11 Exhibit 9.

12 12. Mr. Fates replied to my email with his own of March 15, where he claimed
13 he had provided "what is available as far as financial records showing the receipts and
14 disbursements since the Receiver's appointment." His email also read:

15 The documentation that is not already available from the Receiver's website
16 – i.e. the GP financial statements for 2012 and 2013 – were promptly
17 provided to you despite your failure to respond to my 2/26 and 3/1 emails
seeking clarification of your request.

18 *You have now asked for individual transactions, which was not part of your*
19 *prior request for "ledgers, journals, and other booking and accounting*
20 *records". Individual transaction information would be reflected only on the*
21 *bank statements. ... If you are now requesting the over 3,500 bank*
statements for all of the GPs since the inception of the receivership, please
advise accordingly.

22 A true and correct copy of Mr. Fates' email is attached hereto and incorporated by
23 reference as Exhibit 9.

24 13. By my letter of March 17, 2016, I responded to Mr. Fates' to provide the
25 3,500 bank statements:

26
27 In view of your statement that the only records relating to individual
28 transactions are bank statements which have been posted to spreadsheets, I
am requesting you to produce those records—the bank statements and the

1 spreadsheets—from the date of Mr. Hebrank’s appointment to the present. I
2 am assuming these records are maintained electronically. Accordingly, I am
3 requesting that you provide these records electronically by making them
4 available to me in Dropbox as soon as possible. Kindly advise me when you
5 expect to place them in Dropbox.

6 A true and correct copy of my letter of March 17, 2016, without the exhibits, which are
7 voluminous and repetitive of these exhibits, is attached hereto and incorporated by
8 reference as Exhibit 10.

9 14. As a reply to Exhibit 10, Mr. Fates sent me a letter dated March 21, 2016,
10 where he engaged in his customary personal accusations but agreed to produce “the excel
11 [sic] spreadsheets and over 3,500 bank statements-to you via Dropbox.” A true and
12 correct copy of Mr. Fates’ letter is attached hereto and incorporated by reference as
13 Exhibit 11.

14 15. By my letter of March 24, 2016, I requested again a class of records which
15 the Receiver had not produced:

- 16 1. All journals, ledgers, accounts, computer-generated records, which
17 record or reflect revenues received or disbursements made by Western
18 Financial from September 2012 to the present.
- 19 2. Our investigation has established that the Receiver has used the OPADS
20 electronic accounting system to record individual transactions. Why did
21 you not disclose this fact or produce the transactions stored on that
22 system?

23 A true and correct copy of my letter of March 24, 2016, is attached hereto and
24 incorporated by reference as Exhibit 12.

25 16. On March 24, 2016, David R. Zaro, co-counsel to the Receiver, responded to
26 my letter with a new concession: “The Receiver did not produce the OPADS software or
27 records because these are nor relevant to the requests that you have made and the
28 information contained in OPADS is not relevant to any pending motion.” A true and
correct copy of Mr. Zaro’s letter of March 24, 2016, is attached hereto and incorporated
by reference as Exhibit 13.

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