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Attorney for Investors Susan Graham *et al.*

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

LOUIS V. SCHOOLER and FIRST  
FINANCIAL PLANNING  
CORPORATION d/b/a WESTERN  
FINANCIAL PLANNING  
CORPORATION,

Defendants.

CASE NO.: 3:12-CV-02164-GPC-JMA

**INVESTORS' NOTICE OF MOTION  
AND MOTION FOR AN ORDER  
DIRECTING THE RECEIVER TO  
PROVIDE AN ACCOUNTING OR IN  
THE ALTERNATIVE FOR AN AUDIT  
OF THE RECEIVERSHIP BY AN  
INDEPENDENT ACCOUNTANT**

Date: June 3, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on June 3, 2016, at 1:30 p.m. in Courtroom 2D of the United States District Court, Southern District of California, located at 221 W. Broadway, San Diego, CA 92101, Investors<sup>1</sup> will, and hereby do, move this Court for an order:

<sup>1</sup> Susan Graham, Alfred L. Pipkin, Alfred L. Pipkin, IRA, Allert Boersma, Arthur V. and Kristie L. Rocco Living Trust, Arthur V. Rocco, Baldwin Family Survivors' Trust, Barbara Humphreys, IRA, Beverly & Mark Bancroft, Beverly A. Bancroft, IRA, Bruce A. Morey IRA, Bruce A. Morey, Bruce R. Hart IRA for Bruce R. Hart and Dixie L. Hart, Carol D. Summers, Carol Jonson, Catherine E. Wertz IRA, Catherine E. Wertz, Cathy Totman, IRA, Charles Bojarski, Chris Nowacki, IRA, Cindy Dufresne, Craig Lamb, Curt & Janean Johnson Family Trust, Curt & Janean Johnson, jointly, Curt Johnson, Curt Johnson, Roth IRA, Cynthia J. Clarke, D & E Macy Family Revocable Living Trust, D.F. Macy IRA, Daniel Burns, Daniel Knapp, Darla Berkel IRA, Darla Berkel, Daryl Dick, Daryl R. Mabley, David and Sandra Jones Trust, David Fife IRA, David Haack IRA, David Haack; David Karp IRA, David Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional IRA, Debra Askeland, Deidre Parkinen, Dennis Gilman, Dennis Gilman IRA, Diane Bojarski, Diane Gilman, Donna M. and Richard A. Kopenski Family Trust, Donna M. Kopenski, IRA Roth, Douglas G. Clarke, Douglas Sahlin IRA, Eben B. Rosenberger, Edith Sahlin IRA, Edward Takacs, Elizabeth Lamb, Elizabeth Q. Mabley, Eric W. Norling, Eric W. Norling, IRA, Gary Hardenburg, Gary Hardenburg, Roth IRA, Gene Fantano, George Klinke, IRA, George Trezek, Gerald Zevin, Gerald Zevin, IRA, Gwen Tuohy, Gwenmarie Hilleary, Henrik Jonson, Henrik Jonson, IRA, IDAC Family Group LLC, Iris Bernstein IRA, James J. Coyne Jr. Trust, Janice Marshall, Janice Marshall, IRA, Jason Bruce, Jeffrey Merder, IRA, Jeffrey J. Walz, Jeffrey Larsen, Jeffrey Merder, Jennifer Berta, Jim Minner, Joan Trezek, John Jenkins, John and Mary Jenkins Trust, John and Mary Jenkins Trustees, John Lukens, John Lukens, IRA, John R. Oberman, Joy A. de Beyer, Roth IRA, Joy A. de Beyer, Traditional IRA, Joy de Beyer, Juanita Bass IRA, Juanita Bass, Judith Glickman Zevin, IRA, Judith Glickman Zevin, Judy Froning, Judy Knapp, Karen Coyne, Karen J. Coyne IRA, Karen Wilhoite, Karie J. Wright, Kimberly Dankworth, Kirsh Family Trust UTD, Kristie L. Rocco, Lawrence Berkel, Lawrence Berkel, IRA, Lea Leccese, Leo Dufresne, Leo T. Dufresne Jr. IRA, Linda Baldwin IRA, Linda Clifton, Lisa A. Walz, Lloyd Logan and Ida Logan, jointly, Lloyd Logan, IRA, Loretta J. Diehl, Lynda Igawa, Marc McBride, Marcia McRae, Marilyn L. Duncan, Mark Clifton, Mary Grant, Mary J. Jenkins, IRA, Mathew Berta, Mealey Family Trust, Michael R. Wertz, Michael R. Wertz, IRA, Mildred Mealey, beneficiary of Duane Mealey IRA, Minner Trust, Monica Takacs, Monique Minner, Neil Ormonde, IRA,

1 A. Directing Thomas C. Hebrank, the Receiver in this matter, to provide:

- 2 1) the Court and investors with accurate and complete statements by accounting
- 3 category, e.g., payroll, of his receipts and disbursements for each GP and
- 4 Western for each quarter since his appointment;
- 5 2) the Court and investors with current balance sheets for each GP and Western;
- 6 3) the Court and investors with all his filings with the SEC as required or
- 7 contemplated by the SEC's Billing Instructions for Receivers, including any fee
- 8 applications or Standardized Fund Accounting Report ("SFAR") submitted to
- 9 the SEC in connection with services in this case;
- 10 4) the Court and investors with the amount and source of the fees he has paid
- 11 himself and his consultants to date;
- 12 5) the Court and investors with the amount of the fees he expects to pay himself
- 13 and his consultants under his Plan;
- 14 6) the Court and investors with accurate and complete statements of the amounts
- 15 currently owed on any outstanding mortgage on any realty subject to the
- 16

---

17 Nevada Ormonde, IRA, Nick Ruddick, Paul Leccese, Paul R. Sarraffe, IRA, Perryman  
 18 Family Trust, Polly Yue, Prentiss Family Trust, Kenneth and Gail Prentiss Trustees,  
 19 Ralph Brenner, Randall S. Ingermanson IRA, Rebecca Merder, Reeta Mohleji, Regis T.  
 20 Duncan, IRA, Regis T. Duncan, Renee Norling, Richard A. Kopenski, IRA Roth, Robert  
 21 Indihar, Robert Churchill Family Trust, Robert Churchill IRA, Robert H. Humphreys,  
 22 Robert Indihar IRA, Robert S. Weschler, Robert Tuohy, Roderick C. Grant, Roger Hort,  
 23 Roger Moucheron, Ronald Askeland, Ronald Parkinen, Ronald Scott, Ronald Scott,  
 24 IRA, Salli Sammut Trust, Salli Sue Sammut Trustee, Salli Sue Sammut, IRA, Shirley  
 25 Moucheron, Stephen Dankworth, Stephen Hogan, Stephen Yue, Steve P. White, IRA,  
 26 Steve P. White, SEP IRA, Susan Burns, Tamara and Chris Nowacki, jointly, Tamara  
 27 Nowacki, IRA, Terry Adkinson, The Knowledge Team Profit Sharing Plan, The  
 28 Ormonde Family Trust, Thomas H. Panzer, Roth IRA, Thomas Herman Panzer Trust,  
 Thomas H Panzer, Trustee, Trisha Bruce, Val Indihar, W.C. Wilhoite, W.C. Wilhoite,  
 Roth IRA, William c. Phillips, William L. Summers, IRA, William L. Summers,  
 William Loeber, William Nighswonger IRA, William R. Nighswonger, William R.  
 Diehl, William R. Rattan Rev. Trust, and William V. and Carol J. Dascomb Trust.

- 1 receivership and, where past due sums are owed, the amounts now past due  
2 including the rate of interest and/or penalties on past due amounts;
- 3 7) the Court and investors with accurate and complete statements of the amounts  
4 currently owed on any outstanding taxes on any realty subject to the  
5 receivership and, where past due sums are owed, the amount now past due  
6 including the rate of interest and/or penalties on past due amounts;
- 7 8) Investors with the books and records for the GPs and Western, including  
8 ACCPAC, QuickBooks and OPADS computer system;
- 9 9) Investors with monthly bank statements and checks for the GPs and Western  
10 which were not previously provided to Investors;
- 11 10) Investors with the financial statement Schooler provided to the Receiver  
12 pursuant to paragraph XIX of the Court's order of September 6, 2012, (Dkt.  
13 No. 10), or, in the alternative,
- 14 B. For an order an audit by an independent accounting firm appointed by the Court at  
15 the Receiver's expense.

16 This Motion is brought on the grounds that:

- 17 1. The receiver was appointed as a fiduciary, and , in that capacity, has a duty  
18 to maintain and produce such records upon the request of the Court or the  
19 beneficiaries of the assets entrusted to him;
- 20 2. Investors are general partners in the partnerships which the receiver  
21 possesses and controls, and in that capacity, Investors have the right to  
22 inspect and copy the partners' books and records and other financial  
23 information;
- 24 3. The Receiver has a duty to provide a final audit at the time he proposes a  
25 distribution plan; and
- 26 4. The receiver has a duty under the SEC Billing Instructions for Receivers to  
27 provide periodic statements of his receipts and disbursements and a final  
28



statement describing in detail the cost and benefit associated with his participation in this case.

DATED: April 21, 2016

Respectfully submitted,

By: /s/ Gary J. Aguirre  
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Attorney for Investors Susan Graham et al.

**UNITED STATES DISTRICT COURT  
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SECURITIES AND EXCHANGE  
COMMISSION,

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LOUIS V. SCHOOLER and FIRST  
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CORPORATION d/b/a WESTERN  
FINANCIAL PLANNING  
CORPORATION,

Defendants.

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

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF INVESTORS' MOTION FOR AN  
ORDER DIRECTING THE  
RECEIVER TO PROVIDE AN  
ACCOUNTING OR IN THE  
ALTERNATIVE FOR AN AUDIT OF  
THE RECEIVERSHIP BY AN  
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## I. Introduction

This motion is brought by 191 investors (“Investors”)<sup>1</sup> in the 87 partnerships (GPs) in the receivership. Investors seek an order permitting them to intervene in this case to bring this motion for an accounting or, in the alternative, an audit of the receivership. Investors are cognizant that additional costs would be incurred with either. But the huge gaps and Enron-style irregularities in the Receiver’s accounting for the \$19 million he has received and spent must be addressed before any plan can be approved.

We cannot present a complete list of those gaps and irregularities at this time. That cannot be done until we see the Receiver’s books of account, if they exist, and his bank records. That said, we present below the more significant gaps and irregularities in the Receiver’s accounting practices that we have found so far:

1. The Receiver failed to submit a single report to the Court pursuant to the Securities and Exchange Commission (“SEC”) mandates which required him to submit 13 reports providing 34 categories of information regarding the \$19 million he has spent;
2. His Enron-style financial statements simultaneously misstate revenue and understate the receivership funds he spent by an estimated 9.5 million;
3. The Receiver has failed to disclose in his proposed distribution plan (“Plan”) (Dkt. No. 1181) how much he has paid himself and his consultants, how much he expects to pay himself and his consultants, and the source of the funds to pay those fees.
4. The Receiver failed to provide in his 14 interim reports (“Reports”) any accounting category for the \$16.4 million of Western funds he has spent;
5. The Receiver failed to provide in his 14 Reports any accounting category for the \$2.38 million of GP funds he has spent;

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<sup>1</sup> The names of the investors filing this opposition are listed in Attachment 1 filed herewith.



6. The Receiver has failed to provide the Court with any information of Western's debt on outstanding mortgages, so far as we can tell, since November 2014;
  7. The Receiver has failed to provide the Court with any information of GPs debt to Western, so far as we can tell, since November 2014;
  8. The Receiver has failed to provide any information of the liabilities of the GPs for past due taxes and defaults on mortgages;
  9. The statements Receiver's counsel made to Investors' counsel that the Receiver keeps no books and records is not true, since Receive uses Western's electronic accounting system;
  10. The Receiver has produced financial statements and records for the same GPs for the same accounting periods, which cannot be reconciled with each other, e.g., there are conflicting representations for the same GP for the same quarter.
- For all of these reasons, Investors seek an order directing the Receiver to provide:
1. the Court and investors with accurate and complete statements by accounting category, e.g., payroll, of his receipts and disbursements for each GP and Western for each quarter since his appointment;
  2. the Court and investors with current balance sheets for each GP and Western;
  3. the Court and investors with all his filings with the SEC as required or contemplated by the SEC's Billing Instructions for Receivers, including any fee applications or Standardized Fund Accounting Report ("SFAR") submitted to the SEC in connection with services in this case;
  4. the Court and investors with the amount and source of the fees he has paid himself and his consultants to date;
  5. the Court and investors with the amount of the fees he expects to pay himself and his consultants under his Plan;
  6. the Court and investors with accurate and complete statements of the amounts currently owed on any outstanding mortgage on any realty subject to the

- 1 receivership and, where past due sums are owed, the amounts now past due  
2 including the rate of interest and/or penalties on past due amounts;
- 3 7. the Court and investors with accurate and complete statements of the amounts  
4 currently owed on any outstanding taxes on any realty subject to the  
5 receivership and, where past due sums are owed, the amount now past due  
6 including the rate of interest and/or penalties on past due amounts;
- 7 8. Investors with the books and records for the GPs and Western, including  
8 ACCPAC, QuickBooks and OPADS computer system;
- 9 9. Investors with monthly bank statements and checks for the GPs and Western  
10 which were not previously provided to Investors;
- 11 10. Investors with the financial statement Schooler provided to the Receiver  
12 pursuant to paragraph XIX of the Court's order of September 6, 2012, (Dkt.  
13 No. 10).

14 If the Receiver is unable to provide the financial statements and records specified above,  
15 Investors believe the only viable alternative is for the Court to order an audit of the  
16 receivership by an independent accounting firm and have the Receiver pay for the cost  
17 from his own funds.

18 Investors filed a prior motion for an accounting on April 1, 2016, (Dkt. No. 1223).  
19 The Court denied that motion without prejudice on April 5, 2016 (Dkt. No. 1224) and  
20 directed Investors' counsel as follows: "The Dillon and Aguirre investors are directed to  
21 follow Fed. R. Civ. P. Rule 24 and file motions to intervene to the extent that they wish to  
22 refile any of these motions." To comply with this order, Investors filed their motion for  
23 leave to file a complaint in intervention on April 8, 2016 (Dkt. No. 1229). The proposed  
24 complaint in intervention seeks various post judgment relief including the relief sought  
25 by this motion. In order for the issues raised by this motion to be promptly resolved,  
26 Investors seek to bring this motion pursuant to Fed. R. Civ. P. Rule 24.

27 Sections II and III below address Investors' right to intervene for the purpose of  
28 this motion. Investors refer the Court to Investors' motion to intervene in this matter

(Dkt. No. 1229) for more extended analysis of their rights to intervene in this matter. These arguments may be moot if the Court grants Investors' motion to file a complaint in intervention which is scheduled for hearing on May 6, 2016. In sections III through VI, Investors present their arguments why the Court should grant the motion for an accounting or an audit.

## **II. Investors Are Entitled to Intervene as a Matter of Right under Fed. R. Civ. P. 24(a)(2) to Bring This Motion**

### **A. Elements of Rule 24(a).**

Fed. R. Civ. P. 24(a)(2) of the Federal Rules of Civil Procedure, upon timely motion, states the Court must permit to intervene anyone who:

claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998), this Court noted:

The Circuit apply a four-part test to determine whether intervention as of right should be granted: (1) the applicant must assert a significantly protectable interest relating to the party or transaction that is the subject of the action; (2) the applicant's interest must be inadequately represented by the parties to the action; (3) disposition of the action without intervention may as a practical matter impair or impeded its ability to protect that interest; and (4) the applicant's motion must be timely.

By this motion, Investors seek an order to intervene for the limited purpose of bringing this motion. The Court may grant limited intervention under Rule 24. *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 383 (U.S. 1987)(quoting with approval Advisory Committee Notes on Fed. Rule Civ. Proc. 24, "intervention of right under the amended rule [24(a)] may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of proceedings.") See also *Forest Conservation Council v. United States Forest Serv.*, 66

1 F.3d 1489, 1495 (9th Cir. 1995); *United States v. City of Detroit*, 712 F.3d 925, 927 (6th  
2 Cir. Mich. 2013)

3 **B. Investors Have a Significantly Protectable Interest in This Action.**

4 Citing *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897  
5 (9th Cir. 2011), this court observed in *United States v. Ballantyne*, 2013 U.S. Dist.  
6 LEXIS 125632 (S.D. Cal. 2013), “To demonstrate a ‘significant protectable interest,’ an  
7 applicant ‘must establish that the interest is protectable under some law and that there is a  
8 relationship between the legally protected interest and the claims at issue.’” The  
9 undisputable facts establish Investors have met that burden. This Court previously held  
10 the investor-partners and GPs have protectable interests in this case (Dkt. No. 809, p. 5,  
11 ll. 23-25).

12 **C. The Disposition of This Action May Impair or Impede Investors’ Ability to**  
13 **Protect Their Interests**

14 The proposed complaint in intervention satisfies this element for multiple reasons.  
15 Most obviously, the February 4, 2016, Receiver’s motion (Dkt. No. 1181) would  
16 liquidate each GP, and distribute almost 99% of the assets to persons who, as alleged in  
17 the proposed complaint in intervention, have no right, title, or interest in those assets.  
18 According to the Receiver, the SEC has consented to his motion.<sup>2</sup> No other party to the  
19 case has opposed this motion. By way of example, Investors Mary and John Jenkins  
20 invested \$30,000 in Park Vegas Partners in 1983. For 33 years, they have paid off their  
21 notes and paid operational fees. According to the Receiver’s projections in his February  
22 4, 2016, memorandum (Dkt. No. 1181), the Jenkins would have received \$58,200 dollars  
23 (194%) if Park Vegas Partners was dissolved in 2015 and the proceeds distributed to its  
24 partners. Under the Receiver’s Plan, the Jenkins would receive approximately \$4,000.

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25  
26  
27 <sup>2</sup> “An opposing party’s failure to file an opposition to any motion may be construed as  
28 consent to the granting of the motion pursuant to Civil Local Rule 7.1(f)(3)(c).” Dkt. No.  
1181, at 2, ll. 18-20.

1 The Receiver's Plan will have the same effect on each Investor's interests, just as it does  
2 on the Jenkins, unless they can fully participate as parties.

### 3 **D. Defendants Cannot Adequately Represent Investors in This Action**

4 The Court found a conflict of interest between Defendants and investors. *SEC v.*  
5 *Schooler*, 2013 U.S. Dist. LEXIS 158538 (S.D. Cal. 2013) ("Counsel for Defendants has  
6 a clear conflict of interest in representing the interests of both Defendants and the GPs  
7 because the GPs are comprised of investors alleged to have been defrauded by  
8 Defendants."). Under these circumstances, Defendants obviously cannot and have not  
9 adequately represented investors in this case.

10 And the record conclusively establishes Defendants have not represented, cannot  
11 represent and have no motivation to represent Investors or any of the other partners in  
12 the GPs. Defendants have failed to take any position in relation to the Receiver's  
13 February 4 motion as he indeed states in that motion (Dkt. No. 1225 at 2, l. 26).

### 14 **E. The Receiver Cannot Adequately Represent Investors in This Action**

15 The Receiver's Plan would distribute \$4,020 (13.4%) to the Jenkins, rather than  
16 the \$58,000 they would receive under the terms of the GP agreement.<sup>3</sup> By any measure,  
17 the Receiver has taken an adverse position to the Jenkins' financial interests. By  
18 definition, an adversary is not an adequate representative for the person on the other side  
19 of the relationship.

### 20 **F. The SEC Cannot Adequately Represent Investors in This Action**

21 According to the Receiver, the SEC has approved his motion to sell off the  
22 properties, create a "single pot," and distribute the single pot to all investors in  
23 proportion to their total investment in all GPs.<sup>4</sup> In supporting the Receiver's Plan, the  
24 SEC supports forfeiture of the rights of the Investors' under the GP agreements. As such,  
25 the SEC obviously cannot and does not speak on behalf of Investors.

### 26 **G. Investors' Motion to Intervene Is Timely**

27 <sup>3</sup> The discrepancy is greater; because Investors' valuations are substantially higher.

28 <sup>4</sup> Dkt. No. 1181, p. 13, ll. 1-4 and p. 25, ll. 5-11.

The Ninth Circuit has consistently held that, “In analyzing timeliness, however, the focus is on the date the person attempting to intervene should have been aware his ‘interest[s] would no longer be protected adequately by the parties,’ rather than the date the person learned of the litigation,” *Chamness v. Bowen*, 722 F.3d 1110, 1121 (9th Cir. Cal. 2013), citing *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997). In *Legal Aid Soc. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. Cal. 1980), the court focused on how the change of position by the Government, as the Receiver has done here, was the event that triggered the beginning of the time period for the Investors to intervene. The Ninth Circuit held:

We rule that the district court did not apply the correct legal standard in finding the Chamber’s second motion was not a timely one and that it should have considered the motion in light of the substantially different position that had then been assumed by the Government as the principal defendant.

618 F.2d 48, 50. In this case, the necessity for Investors to bring this motion was triggered by the Receiver’s 180-degree reversal on February 4, 2016.

### **III. Gaps and Irregularities in the Receiver’s Financial Statements and Records**

According to the Receiver, he began his receivership with \$6.58 million in cash<sup>5</sup> plus realty now valued at \$23.8 million.<sup>6</sup> Investors estimate that approximately \$16.5 million in Western funds have passed through the Receiver’s hands and around \$16.4 million in GP funds did the same. The Receiver’s financial reports and record keeping of these transactions appear to be a mess. Unless the Court grants this motion, no one—with the possible exception of the Receiver and his attorneys—will ever know how much he spent or received. And there is a real possibility the Receiver has kept no books or records of his cash transactions, since his attorney made that concession.<sup>7</sup>

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<sup>5</sup> Dkt. No. 80, Ex A p. 3. Ex A. See also Dkt. No. 1181, Ex. B, p. 34, Aguirre Decl. ¶ 29, Ex. 19.

<sup>6</sup> *Id.*, Ex. A, p. 32.

<sup>7</sup> Whether the Receiver has maintained books and records of his transactions involving receivership assets is far from clear. The Receiver’s attorney has stated the Receiver keeps no books or records for Western or the GPs, but only bank statements. Aguirre



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

#### **A. The Receiver’s Reports Are Grossly Incomplete and Inaccurate**

Investors begin their review of the Receiver’s financial reporting and record keeping from the top down. For that, the best starting point is the Receiver’s interim reports (“Reports”) to the Court which he also publishes in the E3 Advisors’ website for investors to peruse the case.<sup>8</sup> Those Reports provide summaries of the receipts and disbursements on a month-to-month basis for the Western entities until the Ninth Report (Dkt. No. 759).

The Receiver provided the opening balance, closing balance, and gross receipts and disbursements for Western entities through 2014. The table below restates deposits (receipts) for the Western bank accounts in the Ninth Report for the second quarter of 2014.<sup>9</sup>

Bank Name	Deposits		
	April	May	June
Fernley I, LLC	2,876.64	3,198.64	2,876.64
P51 LLC	4,199.59	4,199.59	4,199.59

Decl. ¶ 13. On the other hand, the Receiver took possession of well-functioning computer accounting systems when the receivership took control of Western and the GPs.

<sup>8</sup> <http://www.ethreeadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-planning-corp-dba-western-financial-planning-corp/>.

<sup>9</sup> Receiver’s Ninth Interim Report, Dkt. No. 759, Exhibit A, p. 13

Santa Fe Venture	16,014.99	16,014.99	2,497.00
SFV II, LLC	2,497.00	2,497.00	107,164.49
WFPC - Corp	116,140.38	132,208.18	107,164.49
WFPC -Business	113,846.03	113,846.03	113,846.03
WFPC - FFP	2,029.09	2,597.82	1,386.88
WSCC, LLC	203,469.42	201,879.02	199,660.44
<b>Total WFPC Bank Accounts</b>	461,073.14	476,441.27	447,646.06

The above table gives no hint of the source or the purpose and thus both could be improper, GP funds the Receiver was not authorized to transfer.

The table below restates the disbursements from Receiver's Ninth Report for the second quarter of 2014 for the Western bank accounts.<sup>10</sup>

Bank Name	Disbursements		
Account	April	May	June
Fernley I, LLC	2,800.00	3,459.00	
P51 LLC	4,403.33	4,284.64	148.10
Santa Fe Venture	60,492.85	15,022.28	
SFV II, LLC	3,296.68	478.80	
WFPC - Corp	131,462.07	155,898.58	70,157.92
WFPC -Business	113,846.03	113,846.03	113,846.03
WFPC - FFP	3,000.00	1,000.00	
WSCC, LLC	197,286.57	216,824.12	186,013.63
<b>Total WFPC Bank Accounts</b>	516,587.53	510,813.45	370,165.68

Again, this Report provided no information regarding any specific disbursement, e.g., to whom and for what.<sup>11</sup> Again, that raises the possibility the funds were transferred for an improper purpose. This is critical, because with real accounting comes real accountability. The Receiver could include a first class trip to Hawaii in his reporting

<sup>10</sup> *Id.*

<sup>11</sup> Like the Ninth Report, the Third, Fourth, and Sixth through the Eighth Reports only contain the total amounts of receipts and deposits for Western entities.

above. To the extent he reports expenses by category, there is accountability. He could still take his first class trip to Hawaii, but he commits a crime if he journals the expense as a mortgage payment.<sup>12</sup>

Significantly, after his Ninth Report, with no explanation,<sup>13</sup> the Receiver omitted the tables showing the gross amounts of his receipts and disbursements for the Western. His next five Reports thus provided no information on Western receipts and disbursements.<sup>14</sup> The table below shows Reports which contained the table showing Western's receipts and disbursements and, where table was present, the amount of both (rounded to the nearest thousand).

Quarter	Opening Balance	Receipts	Disbursements	Closing Balance	Interim Report
2012 Q4	127,000	2,047,000	2,099,000	75,000	Third, Dkt. No. 80
2013 Q1	121,000	1,348,000	1,318,000	151,000	Fourth, Dkt. No. 184
2013 Q2	No data	No data	No data	30,000	Fifth, Dkt. No. 481
2013 Q3	30,000	1,010,000	901,000	216,000	Sixth, Dkt. No. 517
2013 Q4	222,000	1,502,00	1,576,000	147,000	Seventh, Dkt. No. 547
2014 Q1	147,000	1,634,576	1,638,000	144,000	Eighth, Dkt. No. 596
2014 Q2	144,000	1,385,000	1,398,000	131,000	Ninth, Dkt. No. 759
2014 Q3	No data	No data	No data	No data	Tenth, Dkt. No. 1000

<sup>12</sup> 18 U.S.C. § 1001.

<sup>13</sup> Both the Ninth and Tenth Reports were silent on why the Receiver stopped providing the receipts and disbursements for the Western entities. Both contain this statement: "Attached hereto as Exhibit A is a summary of the receipts and disbursements for the Receivership Entities for the...quarter of 2014." The Ninth Report had the receipts and disbursements for the Western entities, but the Tenth did not.

<sup>14</sup> *Id.*

Quarter	Opening Balance	Receipts	Disbursements	Closing Balance	Interim Report
2014 Q4	No data	<i>No data</i>	<i>No data</i>	No data	Tenth, Dkt. No. 1000
2015 Q1	No data	<i>No data</i>	<i>No data</i>	No data	Eleventh, Dkt. No. 1065
2015 Q2	No data	<i>No data</i>	<i>No data</i>	No data	Twelfth, Dkt. No. 1103
2015 Q3	No data	<i>No data</i>	<i>No data</i>	No data	Thirteenth, Dkt. No. 1148
2015 Q4	No data	<i>No data</i>	<i>No data</i>	No data	Fourteenth, Dkt. No. 1189

The key facts disclosed by the above table are found in the third and fourth columns (italicized), titled “Receipts” and “Disbursements.” Those two columns identify the Reports where the Receiver provided the Court with the total amount of Western cash that went through his hands in each quarter. As the table clearly reflects, he provided no data in relation to the gross receipts and disbursements for seven of the 13 quarters he has thus far reported. Further, he has not provided that data for any quarter since the second quarter of 2015. Apparently, the Receiver prefers to keep the Court and investors in the dark over how much money he is spending.

In his last reported quarter, he received \$1.39 million in receipts and spent \$1.40 million.<sup>15</sup> Through extrapolation, it appears the Receiver failed to report approximately \$9.6 million in receipts and approximately \$9.4 million in disbursements in his Reports to the Court.<sup>16</sup> From these facts, a stubborn question looks for an answer: why did the Receiver stop reporting to the Court the millions of dollars of Western receipts and disbursements passing through his hands? And where was the SEC? We address these questions in Section VI.

<sup>15</sup> Receiver’s Ninth Report (Dkt. No. 759), Ex. A, p. 13.

<sup>16</sup> Our extrapolation is as follows: we left out the \$2.1 million reported in Dkt. No. 80, as it appeared to be an outlier. We then averaged the receipts for the other five interim reports and did the same with the disbursements.

1 The Receiver also included a “Statement of Revenue and Expenses” with each of  
 2 his Reports from the Third to the Fourteenth. The Ninth Report included both the  
 3 statement of receipts and disbursements<sup>17</sup> and the “Statement of Revenue and  
 4 Expenses.”<sup>18</sup> The difference in the amounts reported by the two statements merely  
 5 illustrates that both were useless in providing accurate information what the Receiver  
 6 was doing with Western’s cash. The deposits and disbursements only told *how much*  
 7 *money* was being deposited and disbursed, but nothing about the categories of the  
 8 expenditures, much less about individual transactions. The “Statement of Revenues and  
 9 Expenses” specified the categories of revenues and expenses, but reported only a small  
 10 fraction of the funds going through the Receiver’s hands. Neither statement was useful.  
 11 Neither created accountability for the Receiver. Both gave the impression the Receiver  
 12 was providing meaningful information, when he was not.<sup>19</sup> Perhaps, that was the point.

13 By way of example, the Ninth Report provides both types of statements for April,  
 14 May, and June 2014, collectively the second quarter of 2014 (“2014 Q2”). It is important  
 15 to remember the Report provides no description or category for the receipts or  
 16 disbursements, but it does describe by category revenues and expenses.<sup>20</sup>

17 Significantly, the receipts and disbursements are always larger numbers than  
 18 revenues and expenses. By way of example, the total disbursements for 2014 Q2,  
 19 rounded to the nearest thousand, was \$1.397 million and the total expenses rounded to  
 20 the nearest thousand, would be \$358,000, a difference of \$1.039 million. Since there is  
 21 no description of disbursements, there is no description of the \$1.039 difference. So  
 22 what was this \$1.039 million used for? No one knows. There is no clue in the Report  
 23 how the Receiver spent these funds.

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25 <sup>17</sup> Receiver’s Ninth Report (Dkt. No. 759), Ex. A, pp. 11-13.

26 <sup>18</sup> *Id.*, Ex. B, p. 15.

27 <sup>19</sup> We also question whether a statement of revenue and expenses has any meaningful  
 application to a company that has no operational income.

28 <sup>20</sup> See Dkt. No. 759, Ex. A, p. 13 and Ex. B, p. 15.

The table below shows (rounded to the nearest thousand) the Receiver's statements of (1) disbursements and receipts and (2) revenues and expenses for each accounting period. Comparisons can only be made where the Receiver provided both statements in the Report for the same accounting period. Those are in bold below.

Period	Interim Report	Receipts	Disbursements	Revenue	Expenses
Q4 2012	Third, Dkt. No. 80	<b>2,047,000</b>	<b>2,099,000</b>	<b>87,000</b>	<b>254,000</b>
Q1 2013	Fourth, Dkt. No. 184	<b>1,348,000</b>	<b>1,318,000</b>	<b>76,000</b>	<b>145,000</b>
Q2 2013	Fifth, Dkt. No. 481	No data	No data	115,000	196,000
Q3 2013	Sixth, Dkt. No. 517	<b>1,010,000</b>	<b>901,000</b>	<b>24,000</b>	<b>37,000</b>
Q4 2013	Seventh, Dkt. No. 547	1,502,000	1,576,000	No data	No data
2013	Seventh, Dkt. No. 547	No data	No data	174,000	339,000
Q1 2014	Eighth, Dkt. No. 596	<b>1,635,000</b>	<b>1,638,000</b>	<b>481,000</b>	<b>445,000</b>
Q2 2014	Ninth, Dkt. No. 759	<b>1,385,000</b>	<b>1,398,000</b>	<b>356,000</b>	<b>358,000</b>
Q3 2014	Tenth, Dkt. No. 1000	No data	No data	353, 000	405, 000
Q4 2014	Tenth, Dkt. No. 1000	No data	No data	357,000	348,000
Q1 2015	Eleventh, Dkt. No. 1065	No data	No data	353,000	337, 000
Q2 2015	Twelfth, Dkt. No. 1103	No data	No data	326,000	334,000
Q3 2015	Thirteenth, Dkt. No. 1148	No data	No data	303,000	250,000



Q4 2015	Fourteenth, Dkt. No. 1189	No data	No data	485,000	467,00
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The above table reveals three important facts. First, it demonstrates receipts and disbursements were always large multiples of the revenues and expenses. Since receipts and disbursements provided no descriptive information, this means there was no descriptive information for most of the cash that went through the Receiver's hands.

Second, the amount of revenues significantly increased with the Eighth and Ninth Reports. This was not due to any increase in revenues. Rather, the Receiver improperly recognized as revenue GP note payments to Western, both entities under his control. This goes a step beyond Enron's phony recognition of revenue for doing business with its special purpose entity, Chewco.<sup>21</sup> The repayment of a debt does not generate revenue or gain, except for the interest portion.<sup>22</sup> The Receiver, a CPA, obviously knows that, since he did not treat note payments as income in his revenue and expense statements in earlier Reports.<sup>23</sup> The Receiver's decision to improperly treat note repayments as revenue raises the obvious question: why did he do that?

Third, the Receiver provided no receipt and disbursement data with the Tenth through the Fourteenth Reports. However, he continued his practice of posting note repayments as revenue in the revenue and expense statements in those Reports. These Reports presented income and expense as roughly in balance. Consequently, these statements were materially misleading for three reasons: (1) it is unknown how much money was coming into the receivership; (2) it is unknown how much money was being

<sup>21</sup> See, Aguirre, Gary J., The Enron Decision: Closing the Fraud-Free Zone on Errant Gatekeepers?, 28 Del. J. Corp. L. 447, 455 (2003).

<sup>22</sup> Aguirre Decl., ¶ 21.

<sup>23</sup> See Third Report (Dkt. No. 80), Ex. B, p. 15; Fourth Report (Dkt. No. 184), Ex. B, p. 12; Fifth Report (Dkt. No. 481), Ex. B, p. 12; Sixth Report (Dkt. No. 517) Ex. B, p. 16; Seventh Report (Dkt. No. 547), Ex. B, pp. 19-20.

1 spent; and (3) the improper treatment of note payments as revenue gives the statement  
2 the appearance of a meaningful report.

3 One might expect the SEC to have standards for those receivers whose  
4 appointments they recommend to the courts and they do.<sup>24</sup> One might expect the SEC to  
5 keep a vigilant eye on how these receivers present their fee applications and report their  
6 receipts and disbursements of receivership to the court for approval. And indeed their  
7 standards are designed for them to exercise some oversight. The SEC requires receivers  
8 to submit their fee applications and SFARs to the SEC *before* they are submitted to the  
9 Court.<sup>25</sup>

10 Significantly, all receivers recommended by the SEC must sign a statement that  
11 they and other consultants they retain, including their attorneys, will comply with (1)  
12 detailed SEC procedures, billing instructions relating to how they should perform their  
13 services, record their time, and apply for fees,<sup>26</sup> and (2) equally detailed SEC procedures,  
14 Standardized Fund Accounting Report Civil Receivership Fund (“SFAR”), relating to  
15 their reporting of the receipts and disbursements of receivership assets to the court and  
16 the records they are supposed to keep in relation to those transactions.<sup>27</sup> SFAR describes  
17 exactly what information the Receiver was supposed to submit to the Court in connection  
18 with his receipts and disbursements of receivership funds. The Receiver complied with  
19 neither.

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21 <sup>24</sup> See Billing Instructions for Receivers in Civil Actions Commenced by the U.S.  
22 Securities and Exchange Commission (“Instructions”) and Standardized Fund accounting  
23 Report (“SFAR”), Aguirre Decl. ¶ 22, and Ex. 15. Both the instructions and SFAR are  
24 available online at [https://www.sec.gov/oiealinvestor-alerts-bulletins/ib\\_receivers.html](https://www.sec.gov/oiealinvestor-alerts-bulletins/ib_receivers.html)  
and <https://www.sec.gov/oiea/Article/billinginstructions.pdf>.

25 <sup>25</sup> The Instructions read at relevant point: “At least 30 days prior to the filing of the  
26 Application with the Court, the Applicant will provide to SEC Counsel a complete copy  
27 of the proposed Application, together with all exhibits and relevant billing information  
in a format to be provided by SEC staff.” *Id*, Ex. 15 at 2.

28 <sup>26</sup> Instructions, *Id*, Ex. 15, pp. 1-11.

<sup>27</sup> SFAR, *Id*, Ex. 15, pp. 12-18.

To begin with, SFAR requires the Receiver to provide the Court with 34 separate categories of receipts and disbursements of receivership assets in a standard form with each of his fee applications.<sup>28</sup> The Receiver has made 13 applications for fees by the Receiver and his attorneys and thus the Receiver should have filed 13 SFAR reports. He filed none. Further, if a receiver wishes to deviate from SFAR, he or she must advise the SEC before doing so. In this regard, the first page of SFAR requires:

Undersigned further represents that any deviation from the Billing Instructions will be described in writing and submitted to the SEC at least 30 days prior to the filing of the Application with the Receivership Court.<sup>29</sup>

We have asked both the SEC and the Receiver for the original application under SFAR and whether he ever submitted a request to the SEC to deviate from its requirements. Neither has responded to our request.

The Receiver's failure to provide the Court with an accurate and complete accounting is alone a ground for the Court to reject the receiver's distribution plan in *SEC v. Harris*, 2015 U.S. Dist. LEXIS 11975, 5-6 (N.D. Tex. 2015). In language equally applicable here, the court described adequacies in the financial information the receiver had provided the court:

To illustrate, the Receiver's Motions include no itemized list of Receivership assets and liabilities, or any other "account [of] all monies, securities, and other properties which [have] come into her hands" during the course of her receivership... Instead, her Motions vaguely identify the total assets that remain—\$616,578.17 in cash, with a \$64,487.18 cash bond posted in New Mexico—without clarifying the source of any of this cash.

### **B. The Receiver's Flip flop Whether He Keeps Books and Records**

Going one level deeper, the Receiver, Thomas Hebrank, a CPA, claimed for a while he keeps no books and records of his individual transactions of receivership cash.

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<sup>28</sup> *Id.* Counting subparts, SFAR requires the receiver to provide 34 categories of information relating to his receipt and disbursements of receivership assets

<sup>29</sup> *Id.*, p. 1.

1 Instead, he contended he filled the void with bank statements.<sup>30</sup> This contention appeared  
 2 to be absurd. For several weeks, starting of February 25, 2016, Investors' counsel  
 3 requested the Receiver to produce the following records:

- 4 1. All journals, ledgers, accounts, computer-generated records, which record  
 5 or reflect revenues received or disbursements made by any of the 87  
 6 partnerships identified on Attachment A from September 2012 to the  
 7 present.
- 8 2. All journals, ledgers, accounts, computer-generated records, which record  
 9 or reflect revenues received or disbursements made by Western Financial  
 10 from September 2012 to the present.<sup>31</sup>

11 On March 23, the Receiver's counsel responded with this statement:

12 You have now asked for individual transactions, which was not part of your  
 13 prior request for "ledgers, journals, and other booking and accounting  
 14 records". Individual transaction information would be reflected only on the  
 15 bank statements. The Receiver uses the bank statements to create an excel  
 16 summary which is used by the tax preparation firm to prepare the tax  
 17 returns, and was used to generate the financial summaries contained in the  
 18 Information Packets and the Receiver's Reports.<sup>32</sup>

19 This made even less sense in view of the Receiver's praise of Western's  
 20 accounting system for the GPs in his Forensic Accounting Report: Part One (Dkt. No.  
 21 182) ("Forensic Report"). He there praised the accuracy and reliability of the Western  
 22 computer accounting system called "OPADS." His Forensic Report described in detail  
 23 how the Receiver used OPADS to retrieve financial transactions down to the penny,  
 24 including those between the GPs and Western.<sup>33</sup> The Receiver concludes with this  
 25 statement about OPADS: "At the conclusion of these tests, the Receiver determined the  
 26 data maintained in OPADS Accounting System and the other data sources noted above is  
 27 accurate and reliable, and therefore could be used in performing the forensic  
 28

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<sup>30</sup> Aguirre Decl. ¶ 13, Ex. 9.

<sup>31</sup> *Id.*, ¶ 6, Ex. 3.

<sup>32</sup> *Id.*, ¶ 13, Ex. 9.

<sup>33</sup> *Id.*, ¶ 20, Ex. 14.

accounting.”<sup>34</sup> When we became aware the Receiver was likely using OPADS, we asked his counsel in our letter of March 24, 2016, why he had not disclosed it: “[Ou]r investigation has established that the Receiver has used the OPADS electronic accounting system to record individual transactions. Why did you not disclose this fact or produce the transactions stored on that system?”<sup>35</sup> Once again, the Receiver refused to provide the records,<sup>36</sup> but implied he was using OPADS. He dropped the claim that accounting records did not exist, “The Receiver did not produce the OPADS software or records because these are not relevant to the requests that you have made and the information contained in OPADS is not relevant to any pending motion.”<sup>37</sup>

This is nonsense. The Receiver has packed his liquidation motion (Dkt. No. 1181) with bald and unfounded conclusions regarding (1) the financial conditions of the GPs and Western and (2) the transactions between them. Further, the Receiver’s Forensic Report establishes beyond any shadow of a doubt that OPADS contains the critical data that would support or refute those bald and unfounded conclusions.

Since Investors filed their motion seeking an accounting on April 1, 2016, (Dkt. No. 1223), the Receiver produced some new accounting records kept by the current GP administrator, Lincoln Property Group, from March 2015 to February 2016, except for the month of May 2015. However, the Lincoln records only show its receipts and disbursements, not those of the Receiver’s. Further, Lincoln’s records of receipts and disbursements cannot be reconciled with the gross receipts and disbursements in the Receiver’s interim reports.<sup>38</sup> In sum, Lincoln’s records provide information on only 11

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<sup>34</sup> *Id.*, p. 15, ll. 14-17.

<sup>35</sup> *Id.*, ¶ 16, Ex. 12.

<sup>36</sup> *Id.*, ¶ 17, Ex. 13.

<sup>37</sup> *Id.*

<sup>38</sup> For example, Honey Springs Partners shows an ending balance for Dec. 2015 of \$8,365 in the Receiver’s Fourteenth Interim Report (Dkt. No. 1189), Ex. A, p. 10, but the Lincoln records show \$4,503.04. Likewise, Clearwater Bridge Partners shows total disbursements for Dec. 2015 of \$1,171 in Lincoln’s records, but \$4,048 in the Receiver’s report. In the same vein, Lyons Valley Partners shows Dec. 2015

of the 43 months for a portion of the expenditures of the GPs, and none of the expenditures for Western entities. It is comforting to see that Lincoln does have books and records of its expenditures for the past year for the GPs. But this disclosure puts the high beam on a persistent question: why did the Receiver stop providing the Court with information Western's receipts and disbursements and why does he refuse to provide Investors with records containing that same information.

A century of authority confirms the duty of receivers to keep accurate records of their transactions, Clark's Treatise on the Law and Practice of Receivers speaks clearly to this point:

It is a receiver's duty to keep accounts of receipts and expenditures in the shape of books and vouchers in such a manner as to furnish an intelligible and perspicuous account of his act and transactions in order that the bondholders, lien creditors and all creditors as well as the court may at any time as occasion requires, ascertain the true condition of affairs.<sup>39</sup>

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

Receiver's Duty to Preserve Vouchers. It is the receiver's duty to keep an accurate account of all money received and expended. Even in the absence of objections by an interested party, a court should closely scrutinize the accounts of a receiver before approving them. The correctness of the expenditures should be made to appear from something more than the statement made in the report itself. Vouchers should be demanded when any payments except petty payments are made and these vouchers preserved and filed with the receiver's report.<sup>40</sup>

disbursements of \$1,576 in the Receiver's report, but only \$118 in the Lincoln records. Further, the beginning balance for Lyons Valley Partners in Dec. 2015 is different in each document. See Aguirre Decl. ¶ 19.

<sup>39</sup> Ralph Ewing Clark, Treatise on the Law and Practice of Receivers, 3d Revised Edition (1929), Section 544, at 614.

<sup>40</sup> *Id.*



1 A decision from the Delaware District, Court, *Hitner v. Diamond State Steel Co.*,  
 2 207 F. 616, 622 (D. Del. 1913), a century ago speaks to the inadequate record keeping of  
 3 the Receiver in this case:

4 ....It goes without saying that the quarterly returns of merely receipts and  
 5 disbursements were wholly inadequate to furnish the data requisite for the  
 6 final settlement and adjustment of the affairs of the steel company, and could  
 7 not be deemed a compliance with the obligation resting upon them as  
 8 trustees to keep proper books of account and vouchers as above stated. The  
 9 fact that the quarterly accounts of the receivers largely failed to specify with  
 10 particularity the items or classes of items for which expenditures were made,  
 11 and the items or classes of items for which moneys were received by them,  
 rendered it all the more important that the books and vouchers, in  
 contradistinction to the quarterly accounts, should be full, detailed and  
 explicit.

12  
 13 And a century later, the courts continue to recognize the need for receivers to keep  
 14 detailed accounting records of all deposits and expenditures. The Receiver's failure to  
 15 provide the Court with an accurate and complete accounting was alone a ground for the  
 16 court to reject the receiver's distribution plan in *SEC v. Harris*, 2015 U.S. Dist. LEXIS  
 17 11975, 5-6 (N.D. Tex. 2015). In language equally applicable here, the court described  
 18 adequacies in the financial information the receiver had provided the court:

19 To illustrate, the Receiver's Motions include no itemized list of Receivership  
 20 assets and liabilities, or any other "account [of] all monies, securities, and  
 21 other properties which [have] come into her hands" during the course of her  
 22 receivership... Instead, her Motions vaguely identify the total assets that  
 remain—\$616,578.17 in cash, with a \$64,487.18 cash bond posted in New  
 Mexico—without clarifying the source of any of this cash.

23 See also *Santa Barbara Channelkeeper v. Seror*, 2010 U.S. Dist. LEXIS 109978 (C.D.  
 24 Cal. Oct. 14, 2010)("The Receiver shall keep detailed accounting records of all deposits  
 25 to and all expenditures from the Receiver Trust Account, and shall maintain those  
 26 accounting records until the expiration the receivership.")  
 27  
 28

**IV. The Receiver's Plan Fails to Disclose the Amount and Source of the Funds to Pay for the Costs of the Receivership.**

By our calculations, the fees for the Receiver, his attorneys, and accountants would be approximately \$3.2 million by the end of 2016 if they continue at the same rate.<sup>41</sup> Nothing in the Receiver's proposed plan states the amount of the fees he and his consultants have accrued over the past six months, or the Receiver expects to pay himself and his consultants through the end of the receivership. Nor can we discern from his filings where the funds are going to come from.

The Plan states the GPs' realty has an approximate value of \$23.84 million,<sup>42</sup> and it also states Western is expected to have \$1.2 million in cash that will be distributed to investors.<sup>43</sup> There are presumably still outstanding mortgages on the properties, but that is nowhere stated in the Plan. The latest statement we could find on that debt was in a November 2014 filing) where the stated debt was \$2.09 million (Dkt. No. 852, p. 33).

So, there is a mystery: where are the funds going to come from to pay the Receiver? Assuming our \$3.2 million figure is accurate, approximately \$2.1 million would be needed, since the Receiver's counsel stated in March the Receiver and his attorneys have only been paid \$1.1 million.<sup>44</sup>

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<sup>41</sup> The Court had approved a total of \$2.242 million for the period ending Sep. 30, 2015. The average monthly billing for the three years of the receivership is approximately \$62,222. Since the Liquidation Motion contemplates a Dec. 31, 2016, completion date, there are 15 unbilled months, which would be \$933,333, a total of \$3.17 million, minus the amount paid to date, leaves approximately \$2.1 million.

<sup>42</sup> Dkt. No. 1181, Exhibit A, p. 32.

<sup>43</sup> *Supra*, n. 41.

<sup>44</sup>

Movants assert the Receiver and his colleagues have been paid \$2.24 million. Again, this is completely false. To date, the Receiver and Allen Matkins combined have been paid \$1,097,734.66, or approximately 42% of amounts approved by the Court. All amounts paid have been expressly approved by the Court and have been paid from the assets of Western. (Dkt. No. 1195, p. 3, l. 23 to p. 4, l. 2).

Nothing in the prior fee applications helps solve this mystery. Those fee applications neglected to include statements required by the SEC's billing instructions that would have required the Receiver to state the amount of all prior fees, the amount of accrued administrative expenses, the prior amounts paid, the prior amounts unpaid, along with a certification.<sup>45</sup> The Receiver's failure to provide the information regarding the fees paid to consultants was one of the reasons the court in *SEC v. Harris*, 2015 U.S. Dist. LEXIS 11975 (N.D. Tex. 2015) rejected the receiver's proposed distribution plan.

**V. The Receiver Has Failed to Disclose Any Facts relating to Mortgage Debt, Taxes, or Debt to Western**

This debt directly affects what investors can expect to receive from the Receiver's Plan. And there is reason to believe the Receiver has not been forthcoming. For example, the Receiver states the four partnerships that own the LV Kade property "are projected to be \$99,279 behind on their operating expenses by the end of 2016. Accordingly, if the property is not sold, property taxes will go unpaid and penalties and interest will accrue on the past due amounts."<sup>46</sup> This seems to imply the penalties will arise in the future. We checked this statement. The Receiver has not paid the taxes on this property since 2013.<sup>47</sup> The outstanding balance at this time is \$102,196.28, including \$23,295.36 for penalties and interest currently running at the 22%.<sup>48</sup> Since the Receiver has attributed the property a value of \$8.26 million, he could easily have obtained loans at a lower interest rate if necessary to keep the taxes current. The Receiver's mismanagement runs deeper on the same property. Investors' counsel learned on April 8, 2016, that Clark County was going to deed the property in June.<sup>49</sup> That process was stopped when Investors' counsel sent a

<sup>45</sup> Aguirre Decl. ¶ 22, Ex. 15.

<sup>46</sup> Dkt. No. 1181, p. 5, ll. 19-25.

<sup>47</sup> Aguirre Dec., ¶¶ 24-25, Ex. 17.

<sup>48</sup> *Id.*, ¶ 24-26, Exs. 17 and 18.

<sup>49</sup> *Id.*, ¶¶ 23.

1 fax to Clark County informing them the property could not be deeded because of this  
2 Court's outstanding order.<sup>50</sup>

### 3 **VI. The Receiver's Heroic Efforts to Keep Secret His Use of Western Cash**

4 As demonstrated above, the Reports, despite their huge gaps, establish the  
5 Receiver has spent approximately \$16.4 million of Westerns cash and about \$2.38  
6 million of the GPs cash, a ratio of almost seven to one. Hard facts prove the Receiver has  
7 tenaciously avoided disclosing the sources, amounts, and purposes for the \$16.4 million  
8 in Western cash that went through his hands:

- 9 • Fact 1: He has never disclosed the categories of Western and the GPs receipts and  
10 disbursements even to the Court;
- 11 • Fact 2: He stopped telling the Court in the second quarter of 2014 how much  
12 Western cash was going through his hands;
- 13 • Fact 3: He created revenue-expense statements with phony revenue, thus giving a  
14 false appearance of Western's cash flow;
- 15 • Fact 4: He did not treat loan repayments as revenue in his first five Reports;
- 16 • Fact 5: He failed to disclose in his last five Reports that he received and spent \$9.5  
17 million of Western's cash;
- 18 • Fact 6: His attorney told Investors' counsel Western keeps no books;
- 19 • Fact 7: Confronted with OPADS, the Receiver's counsel admitted he was using  
20 Western's OPADS system, but claimed the accounting records were "irrelevant."

21 A logical inference from these facts is that the Receiver is hiding something related  
22 to his receipt and expenditure of \$16.4 million. But even if he is not, these records must  
23 be released to eliminate any doubts about how he has been using receivership cash.

24 And those doubts exist. And they were heightened by the Receiver's failure to file  
25 any sworn statement to support his distribution plan. And they were further heightened by  
26

---

27  
28 <sup>50</sup> *Id.*, ¶¶ 27-28.

1 the vague conclusions and misleading statements supporting his distribution plan, when  
2 concrete facts should have been presented.

3 One reason these accounting records must be released is to solve the mystery: how  
4 is the Receiver going to pay the outstanding and future fees for his consulting team,  
5 which we calculate to be \$2.1 million? Nothing in his Plan discloses where this money is  
6 going to come from. However, he has repeatedly told investors they were not going to  
7 pay these costs. His website tells investors: “The partners have paid no fees to the  
8 Receiver and his attorneys. The Receiver and his counsel are paid from the assets of  
9 Western.”<sup>51</sup> His Liquidation Motion, also on his website, tells investors the Court is  
10 protecting them: “[D]espite all the motions, reports, recommendations, and Court orders  
11 telling them otherwise, some investors still believe ... the sale proceeds will be used to  
12 pay fees and costs of the receivership.” And to this, he adds: “The Court reviews all fees  
13 and costs of the receivership to ensure all amounts requested are reasonable.”<sup>52</sup>

14 A related question is whether the accelerated payments of the loans have been or  
15 would be used to pay the \$2.1 million. It is clear that was not the Court’s intention, since  
16 the payments by the GPs to Western were only “to ensure that the mortgages for those  
17 GPs’ properties were paid” (Dkt. No. 1003).

18 We have studied the Reports, the fragmentary accounting records the Receiver has  
19 produced, and the Receiver’s other filings, and—to the best of our ability—cannot grasp  
20 how the Receiver intends to pay \$2.1 million to himself and his team.

21 The cash flow between the GPs and Western was not designed to create a cash  
22 cushion. It was supposed to be just enough so Western could pay the mortgages. So, if  
23 the funds were diverted to another purpose, the mortgages would go unpaid and the GPs  
24 would be out of pocket in the sum of the diverted funds. The Receiver’s Fourteenth  
25 Report suggests the possibility. For 2014, the revenue and expense statements indicate

---

26  
27 <sup>51</sup> [http://www.ethreadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-  
28 planning-corp-dba-western-financial-planning-corp/](http://www.ethreadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-planning-corp-dba-western-financial-planning-corp/).

<sup>52</sup> Dkt. No. 1181-1, p. 10, ll. 3-6.

1 the GPs note payments to Western were in the sum of approximately \$1.48 million and  
2 the payments to the mortgage holders \$1.171 million, a difference of \$309,000. In 2015,  
3 the GPs paid \$1.17 million to Western, but Western only paid \$769,000 on mortgages,  
4 which suggests that some mortgages went unpaid. In 2015, the Receiver paid his team  
5 \$465,000. These numbers suggest the possibility that some note payments by the GPs to  
6 Western were used to pay receivership expenses or that some mortgages went unpaid so  
7 the receivership fees could be paid. To the extent the GP payments to Western were used  
8 to pay the costs of the receivership rather than the mortgages, the GPs and their investors  
9 are paying the costs of the receivership. And the fact the investors are losing \$4.8 million  
10 in cash while the Receiver's team is making fees of \$3.17 million also suggests a linkage  
11 between the two.

12 But the fees of the Receiver's team are just part of the dark cloud hanging over this  
13 case. \$19 million have gone through the Receiver's hands. There is no information how  
14 he spent most of these funds and little information about the rest. The gaps and  
15 irregularities in his accounting defy explanation in the record before this Court. We  
16 believe an accounting would best resolve these questions. It would be better for the  
17 Receiver, for investors, for the SEC, for justice itself, and the appearance of justice.

18  
19 Dated: April 21, 2016

Respectfully submitted,

20  
21 By: /s/ Gary J. Aguirre  
22 GARY J. AGUIRRE  
23 Aguirre Law, A.P.C.  
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25 Attorney for Investors  
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8 Attorney for Investors Susan Graham et al.

9  
10  
11  
12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**  
14

15 SECURITIES AND EXCHANGE  
16 COMMISSION,

17 Plaintiff,

18 v.

19 LOUIS V. SCHOOLER and FIRST  
20 FINANCIAL PLANNING  
21 CORPORATION d/b/a WESTERN  
22 FINANCIAL PLANNING  
23 CORPORATION,

24 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 BY AN  
INDEPENDENT ACCOUNTANT**

Date: June 3, 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 191 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. I state below a few well-established principles of accountancy. I have  
8 studied accounting at Georgetown University Law Center as part of my LL.M. program  
9 focused in part on securities regulation. In particular, my professor was David M.  
10 Estabrook, currently Associate Chief Accountant at the SEC's Division of Enforcement  
11 in Washington, DC. While staff attorney at the SEC in 2004 and 2005, I worked on  
12 accounting matters with accountants in the SEC Division of Enforcement. Since leaving  
13 the SEC in 2005, my cases have required that I continue to familiarize myself with  
14 accounting principles. The accounting principles discussed below are very fundamental  
15 principles of accounting.

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

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

21 7. All statements of receipts and disbursements, audited or unaudited,  
22 and balance sheets, audited or unaudited, relating to the 87 partnerships,  
23 consolidated or separate, or Western from the inception of the receivership  
24 to the present.

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



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

4           6.     No such documents exist.

5           7.     No such statements exist. However, the Receiver will provide the tax  
6 returns (not including investor K-1s) for the partnerships in which your  
7 clients have an interest from inception of the receivership. Note, the  
8 receipts and disbursements for every month from the Receiver's  
9 appointment up to and including December 2015 have been provided in the  
10 Receiver's fourteen interim reports, which are available from the  
11 Receiver's website. There is also substantial information and projections  
12 regarding receipts and disbursements included in the partnership  
information packets, which are available from the Receiver's website.

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

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

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

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

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

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

1 Since I do not know the exact way in which E3 Advisors maintained the  
2 accounting records of its receivership, I cannot define the records sought  
3 more tightly. However, to avoid any unnecessary inconvenience or expense,  
4 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.

5 Mr. Fates replied the next day by email:

6 With regard to your remaining requests, we understand your reference to  
7 “acceleration of loans” to mean the GP payments to Western referenced on  
8 Exhibit B to the attached Ex Parte Application. The amounts these GPs paid  
9 Western were used to pay the underlying mortgages on the applicable  
10 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.

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

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

15 You did not respond to my question whether you would produce the  
16 following records:

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

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

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

26 Further, with regard to your enumerated requests below (1 and 2) -- which  
27 you had said “boils down to this: what did the Receiver do with the funds  
28 generated by the acceleration of the loans owed by the partnerships to  
Western?” -- I stated in an email to you on Friday February 26<sup>th</sup>:

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

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

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

11 Although we have not heard from you regarding my 2/26/16 attempt to  
12 clarify your request for financial statements, which I then repeated in my  
13 3/1/16 email below, the Receiver has nonetheless gathered the available  
14 2012 and 2013 financial statements for the GPs and we will provide them to  
15 you today via Dropbox. These statements were prepared by Louise Cohen,  
16 an independent contractor hired by the GPs prior to the Receiver's  
17 appointment to prepare financial statements as necessary for federal and  
18 state tax returns.

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

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

26 10. By my letter of March 14, 2016, I requested one more time, among other  
27 things:

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

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

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

The Receiver has provided you with the 2012 and 2013 financial statements for all of the GPs, which were prepared by Louise Cohen, an independent 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.

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

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

I take your response below to be a refusal by the Receiver to open his books of account for an inspection by those whose assets he has been entrusted to protect, the investors and partners in the 87 partnerships.  
As you know, the records you refer to below display only conclusions, not individual transactions.

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

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

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

*You have now asked for individual transactions, which was not part of your prior request for "ledgers, journals, and other booking and accounting*

1        *records". Individual transaction information would be reflected only on the*  
 2        *bank statements. ... If you are now requesting the over 3,500 bank*  
 3        *statements for all of the GPs since the inception of the receivership, please*  
       *advise accordingly.*

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

6        14. By my letter of March 17, 2016, I responded to Mr. Fates' to provide the  
 7        3,500 bank statements:

8        In view of your statement that the only records relating to individual  
 9        transactions are bank statements which have been posted to spreadsheets, I  
 10        am requesting you to produce those records—the bank statements and the  
 11        spreadsheets—from the date of Mr. Hebrank's appointment to the present. I  
 12        am assuming these records are maintained electronically. Accordingly, I am  
 13        requesting that you provide these records electronically by making them  
       available to me in Dropbox as soon as possible. Kindly advise me when you  
       expect to place them in Dropbox.

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

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

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

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

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

3 17. On March 24, 2016, David R. Zaro, co-counsel to the Receiver, responded to  
4 my letter with a new concession: "The Receiver did not produce the OPADS software or  
5 records because these are nor relevant to the requests that you have made and the  
6 information contained in OPADS is not relevant to any pending motion." A true and  
7 correct copy of Mr. Zaro's letter of March 24, 2016, is attached hereto and incorporated  
8 by reference as Exhibit 13.

9 18. The bank statements produced by the Receiver are largely useless in  
10 ascertaining the financial transactions in which the Receiver has engaged or  
11 corroborating his financial projections and financial statements in his filings, including  
12 his February 4, 2016, liquidation motion proposing the sale of all properties, dissolution  
13 of the GPs, and distribution of the proceeds to investors (Dkt. No. 1181). These  
14 representations were made to investors through the E3 Advisors website for this matter.

15 19. On April 6, 2016, the Receiver's counsel provided me with the records kept  
16 by the current GP administrator, Lincoln Property Group ("Lincoln"). The records go  
17 from March 2015 to February 2016, except for the month of May 2015. I found that the  
18 Lincoln records could not be reconciled with the Receiver's Fourteenth Interim Report  
19 (Receiver's 14<sup>th</sup> Report") and noted the following inconsistencies:

- 20 A. Clearwater Bridge Partners shows total disbursements for December 2015 of  
21 \$1,171 in Lincoln's records, but \$4,048 in the Receiver's 14<sup>th</sup> Report;
- 22 B. Lyons Valley Partners shows disbursements for December 2015 of \$1,576 in  
23 the Receiver's 14<sup>th</sup> Report, but only \$118 in the Lincoln records. Further, the  
24 beginning balance for Lyons Valley Partners in December 2015 is different  
25 in each document;
- 26 C. Honey Springs Partners shows an ending balance for December 2015 of  
27 \$8,365 in the Receiver's 14<sup>th</sup> Report, but the Lincoln records show an ending  
28 balance of \$4,503.04.



20. A true and correct copy of the Receiver's Forensic Accounting Report: Part One (Dkt. No. 182) ("Forensic Report") Report, without exhibits, is attached hereto and incorporated by reference as Exhibit 14.

21. The most frequently used accounting reference book for both accountants and graduate programs is Intermediate accounting by Donald E. Kieso, Jerry J. Weygandt and Terry D. Warfield, 11<sup>th</sup> Ed. ("Intermediate Accounting"). Intermediate Accounting has two sections dealing with whether note payments should be treated as revenue. According to Intermediate Accounting the underlying concepts relating to revenue are the following: "Revenues are inflows of assets and/or settlements of liabilities from delivering or producing goods, rendering services or other earning activities that constitute an enterprise's ongoing major or central operations during the period." Page 904. Further, Intermediate Accounting at 681 addresses the question how to treat a repayment of debt under standard accounting principles. It states there: "How is the payment of debt—often referred to as extinguishment of debt—recorded? If the bonds (or any other form of debt security) are held to maturity, the answer is straightforward: no gain or loss is computed." Accordingly the repayment of notes described in the revenue and expense statements included in Interim Reports Eight through Fourteen does not appear to be a gain or revenue.

22. Attached hereto and incorporated by reference as Exhibit 15 is a true and correct copy of the SEC's Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities And Exchange Commission ("Instructions"). Exhibit A to the instructions is the Standardized Fund Accounting Report ("SFAR").

23. On April 8, 2016, my assistant and I contacted the Clark County Treasurer's office to inquire about the tax payment status of the Las Vegas properties (Las Vegas 1, 2, and LV Kade). During that call we were informed the properties are delinquent in their tax payments and the county had scheduled at least one of them to be deeded in June. The Clark County staff person we spoke with, Jamie Burke, was not aware the properties are involved in litigation or that the Court had issued an injunction restraining the transfer of



1 the property. I provided the Treasurer Office with a copy of the preliminary injunction  
2 via fax on April 8. A true and correct copy of said fax (without enclosures) is attached  
3 hereto and incorporated by reference as Exhibit 16.

4 24. On April 14, 1016, the Clark County Treasurer Office provided me with the  
5 Real Property and Special Tax Statement for Fiscal Year 2015-2016 for the three Las  
6 Vegas properties subject to the receivership. A true and correct copy of said statements  
7 are attached hereto and incorporated by reference as Exhibit 17.

8 25. According to Exhibit 17 hereto, the GPs owning the LV Kade property owe  
9 \$102,196.28 in taxes, of which \$23,295.36 are for interest and penalties.

10 26. Attached hereto and incorporated by reference as Exhibit 18 is a true and  
11 correct copy of the email from the Clark County Treasurer's Office explaining how the  
12 penalties and interest are applied when taxes are not paid on real property.

13 27. On April 14, 2016, the Clark County Treasurer Office advised my office  
14 that, due to my fax of April 8 to the Treasurer's Office, the Las Vegas District Attorney  
15 had contacted Ted Fates, attorney for the Receiver, and had decided not to deed the  
16 properties and revisit the situation of the Las Vegas properties in a few months.

17 28. I spoke with Shannon Wittenberger, Deputy District Attorney for Clark  
18 County, Nevada, who is handling the tax issues relating to Las Vegas 1 property. I  
19 understand from her that no action to transfer the property will be taken while the  
20 injunction in this matter is in force.

21 29. Attached hereto and incorporated by reference as Exhibit 19 is Exhibit A to  
22 the Receiver's Third Interim Report.

23 Executed this 21<sup>st</sup> day of April 2016, at San Diego, California.

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

26 /s/ Gary J. Aguirre  
27 GARY J. AGUIRRE  
28

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8 Attorney for Investors Susan Graham *et al.*

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

**PROOF OF SERVICE**

Date: June 3, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, Suite 800, San Diego, California 92101.

On April 21, 2016, I served the within document(s) described as:

1. **INVESTORS' NOTICE OF MOTION AND MOTION FOR AN ACCOUNTING OR, IN THE ALTERNATIVE, AN AUDIT OF THE RECEIVERSHIP BY AN INDEPENDENT ACCOUNTANT;**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF INVESTORS' MOTION FOR AN ACCOUNTING OR, IN THE ALTERNATIVE, AN AUDIT OF THE RECEIVERSHIP BY AN INDEPENDENT ACCOUNTANT;**
3. **DECLARATION OF GARY J. AGUIRRE IN SUPPORT OF INVESTORS' MOTION FOR AN ACCOUNTING OR, IN THE ALTERNATIVE, AN AUDIT OF THE RECEIVERSHIP BY AN INDEPENDENT ACCOUNTANT AND EXHIBITS THERETO.**

On the interested parties in this action **BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**: the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On April 21, 2016, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

- Lynn M Dean - deanl@sec.gov;
- Philip H. Dyson - phildysonlaw@gmail.com;
- Edward G. Fates - tfates@allenmatkins.com;
- Eric Hougen - eric@hougenlaw.com;
- Sara D. Kalin - kalins@sec.gov;
- John W. Berry - berryj@sec.gov;
- Tim Dillon - tdillon@dghmalaw.com.

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

Executed on April 21, 2016, at San Diego, California.

/s/ Gary J. Aguirre  
GARY J. AGUIRRE

## **Attachment 1**

The investors filing this opposition to Receiver's Motion for (A) Authority to Conduct Orderly Sale of General Partnership Properties; (B) Approval of Plan Of Distributing Receivership Assets; and (C) Approval of Procedures for the Administration of Investor Claims are: Alfred L. Pipkin, Alfred L. Pipkin, IRA, Allert Boersma, Arthur V. and Kristie L. Rocco Living Trust, Arthur V. Rocco, Baldwin Family Survivors' Trust, Barbara Humphreys, IRA, Beverly & Mark Bancroft, Beverly A. Bancroft, IRA, Bruce A. Morey IRA, Bruce A. Morey, Bruce R. Hart IRA for Bruce R. Hart and Dixie L. Hart, Carol D. Summers, Carol Jonson, Catherine E. Wertz IRA, Catherine E. Wertz, Cathy Totman, IRA, Charles Bojarski, Chris Nowacki, IRA, Cindy Dufresne, Craig Lamb, Curt & Janean Johnson Family Trust, Curt & Janean Johnson, jointly, Curt Johnson, Curt Johnson, Roth IRA, Cynthia J. Clarke, D & E Macy Family Revocable Living Trust, D.F. Macy IRA, Daniel Burns, Daniel Knapp, Darla Berkel IRA, Darla Berkel, Daryl Dick, Daryl R. Mabley, David and Sandra Jones Trust, David Fife IRA, David Haack IRA, David Haack; David Karp IRA, David Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional IRA, Debra Askeland, Deidre Parkinen, Dennis Gilman, Dennis Gilman IRA, Diane Bojarski, Diane Gilman, Donna M. and Richard A. Kopenski Family Trust, Donna M. Kopenski, IRA Roth, Douglas G. Clarke, Douglas Sahlin IRA, Eben B. Rosenberger, Edith Sahlin IRA, Edward Takacs, Elizabeth Lamb, Elizabeth Q. Mabley, Eric W. Norling, Eric W. Norling, IRA, Gary Hardenburg, Gary Hardenburg, Roth IRA, Gene Fantano, George Klinke, IRA, George Trezek, Gerald Zevin, Gerald Zevin, IRA, Gwen Tuohy, Gwenmarie Hilleary, Henrik Jonson, Henrik Jonson, IRA, IDAC Family Group LLC, Iris Bernstein IRA, James J. Coyne Jr. Trust, Janice Marshall, Janice Marshall, IRA, Jason Bruce, Jeffrey Merder, IRA, Jeffrey J. Walz, Jeffrey Larsen, Jeffrey Merder, Jennifer Berta, Jim Minner, Joan Trezek, John Jenkins, John and Mary Jenkins Trust, John and Mary Jenkins Trustees, John Lukens, John Lukens,

## Attachment 1

IRA, John R. Oberman, Joy A. de Beyer, Roth IRA, Joy A. de Beyer, Traditional IRA, Joy de Beyer, Juanita Bass IRA, Juanita Bass, Judith Glickman Zevin, IRA, Judith Glickman Zevin, Judy Froning, Judy Knapp, Karen Coyne, Karen J. Coyne IRA, Karen Wilhoite, Karie J. Wright, Kimberly Dankworth, Kirsh Family Trust UTD, Kristie L. Rocco, Lawrence Berkel, Lawrence Berkel, IRA, Lea Leccese, Leo Dufresne, Leo T. Dufresne Jr. IRA, Linda Baldwin IRA, Linda Clifton, Lisa A. Walz, Lloyd Logan and Ida Logan, jointly, Lloyd Logan, IRA, Loretta J. Diehl, Lynda Igawa, Marc McBride, Marcia McRae, Marilyn L. Duncan, Mark Clifton, Mary Grant, Mary J. Jenkins, IRA, Mathew Berta, Mealey Family Trust, Michael R. Wertz, Michael R. Wertz, IRA, Mildred Mealey, beneficiary of Duane Mealey IRA, Minner Trust, Monica Takacs, Monique Minner, Neil Ormonde, IRA, Nevada Ormonde, IRA, Nick Ruddick, Paul Leccese, Paul R. Sarraffe, IRA, Perryman Family Trust, Polly Yue, Prentiss Family Trust, Kenneth and Gail Prentiss Trustees, Ralph Brenner, Randall S. Ingermanson IRA, Rebecca Merder, Reeta Mohleji, Regis T. Duncan, IRA, Regis T. Duncan, Renee Norling, Richard A. Kopenski, IRA Roth, Robert Indihar, Robert Churchill Family Trust, Robert Churchill IRA, Robert H. Humphreys, Robert Indihar IRA, Robert S. Weschler, Robert Tuohy, Roderick C. Grant, Roger Hort, Roger Moucheron, Ronald Askeland, Ronald Parkinen, Ronald Scott, Ronald Scott, IRA, Salli Sammut Trust, Salli Sue Sammut Trustee, Salli Sue Sammut, IRA, Shirley Moucheron, Stephen Dankworth, Stephen Hogan, Stephen Yue, Steve P. White, IRA, Steve P. White, SEP IRA, Susan Burns, Susan Graham, Tamara and Chris Nowacki, jointly, Tamara Nowacki, IRA, Terry Adkinson, The Knowledge Team Profit Sharing Plan, The Ormonde Family Trust, Thomas H. Panzer, Roth IRA, Thomas Herman Panzer Trust, Thomas H Panzer, Trustee, Trisha Bruce, Val Indihar, W.C. Wilhoite, W.C. Wilhoite, Roth IRA, William c. Phillips, William L. Summers, IRA, William L. Summers, William Loeber, William Nighswonger IRA, William

## **Attachment 1**

R. Nighswonger, William R. Diehl, William R. Rattan Rev. Trust, and William V.  
and Carol J. Dascomb Trust,



# Exhibit 19

# EXHIBIT A

# EXHIBIT A

## SUMMARY OF RECEIPTS AND DISBURSEMENTS FOR RECEIVERSHIP

Bank Name	9/5/12 Balance	9/5/12 to 12/31/12 Deposits	9/5/12 to 12/31/12 Disbursements	12/31/12 Balance
<b>GP BANK ACCOUNTS:</b>				
ABL Partners	\$31,061.67	\$0.00	\$1,051.89	\$30,009.78
Antelope Springs Partners	\$153.79	\$7,222.22	\$7,052.02	\$323.99
Big Ranch Partners	\$328.38	\$2,872.95	\$468.54	\$2,732.79
BLA Partners	\$8,712.14	\$16,819.64	\$300.00	\$25,231.78
Borderland Partners	\$18,558.81	\$5,520.23	\$300.00	\$23,779.04
Bratton View Partners	\$5,748.99	\$491.59	\$2,001.52	\$4,239.06
Cactus Ridge Partners	\$76,254.74	\$4,493.74	\$8,346.20	\$72,402.28
Carson Valley Partners	\$10,712.17	\$0.00	\$460.00	\$10,252.17
Checkered Flag Partners	\$2,075.53	\$0.00	\$300.00	\$1,775.53
Comstock Partners	\$48,995.97	\$5,485.44	\$8,580.60	\$45,900.81
Crystal Clearwater Partners	\$100,599.02	\$4,035.40	\$3,217.70	\$101,416.72
Dayton View Partners	\$46,921.48	\$0.00	\$300.00	\$46,621.48
Desert View Partners	\$84,310.10	\$7,886.76	\$13,457.42	\$78,739.44
Eagle View Partners	\$280,797.59	\$20,476.89	\$15,831.38	\$285,443.10
F-86 Partners	\$66,066.00	\$0.00	\$0.00	\$66,066.00
Fairway Partners	\$54,128.27	\$0.00	\$300.00	\$53,828.27
Falcon Heights Partners	\$291,668.22	\$22,465.18	\$14,146.50	\$299,986.90
Free Trade Partners	\$5,596.27	\$178.64	\$637.33	\$5,137.58
Frontage 177 Partners	\$71,681.90	\$6,049.67	\$4,013.05	\$73,718.52
Galena Ranch Partners	\$127,474.26	\$4,568.80	\$5,898.08	\$126,144.98
Gila View Partners	\$40,074.68	\$7,813.24	\$12,076.20	\$35,811.72
Gold Ridge Partners	\$193,546.84	\$0.00	\$11,972.37	\$181,574.47
Grand View Partners	\$221,937.45	\$0.00	\$4,147.49	\$217,789.96
Green View Partners	\$57,551.85	\$0.00	\$300.00	\$57,251.85
Heavenly View Partners	\$8,807.16	\$0.00	\$460.00	\$8,347.16
Hidden Hills Partners	\$139.09	\$5,718.97	\$1,200.00	\$4,658.06
High Desert Partners	\$96,478.03	\$7,765.44	\$1,200.00	\$103,043.47
Highway 50 Partners	\$92,827.82	\$7,793.11	\$10,012.53	\$90,608.40
Hollywood Partners	\$1,601.00	\$163.23	\$300.00	\$1,464.23
Honey Springs Partners	\$17,517.71	\$630.92	\$6,616.71	\$11,531.92
Horizon Partners	\$10,339.36	\$7,468.19	\$2,058.79	\$15,748.76
International Partners	\$6,998.84	\$3,772.84	\$466.00	\$10,305.68
Jamul Meadows Partners	\$10,718.39	\$0.00	\$1,450.00	\$9,268.39
Lahontan Partners	\$140,412.54	\$8,848.51	\$11,896.06	\$137,364.99
Las Vegas Partners	\$28,315.49	\$0.00	\$0.00	\$28,315.49
Lyons Valley Partners	\$87.52	\$4,958.41	\$600.00	\$4,445.93
Mesa View Partners	\$120,135.99	\$9,935.36	\$13,831.34	\$116,240.01
Mex-Tec Partners	\$45,882.63	\$0.00	\$1,051.89	\$44,830.74
Mohawk Mountain Partners	\$94,156.83	\$11,829.16	\$16,768.87	\$89,217.12
Mountain View Partners	\$64,603.89	\$3,559.41	\$7,816.88	\$60,346.42
Nevada View Partners	\$56,936.78	\$13,730.61	\$18,759.00	\$51,908.39
Night Hawk Partners	\$323,872.30	\$20,027.68	\$10,769.38	\$333,130.60
North Springs Partners	\$90,735.92	\$5,359.16	\$7,606.44	\$88,488.64
Ocotillo View Partners	\$85,340.90	\$2,481.39	\$5,556.40	\$82,265.89

Bank Name	9/5/12 Balance	9/5/12 to 12/31/12 Deposits	9/5/12 to 12/31/12 Disbursements	12/31/12 Balance
Orange Vista Partners	\$110,666.97	\$5,453.96	\$6,667.36	\$109,453.57
Osprey Partners	\$346,789.05	\$16,031.10	\$8,769.24	\$354,050.91
P-39 Aircobra Partners	\$155,585.61	\$8,307.56	\$1,200.00	\$162,693.17
P-40 Warhawk Partners	\$179,045.90	\$6,188.37	\$5,326.00	\$179,908.27
Painted Desert Partners	\$40,638.53	\$5,142.50	\$10,672.88	\$35,108.15
Par Four Partners	\$56,221.07	\$0.00	\$300.00	\$55,921.07
Park Vegas Partners	\$4,117.50	\$200.00	\$1,150.00	\$3,167.50
Pecos Partners	\$162,113.67	\$4,349.44	\$6,824.70	\$159,638.41
Pine View Partners	\$14,226.90	\$0.00	\$460.00	\$13,766.90
Production Partners	\$16,705.11	\$2,327.02	\$493.50	\$18,538.63
Prosperity Partners	\$578.77	\$4,800.09	\$300.00	\$5,078.86
Pueblo Partners	\$126,914.26	\$7,158.42	\$8,781.48	\$125,291.20
Pyramid Highway 177 Partners	\$49,658.21	\$1,556.80	\$300.00	\$50,915.01
Rail Road Partners	\$128,717.47	\$3,942.62	\$5,959.06	\$126,701.03
Rainbow Partners	\$24,770.53	\$10,697.07	\$2,058.79	\$33,408.81
Rawhide Partners	\$92,143.10	\$6,348.36	\$7,909.08	\$90,582.38
Redfield Heights Partners	\$128,970.04	\$6,595.08	\$7,651.28	\$127,913.84
Reno Partners	\$295.94	\$0.00	\$0.00	\$295.94
Reno View Partners	\$408.82	\$0.00	\$0.00	\$408.82
Reno Vista Partners	\$592.23	\$0.00	\$0.00	\$592.23
Road Runner Partners	\$126,321.22	\$2,475.32	\$5,746.06	\$123,050.48
Rolling Hills Partners	\$223,967.07	\$203.73	\$4,064.39	\$220,106.41
Rose Vista Partners	\$108,744.15	\$7,724.52	\$10,952.16	\$105,516.51
Santa Fe View Partners	\$97,343.47	\$12,147.48	\$12,228.86	\$97,262.09
Sierra View Partners	\$21,736.37	\$0.00	\$460.00	\$21,276.37
Silver City Partners	\$39,560.42	\$9,616.84	\$11,491.64	\$37,685.62
Silver State Partners	\$11,179.64	\$3,372.62	\$180.00	\$14,372.26
Sky View Partners	\$235,055.70	\$0.00	\$4,147.50	\$230,908.20
Snow Bird Partners	\$56,369.95	\$8,734.96	\$11,623.72	\$53,481.19
Sonora View Partners	\$116,223.73	\$6,201.24	\$7,896.10	\$114,528.87
Spanish Springs View Partners	\$919.17	\$6,776.72	\$3,060.54	\$4,635.35
Spruce Heights Partners	\$152,527.43	\$1,610.16	\$17,889.66	\$136,247.93
Steamboat Partners	\$103,241.31	\$3,011.64	\$6,044.52	\$100,208.43
Storey County Partners	\$49,437.22	\$1,610.17	\$2,811.44	\$48,235.95
SunTec Partners	\$14,023.01	\$625.00	\$787.34	\$13,860.67
Tecate South Partners	\$1,817.05	\$160.17	\$450.00	\$1,527.22
Twin Plant Partners	\$5,336.42	\$11,337.16	\$1,000.00	\$15,673.58
Valley Vista Partners	\$11,241.18	\$500.72	\$2,573.52	\$9,168.38
Via 188 Partners	\$383.57	\$5,163.76	\$937.33	\$4,610.00
Victory Lap Partners	\$12,312.75	\$2,651.91	\$300.00	\$14,664.66
Vista Del Sur Partners	\$129,279.84	\$8,299.98	\$12,962.42	\$124,617.40
Vista Tecate Partners	\$2,225.99	\$1,259.36	\$450.00	\$3,035.35
Wild Horse Partners	\$1,144.95	\$6,842.83	\$8,515.74	(\$527.96)
Clearwater Bridge, LLC	\$3,419.36	\$2,017.70	\$6,005.98	(\$568.92)
Eagle View Partners, LLC	\$18,536.26	\$15,528.00	\$23,291.28	\$10,772.98
F-86, LLC	\$500.00	\$0.00	\$0.00	\$500.00
Falcon Heights Partners, LLC	\$18,094.51	\$13,843.12	\$27,686.24	\$4,251.39
Frontage 177, LLC	\$2,802.23	\$3,713.05	\$6,790.28	(\$275.00)

Bank Name	9/5/12 Balance	9/5/12 to 12/31/12 Deposits	9/5/12 to 12/31/12 Disbursements	12/31/12 Balance
High Desert Shadow, LLC	\$9,488.00	\$0.00	\$8,432.89	\$1,055.11
Night Hawk Partners, LLC	\$16,324.04	\$10,466.00	\$20,935.16	\$5,854.88
Osprey Pescador, LLC	\$18,233.82	\$8,465.86	\$17,381.72	\$9,317.96
P-39 Aircobra, LLC	\$19,551.53	\$0.00	\$8,547.20	\$11,004.33
P-40 Warhawk, LLC	\$5,581.59	\$4,126.00	\$6,682.37	\$3,025.22
Pueblo Partners, LLC	\$6,146.52	\$8,481.48	\$14,545.06	\$82.94
Pyramid Highway 177, LLC	\$10,258.67	\$0.00	\$3,462.92	\$6,795.75
Santa Fe View, LLC	\$11,109.82	\$11,928.86	\$19,130.08	\$3,908.60
The Pecos Partnership, LLC	\$4,480.72	\$6,524.70	\$7,928.40	\$3,077.02

<b>Total GP Bank Accounts</b>	\$6,444,942.67	\$504,942.23	\$605,794.47	\$6,344,090.43
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Fernley I, LLC	\$102.86	\$11,506.56	\$11,600.00	\$9.42
P51 LLC	\$2,664.22	\$15,685.57	\$17,342.76	\$1,007.03
Santa Fe Venture	\$10,850.86	\$56,988.73	\$64,060.64	\$3,778.95
SFV II, LLC	\$4,084.04	\$9,703.20	\$12,416.68	\$1,370.56
WFPC - Corp	\$177,359.03	\$550,804.75	\$646,525.01	\$81,638.77
WFPC - Business	(\$118,928.69)	\$539,386.83	\$502,160.19	(\$81,702.05)
WFPC - Payroll	\$0.00	\$111,369.52	\$111,369.52	\$0.00
WFPC - MMKT	\$847.27	\$0.13	\$20.00	\$827.40
WFPC - Special	\$222.88	\$1,741.34	\$0.00	\$1,964.22
WFPC - FFP	\$1,598.24	\$9,087.05	\$6,000.00	\$4,685.29
WFPC - Las Vegas Prop Tax	\$1,771.53	\$0.00	\$0.00	\$1,771.53
WSCC, LLC	\$45,334.51	\$732,156.09	\$721,752.82	\$55,737.78
First Financial Planning	\$1,450.97	\$8,593.36	\$6,000.00	\$4,044.33
<b>Total WFPC Bank Accounts</b>	\$127,357.72	\$2,047,023.13	\$2,099,247.62	\$75,133.23
<b>Total All Bank Accounts</b>	\$6,572,300.39	\$4,066,854.13	\$4,169,552.48	\$6,469,602.04

*Note: The beginning balances listed above differ slightly from those listed in the Receiver's Initial Report due to 1) inclusion/exclusion of certain bank accounts and 2) timing differences on cash vs. book balances.*

*This schedule lists the book balances for each account. The balances in the Initial Report are cash balances.*

# Exhibit 18

**From:** Linda Howard  
**To:** "Maria Pomares"  
**Subject:** RE: Properties subject to court injunction and restraining order  
**Date:** Thursday, April 14, 2016 3:36:48 PM

---

Maria,

Her name is Shannon Wittenberger and her email address is  
[Shannon.Wittenberger@clarkcountyda.com](mailto:Shannon.Wittenberger@clarkcountyda.com)

**Penalties NRS 361.483**

7. If any person charged with taxes which are a lien on real property fails to pay:

(a) Any one installment of the taxes on or within 10 days following the day the taxes become due, there must be added thereto a penalty of 4 percent.

(b) Any two installments of the taxes, together with accumulated penalties, on or within 10 days following the day the later installment of taxes becomes due, there must be added thereto a penalty of 5 percent of the two installments due.

(c) Any three installments of the taxes, together with accumulated penalties, on or within 10 days following the day the latest installment of taxes becomes due, there must be added thereto a penalty of 6 percent of the three installments due.

(d) The full amount of the taxes, together with accumulated penalties, on or within 10 days following the first Monday of March, there must be added thereto a penalty of 7 percent of the full amount of the taxes.

**Interest NRS 361.570**

1. Pursuant to the notice given as provided in NRS 361.5648 and 361.565 and at the time stated in the notice, the tax receiver shall make out a certificate that describes each property on which delinquent taxes, penalties, interest and costs have not been paid. The certificate authorizes the county treasurer, as trustee for the State and county, to hold each property described in the certificate for the period of 2 years after the first Monday in June of the year the certificate is dated, unless sooner redeemed.

2. (b) The taxes, and the penalties and costs added thereto, on each property, and that, except as otherwise provided in NRS 360.232 and 360.320, interest on the taxes will be added at the rate of 10 percent per annum, assessed monthly, from the date due until paid; and

The reason for the difference in the amounts on parcel number 123-34-601-001 is total tax amount and balance due. We received partial payment for the 12/13 fiscal year so you have total original amount and balance. Hope that makes sense to you.

Linda

Linda Howard  
Office Services Manager  
Clark County Treasurer's Office  
(702) 455-3553  
[howardlc@clarkcountynv.gov](mailto:howardlc@clarkcountynv.gov)



# Exhibit 17

**Clark County Treasurer's Office**

Laura B. Fitzpatrick, Treasurer  
 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220  
 (702) 455-4323  
 www.clarkcountynv.gov/treasurer

**Real Property and Special Tax Statement for Fiscal Year 2015-2016**

HORIZON PARTNERS  
 270 N EL CAMINO REAL #F533  
 ENCINITAS CA 92024-2874

Parcel Number: 138-23-401-001

Tax District: 200 Tax Rate: 3.2782 Tax Cap %: 3.2

Location: UNASSIGNED SITUS

Assessor PT SW4 SW4 SEC 23 20 60  
 Description:

**Assessed Valuation for 2015-2016**

Land	339,570
Building & Improvement	0
Personal Property	0
<b>Assessed Value Subject to Cap</b>	<b>339,570</b>
New Land Value**	0
New Improvement Value**	0
Personal Property Value**	0
Less Exemption	0
<b>Net Assessed Value</b>	<b>339,570</b>
New Construction Supplemental**	0

**\*\*Not Subject to Cap****Payment Installments**

Description	Due Date	Original Amount	Amount Due
Prior Delinquencies	NOW	\$11,779.08	\$1,675.44
Installment 1	8/17/2015	\$3,402.57	\$3,402.57
Installment 2	10/5/2015	\$3,283.89	\$3,283.89
Installment 3	1/4/2016	\$3,144.74	\$3,144.74
Installment 4	3/7/2016	\$2,977.76	\$2,977.76
Costs	3/26/2016	\$4.00	\$4.00

**Summary**

Taxes as Assessed	\$11,131.78
Cap Reduction (if applicable)	\$0.00
<b>Net Taxes</b>	<b>\$11,131.78</b>

**Other Charges**

Prior Year Delinquencies	\$1,675.44
Las Vegas Artesian Basin	\$6.06

<b>Total Annual Charges</b>	<b>\$12,813.28</b>
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PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



Make checks payable to:

Fiscal Year 2015-2016

**Clark County Treasurer's Office**

Parcel Number: 138-23-401-001

Mail to:

Location: UNASSIGNED SITUS

500 S Grand Central Pky

PO Box 551220

Las Vegas NV 89155-1220

**Comment:**

Amount valid through April 29, 2016. Thank you, Linda  
 Howard

Minimum Due: \$14,488.40

To Pay In Full: \$14,488.40

**Enter Payment Amount**

\$

1382340100116100014488404

**Clark County Treasurer's Office**

Laura B. Fitzpatrick, Treasurer  
 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220  
 (702) 455-4323  
[www.clarkcountynv.gov/treasurer](http://www.clarkcountynv.gov/treasurer)

**Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.**

**Parcel Number:** 138-23-401-001

**Distribution of Fiscal Year 2015-2016 Taxes**

Distribution of Tax Dollars	Tax Rate	Taxes as Assessed	Cap Reduction	Net Taxes
COUNTY SCHOOL MAINTENANCE & OPERATION	0.7500	2,546.77	0.00	2,546.77
LAS VEGAS CITY	0.6765	2,297.18	0.00	2,297.18
COUNTY SCHOOL DEBT (BONDS)	0.5534	1,879.17	0.00	1,879.17
CLARK COUNTY GENERAL OPERATING	0.4470	1,517.88	0.00	1,517.88
LVMPD MANPOWER SUPPLEMENT LV	0.2800	950.80	0.00	950.80
STATE OF NEVADA	0.1700	577.27	0.00	577.27
ASSISTANCE TO INDIGENT PERSONS	0.1000	339.57	0.00	339.57
LAS VEGAS CITY FIRE SAFETY	0.0950	322.59	0.00	322.59
LV/CLARK COUNTY LIBRARY	0.0942	319.88	0.00	319.88
CLARK COUNTY CAPITAL	0.0500	169.79	0.00	169.79
CLARK COUNTY FAMILY COURT	0.0192	65.20	0.00	65.20
INDIGENT ACCIDENT FUND	0.0150	50.94	0.00	50.94
CLARK COUNTY DEBT	0.0129	43.80	0.00	43.80
STATE COOPERATIVE EXTENSION	0.0100	33.96	0.00	33.96
LVMPD EMERGENCY 911	0.0050	16.98	0.00	16.98
LAS VEGAS CITY DEBT	0.0000	0.00	0.00	0.00
<b>TAX DISTRIBUTION</b>	<b>3.2782</b>	<b>11,131.78</b>	<b>0.00</b>	<b>11,131.78</b>

**Detail of Amount Due**

Year	Description	Total Tax Amt.	Balance Due
2016	Property Tax Principal	\$11,131.78	\$11,131.78
2016	Las Vegas Artesian Basin	\$6.06	\$6.06
2016	Property Tax Penalty	\$1,671.12	\$1,671.12
2016	MAILING FEE	\$4.00	\$4.00
<b>Total for Fiscal Tax Year 2016:</b>		<b>\$12,812.96</b>	<b>\$12,812.96</b>
2015	Property Tax Principal	\$11,545.23	\$1,441.59
2015	Property Tax Penalty	\$57.66	\$57.66
2015	Property Tax Interest	\$168.19	\$168.19
2015	Advertising Fee	\$4.00	\$4.00


**Clark County Treasurer's Office**

Laura B. Fitzpatrick, Treasurer  
 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220  
 (702) 455-4323  
[www.clarkcountynv.gov/treasurer](http://www.clarkcountynv.gov/treasurer)

**Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.**

2015 MAILING FEE	\$4.00	\$4.00
<b>Total for Fiscal Tax Year 2015:</b>	<b>\$11,779.08</b>	<b>\$1,675.44</b>
<b>Total:</b>	<b>\$24,592.04</b>	<b>\$14,488.40</b>



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## Real Property and Special Tax Statement for Fiscal Year 2015-2016

HOLLYWOOD PARTNERS  
%B SCHULER  
270 N EL CAMINO REAL #F533  
ENCINITAS CA 92024

Parcel Number: 123-34-601-001

Tax District: 125 Tax Rate: 2.7264 Tax Cap %: 3.2

Location: UNASSIGNED SITUS

Assessor PT S2 NE4 SEC 34 19 62  
Description:

### Assessed Valuation for 2015-2016

Land	806,366
Building & Improvement	0
Personal Property	0
<b>Assessed Value Subject to Cap</b>	<b>806,366</b>
New Land Value**	0
New Improvement Value**	0
Personal Property Value**	0
Less Exemption	0
<b>Net Assessed Value</b>	<b>806,366</b>
New Construction Supplemental**	0

**\*\*Not Subject to Cap**

### Payment Installments

Description	Due Date	Original Amount	Amount Due
Prior Delinquencies	NOW	\$109,605.31	\$76,888.26
Installment 1	8/17/2015	\$6,722.91	\$6,722.91
Installment 2	10/5/2015	\$6,485.50	\$6,485.50
Installment 3	1/4/2016	\$6,210.69	\$6,210.69
Installment 4	3/7/2016	\$5,880.92	\$5,880.92
Costs	3/26/2016	\$8.00	\$8.00

### Summary

Taxes as Assessed	\$21,984.76
Cap Reduction (if applicable)	\$0.00
<b>Net Taxes</b>	<b>\$21,984.76</b>

### Other Charges

Prior Year Delinquencies	\$76,888.26
Las Vegas Artesian Basin	\$14.39

**Total Annual Charges** \$98,887.41

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



Make checks payable to:  
**Clark County Treasurer's Office**  
Mail to:  
500 S Grand Central Pky  
PO Box 551220  
Las Vegas NV 89155-1220

Fiscal Year 2015-2016

Parcel Number: 123-34-601-001

Location: UNASSIGNED SITUS



**Comment:** Amount valid through April 29, 2016. Thank you, Linda Howard

**Minimum Due:** \$102,196.28

**To Pay In Full:** \$102,196.28

**Enter Payment Amount**

\$

1233460100116100102196280

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**Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.**

**Parcel Number:** 123-34-601-001

**Distribution of Fiscal Year 2015-2016 Taxes**

Distribution of Tax Dollars	Tax Rate	Taxes as Assessed	Cap Reduction	Net Taxes
COUNTY SCHOOL MAINTENANCE & OPERATION	0.7500	6,047.74	0.00	6,047.74
COUNTY SCHOOL DEBT (BONDS)	0.5534	4,462.43	0.00	4,462.43
CLARK COUNTY GENERAL OPERATING	0.4470	3,604.46	0.00	3,604.46
LVMPD MANPOWER SUPPLEMENT COUNTY	0.2800	2,257.82	0.00	2,257.82
CLARK COUNTY FIRE SERVICE DISTRICT	0.2197	1,771.59	0.00	1,771.59
STATE OF NEVADA	0.1700	1,370.83	0.00	1,370.83
ASSISTANCE TO INDIGENT PERSONS	0.1000	806.37	0.00	806.37
LV/CLARK COUNTY LIBRARY	0.0942	759.59	0.00	759.59
CLARK COUNTY CAPITAL	0.0500	403.18	0.00	403.18
CLARK COUNTY FAMILY COURT	0.0192	154.82	0.00	154.82
INDIGENT ACCIDENT FUND	0.0150	120.95	0.00	120.95
CLARK COUNTY DEBT	0.0129	104.02	0.00	104.02
STATE COOPERATIVE EXTENSION	0.0100	80.64	0.00	80.64
LVMPD EMERGENCY 911	0.0050	40.32	0.00	40.32
<b>TAX DISTRIBUTION</b>	<b>2.7264</b>	<b>21,984.76</b>	<b>0.00</b>	<b>21,984.76</b>

**Detail of Amount Due**

Year	Description	Total Tax Amt.	Balance Due
2016	Property Tax Principal	\$21,984.76	\$21,984.76
2016	Las Vegas Artesian Basin	\$14.39	\$14.39
2016	Property Tax Penalty	\$3,300.87	\$3,300.87
2016	MAILING FEE	\$8.00	\$8.00
<b>Total for Fiscal Tax Year 2016:</b>		<b>\$25,308.02</b>	<b>\$25,308.02</b>
2015	Property Tax Principal	\$24,403.81	\$24,403.81
2015	Las Vegas Artesian Basin	\$16.26	\$16.26
2015	Property Tax Penalty	\$3,664.18	\$3,664.18
2015	Property Tax Interest	\$3,561.74	\$3,561.74
2015	Advertising Fee	\$4.00	\$4.00



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### Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.

2015 MAILING FEE	\$8.00	\$8.00
<b>Total for Fiscal Tax Year 2015:</b>	<b>\$31,657.99</b>	<b>\$31,657.99</b>
2014 Property Tax Principal	\$23,693.02	\$23,693.02
2014 Las Vegas Artesian Basin	\$16.94	\$16.94
2014 Property Tax Penalty	\$3,557.70	\$3,557.70
2014 Property Tax Interest	\$5,829.19	\$5,829.19
2014 Advertising Fee	\$4.00	\$4.00
2014 MAILING FEE	\$2.00	\$2.00
<b>Total for Fiscal Tax Year 2014:</b>	<b>\$33,102.85</b>	<b>\$33,102.85</b>
2013 Property Tax Principal	\$41,462.79	\$8,745.74
2013 Property Tax Penalty	\$612.20	\$612.20
2013 Property Tax Interest	\$2,769.48	\$2,769.48
<b>Total for Fiscal Tax Year 2013:</b>	<b>\$44,844.47</b>	<b>\$12,127.42</b>
<b>Total:</b>	<b>\$134,913.33</b>	<b>\$102,196.28</b>



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**Real Property and Special Tax Statement for Fiscal Year 2015-2016**

SILVER STATE PARTNERS  
 270 N EL CAMINO REAL #F533  
 ENCINITAS CA 92024-2874

Parcel Number: 123-27-701-001

Tax District: 250 Tax Rate: 3.3544 Tax Cap %: 3.2

Location: UNASSIGNED SITUS

Assessor Description: LAND DIVISION 10-85 LOT 1

**Assessed Valuation for 2015-2016**

Land	281,719
Building & Improvement	0
Personal Property	0
<b>Assessed Value Subject to Cap</b>	<b>281,719</b>
New Land Value**	0
New Improvement Value**	0
Personal Property Value**	0
Less Exemption	0
<b>Net Assessed Value</b>	<b>281,719</b>
New Construction Supplemental**	0

**\*\*Not Subject to Cap**

**Payment Installments**

Description	Due Date	Original Amount	Amount Due
Prior Delinquencies	NOW	\$20,976.07	\$14,522.87
Installment 1	8/17/2015	\$2,831.89	\$2,831.89
Installment 2	10/5/2015	\$2,733.10	\$2,733.10
Installment 3	1/4/2016	\$2,617.29	\$2,617.29
Installment 4	3/7/2016	\$2,478.32	\$2,478.32
Costs	3/21/2016	\$13.00	\$13.00

**Summary**

Taxes as Assessed	\$9,449.98
Cap Reduction (if applicable)	\$185.21
<b>Net Taxes</b>	<b>\$9,264.77</b>

**Other Charges**

Prior Year Delinquencies	\$14,522.87
Las Vegas Artesian Basin	\$5.03

**Total Annual Charges** \$23,792.67

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



Make checks payable to:

Fiscal Year 2015-2016

**Clark County Treasurer's Office**

Parcel Number: 123-27-701-001

Mail to:  
 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220

Location: UNASSIGNED SITUS



**Comment:** Amount valid through April 29, 2016. Thank you, Linda Howard

**Minimum Due:** \$25,196.47

**To Pay In Full:** \$25,196.47

**Enter Payment Amount**

\$

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# Clark County Treasurer's Office

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## Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.

Parcel Number: 123-27-701-001

### Distribution of Fiscal Year 2015-2016 Taxes

Distribution of Tax Dollars	Tax Rate	Taxes as Assessed	Cap Reduction	Net Taxes
COUNTY SCHOOL MAINTENANCE & OPERATION	0.7500	2,112.88	41.40	2,071.48
NORTH LAS VEGAS CITY PUBLIC SAFETY	0.7300	2,056.54	40.31	2,016.23
COUNTY SCHOOL DEBT (BONDS)	0.5534	1,559.04	30.56	1,528.48
CLARK COUNTY GENERAL OPERATING	0.4470	1,259.28	24.68	1,234.60
NORTH LV CITY STREET MAINT/FIRE/PARK	0.2350	662.04	12.98	649.06
NORTH LAS VEGAS CITY	0.1937	545.69	10.69	535.00
STATE OF NEVADA	0.1700	478.93	9.39	469.54
ASSISTANCE TO INDIGENT PERSONS	0.1000	281.72	5.52	276.20
NORTH LAS VEGAS CITY LIBRARY	0.0632	178.05	3.49	174.56
CLARK COUNTY CAPITAL	0.0500	140.86	2.76	138.10
CLARK COUNTY FAMILY COURT	0.0192	54.09	1.06	53.03
INDIGENT ACCIDENT FUND	0.0150	42.26	0.83	41.43
CLARK COUNTY DEBT	0.0129	36.34	0.71	35.63
STATE COOPERATIVE EXTENSION	0.0100	28.17	0.55	27.62
NORTH LAS VEGAS EMERGENCY 911	0.0050	14.09	0.28	13.81
NORTH LAS VEGAS CITY DEBT	0.0000	0.00	0.00	0.00
<b>TAX DISTRIBUTION</b>	<b>3.3544</b>	<b>9,449.98</b>	<b>185.21</b>	<b>9,264.77</b>

### Detail of Amount Due

Year	Description	Total Tax Amt.	Balance Due
2016	Property Tax Principal	\$9,264.77	\$9,264.77
2016	Las Vegas Artesian Basin	\$5.03	\$5.03
2016	Property Tax Penalty	\$1,390.80	\$1,390.80
2016	MAILING FEE	\$13.00	\$13.00
<b>Total for Fiscal Tax Year 2016:</b>		<b>\$10,673.60</b>	<b>\$10,673.60</b>
2015	Property Tax Principal	\$8,977.49	\$8,977.49
2015	Las Vegas Artesian Basin	\$4.69	\$4.69
2015	Property Tax Penalty	\$1,347.67	\$1,347.67



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## Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.

2015 Property Tax Interest	\$1,310.04	\$1,310.04
2015 Advertising Fee	\$4.00	\$4.00
2015 MAILING FEE	\$2.00	\$2.00
<b>Total for Fiscal Tax Year 2015:</b>	<b>\$11,645.89</b>	<b>\$11,645.89</b>
2014 Property Tax Principal	\$8,716.01	\$2,262.81
2014 Property Tax Penalty	\$116.49	\$116.49
2014 Property Tax Interest	\$491.68	\$491.68
2014 Advertising Fee	\$4.00	\$4.00
2014 MAILING FEE	\$2.00	\$2.00
<b>Total for Fiscal Tax Year 2014:</b>	<b>\$9,330.18</b>	<b>\$2,876.98</b>
<b>Total:</b>	<b>\$31,649.67</b>	<b>\$25,196.47</b>

**Clark County Treasurer's Office**

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**Real Property and Special Tax Statement for Fiscal Year 2015-2016**

PARK VEGAS PARTNERS  
 207 N EL CAMINO REAL #F533  
 ENCINITAS CA 92024-0000

Parcel Number: 123-27-301-003

Tax District: 254 Tax Rate: 3.3544 Tax Cap %: 3.2

Location: UNASSIGNED SITUS

Assessor LAND DIVISION 130-81 LOT 2 GEOID: PT NE4 SW4  
 Description: SEC 27 19 62

**Assessed Valuation for 2015-2016**

Land	61,289
Building & Improvement	0
Personal Property	0
<b>Assessed Value Subject to Cap</b>	<b>61,289</b>
New Land Value**	0
New Improvement Value**	0
Personal Property Value**	0
Less Exemption	0
<b>Net Assessed Value</b>	<b>61,289</b>
New Construction Supplemental**	0

**\*\*Not Subject to Cap****Payment Installments**

Description	Due Date	Original Amount	Amount Due
Prior Delinquencies	NOW	\$4,824.93	\$4,824.93
Installment 1	8/17/2015	\$567.88	\$567.88
Installment 2	10/5/2015	\$547.96	\$547.96
Installment 3	1/4/2016	\$524.74	\$524.74
Installment 4	3/7/2016	\$496.88	\$496.88
Costs	3/21/2016	\$13.00	\$13.00

**Summary**

Taxes as Assessed	\$2,055.88
Cap Reduction (if applicable)	\$198.39
<b>Net Taxes</b>	<b>\$1,857.49</b>

**Other Charges**

Prior Year Delinquencies	\$4,824.93
Las Vegas Artesian Basin	\$1.09

<b>Total Annual Charges</b>	<b>\$6,683.51</b>
-----------------------------	-------------------

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



Make checks payable to:

Fiscal Year 2015-2016

**Clark County Treasurer's Office**

Parcel Number: 123-27-301-003

Mail to:  
 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220

Location: UNASSIGNED SITUS



**Comment:** Amount valid through April 29, 2016. Thank you, Linda Howard

Minimum Due: \$6,975.39

To Pay In Full: \$6,975.39

**Enter Payment Amount**

\$

1232730100316100006975395



# Clark County Treasurer's Office

Laura B. Fitzpatrick, Treasurer  
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## Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.

Parcel Number: 123-27-301-003

### Distribution of Fiscal Year 2015-2016 Taxes

Distribution of Tax Dollars	Tax Rate	Taxes as Assessed	Cap Reduction	Net Taxes
COUNTY SCHOOL MAINTENANCE & OPERATION	0.7500	459.68	44.35	415.33
NORTH LAS VEGAS CITY PUBLIC SAFETY	0.7300	447.41	43.16	404.25
COUNTY SCHOOL DEBT (BONDS)	0.5534	339.17	32.73	306.44
CLARK COUNTY GENERAL OPERATING	0.4470	273.96	26.44	247.52
NORTH LV CITY STREET MAINT/FIRE/PARK	0.2350	144.03	13.90	130.13
NORTH LAS VEGAS CITY	0.1937	118.72	11.46	107.26
STATE OF NEVADA	0.1700	104.19	10.06	94.13
ASSISTANCE TO INDIGENT PERSONS	0.1000	61.29	5.91	55.38
NORTH LAS VEGAS CITY LIBRARY	0.0632	38.73	3.74	34.99
CLARK COUNTY CAPITAL	0.0500	30.64	2.96	27.68
CLARK COUNTY FAMILY COURT	0.0192	11.77	1.14	10.63
INDIGENT ACCIDENT FUND	0.0150	9.19	0.89	8.30
CLARK COUNTY DEBT	0.0129	7.91	0.76	7.15
STATE COOPERATIVE EXTENSION	0.0100	6.13	0.59	5.54
NORTH LAS VEGAS EMERGENCY 911	0.0050	3.06	0.30	2.76
NORTH LAS VEGAS CITY DEBT	0.0000	0.00	0.00	0.00
<b>TAX DISTRIBUTION</b>	<b>3.3544</b>	<b>2,055.88</b>	<b>198.39</b>	<b>1,857.49</b>

### Detail of Amount Due

Year	Description	Total Tax Amt.	Balance Due
2016	Property Tax Principal	\$1,857.49	\$1,857.49
2016	Las Vegas Artesian Basin	\$1.09	\$1.09
2016	Property Tax Penalty	\$278.88	\$278.88
2016	MAILING FEE	\$13.00	\$13.00
<b>Total for Fiscal Tax Year 2016:</b>		<b>\$2,150.46</b>	<b>\$2,150.46</b>
2015	Property Tax Principal	\$1,799.89	\$1,799.89
2015	Recapture Principal	\$38.40	\$38.40
2015	Las Vegas Artesian Basin	\$1.05	\$1.05



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## Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.

2015 Property Tax Penalty	\$270.22	\$270.22
2015 Property Tax Interest	\$262.68	\$262.68
2015 Advertising Fee	\$4.00	\$4.00
2015 MAILING FEE	\$2.00	\$2.00
<b>Total for Fiscal Tax Year 2015:</b>	<b>\$2,378.24</b>	<b>\$2,378.24</b>
2014 Property Tax Principal	\$1,747.47	\$1,747.47
2014 Las Vegas Artesian Basin	\$1.02	\$1.02
2014 Property Tax Penalty	\$262.32	\$262.32
2014 Property Tax Interest	\$429.88	\$429.88
2014 Advertising Fee	\$4.00	\$4.00
2014 MAILING FEE	\$2.00	\$2.00
<b>Total for Fiscal Tax Year 2014:</b>	<b>\$2,446.69</b>	<b>\$2,446.69</b>
<b>Total:</b>	<b>\$6,975.39</b>	<b>\$6,975.39</b>


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**Real Property and Special Tax Statement for Fiscal Year 2015-2016**

PARK VEGAS PARTNERS  
 270 N EL CAMINO REAL #F533  
 ENCINITAS CA 92024-2874

Parcel Number: 123-27-301-002

Tax District: 254 Tax Rate: 3.3544 Tax Cap %: 3.2

Location: UNASSIGNED SITUS

Assessor LAND DIVISION 130-81 LOT 1 GEOID: PT NE4 SW4  
 Description: SEC 27 19 62

**Assessed Valuation for 2015-2016**

Land	56,999
Building & Improvement	0
Personal Property	0
<b>Assessed Value Subject to Cap</b>	<b>56,999</b>
New Land Value**	0
New Improvement Value**	0
Personal Property Value**	0
Less Exemption	0
<b>Net Assessed Value</b>	<b>56,999</b>
New Construction Supplemental**	0

**\*\*Not Subject to Cap**

**Payment  
Installments**

Description	Due Date	Original Amount	Amount Due
Prior Delinquencies	NOW	\$1,992.86	\$558.88
Installment 1	8/17/2015	\$584.40	\$584.40
Installment 2	10/5/2015	\$564.03	\$564.03
Installment 3	1/4/2016	\$540.13	\$540.13
Installment 4	3/7/2016	\$511.45	\$511.45
Costs	3/26/2016	\$2.00	\$2.00

**Summary**

Taxes as Assessed	\$1,911.97
Cap Reduction (if applicable)	\$0.00
<b>Net Taxes</b>	<b>\$1,911.97</b>

**Other Charges**

Prior Year Delinquencies	\$558.88
Las Vegas Artesian Basin	\$1.02

**Total Annual Charges** \$2,471.87

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 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220

Fiscal Year 2015-2016

Parcel Number: 123-27-301-002

Location: UNASSIGNED SITUS



**Comment:** Amount valid through April 29, 2016. Thank you, Linda Howard

**Minimum Due:** \$2,760.89

**To Pay In Full:** \$2,760.89

**Enter Payment Amount**

\$

1232730100216100002760891



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## Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.

Parcel Number: 123-27-301-002

### Distribution of Fiscal Year 2015-2016 Taxes

Distribution of Tax Dollars	Tax Rate	Taxes as Assessed	Cap Reduction	Net Taxes
COUNTY SCHOOL MAINTENANCE & OPERATION	0.7500	427.50	0.00	427.50
NORTH LAS VEGAS CITY PUBLIC SAFETY	0.7300	416.09	0.00	416.09
COUNTY SCHOOL DEBT (BONDS)	0.5534	315.43	0.00	315.43
CLARK COUNTY GENERAL OPERATING	0.4470	254.79	0.00	254.79
NORTH LV CITY STREET MAINT/FIRE/PARK	0.2350	133.95	0.00	133.95
NORTH LAS VEGAS CITY	0.1937	110.41	0.00	110.41
STATE OF NEVADA	0.1700	96.89	0.00	96.89
ASSISTANCE TO INDIGENT PERSONS	0.1000	57.00	0.00	57.00
NORTH LAS VEGAS CITY LIBRARY	0.0632	36.02	0.00	36.02
CLARK COUNTY CAPITAL	0.0500	28.50	0.00	28.50
CLARK COUNTY FAMILY COURT	0.0192	10.94	0.00	10.94
INDIGENT ACCIDENT FUND	0.0150	8.55	0.00	8.55
CLARK COUNTY DEBT	0.0129	7.35	0.00	7.35
STATE COOPERATIVE EXTENSION	0.0100	5.70	0.00	5.70
NORTH LAS VEGAS EMERGENCY 911	0.0050	2.85	0.00	2.85
NORTH LAS VEGAS CITY DEBT	0.0000	0.00	0.00	0.00
<b>TAX DISTRIBUTION</b>	<b>3.3544</b>	<b>1,911.97</b>	<b>0.00</b>	<b>1,911.97</b>

### Detail of Amount Due

Year	Description	Total Tax Amt.	Balance Due
2016	Property Tax Principal	\$1,911.97	\$1,911.97
2016	Las Vegas Artesian Basin	\$1.02	\$1.02
2016	Property Tax Penalty	\$287.02	\$287.02
2016	MAILING FEE	\$2.00	\$2.00
<b>Total for Fiscal Tax Year 2016:</b>		<b>\$2,202.01</b>	<b>\$2,202.01</b>
2015	Property Tax Principal	\$1,911.97	\$477.99
2015	Property Tax Penalty	\$19.12	\$19.12
2015	Property Tax Interest	\$55.77	\$55.77
2015	Advertising Fee	\$4.00	\$4.00



**Clark County Treasurer's Office**

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 (702) 455-4323  
[www.clarkcountynv.gov/treasurer](http://www.clarkcountynv.gov/treasurer)

**Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.**

2015 MAILING FEE	\$2.00	\$2.00
<b>Total for Fiscal Tax Year 2015:</b>	<b>\$1,992.86</b>	<b>\$558.88</b>
<b>Total:</b>	<b>\$4,194.87</b>	<b>\$2,760.89</b>

**Clark County Treasurer's Office**

Laura B. Fitzpatrick, Treasurer  
 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220  
 (702) 455-4323  
 www.clarkcountynv.gov/treasurer

**Real Property and Special Tax Statement for Fiscal Year 2015-2016**

PRODUCTION PARTNERS  
 270 N EL CAMINO REAL #F533  
 ENCINITAS CA 92024-2874

Parcel Number: 123-27-801-001

Tax District: 250 Tax Rate: 3.3544 Tax Cap %: 3.2

Location: UNASSIGNED SITUS

Assessor LAND DIVISION 65-84 LOT 2 & VAC RD GEOID: ALL  
 Description: SW4 SE4 SEC 27 19 62

**Assessed Valuation for 2015-2016**

Land	389,002
Building & Improvement	0
Personal Property	0
<b>Assessed Value Subject to Cap</b>	<b>389,002</b>
New Land Value**	0
New Improvement Value**	0
Personal Property Value**	0
Less Exemption	0
<b>Net Assessed Value</b>	<b>389,002</b>
New Construction Supplemental**	0

**\*\*Not Subject to Cap****Payment Installments**

Description	Due Date	Original Amount	Amount Due
Installment 1	8/17/2015	\$3,704.94	\$3,704.94
Installment 2	10/5/2015	\$3,575.29	\$3,575.29
Installment 3	1/4/2016	\$3,423.79	\$3,423.79
Installment 4	3/7/2016	\$3,242.00	\$3,242.00
Costs	3/26/2016	\$2.00	\$2.00

**Summary**

Taxes as Assessed	\$13,048.68
Cap Reduction (if applicable)	\$929.06
<b>Net Taxes</b>	<b>\$12,119.62</b>

**Other Charges**

Las Vegas Artesian Basin \$6.94

**Total Annual Charges** \$12,126.56

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



Make checks payable to:

Fiscal Year 2015-2016

**Clark County Treasurer's Office**

Mail to:  
 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220

Parcel Number: 123-27-801-001

Location: UNASSIGNED SITUS



**Comment:** Amount valid through April 29, 2016. Thank you, Linda Howard

**Minimum Due:** \$13,948.02**To Pay In Full:** \$13,948.02**Enter Payment Amount**

\$

1232780100116100013948022



## Clark County Treasurer's Office

Laura B. Fitzpatrick, Treasurer  
 500 S Grand Central Pky  
 PO Box 551220  
 Las Vegas NV 89155-1220  
 (702) 455-4323  
[www.clarkcountynv.gov/treasurer](http://www.clarkcountynv.gov/treasurer)

### Real Property and Special Tax Statement for Fiscal Year 2015-2016--Con't.

Parcel Number: 123-27-801-001

#### Distribution of Fiscal Year 2015-2016 Taxes

Distribution of Tax Dollars	Tax Rate	Taxes as Assessed	Cap Reduction	Net Taxes
COUNTY SCHOOL MAINTENANCE & OPERATION	0.7500	2,917.52	207.74	2,709.78
NORTH LAS VEGAS CITY PUBLIC SAFETY	0.7300	2,839.71	202.19	2,637.52
COUNTY SCHOOL DEBT (BONDS)	0.5534	2,152.73	153.27	1,999.46
CLARK COUNTY GENERAL OPERATING	0.4470	1,738.84	123.80	1,615.04
NORTH LV CITY STREET MAINT/FIRE/PARK	0.2350	914.15	65.09	849.06
NORTH LAS VEGAS CITY	0.1937	753.50	53.65	699.85
STATE OF NEVADA	0.1700	661.31	47.08	614.23
ASSISTANCE TO INDIGENT PERSONS	0.1000	389.00	27.70	361.30
NORTH LAS VEGAS CITY LIBRARY	0.0632	245.85	17.50	228.35
CLARK COUNTY CAPITAL	0.0500	194.50	13.85	180.65
CLARK COUNTY FAMILY COURT	0.0192	74.69	5.32	69.37
INDIGENT ACCIDENT FUND	0.0150	58.35	4.15	54.20
CLARK COUNTY DEBT	0.0129	50.18	3.57	46.61
STATE COOPERATIVE EXTENSION	0.0100	38.90	2.77	36.13
NORTH LAS VEGAS EMERGENCY 911	0.0050	19.45	1.38	18.07
NORTH LAS VEGAS CITY DEBT	0.0000	0.00	0.00	0.00
<b>TAX DISTRIBUTION</b>	<b>3.3544</b>	<b>13,048.68</b>	<b>929.06</b>	<b>12,119.62</b>

#### Detail of Amount Due

Year	Description	Total Tax Amt.	Balance Due
2016	Property Tax Principal	\$12,119.62	\$12,119.62
2016	Las Vegas Artesian Basin	\$6.94	\$6.94
2016	Property Tax Penalty	\$1,819.46	\$1,819.46
2016	MAILING FEE	\$2.00	\$2.00
<b>Total for Fiscal Tax Year 2016:</b>		<b>\$13,948.02</b>	<b>\$13,948.02</b>
<b>Total:</b>		<b>\$13,948.02</b>	<b>\$13,948.02</b>

# Exhibit 16

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501 W. BROADWAY, SUITE 800 • SAN DIEGO, CA 92101 • PHONE: 619-400-4960 • FAX: 619-501-7072

---

TO:

Jamie Burke

FROM:

Gary Aguirre

COMPANY:

Clark County Treasurer

DATE:

April 8, 2016

FAX NUMBER:

702-455-5969

TOTAL NO. OF PAGES INCLUDING COVER:

51

PHONE NUMBER:

702-455-4323

RE:

Parcel No. 123-27-701-001

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☐ URGENT

☐ FOR REVIEW

☐ PLEASE COMMENT

☐ PLEASE REPLY

☐ PLEASE RECYCLE

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NOTES/COMMENTS:

This facsimile is intended only for the use of the individuals to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. If you have received this communication in error, please do not distribute it and notify us immediately by email to [maria@aguirrelawapc.com](mailto:maria@aguirrelawapc.com) or by phone to 619-400-4960.

501 W BROADWAY, SUITE 800 · SAN DIEGO CA 92101 · PHONE: 619-400-4960 · GARY@AGUIRRELAWAPC.COM

By Facsimile to 702-455-5969

April 8, 2016

Jamie Burke  
Office of the Clark county Treasurer  
Las Vegas, NV

Re: Parcel No. 123-27-701-001

Dear Ms. Burke:

This confirms the telephone conference this afternoon with Maria Pomares and I relating to the default in the payments of taxes on the above property.

I understand that interest is now running on the taxes which are in default at the rate of 22% per annum. I also understand you are preparing to deed the property in June until my phone call with you this afternoon.

In order to stop that process, I am enclosing a copy of the Court's temporary restraining order issued on September 6, 2012, and preliminary injunction issued on October 5, 2012. You may confirm the stay order is in effect by contacting either Ted Fates of Allen Matkins Leck Gamble Mallory & Natsis LLP (tfates@allenmatkins.com), the attorney for Thomas Hebrank, the court-appointed receiver, or John Berry (berryj@sec.gov) and Lynn Dean (DeanL@sec.gov), attorneys for the Securities and Exchange Commission who are handling this case.

Since I represent partners in the partnership which owns this property, I am deeply concerned regarding the possible transfer of the property in June. Kindly confirm at your earliest convenience that process has been stopped in view of the attached orders.

Regards,



Gary J. Aguirre

Enclosures

# Exhibit 15

**BILLING INSTRUCTIONS FOR RECEIVERS IN CIVIL ACTIONS  
COMMENCED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION**

Except where inconsistent with guidelines established by the applicable district or circuit court, the undersigned hereby represents that, if appointed receiver in a civil action commenced by the U.S. Securities and Exchange Commission (the "SEC" or the "Commission"), each application for professional fees and expenses (the "Application") submitted by the receiver, including all contractors and/or professionals retained by the receiver, will comply with these billing instructions (the "Billing Instructions"). Undersigned further represents that any deviation from the Billing Instructions will be described in writing and submitted to the SEC at least 30 days prior to the filing of the Application with the Receivership Court. Following its receipt and review of proposed applications, as described in section A.2 below, the SEC may object to deviations and charges with which it does not agree.

Undersigned acknowledges that all applications for compensation are interim and are subject to a cost benefit review and final review at the close of the receivership. At the close of the receivership, the receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the receiver during the course of the receivership.

Undersigned acknowledges that, to the extent requested by the SEC, interim fee applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the court as part of the final fee application submitted at the close of the receivership.



**A. CERTIFICATION**

1. Each Application must contain a Certification by the Applicant that:
  - (a) the Certifying Professional has read the Application;
  - (b) to the best of the Applicant's knowledge, information and belief formed after reasonable inquiry, the Application and all fees and expenses therein are true and accurate and comply with the Billing Instructions (with any exceptions specifically noted in the Certification and described in the Application);
  - (c) all fees contained in the Application are based on the rates listed in the Applicant's fee schedule attached hereto and such fees are reasonable, necessary and commensurate with the skill and experience required for the activity performed;
  - (d) the Applicant has not included in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay (except to the extent that any such amortization is included within the permitted allowable amounts set forth herein for photocopies and facsimile transmission); and,
  - (e) in seeking reimbursement for a service which the Applicant justifiably purchased or contracted for from a third party (such as copying, imaging, bulk mail, messenger service, overnight courier, computerized research, or title and lien searches), the Applicant requests reimbursement only for the amount billed to the Applicant by the third-party vendor and paid by the Applicant to such vendor. If such services are performed by the receiver, the receiver will certify that it is not making a profit on such reimbursable service.
2. At least 30 days prior to the filing of the Application with the Court, the Applicant will provide to SEC Counsel a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

**B. ATTENDANCE AT HEARING ON APPLICATION**

The Receiver or other Certifying Professional shall be present at any hearing to

consider the Application.

**C. CONTENT OF APPLICATION**

The following information must be provided in the Application:

1. Information about the Applicant and the Application.
  - (a) the time period covered by the Application;
  - (b) the date the receiver was appointed, the date of the order approving employment of the Applicant, and the date services commenced;
  - (c) the names and hourly rates of all Applicant's professionals and paraprofessionals (the "Fee Schedule"); and,
  - (d) whether the Application is interim or final, and the dates of previous orders on interim Applications along with amounts requested and the amounts allowed or disallowed, all amounts of previous payments, and amount of any allowed Applications which remain unpaid.
2. Case Status (Narrative).
  - (a) The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
  - (b) Summary of the administration of the case, including all funds received and disbursed, and when the case is expected to close;
  - (c) Summary of creditor claims proceedings, including a description of established or anticipated procedures for: (i) providing notice to known and unknown claimants; (ii) receipt and review of claims; (iii) making recommendations to court for payment or denial of claims; and, (iv) final disposition of claims. This summary should also include the status of such claims proceedings after they have been commenced;
  - (d) Description of assets in the receivership estate, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended; and,

- (e) Description of liquidated and unliquidated claims held by the receiver, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments).

3. Current and Previous Billings.

- (a) Total compensation and expenses requested and any amount(s) previously requested;
- (b) Total compensation and expenses previously awarded by the court; and,
- (c) Total hours billed and total amount of billing for each person who billed time during the period for which fees are requested.

4. Standardized Fund Accounting Report.

The SEC's Standardized Fund Accounting Report ("SFAR") submitted by the Receiver for the most recent quarter shall be attached to any fee application as "Exhibit A".

**D. TIME RECORDS REQUIRED TO SUPPORT FEE APPLICATIONS**

1. Each professional and paraprofessional must record time in increments of tenths of an hour, and must keep contemporaneous time records on a daily basis.

2. Time records must set forth in reasonable detail an appropriate narrative description of the services rendered. Without limiting the foregoing, the description should include indications of the participants in, as well as the scope, identification and purpose of the activity that is reasonable in the circumstances.

3. The Application should separately describe each business enterprise or litigation matter (i.e., "Project") for which outside professionals have been employed. For example, separate litigation matters should be set out individually in the Application as

individual Projects and each such Project should contain Activity Categories as described in Sections D.4 and D.5 below. Each Project Category should contain a narrative summary of the following information:

- (a) a description of the project, its necessity and benefit to the estate and the status of the project including pending litigation for which compensation and/or reimbursement of expenses is requested;
- (b) identification of each person providing services on the project; and
- (c) a statement of the number of hours spent and the amount of compensation requested by professionals and paraprofessionals on the project.

4. In recording time, each professional and paraprofessional may, subject to Section D.5 immediately below, describe in one entry the nature of the services rendered during that day and the aggregate time expended for that day in an "Activity Category" (as described in section D.5.a and D.5.b, below) without delineating the actual time spent on each discrete activity in an Activity Category, provided, however, single time entries of more than one hour in an Activity Category that include two or more activities must include a notation of the approximate time spent on each activity within the Activity Category.

5. Time records shall be in chronological order by Activity Category. Only one category should be used for any given activity and professionals and paraprofessionals should make their best effort to be consistent in their use of categories. This applies both within and across firms. Thus, it may be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. Every effort should be made to use the listed categories in the first instance and to coordinate the use of additional categories with other professionals in the case. Notwithstanding the above, all categories must correspond with the SEC's SFAR. The

SEC Receivership Billing Instructions, pg. 6 of 11

time information reflected on the Application shall also be supplied to the SEC Counsel in an electronic format as directed by SEC staff.

(a) Legal Activities. The following categories are generally more applicable to attorneys but may be used by all professionals where appropriate.

**ASSET ANALYSIS AND RECOVERY.** Identification and review of potential assets including causes of action and non-litigation recoveries.

**ASSET DISPOSITION.** Sales, leases, abandonment and related transaction work. Where extended series of sales or other disposition of assets is contemplated, a separate category should be established for each major transaction.

**BUSINESS OPERATIONS.** Issues related to operation of an ongoing business.

**CASE ADMINISTRATION.** Coordination and compliance activities, including preparation of reports to the court, investor inquiries, etc.

**CLAIMS ADMINISTRATION AND OBJECTIONS.** Expenses in formulating, gaining approval of and administering any claims procedure.

**EMPLOYEE BENEFITS/PENSIONS.** Review issues such as severance, retention, 401K coverage and continuance of pension plan.

(b) Financial Activities. The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals where appropriate.

**ACCOUNTING/AUDITING.** Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

**BUSINESS ANALYSIS.** Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

**CORPORATE FINANCE.** Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

**DATA ANALYSIS.** Management information systems review, installation and

analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

**STATUS REPORTS.** Preparation and review of periodic reports as may be required by the court.

**LITIGATION CONSULTING.** Providing consulting and expert witness services relating to forensic accounting; etc.

**FORENSIC ACCOUNTING.** Reconstructing books and records from past transactions and bringing accounting current; tracing and sourcing assets.

**TAX ISSUES.** Analysis of tax issues and preparation of state and federal tax returns.

**VALUATION.** Appraise or review appraisals of assets.

**E. PAYMENT OF FEES AND EXPENSES**

**1. Presentation of Fees and Expenses in Application.**

- (a) All fees and expenses must be necessary and reasonable; excessive charges will not be paid. To the extent that an Applicant seeks reimbursement of expenses, the Application shall include a categorization of such expenses along with an exhibit summarizing the total expenses for the period covered by the Application.
- (b) Charges for litigation will be paid only if the litigation is reasonably likely to produce a net economic benefit to the estate. With respect to each litigation matter, the Applicant shall certify that the Applicant determined that the action was likely to produce a net economic benefit to the estate, based on reviews of: (i) the legal theories upon which the action was based, including issues of standing; (ii) the likelihood of collection on any judgment which might be obtained; and, (iii) alternative methods of seeking the relief, such as the retention of counsel on a contingency basis. Retention of counsel on a contingency fee basis should be pursued where the Receiver (after consulting with SEC Counsel) concludes that retention of counsel under the approved fee schedule would produce a lesser economic benefit to the receivership estate. The receiver should memorialize these cost-benefit analyses, through communications with the receiver's counsel, as support for the engagement of such counsel.
- (c) Invoices and/or bills for each expense item for which reimbursement

is sought must be kept for seven (7) years after the close of the receivership. Such support shall be provided on request to the court and the SEC, and in appropriate circumstances to any party in interest provided that, where applicable, privilege or confidentiality can be preserved.

- (d) Time spent preparing fee applications, or any documentation in support thereof, may not be charged to the receivership estate.

2. Allowable and Non-Allowable Reimbursable Expenses.

(a) Filing Fees Process Service Fees, Witness Fees and Expert Witness Fees.

Filing fees (including for necessary adversaries), process service fees, witness fees, and expert witness fees (subject to court approval of the employment of any professionals and the reasonableness of such fees) shall be allowable to the extent of the actual cost incurred by the Applicant.

(b) Court Reporter Fees and Transcripts.

Court reporter fees and copies of transcripts shall be allowable to the extent of the actual cost incurred by the Applicant.

(c) Lien and Title Searches.

The cost for lien and title searches (whether done in-house or by an outside vendor) is allowable to the extent of the actual cost incurred by, or invoiced to, the Applicant.

(d) Photocopying.

Photocopying shall be allowable at a cost not to exceed \$.15 per page. The Applicant shall set forth in its fee application the total number of copies. Outside vendor photocopying charges are allowable at the actual cost invoiced to the Applicant. Necessary copies obtained from the Clerk of the Court (including certified copies) or from the approved court copy service will be permitted at the actual cost incurred by the Applicant.

SEC Receivership Billing Instructions, pg. 9 of 11

The Applicant shall not reflect on the Application any copies for which the Applicant has been, or expects to be, reimbursed (eg., payment from an opposing party for document production from which the Applicant has been reimbursed).

(e) Postage, Overnight Delivered Courier/Messenger Services.

The cost of postage, overnight delivery, and outside courier/messenger services are reimbursable for the actual cost incurred, if reasonably incurred. Charges should be minimized whenever possible. For example, couriers/messengers and overnight delivery service should be used only when first-class mail is impracticable.

(f) Telephone.

Long distance telephone charges are allowable to the Applicant for the actual cost invoiced from the telephone carrier. Charges for local telephone exchange service and cellular telephone service shall not be reimbursable.

(g) Facsimile Transmission.

A charge for outgoing facsimile transmission to long distance telephone numbers are reimbursable at the lower of (a) toll charges or (b) if such amount is not readily determinable, \$1.00 per page for domestic and \$2.00 per page for international transmissions. Charges for in-coming facsimiles are not reimbursable. The Application shall state the total number of pages of the outgoing transmissions.

(h) Computerized Research.

Computerized legal research services such as Lexis and Westlaw are reimbursable to the extent of the invoiced cost from the vendor, however if such service is provided on a monthly or other periodic rate, proportional usage shall not be reimbursable.

(i) Parking.



SEC Receivership Billing Instructions, pg. 10 of 11

Reimbursement for parking is allowable, including parking by a professional to attend court proceedings, depositions or case conferences, parking at the airport, and client and third party parking (including validation).

(j) Travel Expenses and Meals.

Local travel time and related expenses for destinations within a twenty (20) mile radius of the Applicant's office including mileage, taxis, etc. and meals (including staff meals) will not be reimbursed. Mileage charges for out-of-town travel (outside a twenty (20) mile radius of the Applicant's office) with one's own car are reimbursable at the lesser of the amount customarily charged clients or the amount allowed by the Internal Revenue Service for per mile deductions. For purposes of the foregoing, the Applicant's office shall be the office in which the person incurring the travel expense is located.

Long distance travel time outside a twenty (20) mile radius of the Applicant's office is reimbursable at 50% of the Applicant's regular billing rate. The reimbursement of long distance travel expenses is subject to the following limitations: (1) the Applicant shall seek and use the lowest airfare or train fare available to Applicant; (2) luxury accommodations and deluxe meals are not reimbursable; (3) personal, incidental charges such as telephone and laundry are not reimbursable unless necessary as a result of a reasonably unforeseen extended stay not due to the fault of the traveler; and (4) each out-of-pocket travel and allowable miscellaneous administrative expense exceeding \$75 requires a receipt that is to be attached to the invoice.

(k) Word Processing, Document Preparation, Data Processing, Proofreading, Secretarial and Other Staff Services.

SEC Receivership Billing Instructions, pg. 11 of 11

Secretarial, library, word processing, document preparation (other than by professionals or paraprofessionals), data processing, and other staff services (exclusive of paraprofessional services), including overtime for the foregoing, are not reimbursable. Charges for proofreading for typographical or similar errors are not reimbursable whether the services are performed by a paralegal, secretary, or temporary staff.

(l) Communications with Investors.

Where appropriate, the estate should promptly create a website, and update the website as appropriate, to provide information as to the activities and condition of the estate to investors. In addition, any necessary basic communications with investors should be handled by clerical or paralegal staff (or comparatively paid staff) to the extent possible. Expenses stemming from a failure to comply with this policy will not be submitted.

Candidate for Appointment as Receiver in  
Civil Action Commenced by the  
U.S. Securities and Exchange Commission

Date: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

[Address 1]

[Address 2]

[Address 3]

[E-Mail Address]

[Phone Number]

[Fax Number]

## EXHIBIT A

RECEIVER NAME  
ADDRESS  
CONTACT NUMBER

# STANDARDIZED FUND ACCOUNTING REPORT

CIVIL – RECEIVERSHIP FUND

---

FUND NAME  
CIVIL COURT DOCKET No.

REPORTING PERIOD MM/DD/YYYY TO MM/DD/YYYY  
OR  
FINAL REPORT DATED MM/DD/YYYY

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## REPORT INSTRUCTIONS

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The Standardized Fund Accounting Report (SFAR) should be prepared for the reporting period on a cash basis which is a comprehensive basis of accounting other than generally accepted accounting principles. In cash basis accounting, revenues are recorded only when cash is received and expenses are recorded only when cash is paid. Cash basis accounting does not recognize promises to pay or expectations to receive money or services in the future. For all income and expenses, provide documentation evidencing the income received or expense incurred. Business income or assets that are not cash should be reported in the notes with documentation of their current fair market value. For cash and cash equivalents, provide the latest bank and/or investment records to the SEC. Do not file any of the above documentation with the court unless ordered.

**Line 1 – Beginning Balance:** Balance of the Fund at the beginning of the reporting period. The beginning balance may not necessarily include all amounts received in the Fund since inception unless this is the first SFAR filed.

**Line 2 – Business Income:** Amounts received by the Fund from operational income of the business assets, or other business sources.

**Line 3 – Cash and Cash Equivalents:** Include the value of bank and/or brokerage/security accounts as of the reporting period end date. Cash includes coins, currency, checks, money orders, and funds on deposit with a financial institution. Securities include U.S. government securities, municipal securities, corporate stocks, corporate bonds, and securitized debt instruments.

**Line 4 – Interest/Dividend Income:** Interest and/or dividends earned by the Fund from investments and other personal assets during the reporting period.

**Line 5 – Business Asset Liquidation:** Amounts received by the Fund as a result of selling or disposing of the assets of the business in receivership. This is separate from the income generated by the asset and reported in Line 2.

**Line 6 – Personal Asset Liquidation:** Amounts received by the Fund as a result of selling or disposing of the personal assets of individuals.

**Line 7 – Third-Party Litigation Income:** Amounts received by the Fund pursuant to third-party litigation. This should not be included in the income reported in Line 2.

**Line 8 – Miscellaneous - Other:** Amounts received from, an identified payor.

**Line 9 – Disbursements to Investors:** Amounts distributed from the Fund to harmed investors/claimants.

**Line 10 – Disbursements for Receivership Operations:**

**Line 10a – Disbursements to Receiver or Other Professionals:** Amounts paid from the Fund (both fees and costs, including travel) for Receiver services and contractual services by accountants, bookkeepers, stock brokers, realty brokers, appraisers, agents, trustees, investigators, not related to expenses under Line 10b.

**Line 10b – Business Asset and Operating Expenses:** Amounts paid from the Fund for the business property assets' maintenance and business operating expenses, taxes,

professional fees, liquidation expenses, administrative services, appraisals and valuation expenses, payment to participant, moving/storage, office furniture and equipment, delivery services, resident agent, copying costs, asset protection costs, etc. These expenses are separate and distinct from those in Line 10a.

**Line 10c – Personal Asset Expenses:** Amounts paid from the Fund for the personal property assets' maintenance and operating expenses, taxes, professional fees, liquidation expenses, administrative services, appraisals and valuation costs, payment to participant, moving/storage, office furniture and equipment, delivery services, resident agent, copying costs, asset protection costs, etc. These expenses are separate and distinct from those in Line 10a.

**Line 10d – Investment Expenses:** Amounts paid from the Fund for banking fees, Court Registry Investment System (CRIS) fees, mandated or economically necessary continuing investments, and other investment related costs.

**Line 10e – Third-Party Litigation Expenses:** Amounts paid from the Fund for attorney fees related to receivership operations and litigation expenses to recover assets to the receivership estate, including outside counsel fees and costs, travel costs, investigative services, filing fees, process servers, court reporters for depositions, etc.

**Line 10f – Tax Administrator Fees and Bonds:** Amounts paid to the Fund's tax administrator for services and/or fiduciary bonds.

**Line 10g – Federal and State Tax Expenses:** Amounts paid in federal and state taxes.

**Line 11 – Disbursements for Distribution Expenses Paid by the Fund:** This line reflects amounts paid from the Fund to administer the plan and should not include amounts reported per Line 14 below. For any disbursement claimed, you must provide the documentation evidencing the expense.

**11a – Distribution Plan Development Expenses:** All expenses related to the development of a plan of distribution which precede the order approving such plan. Include in Administrative Expenses items such as information technology services, mailing, postage, photocopying, etc.

**11b – Distribution Plan Implementation Expenses:** All expenses related to the implementation of a plan of distribution which occur following the order approving such plan. Include in Administrative Expenses items such as information technology services, mailing, postage, photocopying, etc.

**Line 12 – Disbursements to Court/Other:** Amounts paid from the Fund for

**12a – Court Registry Investment System (CRIS) or other banking fees related to the Fund.**

**12b – federal income taxes.**

**Line 13 – Ending Balance:** Compute as Total Funds Available less Total Funds Disbursed.

**Line 14 – Ending Balance of Fund – Net Assets:** Describe the structure of the Fund's ending balance (basis of the Fund's net assets):

**14a – Cash & Cash Equivalents:** Amount of the Fund consisting of cash and currency.

**14b – Investments:** Amount of the Fund that is invested.

**14c – Other Assets or Uncleared Funds:** Amount of other assets or funds that have not cleared a financial institution.

#### OTHER SUPPLEMENTAL INFORMATION

**Line 15 – Disbursements for Plan Administration Expenses Not Paid by the Fund:** This line reflects amounts paid by the defendant or other party to administer the plan and should not include amounts paid from the Fund assets as reported in Line 11.

**15a – Plan Development Expenses Not Paid by the Fund:** All expenses related to the development of a plan of distribution which precede the order approving such plan. Include in Administrative Expenses items such as information technology services, mailing, postage, photocopying, etc.

**15b – Plan Implementation Expenses Not Paid by the Fund:** All expenses related to the implementation of a plan of distribution which occur following the order approving such plan. Include in Administrative Expenses items such as information technology services, mailing, postage, photocopying, etc.

**15c – Tax Administrator Fees & Bonds Not Paid by the Fund:** Amounts paid to the Fund's tax administrator for services and/or fiduciary bonds.

**Line 16 – Disbursements to Court/Other Not Paid by the Fund:** Amounts not paid from the Fund for

**16a –** Court Registry Investment System (CRIS) or other banking fees related to the Fund.

**16b –** federal income taxes.

**Line 17 – DC & State Tax Payments:** Taxes paid by a third party which are paid to the DC government or state tax authority.

**Line 18 – No. of Claims:** This should reflect

**18a –** the number of claims received from investors during this reporting period.

**18b –** the number of claims received from investors as a result of all orders since the inception of the Fund.

**Line 19 – No. of Claimants/Investors:** This should reflect

**19a –** the number of claimants/investors receiving distributions during this reporting period.

**19b –** the number of claimant/investors receiving distributions pursuant to all orders of distribution since the inception of the Fund.

**STANDARDIZED FUND ACCOUNTING REPORT for {Name of Fund} - Cash Basis**

Receivership; Civil Court Docket No.

Reporting Period MM/DD/YYYY to MM/DD/YYYY or Final Report Dated MM/DD/YYYY

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of MM/DD/YYYY):			
	<b>Increases in Fund Balance:</b>			
Line 2	Business Income			
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income			
Line 5	Business Asset Liquidation			
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income			
Line 8	Miscellaneous - Other			
	<b>Total Funds Available (Lines 1 - 8):</b>			
	<b>Decreases in Fund Balance:</b>			
Line 9	Disbursements to Investors			
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals			
Line 10b	Business Asset Expenses			
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	<b>Total Third-Party Litigation Expenses</b>			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	<b>Total Disbursements for Receivership Operations</b>			
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses</b>			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	<b>Total Plan Implementation Expenses</b>			
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other:</b>			
	<b>Total Funds Disbursed (Lines 9 - 11):</b>			
Line 13	Ending Balance (As of MM/DD/YYYY):			



**STANDARDIZED FUND ACCOUNTING REPORT for {Name of Fund} - Cash Basis**

Receivership; Civil Court Docket No.

Reporting Period MM/DD/YYYY to MM/DD/YYYY or Final Report Dated MM/DD/YYYY

<b>Line 14</b>	<b>Ending Balance of Fund – Net Assets:</b>			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	<b>Total Ending Balance of Fund – Net Assets</b>			

  

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
<b>Line 15</b>	<b>Report of Items NOT To Be Paid by the Fund:</b>			
	<b>Disbursements for Plan Administration Expenses Not Paid by the Fund:</b>			
Line 15a	Plan Development Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses Not Paid by the Fund</b>			
Line 15b	Plan Implementation Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	<b>Total Plan Implementation Expenses Not Paid by the Fund</b>			
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund			
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>			
<b>Line 16</b>	<b>Disbursements to Court/Other Not Paid by the Fund:</b>			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other Not Paid by the Fund:</b>			
<b>Line 17</b>	<b>DC &amp; State Tax Payments</b>			
<b>Line 18</b>	<b>No. of Claims:</b>			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			
<b>Line 19</b>	<b>No. of Claimants/Investors:</b>			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			

Receiver:

By: \_\_\_\_\_  
(signature)\_\_\_\_\_  
(printed name)\_\_\_\_\_  
(title)

Date: \_\_\_\_\_

# Exhibit 14

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13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 SECURITIES AND EXCHANGE  
16 COMMISSION,

17 Plaintiff,

18 v.

19 LOUIS V. SCHOOLER and FIRST  
20 FINANCIAL PLANNING  
21 CORPORATION d/b/a WESTERN  
22 FINANCIAL PLANNING  
23 CORPORATION,

24 Defendants.

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

**RECEIVER'S FORENSIC  
ACCOUNTING REPORT: PART  
ONE**

Ctrm.: 9  
Judge: Hon. Gonzalo P. Curiel

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1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial  
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),  
3 and its subsidiaries and affiliates (collectively, "Receivership Entities"), submits Part  
4 One of his Forensic Accounting Report. This report provides the Court and all  
5 interested parties with a summary of the forensic accounting performed to date  
6 relative to the initial investments made by investors in the various General  
7 Partnerships (GPs) established by Western, the funds transferred from the GPs to  
8 Western, Western's initial purchase of the GP properties from third parties, and  
9 Western's investment in the GPs. If this report is approved, and the Receiver is  
10 authorized to proceed, he will prepare and file Part Two of his Forensic Accounting  
11 Report, which will cover Western's uses of funds transferred to it from the GPs.

#### 12 I. EXECUTIVE SUMMARY

13 The Preliminary Injunction Order directs the Receiver to "make an accounting,  
14 as soon as practicable, to this Court of the assets and financial condition of Western  
15 and to file the accounting with the Court and deliver copies thereof to all parties."  
16 Docket No. 174. As discussed below, pursuant to this order, the Receiver analyzed  
17 the books and records of the various GPs and accounted for the funds raised from  
18 investors and the uses of such funds.

19 This report covers 13 land transactions (of the total 22 land transactions  
20 currently active) from approximately 2003 to the present. Western purchased these  
21 13 properties from third parties and then sold undivided interests in them to the  
22 various GPs. The GPs that acquired undivided interests in the 13 properties are listed  
23  
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in Section II below and total 46 of the total 88 active GPs.<sup>1</sup> The following summarizes the Receiver's findings to date.

Western purchased various parcels of land from third parties for approximately 20 cents on the dollar as compared to the prices at which the same land was then sold to the GPs. The following summarizes the total funds raised from investors and transferred to Western as compared to Western's purchase price for the 13 properties (Exhibit 1):

	<b>Amount</b>
Total Raised from Investors in 46 Applicable GPs	\$108,416,039
Less: Contingency Left in GP Accounts to Pay Expenses	(7,415,854)
Total Purchase Price GPs paid to Western	101,000,185
Less: Western Purchase Price for Same Land	(21,168,464)
Excess to Western Above Western Purchase Price	\$79,831,721

## **II. ENTITIES INCLUDED**

As noted above, this report is limited to the GPs listed below, which includes 13 of the 22 active land transactions, which account for 46 of the 88 active GPs. The GPs listed below incorporate the GPs formed from approximately 2005 and on (Western land purchases commencing in 2003) to the date of the receivership. There are a significant number of GPs not included in this report (pre-2005 GPs as well as GPs that owned interests in land that was sold prior to the receivership). The following is a list of GPs included in this report, organized by Western land purchase transactions:

<sup>1</sup> Based on his review and investigation to date, the Receiver determined that, at least for this initial phase of the accounting, analysis of the final 13 land transactions (and the associated 46 GPs) will provide the Court and interested parties with a sufficient amount of detail concerning the Receivership Entities' financial activity. However, as discussed below, the Receiver can expand the scope of his accounting to include prior land transactions if the Court determines that the additional detail is required for its analysis of the case.



- Dayton Valley II
  - o Storey County Partners
  - o Comstock Partners
  - o Silver City Partners
  - o Nevada View Partners
- Dayton Valley III
  - o Gold Ridge Partners
  - o Sky View Partners
  - o Grand View Partners
  - o Rolling Hills Partners
- Dayton Valley IV
  - o Eagle View Partners / Eagle View Partners, LLC
  - o Falcon Heights Partners / Falcon Heights Partners, LLC
  - o Night Hawk Partners / Night Hawk Partners, LLC
  - o Osprey Partners / Osprey Pescador, LLC
- Fernley I, LLC
  - o Crystal Clearwater Partners / Clearwater Bridges, LLC
  - o High Desert Partners / High Desert Shadow, LLC
- New Mexico
  - o Santa Fe View Partners / Santa Fe View, LLC
  - o Pueblo Partners / Pueblo Partners, LLC
  - o The Pecos Partners / The Pecos Partnership, LLC
- P51, LLC
  - o P-39 Aircobra Partners / P-39 Aircobra, LLC
  - o P-40 Warhawk Partners / P-40 Warhawk, LLC
  - o F-86 Partners / F-86, LLC (Not Fully Funded)
  - o F-100 Partners (Unfunded)

- 1 ➤ SFV II, LLC
- 2     o Frontage 177 Partners / Frontage 177, LLC
- 3     o Pyramid Highway 177 Partners / Pyramid Highway 177, LLC
- 4 ➤ Silver Springs North
- 5     o North Springs Partners
- 6     o Rawhide Partners
- 7     o Highway 50 Partners
- 8     o Orange Vista Partners
- 9 ➤ Silver Springs South
- 10    o Rail Road Partners
- 11    o Spruce Heights Partners
- 12    o Vista Del Sur Partners
- 13    o Lahontan Partners
- 14 ➤ South Reno
- 15    o Rose Vista Partners
- 16    o Steamboat Partners
- 17    o Galena Ranch Partners
- 18    o Redfield Heights Partners
- 19 ➤ Yuma I
- 20    o Gila View Partners
- 21    o Painted Desert Partners
- 22    o Snow Bird Partners
- 23 ➤ Yuma II
- 24    o Desert View Partners
- 25    o Sonora View Partners
- 26    o Mesa View Partners
- 27    o Road Runner Partners
- 28

➤ Yuma III

- o Mountain View Partners
- o Ocotillo View Partners
- o Cactus Ridge Partners
- o Mohawk Mountain Partners

### III. WESTERN BUSINESS MODEL EXAMPLE AND OBSERVATIONS

The following section highlights Western's business model and Western's accounting system used for tracking the sale of GPs "ownership units" to investors and the subsequent transfer of funds to Western.

#### A. Western Initial Purchase of Properties

The Receiver traced the initial purchase price (\$21,168,464) paid by Western for the 13 properties to the escrow closing statements. From the escrow statements, the Receiver quantified the deposits/cash paid by Western for the initial purchase and the amount of notes payable carried by the sellers of the properties ("Western Note Payable to Seller"). For example, with Dayton Valley II, Western purchased 3 parcels of land (620 acres) in Storey and Lyon Counties, Nevada on December 15, 2003, for a purchase price of \$1,989,393 from the Borda Family Limited Partnership ("Borda FLP") as follows (Exhibit 4):

- \$309,393 Cash Paid in Escrow – Western collected \$370,400 from the GP Investors prior to Western's initial purchase close of escrow (12/15/03) (Exhibit 5). The \$370,400 collected from investors prior to the close of Western's purchase exceeded the \$309,393 in cash Western paid in escrow to purchase the property from the Borda FLP.
- \$1,500,000 Note Payable to Seller (Borda FLP) - The Receiver reconciled this amount to the escrow statement (Exhibit 4) and the underlying notes payable signed by Western (Louis Schooler).

- \$180,000 Note Payable to Schafer Pacific – The Receiver reconciled this amount to the escrow statement (Exhibit 4) and the underlying notes payable signed by Western (Louis Schooler).

**B. Funds Raised from Investors**

Western tracked investments from investors in their OPADS Accounting System. The OPADS accounting system produced a report called the "Closing/Final Spread" for each GP. This report tracked the cash received from investors, notes payable due from investors and total cash paid to Western. The financing of investor purchases of ownership units in the GPs and the associated notes issued by investors to the GPs and Western is discussed in detail in the Receiver's Third Interim Report, Docket No. 80, pp. 9-10.

For example, with Dayton Valley II, Western created 4 separate GPs (Storey County Partners, Comstock Partners, Silver City Partners and Nevada View Partners) which each acquired a 25% undivided interest in the property purchased from Borda FLP. The total raised from investors for the 4 partnerships is \$8,994,800 (Exhibit 7) as follows:

- \$7,554,550 in "Cash Down Received" – This represents the actual cash received from the investors. Western collected \$2,188,564 (more than Western's total purchase price of \$1,989,393) within 2-1/2 months of Western's initial purchase of the property on December 15, 2003. The \$7,554,550 in the cash investor funds received for Dayton Valley II is summarized in Exhibit 5.
- \$92,368 "Western Note" – This represents the funds advanced by Western to the GPs for investor down payments. As discussed in the Receiver's Third Interim Report, Western allowed some investors to finance their down payments for purchasing ownership units in the GPs. When this was done, investors would issue notes for the amounts financed directly to Western. Western transferred the \$92,368 to the

1 GPs and then subsequently transferred back 93% of the funds (less the  
2 Contingency amount) to itself.

- 3 ➤ \$1,347,882 "Partnership Note" – This represents the notes payable from  
4 investors to the 4 GPs for the balance of the investment. The GPs  
5 would then enter into notes payable in the same amount to Western  
6 (Investors owed GPs \$1,347,882 and GPs owed Western \$1,347,882).  
7 The investors would pay principal and interest payments to the GPs, and  
8 the GPs would then make principal and interest payments to Western.

9 **C. Funds Transferred to Western**

10 Western received cash payments from investors for both the initial purchase as  
11 well as principal and interest payments on investor loans. The following schedule  
12 summarizes the total payments to Western (Exhibit 3):

	Amount
Investor Cash Transferred to Western for Initial Purchase	\$88,495,422
GP Loan Payments to Western (Principal & Interest)	10,757,590
Western Loan Advances to GPs for Investor Down Payments	(487,468)
Investor Loan Payments to Western (Principal & Interest)	142,472
Total Cash Transferred to Western	\$98,908,016

13  
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18 As discussed above, Western tracked GP investments in their OPADS  
19 Accounting System. The OPADS Accounting System also tracked the funds paid to  
20 Western ("Land & Organization" Costs). Approximately 93% of the actual cash  
21 collected by the GPs was transferred to Western. For the Dayton Valley II property,  
22 Western received cash payments of \$8,603,381 as follows:

- 23 ➤ \$7,071,980 in "Land and Organization" costs were transferred from the  
24 GPs to Western. A "Contingency" balance of \$574,938 remained in the  
25 GP accounts to cover the expenses of the GPs (such as property taxes,  
26 insurance and accounting fees).  
27 ➤ \$1,531,401 in principal and interest payments on the notes payable due  
28 from the GPs to Western (Exhibit 6). From a cash flow standpoint,

investors paid principal and interest payments to the GPs, and the GPs in turn paid Western.

**D. Western Initial Investment in GPs**

Western's initial investment in the GPs totaled \$8,967,544 (8,967,544 ownership units). However, immediately after making these investments, Western transferred a total of \$8,345,280 from the GPs back to itself, thereby leaving only \$622,264 (essentially the "Contingency" amount) in the GPs (Exhibit 2):

	Cash	Loans	Total
Western Initial GP Units Purchased	\$8,220,220	\$747,324	\$8,967,544
Cash Transferred Back to Western	(7,597,956)	(747,324)	(8,345,280)
Western Investment Remaining in GP	\$622,264	\$0	\$622,264

These investments represented cash contributions ("Cash Down Received") to the GPs and "Partnership Notes." Western cash contributions essentially represent funds transferred from Western to the GPs, and then immediately transferred back to Western (less the "Contingency" amount). The "Note Payable" essentially represents a loan from Western to itself. For example (Dayton Valley II GP – Nevada View Partners), Western's initial contribution was \$256,589 (256,589 Units or 10.9% ownership of the entity) and comprised of the following:

- \$211,589 Western Contribution on 6/22/05 of which \$198,064 was returned to Western the same day (6/22/05). The Contingency balance of \$13,524 remained in the GP account.
- \$45,000 Western Contribution consisting of both "Cash Down" and a "Note Payable" as follows:
  - o \$14,400 Western Cash Contribution on 6/14/05 of which \$11,524 was returned to Western the same day (6/14/05). The Contingency balance of \$2,876 remained in the GP.
  - o \$30,600 Investor Notes Payable to GPs – This represents a Note Payable from Western to Western. The note was paid off with a

payment of \$28,838 deposited to the GPs on 6/15/06 and subsequently transferred back to Western approximately 20 days later (7/5/06).

#### **E. Retention of Land Parcels**

In addition to the approximately \$80 million transferred to Western over the amount it paid for the 13 properties, in some situations, parcels of land were also stripped off prior to their resale to the GPs. From the 13 properties covered by this report, the following parcels of land were removed by Western prior to their sale to the GPs:

- Dayton Valley IV – Four parcels totaling 1,153 acres were originally purchased by Western for \$4,698,687. Two parcels were transferred out – 1 parcel totaling 81 acres was sold to LVS IV LLC (a Louis Schooler related entity), and another parcel totaling 440 acres was retained by Western. The remaining 2 parcels totaling 632 acres were sold to investors for \$21,723,634 (Exhibit 9).
- Yuma II – Ten parcels totaling 795 acres were originally purchased by Western for \$377,487. One parcel totaling 6 acres was retained by Western, and the remaining 9 parcels totaling 789 acres were sold to investors for \$6,234,768 (Exhibit 18).
- Yuma III – Six parcels totaling 369 acres were purchased by Western for \$1,925,126. Two parcels totaling 36 acres were retained by Western with the remaining 4 parcels totaling 333 acres being sold to investors for \$6,593,287 (Exhibit 19).

### **IV. GENERAL PARTNERSHIP OVERVIEWS BY PROPERTY**

#### **A. Dayton Valley II**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 7):

	<b>Amount</b>
Total Raised from Investors	\$8,994,800
Less: Contingency Left in GP accounts to Pay Expenses	(574,938)
Total Purchase Price GPs Paid to Western	8,419,862
Less: Western Purchase Price	(1,989,393)
Excess to Western Above Western Purchase Price	\$6,430,469

### **B. Dayton Valley III**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 8):

	<b>Amount</b>
Total Raised from Investors	\$10,391,360
Less: Contingency Left in GP accounts to Pay Expenses	(664,205)
Total Purchase Price GPs Paid to Western	9,727,155
Less: Western Purchase Price	(2,066,886)
Excess to Western Above Western Purchase Price	\$7,660,269

### **C. Dayton Valley IV**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 9):

	<b>Amount</b>
Total Raised from Investors	\$23,207,000
Less: Contingency Left in GP accounts to Pay Expenses	(1,483,366)
Total Purchase Price GPs Paid to Western	21,723,634
Less: Western Purchase Price	(4,698,687)
Excess to Western Above Western Purchase Price	\$17,024,947

### **D. Fernley I, LLC**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 10):



	<b>Amount</b>
Total Raised from Investors	\$3,270,500
Less: Contingency Left in GP accounts to Pay Expenses	(242,259)
Total Purchase Price GPs Paid to Western	3,028,241
Less: Western Purchase Price	(461,854)
Excess to Western Above Western Purchase Price	\$2,566,387

#### **E. New Mexico**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 11):

	<b>Amount</b>
Total Raised from Investors	\$8,307,700
Less: Contingency Left in GP Accounts to Pay Expenses	(531,019)
Total Purchase Price GPs Paid to Western	7,776,681
Less: Western Purchase Price	(15,05,514)
Excess to Western Above Western Purchase Price	\$6,271,167

#### **F. P51, LLC**

P51, LLC was in the process of being funded as of the date of the receivership. The first two of four GPs – P-39 Aircobra, LLC and P-40 Warhawk, LLC – were funded and escrow was closed. F-86 Partners was in the process of being funded and escrow had not closed. No ownership units in F-100 had been sold as of the date of the receivership. The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 12):

	<b>Amount</b>
Total Raised from Investors	\$5,959,214
Less: Contingency Left in GP Accounts to Pay Expenses	(445,115)
Total Purchase Price GPs Paid to Western	5,514,099
Less: Western Purchase Price	(1,847,846)
Excess to Western Above Western Purchase Price	\$4,008,585

**G. SFV II, LLC**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 13):

	<b>Amount</b>
Total Raised from Investors	\$2,887,000
Less: Contingency Left in GP Accounts to Pay Expenses	(184,534)
Total Purchase Price GPs Paid to Western	2,702,466
Less: Western Purchase Price	(537,533)
Excess to Western Above Western Purchase Price	\$2,164,933

**H. Silver Springs North**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 14):

	<b>Amount</b>
Total Raised from Investors	\$8,032,200
Less: Contingency Left in GP Accounts to Pay Expenses	(513,410)
Total Purchase Price GPs Paid to Western	7,518,790
Less: Western Purchase Price	(1,369,743)
Excess to Western Above Western Purchase Price	\$6,149,047

**I. Silver Springs South**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 15):

	<b>Amount</b>
Total Raised from Investors	\$11,541,100
Less: Contingency Left in GP Accounts to Pay Expenses	(737,695)
Total Purchase Price GPs Paid to Western	10,803,405
Less: Western Purchase Price	(2,465,315)
Excess to Western Above Western Purchase Price	\$8,338,090

**J. South Reno**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 16):

	<b>Amount</b>
Total Raised from Investors	\$7,375,950
Less: Contingency Left in GP Accounts to Pay Expenses	(672,843)
Total Purchase Price GPs Paid to Western	6,703,107
Less: Western Purchase Price	(1,187,323)
Excess to Western Above Western Purchase Price	\$5,515,784

**K. Yuma I**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 17):

	<b>Amount</b>
Total Raised from Investors	\$4,545,215
Less: Contingency Left in GP Accounts to Pay Expenses	(290,525)
Total Purchase Price GPs Paid to Western	4,254,690
Less: Western Purchase Price	(735,754)
Excess to Western Above Western Purchase Price	\$3,518,936

**L. Yuma II**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 18):

	<b>Amount</b>
Total Raised from Investors	\$6,860,500
Less: Contingency Left in GP Accounts to Pay Expenses	(625,732)
Total Purchase Price GPs Paid to Western	6,234,768
Less: Western Purchase Price	(377,487)
Excess to Western Above Western Purchase Price	\$5,857,281

**M. Yuma III**

The following summarizes the initial purchase transaction for the above-referenced property (Exhibit 19):

	<b>Amount</b>
Total Raised from Investors	\$7,043,500
Less: Contingency Left in GP Accounts to Pay Expenses	(450,213)
Total Purchase Price GPs Paid to Western	6,593,287
Less: Western Purchase Price	(1,925,126)
Excess to Western Above Western Purchase Price	\$4,668,161

## V. DATA TESTING PERFORMED

The Receiver performed the following testing procedures to ensure the accuracy and reliability of the OPADS Accounting System and other data maintained by Western.

- Reconciled Western's initial purchase price, cash paid in escrow and seller carryback notes payable of the GP properties to the purchase escrow statements and the sales agreement.
- Reconciled the parcels purchased in Western's initial purchase to the parcels sold to the GP entities and the parcels still owned by Western or related Schooler entities.
- Traced the Western Notes Payable to third parties in the initial Western purchase to the Promissory Notes signed by Louis Schooler.
- Reconciled the GP purchase prices and notes payable from the GPs to Western to the purchase escrow statements and the purchase agreement.
- For approximately 75% of the GPs, the Receiver traced the total "Cash Down Received" as recorded in the "Closing/Final Spread" from the OPADS accounting system to the total cash recorded in the OPADS GPs checking account and to the total amount deposited into the GPs bank account.
- For approximately 75% of the GPs, the Receiver traced the Western Note advances from Western to the GPs to the cash deposits recorded in the OPADS GPs checking account and the total amount deposited into the GPs bank account.

- For approximately 75% of the GPs, the Receiver traced the total principal and interest payments made by investors on the investor notes payable to the GPs to the OPADS GPs checking account and the total amount deposited into the GPs bank account.
- For approximately 75% of the GPs, the Receiver traced the total principal and interest payments made by GPs on the GPs notes payable to Western to the OPADS GPs checking account check disbursement.
- For approximately 75% of the GPs, the Receiver traced the "Land & Organization" cash paid to Western from the OPADS accounting system to the OPADS GPs checking account and the total amount of checks/transfers from GPs bank account.
- For 12 GPs, the Receiver tested (on a sample basis) the GPs OPADS accounting system check register to the GPs bank statements.

At the conclusion of these tests, the Receiver determined that the data maintained in the OPADS Accounting System and the other data sources noted above is accurate and reliable, and therefore could be used in performing the forensic accounting.

## **VI. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS**

As noted above, from the 46 GPs covered in this report, Western raised approximately \$101 million, used approximately \$21 million to purchase the 13 properties that were sold to the 46 GPs, and retained almost \$80 million. The Receiver recommends that further analysis be performed to determine Western's uses of these funds and requests authority to proceed with such analysis. If such authority is granted, the Receiver will report on his findings in Part Two of his Forensic Accounting Report.

At this stage, the Receiver believes that forensic analysis of the final 13 land transactions and the associated 46 GPs (herein and in Part Two as described above) will provide a sufficient level of detail of the Receivership Entities' financial activity.

1 However, if the Court determines that analysis of additional land transactions and  
2 GPs is required for its determination of the issues in the case, the Receiver will  
3 expand the scope of his forensic analysis accordingly.

4  
5 Dated: April 17, 2013

6  
7 By: Thomas C Hebrank  
8 THOMAS C. HEBRANK,  
9 Permanent Receiver

10 Dated: April 17, 2013

11 ALLEN MATKINS LECK GAMBLE  
12 MALLORY & NATSIS LLP

13 By: /s/ Ted Fates  
14 TED FATES  
15 Attorneys for Receiver  
16 THOMAS C. HEBRANK  
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# Exhibit 13



## Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law  
515 South Figueroa, 9<sup>th</sup> Floor | Los Angeles, CA 90071-3309  
Telephone: 213.622.5555 | Facsimile: 213.620.8816  
www.allenmatkins.com

David R. Zaro  
E-mail: dzaro@allenmatkins.com  
Direct Dial: 213.955.5518 File Number: 372640-00002/LA1039092.01

### Via Email/U.S. Mail

March 24, 2016

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Re: Securities and Exchange Commission v. Louis V. Schooler; First Financial  
Planning Corporation dba Wetsern Financial Planning Corporation  
United States District Court, Southern District of California  
Case No. 12-cv-02164-GPC-JMA

Dear Mr. Aguirre:

While Mr. Fates is out of town, the Receiver has requested that I respond to your March 24, 2016 letter.

The Receiver promptly responded to your requests for documents and information of February 25, 29 and March 1, 2016. In addition, the Receiver responded to your March 17, 2016 letter on March 21, 2016. These communications were in addition to emails in which the Receiver has attempted to address the myriad of questions, issues and requests for information from you.

Notwithstanding the foregoing, we will again attempt to respond to your inquiry. The records which reflect revenues received and disbursed by the General Partnerships and Western Financial have been produced to you. In other words, the Receiver has produced the accounting information you requested.

The Receiver did not produce the OPADS software or records because these are not relevant to the requests that you have made and the information contained in OPADS is not relevant to any pending motion. The OPADS system was Western Financial's proprietary software for managing investor accounts and activity. The OPADS system contains investor level information reflecting investor contributions and investor loan activity. These records have no relevance whatsoever to the motion pending before the Court. Moreover, please note that the OPADS records include personal contact and private financial information of the individual investors. This consumer information is not subject to disclosure.



Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

Gary J. Aguirre  
March 24, 2016  
Page 2

Should you have any further questions, please do not hesitate to contact Ted Fates or me.

Very truly yours,



David R. Zaro

DRZ:md

cc: Allistaire Bamback, Esq.  
John Berry, Esq.  
Lynn Dean, Esq.  
Tim Dillon, Esq.  
Sara Kalin, Esq.  
Ted Fates, Esq. (i/o)  
Thomas C. Hebrank

# Exhibit 12

501 W BROADWAY, SUITE 800 · SAN DIEGO CA 92101 · PHONE: 619-400-4960 · GARY@AGUIRRELAWAPC.COM

By Electronic Mail and First Class Mail

March 24, 2016

Ted Fates, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis, LLP  
501 West Broadway, 15th Floor  
San Diego, CA 92101-3541

Re: *SEC v. Schooler*

Dear Mr. Fates:

I will be responding to your letter of March 21, 2016, in due course.

I have two preliminary questions regarding your response.

First, I have requested the following records on February 25, 29, and March 1, 2016, and am requesting them again:

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

You have not produced the records in paragraph 2 above nor explained why you were not producing them in any of your responses.

Second, our investigation has established that the Receiver has used the OPADS electronic accounting system to record individual transactions. Why did you not disclose this fact or produce the transactions stored on that system?

Sincerely,



Gary J. Aguirre

cc (via email):      Allistaire Bambach, Esq.;      John Berry, Esq.;  
                             Lynn Dean, Esq.;                      Tim Dillon, Esq.;  
                             Thomas C. Hebrank, CPA;      Sara Kalin, Esq.

# Exhibit 11

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law  
501 West Broadway, 15<sup>th</sup> 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/SD840561.03

**Via Electronic Mail**

March 21, 2016

Gary J. Aguirre, Esq.  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
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 Mr. Aguirre:

As you have done repeatedly in your correspondence and Court filings, your letter dated March 17, 2016 misrepresents and mischaracterizes the facts. The record is perfectly clear. The Receiver has responded to each and every one of your many requests for documents in a direct, prompt, and reasonable manner. The Receiver has produced thousands of pages of documents to you in a very short period of time. Where appropriate, the Receiver has sought clarification of your requests, including but not limited to verifying whether you actually had a client. Needless to say, your demands for documents and information made before you were retained were entirely inappropriate.

The Receiver has promptly produced the documents when he could ascertain the nature of the requests. When clarification was required, the Receiver promptly asked for clarification. In this regard, and contrary to the baseless accusations in your letter, the Receiver has been extremely accommodating to your requests and entirely transparent in providing information.

What is perfectly clear from your letter, including your entirely irrelevant citations to the meaning of words in the New York Society's Accounting Terminology Guide, is that your objective is not to obtain documents but instead to manufacture claims founded on baseless attacks upon the Receiver. In doing so, and in repeatedly misrepresenting the facts to the Court, you are doing a disservice to the Court and the vast majority of the investors in the receivership estate. While your

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

Gary J. Aguirre, Esq.  
March 21, 2016  
Page 2

clients represent approximately 5% of the harmed investors, the Receiver must consider the interests of all investors, including the 95% of the investors who are damaged by fees and costs incurred in responding to your false accusations.

With regard to your false accusations about the Receiver's production of financial documents, you state "[u]nder these circumstances, I would have expected Mr. Hebrank to embrace transparency, e.g. to post a schedule of all disbursements and receipts on his website for the case and update it...". In fact, you have been advised repeatedly this information is available on the Receiver's website, specifically in the quarterly Receiver's Reports and Information Packets. Your refusal to obtain records that are readily available to you from the Receiver's website is emblematic of the hollowness of your claims and your disregard for the costs you impose on the 95% of investors whose views you do not represent.

With regard to your false accusations about the Receiver's recordkeeping of individual transactions, we have explained that "[i]ndividual transaction information would be reflected only on the bank statements. The Receiver uses the bank statements to create an excel summary which is used ... to generate the financial summaries contained in the Information Packets...." This process, is entirely consistent with generally accepted accounting principles. Although more elaborate and expensive accounting processes could have been undertaken (imposing additional costs on investors), there is nothing improper about the straight forward, cost-effective process used by the Receiver.

Nevertheless, the Receiver will again provide the requested documents – the excel spreadsheets and over 3,500 bank statements – to you via Dropbox.

I am currently out of the office on vacation, so this letter has been electronically signed.

Very truly yours,

*Ted Fates*

Ted Fates

EGF:kp

Enclosure

cc: Thomas C. Hebrank, CPA  
Alistair Bambach, Esq.  
John Berry, Esq.  
Lynn Dean, Esq.  
Sara Kalin, Esq.

# Exhibit 10

## AGUIRRE LAW, APC

501 W BROADWAY, SUITE 800 · SAN DIEGO CA 92101 · PHONE: 619-400-4960 · GARY@AGUIRRELAWAPC.COM



By Electronic Mail and First Class Mail

March 17, 2016

Ted Fates, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis, LLP  
501 West Broadway, 15th Floor  
San Diego, CA 92101-3541

Re: *SEC v. Schooler*

Dear Mr. Fates:

For almost four weeks, the Receiver has refused to produce the accounting records necessary to (1) assess whether his financial representations made to the Court and, through his website, to investors<sup>1</sup> are accurate, (2) determine whether his disbursements of \$4.74 million (by the end of this year) are proper, and (3) make the same determination regarding the amount and use of cash received from investors.

On behalf of the Receiver, you refused in different ways. Sometimes you used a pretense to stall.<sup>2</sup> Sometimes you ignored the requests.<sup>3</sup> Sometimes you sidestepped them.<sup>4</sup> On one

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<sup>1</sup> The Receiver's website for this matter is at <http://www.ethreadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-planning-corp-dba-western-financial-planning-corp/>.

<sup>2</sup> See Attachment 1, your email of February 23, which read: "Could you please provide the list of investors you represent, including the General Partnerships in which they hold ownership units? *Once we have that, we will consider your requests below and get back in touch* (emphasis added)."

<sup>3</sup> See Attachment 2, your Feb. 29 email which ignored the request for the following two classes of records in my Feb. 25 email:

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

<sup>4</sup> See Attachment 3, your Feb. 26 email which sidestepped the requests in my Feb. 25 email (the same requests quoted in note 3 above) by responding to an example of the records I was seeking instead of the two paragraphs describing the records I was describing you produce. Your response to the example read:

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



occasion you said the records did not exist,<sup>5</sup> but later contradicted yourself by producing some of them.<sup>6</sup>

But on one point, you have been perfectly consistent: no matter how I framed the request, you refused to produce the records. I would expect these tactics from an attorney representing a penny stock promoter, not a Court-appointed receiver entrusted with assets of investors who did not select him for that job.

Mr. Hebrank's conduct is anomalous. He possesses investor assets as a fiduciary. No investor chose him. Rather, the SEC obtained a Court order appointing him and thereby forced investors to accept him as the receiver of their investments. He is credentialed as a CPA. Under these circumstances, I would have expected Mr. Hebrank to embrace transparency, e.g., to post a schedule of all disbursements and receipts on his website for the case and update it monthly from September 2012 to the present. There should be no need to make one demand these records, much less multiple demands.

Your March 15 email makes a stunning disclosure why you have refused to produce the accounting records investors seek. They do not exist. Your email reads:

You have now asked for individual transactions, which was not part of your prior request for "ledgers, journals, and other booking and accounting records". *Individual transaction information would be reflected only on the bank statements. The Receiver uses the bank statements to create an excel summary which is used by the tax preparation firm to prepare the tax returns, and was used to generate the financial summaries contained in the Information Packets and the Receiver's Reports.* We have repeatedly directed you to these sources. 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.

There are two remarkable assertions in your email: (1) your disclosure that Mr. Hebrank does not maintain the customary accounting records of the transactions relating to the investors' assets entrusted to him and (2) your excuse for not disclosing this fact earlier. I address first your excuse first as it helps understand the significance of what you have now disclosed.

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to pay the underlying mortgages on the applicable 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."

<sup>5</sup> See Attachment 4, your email of Feb. 24, 2016, where you state: "6. No such documents exist 7. No such statements exist"

<sup>6</sup> See Attachment 5, your March 9 email which stated "[T]he Receiver has nonetheless gathered the available 2012 and 2013 financial statements for the GPs and we will provide them to you today via Dropbox." These are the same non-existing records you mentioned in your Feb. 24 email. *Supra*, n. 5.

As an excuse, you state that I have never asked for records which record “individual transactions.” You and Mr. Hebrank must know better. It is true I did not use the exact words “individual transactions.” Rather, I used accounting terminology to ask for the accounting records where “individual transactions” are recorded. My February 25 and 29 emails, and my March 14 letter requested that you and the Receiver produce the following records:

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

Please note the first class of records I requested were “journals.” The Accounting Terminology Guide (Guide) of the New York Society of CPAs<sup>7</sup> defines the term “journal” to mean: “Any book containing *original entries of daily financial transactions* (emphasis added).” The next requested class of documents was “ledgers.” This would include both the general ledger and the subledgers. The Guide defines “general ledgers” as follows: “Collection of asset, liability, owners equity, revenue, and expense accounts.” Further, the Guide defines “accounts” as follows: “Formal record that represents, in words, money or other unit of measurement, certain resources, claims to such resources, transactions or other events that result in changes to those resources and claims.” I included the term “computer generated records” to cover any computer or software system used by Mr. Hebrank to record these transactions, e.g., Quicken Books. These descriptions were qualified by the phrase “which record or reflect revenues received or disbursements made by Western Financial from September 2012 to the present.” Consequently, I submit it could not be clearer that you were asked to provide any hard copy or electronic record which recorded individual transactions.

I will defer comment on Mr. Hebrank’s failure to daily maintain the customary records relating to transactions affecting partnership assets, liabilities, receipts, and disbursements. Please draw no inferences from the fact I am delaying those comments at this time. I am, however, providing a copy of this letter to the SEC and Mr. Dillon.

In view of your statement that the only records relating to individual transactions are bank statements which have been posted to spreadsheets, I am requesting you to produce those records—the bank statements and the spreadsheets—from the date of Mr. Hebrank’s appointment to the present. I am assuming these records are maintained electronically. Accordingly, I am requesting that you provide these records electronically by making them

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<sup>7</sup> Available at <http://www.nysscpa.org/professional-resources/accounting-terminology-guide#letterj>.

available to me in Dropbox as soon as possible. Kindly advise me when you expect to place them in Dropbox.

Sincerely,



Gary J. Aguirre

Attachments

cc (via email): Alistaire Bambach, Esq.  
Lynn Dean, Esq.  
Tim Dillon, Esq.  
Sara Kalin, Esq.

# Exhibit 9

## Gary Aguirre

---

**From:** Fates, Ted [tfates@allenmatkins.com]  
**Sent:** Tuesday, March 15, 2016 10:51 AM  
**To:** Gary Aguirre  
**Cc:** Thomas Hebrank  
**Subject:** RE: SEC v. Schooler

Mr. Aguirre,

You are once again completely mischaracterizing the Receiver's response. As I have clearly explained, we have provided what is available as far as financial records showing the receipts and disbursements since the Receiver's appointment. The documentation that is not already available from the Receiver's website – i.e. the GP financial statements for 2012 and 2013 – were promptly provided to you despite your failure to respond to my 2/26 and 3/1 emails seeking clarification of your request.

You have now asked for individual transactions, which was not part of your prior request for "ledgers, journals, and other booking and accounting records". Individual transaction information would be reflected only on the bank statements. The Receiver uses the bank statements to create an excel summary which is used by the tax preparation firm to prepare the tax returns, and was used to generate the financial summaries contained in the Information Packets and the Receiver's Reports. We have repeatedly directed you to these sources. 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.

Regards,

### **Ted Fates Esq.**

Partner

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**  
CHALLENGE. OPPORTUNITY. SUCCESS.

**From:** Gary Aguirre [mailto:gary@aguirrelawapc.com]  
**Sent:** Monday, March 14, 2016 6:03 PM  
**To:** Fates, Ted <tfates@allenmatkins.com>; Maria Pomares <maria@aguirrelawapc.com>  
**Cc:** Thomas Hebrank <thebrank@ethreadvisors.com>; Tim Dillon - Dillon Gerardi Hershberger Miller & Ahuja, LLP (tdillon@dghmalaw.com) <tdillon@dghmalaw.com>  
**Subject:** RE: SEC v. Schooler

Mr. Fates:

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

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

Sincerely,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

[www.aguirrelawapc.com](http://www.aguirrelawapc.com)

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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Monday, March 14, 2016 4:37 PM  
**To:** Maria Pomares; Gary Aguirre  
**Cc:** Thomas Hebrank  
**Subject:** RE: SEC v. Schooler

Mr. Aguirre,

In response to the requests in your letter of today's date:

1. The Receiver has provided you with the 2012 and 2013 financial statements for all of the GPs, which were prepared by Louise Cohen, an independent 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.
2. The BOVs for the Bratton Valley properties (3 separate parcels) were communicated verbally to Geno Rodriguez at the Receiver's office. One broker estimated the value of the three properties as \$650,000 and another broker estimated the value as \$863,000. The Receiver used the average (\$756,000).
3. The Tecate properties consist of seven different properties. For one property, the GPs had sufficient funds to obtain a 2015 appraisal. This is the property owned by ABL Partners and Mex-Tec Partners. The appraisal has been provided to you (\$180,000). The GPs for the other six properties did not have sufficient funds to obtain 2015 appraisals. The BOVs for these six properties were communicated verbally from the applicable brokers. One broker estimated the value of the six properties as \$643,987 and another broker estimated the value as \$370,000. The Receiver used the average and added the appraised value of the ABL Partners/Mex-Tec Partners for a total of \$686,995.
4. The BOV for the Yuma I property was communicated verbally. The broker estimated the value of the property as \$153,000.

5. The BOV for the Yuma III property was communicated verbally. The broker estimated the value of the property as \$159,620.

Regards,

**Ted Fates Esq.**

Partner

Allen Matkins Leck Gamble Mallory & Natsis LLP

501 West Broadway, 15th Floor, San Diego, CA 92101-3541

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(619) 233-1158 (fax)

**Allen Matkins**  
CHALLENGE. OPPORTUNITY. SUCCESS.

**From:** Maria Pomares [<mailto:maria@aguirrelawapc.com>]

**Sent:** Monday, March 14, 2016 10:38 AM

**To:** Fates, Ted <[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com)>

**Cc:** Aguirre Gary <[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)>

**Subject:** SEC v. Schooler

Mr. Fates:

Please find attached Mr. Aguirre's correspondence.

Sincerely,

Maria Pomares

Aguirre Law, APC

501 W. Broadway, Suite 800

San Diego, CA 92101

Tel: 619-400-4960

Fax: 619-501-7072

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# Exhibit 8

**Gary Aguirre**

---

**From:** Fates, Ted [tfates@allenmatkins.com]  
**Sent:** Monday, March 14, 2016 4:37 PM  
**To:** Maria Pomares; Gary Aguirre  
**Cc:** Thomas Hebrank  
**Subject:** RE: SEC v. Schooler

Mr. Aguirre,

In response to the requests in your letter of today's date:

1. The Receiver has provided you with the 2012 and 2013 financial statements for all of the GPs, which were prepared by Louise Cohen, an independent 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.
2. The BOVs for the Bratton Valley properties (3 separate parcels) were communicated verbally to Geno Rodriguez at the Receiver's office. One broker estimated the value of the three properties as \$650,000 and another broker estimated the value as \$863,000. The Receiver used the average (\$756,000).
3. The Tecate properties consist of seven different properties. For one property, the GPs had sufficient funds to obtain a 2015 appraisal. This is the property owned by ABL Partners and Mex-Tec Partners. The appraisal has been provided to you (\$180,000). The GPs for the other six properties did not have sufficient funds to obtain 2015 appraisals. The BOVs for these six properties were communicated verbally from the applicable brokers. One broker estimated the value of the six properties as \$643,987 and another broker estimated the value as \$370,000. The Receiver used the average and added the appraised value of the ABL Partners/Mex-Tec Partners for a total of \$686,995.
4. The BOV for the Yuma I property was communicated verbally. The broker estimated the value of the property as \$153,000.
5. The BOV for the Yuma III property was communicated verbally. The broker estimated the value of the property as \$159,620.

Regards,

**Ted Fates Esq.**

Partner

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**  
CHALLENGE. OPPORTUNITY. SUCCESS.

**From:** Maria Pomares [<mailto:maria@aguirrelawapc.com>]  
**Sent:** Monday, March 14, 2016 10:38 AM  
**To:** Fates, Ted <[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com)>  
**Cc:** Aguirre Gary <[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)>  
**Subject:** SEC v. Schooler

Mr. Fates:

Please find attached Mr. Aguirre's correspondence.

Sincerely,

Maria Pomares  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

[www.aguirrelawapc.com](http://www.aguirrelawapc.com)

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# Exhibit 7

501 W BROADWAY, SUITE 800 · SAN DIEGO CA 92101 · PHONE: 619-400-4960 · GARY@AGUIRRELAWAPC.COM

By Electronic Mail and First Class Mail

March 14, 2016

Ted Fates, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis, LLP  
501 West Broadway, 15th Floor  
San Diego, CA 92101-3541

Re: *SEC v. Schooler*

Dear Mr. Fates:

I am asking again for the following documents:

1. The general ledgers, journals and other booking and accounting records showing the receipts and disbursements since the appointment of the receiver to the present; the validity and accuracy of the projections in your February 4 memo cannot be assessed without these records;
2. The appraisal, BOV or other document that shows the Bratton Valley property had a value \$756,000 in 2015; we find no document that states or can be interpreted to state that;
3. The appraisal, BOV or other document that shows the Tecate property had a value \$686,995 in 2015; we find no document that states or can be interpreted to state that;
4. The appraisal, BOV or other document that shows the Yuma I property had a value \$153,000 in 2015; we find no document that states or can be interpreted to state that;
5. The appraisal, BOV or other document that shows the Yuma III property had a value \$159,620 in 2015; we find no document that states or can be interpreted to state that.

Sincerely,



Gary J. Aguirre

# Exhibit 6

**Gary Aguirre**

---

**From:** Holman, Janine [jholman@allenmatkins.com]  
**Sent:** Wednesday, March 09, 2016 3:14 PM  
**To:** Fates, Ted; Gary Aguirre  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com)  
**Subject:** RE: SEC v. Schooler

Mr. Aguirre,

I have shared the financial statements folder in Dropbox with you. You should be receiving a separate email.

**Janine Holman**

**From:** Fates, Ted  
**Sent:** Wednesday, March 9, 2016 9:15 AM  
**To:** Gary Aguirre <gary@aguirrelawapc.com>  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com) <thebrank@ethreadvisors.com>; Holman, Janine <jholman@allenmatkins.com>  
**Subject:** RE: SEC v. Schooler

Mr. Aguirre,

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

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

Regards,

**Ted Fates Esq.**

Partner  
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**  
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**From:** Fates, Ted  
**Sent:** Tuesday, March 1, 2016 8:30 AM  
**To:** 'Gary Aguirre' <[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)>  
**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)) <[thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)>  
**Subject:** RE: SEC v. Schooler

Mr. Aguirre,

Your vague reference to creating fictions is both false and counter-productive. We are trying to accommodate your numerous requests for documents in a very short time as best we can. Let's try to keep the correspondence civil and leave out the unnecessary attacks.

I will take your email below as confirmation that you will not provide the names of the GPs in which each of your clients have an interest and we will proceed with the task of gathering that information ourselves.

I have addressed both of your other requests below in prior emails. Specifically, with regard to your request for a deposition of the Receiver, I stated in email to you on Wednesday February 24<sup>th</sup>:

With regard to your request to schedule a deposition of the Receiver, considering the documentation to be provided as discussed above, we do not see a need to expend considerable receivership estate resources on another deposition. If you believe another deposition is necessary, please provide a list of topics that will be covered during the deposition so we can consider them and respond.

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

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 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.

The Ex Parte Application referenced in this prior response is attached again for reference.

Regards,

**Ted Fates Esq.**

Partner

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

**Allen Matkins**  
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**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]  
**Sent:** Monday, February 29, 2016 11:13 PM



**To:** Fates, Ted <tfates@allenmatkins.com>

**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)) <[thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)>

**Subject:** RE: SEC v. Schooler

Mr. Fates:

You create fictions and then argue them as truth. What I put under oath to the court is fact. Again, I am in the process of being retained. Beyond that fact, you are not entitled to know the details.

You know that I represent one client in relation to each property. It took unnecessary work out of order to provide that information. For the sake of clarity, I will object to the admission of any appraisal or reference to any appraisal in your filings and at the hearing which you do not voluntarily produce in its entirety pursuant to this request.

In addition to the request of these documents, I would like to set a deposition date for Mr. Hebrank for one week after you produces the documents you have been requested to produce.

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

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

Sincerely,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]

**Sent:** Monday, February 29, 2016 9:23 PM

**To:** Gary Aguirre

**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com))

**Subject:** RE: SEC v. Schooler

Mr. Aguirre,

We made a straight forward request on Friday – that you provide the names of the GPs in which your clients have interests so we can verify your claim that they have interests in all 23 properties. You must have this information as you have represented they have such interests. We explained that if you provide this information, we would be able to produce documents faster.

You have chosen not to provide the requested information. Therefore, we will have to verify your claim on our own, which will take longer. We will produce the appraisals, but it may take a day or two to verify that your clients have an interest in all 23 GP properties. Or, you can provide the information we requested on Friday and get the *documents* faster. It is your choice.

You have requested a lot of documents and requested that they produced in a very short timeframe. We are doing our best to try to accommodate your requests. Making an issue of little things like this is counter-productive and causes unnecessary delay.

Regards,

**Ted Fates Esq.**

Partner

Allen Matkins Leck Gamble Mallory & Natsis LLP

501 West Broadway, 15th Floor, San Diego, CA 92101-3541

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(619) 235-1527 (direct)

(619) 886-4466 (mobile)

(619) 233-1158 (fax)

**Allen Matkins**  
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---

**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]

**Sent:** Monday, February 29, 2016 5:38 PM

**To:** Fates, Ted

**Subject:** RE: SEC v. Schooler

Mr. Fates:

No, I provided you with the name of one client in a partnership that owns each property. That should be sufficient for you to provide the appraisals. As you are aware your delay in providing this information will delay my preparation. You are now forcing me to bring a discovery motion in addition to responding to your ex parte application.

Are you refusing to produce the appraisals until you are provided with information on all clients who are in the process of retaining me?

Please advise.

Sincerely,

Gary J. Aguirre

Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

[www.aguirrelawapc.com](http://www.aguirrelawapc.com)

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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Monday, February 29, 2016 5:30 PM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com))  
**Subject:** RE: SEC v. Schooler

I think you may have overlooked the highlighted portion below.

**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]  
**Sent:** Monday, February 29, 2016 5:21 PM  
**To:** Fates, Ted <[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com)>  
**Subject:** RE: SEC v. Schooler

As I understood, you were going to put them on Dropbox.

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Monday, February 29, 2016 4:57 PM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com))  
**Subject:** RE: SEC v. Schooler

Gary,

I am following up on this so we can start producing appraisals and broker opinions of value you have requested.

Thanks, Ted

**From:** Fates, Ted

**Sent:** Friday, February 26, 2016 5:59 PM

**To:** 'Gary Aguirre' <gary@aguirrelawapc.com>

**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com) <thebrank@ethreadvisors.com>

**Subject:** RE: SEC v. Schooler

Gary,

You have expressed your concerns regarding timing. If you could provide the names of the GPs in which your clients listed below have interests, that will shorten our time to verify so we can focus on gathering and providing documents.

Thanks, Ted

**From:** Gary Aguirre [mailto:gary@aguirrelawapc.com]

**Sent:** Friday, February 26, 2016 5:04 PM

**To:** Fates, Ted <tfates@allenmatkins.com>

**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com) <thebrank@ethreadvisors.com>

**Subject:** SEC v. Schooler

Ted:

As you know, I am in the process of being retained by clients who are invested in partnerships that own each of the 23 properties. The following individuals have invested in partnerships which hold interests in each of the 23 properties: Robert Churchill, IRA, Robert Churchill Family Trust, Mark and 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, Cynthia Dorney Roth IRA, William V. and Carol J Dascomb, Trustees, Robert Indihar IRA, Linda Baldwin IRA, Baldwin Family Survivors' Trust, Juanita Bass IRA, Matthew and Jennifer Berta, Randall S. Ingermanson IRA, William Dorney IRA, IDAC Family Group LLC, Robert S. Weschler, Karie J. Wright, DF Macy IRA, Stephen and Polly Yue, David Karp IRA, Iris Bernstein IRA, Lisa A. Walz, John & Mary Jenkins Trustees.

That should be sufficient for you at this time to provide me complete copies of the appraisals and the other information I requested in my emails of February 22 and 26, 2016.

Please provide me with a time on Monday that I can obtain the appraisals. I am happy to bring a hard drive to your office for that purpose.

As you know, any delay at your end in producing the requested records will make impossible to meet an extremely challenging deadline. At this point, because of your silence, I have had to begin preparing a motion to be filed with the court requesting that you be directed to produce these records and also requesting the rescheduling of the hearing currently scheduled for April 29. I have also had to divert time to prepare an opposition to your motion for a protective order, which seems to be timed to tie me down on collateral matters.

Regards,

Gary J. Aguirre

Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

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# Exhibit 5

## Gary Aguirre

---

**From:** Fates, Ted [tfates@allenmatkins.com]  
**Sent:** Tuesday, March 01, 2016 8:30 AM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com)  
**Subject:** RE: SEC v. Schooler  
**Attachments:** 2013-11-22 0519 Ex Parte Re Use GP Funds to Pay Mortgages.pdf

Mr. Aguirre,

Your vague reference to creating fictions is both false and counter-productive. We are trying to accommodate your numerous requests for documents in a very short time as best we can. Let's try to keep the correspondence civil and leave out the unnecessary attacks.

I will take your email below as confirmation that you will not provide the names of the GPs in which each of your clients have an interest and we will proceed with the task of gathering that information ourselves.

I have addressed both of your other requests below in prior emails. Specifically, with regard to your request for a deposition of the Receiver, I stated in email to you on Wednesday February 24<sup>th</sup>:

With regard to your request to schedule a deposition of the Receiver, considering the documentation to be provided as discussed above, we do not see a need to expend considerable receivership estate resources on another deposition. If you believe another deposition is necessary, please provide a list of topics that will be covered during the deposition so we can consider them and respond.

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

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 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.

The Ex Parte Application referenced in this prior response is attached again for reference.

Regards,

### **Ted Fates Esq.**

Partner

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**  
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**From:** Gary Aguirre [mailto:gary@aguirrelawapc.com]  
**Sent:** Monday, February 29, 2016 11:13 PM  
**To:** Fates, Ted <tfates@allenmatkins.com>  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com) <thebrank@ethreadvisors.com>  
**Subject:** RE: SEC v. Schooler

Mr. Fates:

You create fictions and then argue them as truth. What I put under oath to the court is fact. Again, I am in the process of being retained. Beyond that fact, you are not entitled to know the details.

You know that I represent one client in relation to each property. It took unnecessary work out of order to provide that information. For the sake of clarity, I will object to the admission of any appraisal or reference to any appraisal in your filings and at the hearing which you do not voluntarily produce in its entirety pursuant to this request.

In addition to the request of these documents, I would like to set a deposition date for Mr. Hebrank for one week after you produces the documents you have been requested to produce.

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

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

Sincerely,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

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---

**From:** Fates, Ted [mailto:tfates@allenmatkins.com]  
**Sent:** Monday, February 29, 2016 9:23 PM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com)  
**Subject:** RE: SEC v. Schooler



Mr. Aguirre,

We made a straight forward request on Friday – that you provide the names of the GPs in which your clients have interests so we can verify your claim that they have interests in all 23 properties. You must have this information as you have represented they have such interests. We explained that if you provide this information, we would be able to produce documents faster.

You have chosen not to provide the requested information. Therefore, we will have to verify your claim on our own, which will take longer. We will produce the appraisals, but it may take a day or two to verify that your clients have an interest in all 23 GP properties. Or, you can provide the information we requested on Friday and get the documents faster. It is your choice.

You have requested a lot of documents and requested that they produced in a very short timeframe. We are doing our best to try to accommodate your requests. Making an issue of little things like this is counter-productive and causes unnecessary delay.

Regards,

**Ted Fates Esq.**

Partner

Allen Matkins Leck Gamble Mallory & Natsis LLP

501 West Broadway, 15th Floor, San Diego, CA 92101-3541

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(619) 233-1158 (fax)

**Allen Matkins**  
CHALLENGE. OPPORTUNITY. SUCCESS.

---

**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]

**Sent:** Monday, February 29, 2016 5:38 PM

**To:** Fates, Ted

**Subject:** RE: SEC v. Schooler

Mr. Fates:

No, I provided you with the name of one client in a partnership that owns each property. That should be sufficient for you to provide the appraisals. As you are aware your delay in providing this information will delay my preparation. You are now forcing me to bring a discovery motion in addition to responding to your ex parte application.

Are you refusing to produce the appraisals until you are provided with information on all clients who are in the process of retaining me?

Please advise.

Sincerely,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

[www.aguirrelawapc.com](http://www.aguirrelawapc.com)

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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Monday, February 29, 2016 5:30 PM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com))  
**Subject:** RE: SEC v. Schooler

I think you may have overlooked the highlighted portion below.

**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]  
**Sent:** Monday, February 29, 2016 5:21 PM  
**To:** Fates, Ted <[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com)>  
**Subject:** RE: SEC v. Schooler

As I understood, you were going to put them on Dropbox.

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Monday, February 29, 2016 4:57 PM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com))  
**Subject:** RE: SEC v. Schooler

Gary,

I am following up on this so we can start producing appraisals and broker opinions of value you have requested.

Thanks, Ted

**From:** Fates, Ted

**Sent:** Friday, February 26, 2016 5:59 PM

**To:** 'Gary Aguirre' <[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)>

**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)) <[thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)>

**Subject:** RE: SEC v. Schooler

Gary,

You have expressed your concerns regarding timing. If you could provide the names of the GPs in which your clients listed below have interests, that will shorten our time to verify so we can focus on gathering and providing documents.

Thanks, Ted

**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]

**Sent:** Friday, February 26, 2016 5:04 PM

**To:** Fates, Ted <[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com)>

**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)) <[thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)>

**Subject:** SEC v. Schooler

Ted:

As you know, I am in the process of being retained by clients who are invested in partnerships that own each of the 23 properties. The following individuals have invested in partnerships which hold interests in each of the 23 properties: Robert Churchill, IRA, Robert Churchill Family Trust, Mark and 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, Cynthia Dorney Roth IRA, William V. and Carol J Dascomb, Trustees, Robert Indihar IRA, Linda Baldwin IRA, Baldwin Family Survivors' Trust, Juanita Bass IRA, Matthew and Jennifer Berta, Randall S. Ingermanson IRA, William Dorney IRA, IDAC Family Group LLC, Robert S. Weschler, Karie J. Wright, DF Macy IRA, Stephen and Polly Yue, David Karp IRA, Iris Bernstein IRA, Lisa A. Walz, John & Mary Jenkins Trustees.

That should be sufficient for you at this time to provide me complete copies of the appraisals and the other information I requested in my emails of February 22 and 26, 2016.

Please provide me with a time on Monday that I can obtain the appraisals. I am happy to bring a hard drive to your office for that purpose.

As you know, any delay at your end in producing the requested records will make impossible to meet an extremely challenging deadline. At this point, because of your silence, I have had to begin preparing a motion to be filed with the court requesting that you be directed to produce these records and also requesting the rescheduling of the hearing currently scheduled for April 29. I have also had to divert time to prepare an opposition to your motion for a protective order, which seems to be timed to tie me down on collateral matters.

Regards,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

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---

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---

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# Exhibit 4

**Gary Aguirre**

---

**From:** Gary Aguirre  
**Sent:** Monday, February 29, 2016 11:13 PM  
**To:** Fates, Ted  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com)  
**Subject:** RE: SEC v. Schooler

Mr. Fates:

You create fictions and then argue them as truth. What I put under oath to the court is fact. Again, I am in the process of being retained. Beyond that fact, you are not entitled to know the details.

You know that I represent one client in relation to each property. It took unnecessary work out of order to provide that information. For the sake of clarity, I will object to the admission of any appraisal or reference to any appraisal in your filings and at the hearing which you do not voluntarily produce in its entirety pursuant to this request.

In addition to the request of these documents, I would like to set a deposition date for Mr. Hebrank for one week after you produces the documents you have been requested to produce.

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

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

Sincerely,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

[www.aguirrelawapc.com](http://www.aguirrelawapc.com)

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---

**From:** Fates, Ted [mailto:tfates@allenmatkins.com]  
**Sent:** Monday, February 29, 2016 9:23 PM

**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com)  
**Subject:** RE: SEC v. Schooler

Mr. Aguirre,

We made a straight forward request on Friday – that you provide the names of the GPs in which your clients have interests so we can verify your claim that they have interests in all 23 properties. You must have this information as you have represented they have such interests. We explained that if you provide this information, we would be able to produce documents faster.

You have chosen not to provide the requested information. Therefore, we will have to verify your claim on our own, which will take longer. We will produce the appraisals, but it may take a day or two to verify that your clients have an interest in all 23 GP properties. Or, you can provide the information we requested on Friday and get the documents faster. It is your choice.

You have requested a lot of documents and requested that they produced in a very short timeframe. We are doing our best to try to accommodate your requests. Making an issue of little things like this is counter-productive and causes unnecessary delay.

Regards,

**Ted Fates Esq.**

Partner

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**  
CHALLENGE. OPPORTUNITY. SUCCESS.

---

**From:** Gary Aguirre [mailto:[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)]  
**Sent:** Monday, February 29, 2016 5:38 PM  
**To:** Fates, Ted  
**Subject:** RE: SEC v. Schooler

Mr. Fates:

No, I provided you with the name of one client in a partnership that owns each property. That should be sufficient for you to provide the appraisals. As you are aware your delay in providing this information will delay my preparation. You are now forcing me to bring a discovery motion in addition to responding to your ex parte application.

Are you refusing to produce the appraisals until you are provided with information on all clients who are in the process of retaining me?

Please advise.

Sincerely,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Monday, February 29, 2016 5:30 PM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com))  
**Subject:** RE: SEC v. Schooler

I think you may have overlooked the highlighted portion below.

**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]  
**Sent:** Monday, February 29, 2016 5:21 PM  
**To:** Fates, Ted <[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com)>  
**Subject:** RE: SEC v. Schooler

As I understood, you were going to put them on Dropbox.

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Monday, February 29, 2016 4:57 PM  
**To:** Gary Aguirre



**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com))

**Subject:** RE: SEC v. Schooler

Gary,

I am following up on this so we can start producing appraisals and broker opinions of value you have requested.

Thanks, Ted

**From:** Fates, Ted

**Sent:** Friday, February 26, 2016 5:59 PM

**To:** 'Gary Aguirre' <[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)>

**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)) <[thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)>

**Subject:** RE: SEC v. Schooler

Gary,

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Thanks, Ted

**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]

**Sent:** Friday, February 26, 2016 5:04 PM

**To:** Fates, Ted <[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com)>

**Cc:** Thomas C. Hebrank ([thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)) <[thebrank@ethreadvisors.com](mailto:thebrank@ethreadvisors.com)>

**Subject:** SEC v. Schooler

Ted:

As you know, I am in the process of being retained by clients who are invested in partnerships that own each of the 23 properties. The following individuals have invested in partnerships which hold interests in each of the 23 properties: Robert Churchill, IRA, Robert Churchill Family Trust, Mark and 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, Cynthia Dorney Roth IRA, William V. and Carol J Dascomb, Trustees, Robert Indihar IRA, Linda Baldwin IRA, Baldwin Family Survivors' Trust, Juanita Bass IRA, Matthew and Jennifer Berta, Randall S. Ingermanson IRA, William Dorney IRA, IDAC Family Group LLC, Robert S. Weschler, Karie J. Wright, DF Macy IRA, Stephen and Polly Yue, David Karp IRA, Iris Bernstein IRA, Lisa A. Walz, John & Mary Jenkins Trustees.

That should be sufficient for you at this time to provide me complete copies of the appraisals and the other information I requested in my emails of February 22 and 26, 2016.

Please provide me with a time on Monday that I can obtain the appraisals. I am happy to bring a hard drive to your office for that purpose.

As you know, any delay at your end in producing the requested records will make impossible to meet an extremely challenging deadline. At this point, because of your silence, I have had to begin preparing a motion to be filed with the court requesting that you be directed to produce these records and also requesting the

rescheduling of the hearing currently scheduled for April 29. I have also had to divert time to prepare an opposition to your motion for a protective order, which seems to be timed to tie me down on collateral matters.

Regards,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
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# Exhibit 3

## Gary Aguirre

---

**From:** Fates, Ted [tfates@allenmatkins.com]  
**Sent:** Friday, February 26, 2016 5:18 PM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com)  
**Subject:** RE: SEC v. Schooler  
**Attachments:** 2013-11-22 0519 Ex Parte Re Use GP Funds to Pay Mortgages.pdf

Gary,

The appraisals for the partnerships in which your clients have an interest will be provided on Monday (via Dropbox). The requested emails with the SEC will be produced either that day or the next.

With regard to your request for communications between the Receiver and Mr. Gessner, we do not have a problem providing them as long as Mr. Gessner's consents. We suggest you contact him and request his written consent.

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 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.

Regards, Ted

**From:** Gary Aguirre [mailto:gary@aguirrelawapc.com]  
**Sent:** Thursday, February 25, 2016 4:40 PM  
**To:** Fates, Ted <tfates@allenmatkins.com>  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com) <thebrank@ethreadvisors.com>  
**Subject:** RE: SEC v. Schooler

Good afternoon Ted:

I am still in the process of finalizing the agreements with my clients, but I expect to have a partial list for you tomorrow. The list will include at least one client who is an investor in a partnership that has an ownership interest in each of the 23 properties.

You have agreed to release the records described in categories 1 through 4 of my email of February 22. As requested in that email, may I obtain copies of these records on Monday, February 29? If not all records are available on Monday, may I obtain electronic copies of the appraisals? I would assume these records are electronically available and easily accessible to your firm and the Receiver. Even if we get the appraisals by Monday, the timetable is very challenging. If you cannot produce all records on Monday, would you kindly consider making a rolling production, i.e., producing them as they become available.

In relation to category 5, I understand there were no communications between your firm and Scott Gessner. Would you kindly confirm whether there were any written communications, including emails, between Mr. Gessner and Mr. Hebrank or E3 Advisors and, if so, produce them at your earliest convenience?

I also understand that neither you nor E3 Advisors have the records described in paragraphs 6 and 7 of my February 22 email. The investors seek a clear accounting of the receipts and disbursements while the Receiver had control of the partnerships in which they were invested. One among many questions raised by investors

boils down to this: what did the Receiver do with the funds generated by the acceleration of the loans owed by the partnerships to Western? Were mortgages paid? Were liabilities of the partnerships paid?

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

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

Since I do not know the exact way in which E3 Advisors maintained the accounting records of its receivership, I cannot define the records sought more tightly. However, to avoid any unnecessary inconvenience or expense, 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.

I expect to respond to your position regarding the Receiver's deposition very soon.

Regards,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

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---

**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Wednesday, February 24, 2016 11:20 AM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank ([thebrank@ethreeadvisors.com](mailto:thebrank@ethreeadvisors.com))  
**Subject:** RE: SEC v. Schooler

Gary,

You have asked for a substantial amount of documentation. Although we are willing to provide requested documents, as provided below, it is reasonable to request the names of your clients and the partnerships in which they have interests. Once we have that information, we will provide documents pertaining to the partnerships in which your clients have interests.

# Exhibit 2



**Gary Aguirre**

---

**From:** Fates, Ted [tfates@allenmatkins.com]  
**Sent:** Wednesday, February 24, 2016 11:20 AM  
**To:** Gary Aguirre  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com)  
**Subject:** RE: SEC v. Schooler

Gary,

You have asked for a substantial amount of documentation. Although we are willing to provide requested documents, as provided below, it is reasonable to request the names of your clients and the partnerships in which they have interests. Once we have that information, we will provide documents pertaining to the partnerships in which your clients have interests.

Your document requests are addressed one by one as follows (in the same order as they appear in your email below):

1. The requested appraisals will be provided.
2. Assuming you have one or more clients in the applicable partnerships, the requested documents concerning the sale of the Jamul Valley property will be provided. There are no other pending sales.
3. All emails between Allen Matkins and the SEC concerning the SEC v. Schooler case from December 1, 2015 to the present will be provided.
4. All emails between Mr. Hebrank (including others at E3 Advisors) and the SEC concerning the SEC v. Schooler case from December 1, 2015 to the present will be provided.
5. No such communications exist.
6. No such documents exist.
7. No such statements exist. However, the Receiver will provide the tax returns (not including investor K-1s) for the partnerships in which your 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 Receiver's website. There is also substantial information and projections regarding receipts and disbursements included in the partnership information packets, which are available from the Receiver's website.

With regard to your request to schedule a deposition of the Receiver, considering the documentation to be provided as discussed above, we do not see a need to expend considerable receivership estate resources on another deposition. If you believe another deposition is necessary, please provide a list of topics that will be covered during the deposition so we can consider them and respond.

With regard to your final question, the Receiver does not anticipate any assets in the receivership will be paid to the SEC.

Regards,

**Ted Fates Esq.**

Partner

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

CHALLENGE. OPPORTUNITY. SUCCESS.

**From:** Gary Aguirre [mailto:gary@aguirrelawapc.com]  
**Sent:** Tuesday, February 23, 2016 10:15 AM  
**To:** Fates, Ted <tfates@allenmatkins.com>  
**Cc:** Thomas C. Hebrank (thebrank@ethreadvisors.com) <thebrank@ethreadvisors.com>  
**Subject:** SEC v. Schooler

Ted:

I think you must have overlooked the first sentence of my email below (now underlined and in bold) and the statements in Susan Graham's moving papers that I expect to be retained by Friday and move expeditiously beginning on Monday February 29. Since the court granted Ms. Graham's motion based on these representations, I would hope that you would also act on them. You can assume there will be at least 90 investors with interests in partnerships owning all properties.

In view of your contention that there is some urgency in proceeding with a hearing in this matter, my email was simply intended to cooperate with you in that goal and avoid unnecessary delays. I will provide you the identities on Friday.

Please advise me by 5 p.m. tomorrow whether or not you will agree voluntarily to the schedule below. If not, I will be forced to file another *ex parte* motion seeking the requested discovery and will ask that the timetable below be incorporated into the order. I would hope we could avoid burdening Judge Curiel with another *ex parte* application.

Regards,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

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**From:** Fates, Ted [<mailto:tfates@allenmatkins.com>]  
**Sent:** Tuesday, February 23, 2016 9:39 AM  
**To:** Gary Aguirre  
**Cc:** Thomas Hebrank  
**Subject:** RE: SEC v. Schooler

Hi Gary,

Thanks for your email. Could you please provide the list of investors you represent, including the General Partnerships in which they hold ownership units? Once we have that, we will consider your requests below and get back in touch.

Thank you,

Ted

**From:** Gary Aguirre [<mailto:gary@aguirrelawapc.com>]  
**Sent:** Monday, February 22, 2016 2:28 PM  
**To:** Fates, Ted <[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com)>  
**Subject:** SEC v. Schooler

Good afternoon Ted:

**As you know, I expect to be retained to represent investors in the above matter by Friday, February 26.**  
In that event, my first objective is to obtain the relevant documents from the Receiver and your office as efficiently and quickly as possible so I can as well move ahead efficiently and quickly.

Again, I hope you will cooperate with this process and resist the temptation to create unnecessary obstacles, e.g., a request that I explain why the appraisals you repeatedly cite in the Receiver's pending motion are relevant. All the documents described below are directly placed in issue by the Receiver's motion. In that light, I am requesting the rolling production of the following documents no later than March 1, beginning with the appraisals which should be immediately available:

1. All appraisals (both the 2013, 2015, or other) on the 23 properties by MAIs or broker/agents, including supporting data;
2. Sales and escrow documents relating to the pending or consummated sale of the Jamul property and any other pending sales (if you believe the production of any are subject to a court order, I would suggest that we stipulate to a proposed modification of the existing order; I am happy to work out a protective order if you believe that is necessary);
3. All emails between your firm and any employee of the SEC from December 1, 2015 to the present;
4. All emails between Mr. Hebrank/E-3 Advisors and any employee of the SEC from December 1, 2015 to the present;
5. All communications between your firm and Scott Gessner from December 1, 2015, to the present;
6. Records, e.g., journals, which indicate the amounts of payments which were accelerated on existing loans from the 87 partnerships to Western and records indicating how the Receiver used those funds;
7. All statements of receipts and disbursements, audited or unaudited, and balance sheets, audited or unaudited, relating to the 87 partnerships, consolidated or separate, or Western from the inception of the receivership to the present.

For the sake of clarity, I will object to the admission of any appraisal or reference to any appraisal in your filings and at the hearing which you do not voluntarily produce in its entirety pursuant to this request.

In addition to the request of these documents, I would like to set a deposition date for Mr. Hebrank for March 7, 2016.

Finally, does the Receiver intend to pay or allow any of the assets subject to the receivership to be used to pay any portion of the SEC judgment?

If you find any portion of this email to be unclear, be assured that I will quickly respond to any question seeking a clarification.

Regards,

Gary Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Tel: 619-400-4960  
Fax: 619-501-7072

[www.aguirrelawapc.com](http://www.aguirrelawapc.com)

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# Exhibit 1

**From:** Fates, Ted  
**To:** Gary Aguirre  
**Cc:** Thomas Hebrank  
**Subject:** RE: SEC v. Schooler  
**Date:** Tuesday, February 23, 2016 9:38:55 AM

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Hi Gary,

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