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

11
12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

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

21 Defendants.

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

**INVESTORS' REPLY TO SEC'S
AND RECEIVER'S OPPOSITION
TO INVESTORS' MOTION TO
INTERVENE**

Date: May 6, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Introduction 1

II. The Receiver Has Not Disputed Investors’ Status as Necessary Parties 4

III. Investors’ Motion to Intervene Is Timely..... 5

IV. Investors Have a Significantly Protectable Interest in This Action 8

V. No Party Adequately Represents Investors in This Case..... 8

VI. The SEC’s Own Ninth Circuit Authority Refutes Its Impairment Theory 15

VII. Alternatively, The Motion for Permissive Intervention Should Be Granted 17

VIII. Section 21(g) of the Exchange Act Does Not Bar Investors from Intervening in
This Action without the SEC’s Consent..... 18

Table of Authorities

Cases

Arakaki v. Cayetano

324 F.2d 1078 (9th Cir. 2003).....*passim*

CFTC v. Chilcott Portfolio Mgmt. Inc.

725 F.2d 384 (10th Cir. 1984).....16

CFTC v. Heritage Capital Advisory Servs. Ltd.

736 F.2d 384 (7th cir. 1984).....16

CFTC v. Topworth International, Ltd.

205 F.3d 1107 (9th Cir. 1999).....16

Chamness v. Bowen

722 F.3d 1110 (9th Cir. Cal. 2013)6

Delta Financial Corp. v. Paul D. Comanduras & Assoc.

973 F.2d 301, 306 (4th Cir. Va. 1992)5

Northwest Forest Res. Council v. Glickman

82 F.2d 825 (9th Cir. 1996).....15

Rudnick v. Delfino

140 Cal. App. 2d 260 (1956)5

SEC v. ABS Fund, LLC

2013 WL 3752119 (S.D. Cal. 2013).....18

SEC v. ABS Fund, LLC

2013 WL 3752119 (S.D. Cal. 2013).....5, 18, 19

SEC v. American Bd. of Trade, Inc.

830 F.2d 431 (2d Cir. N.Y. 1987)12

SEC v. Bengier

2010 U.S. Dist. LEXIS 16545 (N.D. Ill. Feb. 23, 2010).....18, 19

SEC v. Charles Plohn & Co.

448 F.2d 546 (2d Cir. 1971)16, 17

1 *SEC v. Credit Bancorp, Ltd.*
 2 194 F.R.D. 457 (S.D.N.Y. 2000).....18, 20
 3 *SEC v. Harris*
 4 2015 U.S. Dist. LEXIS 11975 (N.D. Tex. Feb. 2, 2015)17
 5 *SEC v. Kings Real Estate Inv. Trust*
 6 222 F.R.D. 660 (D. Kan. 2004)20
 7 *SEC v. Lincoln Thrift Asso.*
 8 577 F.2d 600 (9th Cir. 1978)12, 19
 9 *SEC v. Navin*
 10 166 F.R.D. 435 (N.D. Cal. 1995)19
 11 *SEC v. TLC Invs. and Trade Co.*
 12 147 F.Supp.2d 1031 (C.D. Cal. 2001).....8, 9, 12, 16
 13 *Sw. Ctr. for Biological Diversity v. Berg*
 14 268 F.3d 810 (9th Cir. 2001)9
 15 **Statutes**
 16 28 USC § 20014, 8, 13
 17 **Securities Exchange Act of 1934**
 18 Section 21(g)
 19 [15 U.S.C. § 78(u)(g)].....18, 19, 20
 20 **Rules**
 21 Fed. R. Civ. P. 245
 22 **Regulations**
 23 17 C.F.R. § 230.502(a).....7
 24 **Articles**
 25 Marcus F. Salitore, *SEC Receivers vs. Bankruptcy Trustees Liquidation by Instinct or*
 26 *Rule*, American Bankruptcy Institute Journal, Oct. 200313
 27
 28

1 Megan E. Smith, Comment, *SEC Receivers and the Presumption of Innocence: The*
2 *problem with Parallel Proceedings in Securities Cases and the Ever Increasing*
3 *Powers of the Receivers*, 11 HOUS. BUS. & TAX L.J. 1, 203-31 (2011).....12
4 Sonia A. Steinway, Comment, *SEC “Monetary Penalties Speak Very Loudly,” But What*
5 *Do They Say? A Critical Analysis of the SEC’s New Enforcement Approach*, 124 YALE
6 L.J. 209, 211 (2014).....12

7 **Treatises**

8 Sutherland Stat. Construction § 47.01 (5th ed. 1992).....20

9
10
11
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1 **I. Introduction**

2 Investors¹ believe there is one major issue before the Court: returning the assets
3 in the receivership to investors. Investors believe Justice and the law impose two
4 requirements on that process: (1) investors’ meaningful participation and (2) disclosure
5 of the material facts to investors.

6 Hundreds of Supreme Court cases have decided whether a litigant has standing
7 depends on whether he or she is an aggrieved party. Our Justice system operates best
8 when aggrieved parties speak through attorneys whose skills are not too mismatched.
9 The Court cannot be expected to protect those who should be filling the empty seats in
10 the courtroom. There are now empty seats at that table.

11 The Receiver fills a seat, but has no interest in the assets. The SEC fills a seat, but
12 also has no interest in the assets. Two seats are reserved for Schooler and Western, but
13 neither is in this fight. There is an empty seat: for the Investors who own the assets. For
14 many, it is their retirement. If the SEC and the Receiver, with no financial interests,
15 may distribute investors’ assets over Investors’ objections while their seats are empty,
16 Lady Justice will join investors as a victim.

17 The 350 investors appear before the Court in two groups. Both move to intervene
18 in this case to seek orders that would protect all 3,500 investors. We believe the two
19 groups are adequate spokespersons for the rest. No other investor has retained counsel to
20 appear at the scheduled hearings. We expect there will be little if any support for the
21 Receiver or the SEC’s positions at the scheduled hearings.

22 Both the SEC and the Receiver aggressively oppose Investors’ motions. Both
23 claim they do so to protect Investors. Both concede Investors may appear at the hearing
24 to express their views, but not participate as parties. Both contend the Receiver would
25 adequately represent their interests. We do not think so.

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27
28 ¹ The names of the investors filing this opposition are listed in Attachment 1 filed
herewith.

1 In this case, history is prologue. Investors have experienced what it means to be
2 represented by the Receiver. The SEC proposed his appointment in September 2012. As
3 a condition to his appointment, the Receiver was supposed to comply with the SEC's
4 billing instructions, maintain a cash accounting system, provide the Court with financial
5 reports with content, and file them first with the SEC. He did none of this, while the SEC
6 silently watched. We have asked the SEC staff for his filings and they never responded.²
7 Nor did the SEC ever report the Receiver's noncompliance to the Court in any filing we
8 can find. Instead the SEC allowed him, in violation of its mandates, to provide the Court
9 with financial reports containing huge gaps and Enron-style irregularities. The SEC
10 proposed the Receiver's bond be waived. Dkt. No. 3-1, at 12, 23. The SEC and the
11 Receiver urged the Court to deny the motion allowing the GPs to exit the receivership,
12 while both knew the Receiver's expenses were running at \$62,000 a month and
13 investors' cash was evaporating at more than \$100,000 a month.

14 The SEC claimed the GPs had to stay in the receivership while it pursued claims
15 for fraud and disgorgement against a defendant that now appears to be judgment-proof.³
16 As cash loss approaches \$5 million, the Receiver tells investors that Western has only
17 \$1.2 million for them and the collectability of the judgment against Schooler is
18 unknown. And the GPs' true losses and financial conditions are unknown, because the
19 Receiver failed to comply with SEC mandates, case law, and applicable accounting
20 standards. All while the SEC silently watched. Now, before the Receiver accounts for
21 the first \$19 million, the SEC and the Receiver ask the Court to entrust him with at least
22 \$23 million more.

23 No viable plan can be offered or considered without a clear financial picture of the
24 GPs and Western. None exists. The Court ordered the Receiver to craft a plan so the GPs

25 ² See Aguirre Declaration filed herewith, ¶ 20, Exs. 22 and 25.

26 ³ "In terms of investor recoveries, Western's assets are already in receivership and it is
27 unknown how much will be collected from Schooler. Therefore, the primary sources of
28 investor recoveries will likely be the assets of the Receivership Entities (the GPs and
Western)." Dkt. No. 1181-1 at 8, 10-13.

1 could leave the receivership. He is unwilling or unable to do so and rails against
2 complying with the Court's order. He failed to come up with any feasible alternatives for
3 almost four years. His "orderly sale" plan was designed to fail. The Receiver told
4 investors paying operational fees and debt payments was throwing good money after
5 bad. Not surprisingly, they stopped paying. And when they did, the Receiver proceeded
6 with his "orderly sale," a euphemism for "without investor's consent." This is no plan. It
7 is a blueprint for failure.

8 As a consequence, Investors face an oncoming freight train. In his own defense,
9 the Receiver tells how he warned investors the freight train was headed their way. We do
10 not dispute that, never have. In fact, his dire warnings were part of the blueprint for
11 failure. But the locomotive engineer should do something more than warn of the crash.
12 He needs to find a sidetrack or let the passengers off the train. He did neither.

13 In the absence of any substantial authority or evidence, the SEC and the Receiver
14 blow smoke: dense and in high volumes. Both claim Investors seek to re-litigate the past
15 four years. We assure the Court our modest budget would run out soon if we were so
16 foolhardy. We are not Panama declaring war on China for failing to pay the toll when its
17 ship passed through the canal.

18 Our focus is surgical. And the Court decides its scope. The Court may safely
19 assume neither the SEC nor the Receiver will shy away from pointing out any
20 transgressions, real or otherwise. With these comments in mind, Investors will submit an
21 order limiting the scope of their proposed intervention to post judgment issues along
22 these lines:

- 23 1. Proposing a plan allowing the GPs to exit the receivership;
- 24 2. Seeking an order that the GP agreements remain in effect;
- 25 3. Proposing options to sell the properties, including 28 USC § 2001;
- 26 4. Proposed plan of distribution for GPs which remain in the receivership; and
- 27 5. An accounting of the receivership.

1 The first four subjects are tightly interwoven. The first would allow Investors
2 propose a plan for the GPs to exit the receivership, something the Receiver is unable or
3 unwilling to do. Assuming a majority vote in favor of the plan and the GP meet any
4 conditions the Court sets, investors would take control of the GP. Assuming these steps
5 occur, Investors would seek an order that the GP agreements are in full force and effect.
6 This raises no new issue. The Receiver seeks an order on May 6 that would render the
7 GP agreements void; the declaratory relief seeks the opposite finding.

8 That leads to the third prong. It is pointless for the GPs to leave the receivership if
9 the Receiver has sold their only asset, especially at prices beneath their value. Investors
10 claim the Receiver has not complied with 28 USC § 2001. Numerous SEC cases hold 28
11 USC § 2001 controls the sale of realty. Dkt. No. 1230 at 7-10. Yet, neither the SEC nor
12 the Receiver has ever cited this statute in motions to sell GP properties. Investors set a
13 hearing for June 3, 2016, for the Court to decide how 28 USC § 2001 will be applied to
14 the sales in this case.

15 Fourth, we ask for an accounting. The Receiver's financial reports to the Court and
16 his record keeping are packed with huge gaps and irregularities. Investors have filed a
17 noticed motion set for hearing for June 3, 2016, seeking an accounting. It describes in
18 detail why one is necessary. Investors have also filed a declaration with this motion
19 describing more briefly why the Receiver's most recent efforts to defend his practices are
20 just as misleading as his early ones.⁴

21 Finally, Investors seek to participate in any proceedings before the Court in
22 relation to the proposed plan if for any reason the GPs do not exit the receivership.

23 **II. The Receiver Has Not Disputed Investors' Status as Necessary Parties**

24 Investors have alleged in the proposed complaint in intervention (Complaint) that
25 they are partners in the 87 GPs and thus necessary parties, because the Receiver "plans
26 to dissolve, liquidate and terminate, and, after which, the Receiver plans to distribute
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28 ⁴ Aguirre Decl. ¶¶ 2-15, Exs. 1-22.

1 said GPs' assets to third parties who have no legal or equitable right to said assets
2 (Complaint ¶¶ 12, and 13 (A) and (B)).” In our opposition to the Receiver’s Liquidation
3 motion (Dkt. No. 1235), we argued this case must be stayed, because investors were not
4 joined as necessary parties, citing both federal court and California state court decisions
5 holding that partners are necessary parties in a proceeding to liquidate the partnerships.
6 *Delta Financial Corp. v. Paul D. Comanduras & Assoc.*, 973 F.2d 301, 306 (4th Cir. Va.
7 1992); *Rudnick v. Delfino*, 140 Cal. App. 2d 260, 265 (1956). On February 4, the
8 Receiver initiated proceedings to liquidate the 87 GPs, but has failed to serve, to the best
9 of our knowledge, any of the investors in this case. Neither the Receiver nor SEC has
10 responded to that argument.

11 **III. Investors’ Motion to Intervene Is Timely**

12 The SEC and the Receiver contend Investors’ motion is not timely on some issues,
13 but concede it is timely on others. The SEC parses the issue: “If all they truly wanted to
14 do was intervene *so they could express their views about the receiver’s proposed*
15 *distribution plan and the process for selling the GP properties*, then their motions might
16 have been timely (emphasis added).” Dkt. No. 1266, at 8, 22-24. The Receiver goes one
17 step more: he claims it would be untimely for Investors’ to challenge his wholesale
18 violations of 28 USC § 2001. Dkt. No. 1260 at 5, 5-8.

19 The SEC and the Receiver contend that “timely” means *early* in the context of Fed.
20 R. Civ. P. 24. The SEC knows better. Indeed, the lead staff attorney who brings this
21 motion knows timely means ripe, not too early and not too late. He was also the lead
22 attorney in *SEC v. ABS Fund, LLC*, 2013 WL 3752119 (S.D. Cal. 2013), but was then
23 arguing that timely means not too early. His brief in that case argued to this Court:
24 “[Kern] argues that his motion is timely because the parties are only now beginning the
25 discovery process. However, ...his only interest in intervening concerns the payment of
26 penalties or disgorgement ... *But there is nothing currently pending before the Court*
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1 *regarding the issues of civil penalty and disgorgement* (emphasis added).”⁵ We cannot
2 improve on the SEC’s statement of this principle.

3 Using the SEC’s logic, this motion to intervene would not be timely until this case
4 had reached the point when the termination of the receivership was “pending” before this
5 Court. On that point, we have clear guidance from the Court’s March 4, 2015, order: “the
6 most equitable decision is to keep all the GPs within the receivership until the conclusion
7 of this case.” Dkt. No. 1003. Given the clarity of that order, we do not believe a motion to
8 intervene would have been proper, much less timely, until “the conclusion of the case.”
9 Had we ignored the Court’s guidance, as the SEC now suggests, and brought the motion
10 to intervene shortly after the Court’s order (Dkt. No. 1003), the SEC would surely have
11 pointed our disregard of the Court’s guidance.

12 Nonetheless, the SEC argues this motion should have been brought in August
13 2015, six months before any investor had retained counsel. The SEC argues Investors’
14 counsel was conducting informal discovery at that time. This is pure fiction. He had not
15 been retained. He had made no decision whether to take the case. He contacted the SEC
16 staff attorney handling this case, Sara Kalin, and asked her if there were any key orders
17 defining the issues in the case, since the record was far too voluminous to review. She
18 sent one order, the Court’s order of March 4, 2015 (Dkt. No. 1003).⁶ That order, as
19 discussed above, made crystal clear that no motion to intervene should be filed until “the
20 conclusion of the case.” Investors’ counsel had no discussion regarding discovery,
21 formal or informal, with Ms. Kalin. As mentioned in Investors’ counsel earlier
22 declaration, he declined the case for personal reasons.⁷ The notion a phone call seeking
23 an order regarding this case somehow made a motion to intervene timely is specious.

24 But that is only the first of two arguments that would best be labeled as “grasping
25 at straws.” The SEC comes up with another specious theory to circumvent *Chamness v.*

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27 ⁵ See Investors’ Request for Judicial notice (Dkt. No. 1272), Ex. 1, at 6, 23-28.

28 ⁶ Aguirre Decl. filed herewith, ¶ 38, Ex. 39.

⁷ *Id.*

1 *Bowen* 722 F.3d 1110, 1121 (9th Cir. Cal. 2013), quoted in our first brief for this
2 principle: “In analyzing timeliness, however, the focus is on the date the person
3 attempting to intervene should have been aware his ‘interest[s] would no longer be
4 protected adequately by the parties,’ rather than the date the person learned of the
5 litigation.””

6 The SEC contends there was an event in May 2015 when Investors should have
7 realized they would no longer be adequately protected by the parties in this case:

8 [I]n May 2015, the Court held that the offer and sale of GP interests was
9 one, integrated offering, based, in part, on the fact that 93% of investor funds
10 went directly to Western. *See* Dkt. No. 1074 at 7. So it is no surprise at all
11 that the receiver’s recommended distribution plan calls for a *pro rata*
12 distribution of assets equally to all investors.”

13 Dkt. No. 1266 at 10, 6-10. We believe this argument is worth fully embracing. Imagine
14 a 70-year-old retired engineer who invested \$30,000. The SEC would assume he spends
15 his spare time perusing the 1,200 pleadings and 110 orders in this case. He subscribes to
16 PACER so he misses nothing. On May 19, 2015, he reads the order issued that day.
17 Midway through the decision, he reads, “thus the 17 C.F.R. § 230.502(a) factors, as a
18 whole, warrant considering Western’s sales of GP units for all the GPs to be a single,
19 integrated offering.” Stunned, he turns to his wife and says: “Judge Curiel found the
20 partnerships are single, integrated offerings.” His wife looks at him for a moment and
21 then utters: “Pooling must be coming next.” Not missing a beat, he replies: “Guess we
22 better call that securities lawyer.” This is the scenario the SEC postulates. And had they
23 done that, and the securities lawyer was worth his salt, he would have said exactly what
24 the SEC told this Court in *ABS Fund*: “there is nothing currently pending before the
25 Court involving pooling. Call me next year when the issue may be pending.”⁸

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28 ⁸ *Supra*, n. 3.

1 IV. Investors Have a Significantly Protectable Interest in This Action

2 The Receiver's opposition has a section titled "protected interests" but addresses
3 neither the law nor the facts regarding Investors' assertion they have a protectable
4 interest. We refer the Court to our opening brief on this issue. Dkt. No. 1229-2, at 6. We
5 also note the Court held investors have a protectable interest in this action.

6 V. No Party Adequately Represents Investors in This Case

7 The SEC and Receiver have a super-case, their *passim* case, *SEC v. TLC Invs. and*
8 *Trade Co.* 147 F.Supp.2d 1031 (C.D. Cal. 2001). The SEC cites it 11 times as support
9 for each of its three arguments why Investors should not be permitted to intervene as a
10 matter of right. The SEC's and Receiver's broad reliance on *TLC Investments* is
11 misplaced. *TLC Investments* held that investors seeking to intervene in that case, on
12 comparatively weak facts, satisfied the second ("an interest relating to property or
13 transaction that is the subject of the action") and third ("disposition of the action may
14 impair or impede the applicant's ability to protect the interest") requirements for
15 mandatory intervention. *Id.* On the first element (timeliness), the court noted that
16 "Applicants have waited until several months *after* the liquidation plan and sale
17 procedures were approved to make their motion (emphasis added)." *Id.* at 1041. The
18 court passed over the issue without deciding it. In this case, Investors began objecting to
19 the plan less than a month after it was proposed. Dkt. Nos. 1184, 1186, 1187, and 1194.

20 Turning to the fourth requirement, both the SEC and the Receiver rely on the
21 specific holding in *TLC Invs.* 147 F.Supp.2d 1031, and cite the principles stated in
22 *Arakaki v. Cayetano*, 324 F.2d 1078 (9th. Cir. 2003). Consequently, both arguments are
23 flawed for the same reasons.

24 The SEC tells the Court, "Again, the *TLC Investments* investors made the same
25 arguments" as the investors in this case. Dkt. No. 1266 at 12, 25-26. This is roughly 3%
26 truth and 97 percent fiction. We have 11 reasons why the Receiver is not an adequate
27 representative. As discussed below, 10 of the 11 do not relate to reality.

28

1 Our objection to the Receiver's procedures for handling the sale of realty has three
2 components: (1) they violate 28 USC § 2001; (2) the Court was not informed of the
3 statute; and (3) the Receiver concealed both from investors by his under-seal
4 submissions. We can find no citation of 28 USC § 2001 by the Receiver until his filing
5 on April 6, 2016, (Dkt. No. 1225) well after our motions raising the issue. Dkt. Nos.
6 1217, 1219, and 1221. Meanwhile, the SEC watched from the sidelines, despite
7 numerous SEC cases applying 28 USC § 2001. Dkt. No. 1230 at 7-10.

8 The SEC argues that the investors in *TLC Investments* and Investors in this case
9 made "the same arguments." The SEC gives an "example:" "the investors in *TLC*
10 *Investments* 'did not agree with the 'secretive' sales procedures approved by the Court.'" *Id.*
11 *Id.* at 12-13. The SEC's statement is misleading at two levels. An "example" implies the
12 existence of others of the same type. There were no others. The investors in *TLC*
13 *Investments* made one and only one *argument* why the Receiver was not an adequate
14 representative: the "the secretive sales procedures."

15 The SEC clipped the phrase "secretive sales procedure" out of a context and then
16 created a new distorted context. In context, the sentence reads: "Applicants *make only*
17 *one argument* as to why the Receiver does not adequately represent their interests: they
18 do not agree with the 'secretive' sales procedures approved by the Court." *Id.* at 1042.

19 Before addressing the broader principles, we reply to the Receiver's erroneous
20 claim that Investors must prove with evidence the Receiver is an inadequate
21 representative. Not true. Rather, the courts "are to take well-pleaded, nonconclusory
22 allegations in the motion to intervene as true absent sham, frivolity or other objections."
23 *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

24 We turn now to the principles the Court should apply. Both the Receiver and the
25 SEC cite *Arakaki* and its three factors as the controlling authority in deciding whether a
26 party to the litigation is an adequate representative for the person trying to intervene.
27 Yet, neither addresses, much less applies, the three factors articulated in *Arakaki*. There
28 the Ninth Circuit gave this guidance:

1 This Court considers three factors in determining the adequacy of
2 representation: (1) whether the interest of a present party is such that it will
3 undoubtedly make all of a proposed intervenor's arguments; (2) whether the
4 present party is capable and willing to make such arguments; and (3)
5 whether a proposed intervenor would offer any necessary elements to the
proceeding that other parties would neglect.

6 As discussed below, Investors have established this factor 11 times over.

7 First, the Receiver cannot serve as an adequate representative for any investor,
8 because he cannot or will not carry out the Court's order "to craft a proposal that would
9 enable general partnerships ("GPs") that wish to do so to exit the receivership while
10 maintaining control of their properties instead of having their properties sold." Dkt. No.
11 1224, at 2, 2-4. Using the single tool in his kit and with his blinders in place, he can only
12 find the exit for five of the 36 properties with a total value of \$1.40 million, less that 6%
13 of the \$23.84 million, according to him, the properties are worth. This is not a response
14 to the Court's order. It is a protest. Investors are prepared to present their own plan. No
15 other party will. The *Arakaki* factors are satisfied. 324 F.3d at 1086.

16 Second, the Receiver's plan is a fire sale masquerading as an "orderly sale." He
17 makes it very clear in his recent filings. First, in his reply to the Investor Group's motion
18 to intervene, he argues: "In other words, the Xpera recommendations for 27 out of 36 GP
19 properties (other than its 2016 value estimates, which can be used in considering broker
20 list prices and evaluating offers) are essentially irrelevant due to the severely distressed
21 state of these GPs." Dkt. No. 1262 at 4, 17-20. In short, the properties must be sold
22 immediately below their true value, because he claims he has to pay bills. If this is not a
23 fire sale, what is?

24 He has already committed himself to the fire sale and pooling. He told Lincoln
25 Property Company ("Lincoln") "properties would be moved to the orderly sale process in
26 situations where GPs cannot pay their basic expenses and the understanding that
27 [Lincoln's] past due invoices would be paid from the net sale proceeds." He told the same
28 to his tax consultants. *Id.* at 4, 1-12 and 16-20. He proposes to sell the Las Vegas 1

1 property for \$6.150 million (Dkt. No. 1203, Ex. A) and the LV Kade property for \$8.5
2 million (Dkt. No. 1166, Ex. B, p. 31), because there is outstanding tax liability in the
3 amount of \$48,880.77 for Las Vegas 1 and \$102,196.28 for LV Kade.⁹ Alan Nevin, one
4 of the most respected real estate consultants in San Diego, believes the Las Vegas 1
5 property would sell now between \$7.423 million and \$9.764 million and the LV Kade
6 property is worth somewhere between \$8.69 million and \$11.175 million. No one else
7 can or will make this argument. Again, the *Arakaki* factors are satisfied. 324 F.3d at
8 1086.

9 Third, Nevin believes the Las Vegas 1 and LV Kade properties will appreciate
10 between \$0.5 and \$1 “per square foot annually over the next decade.” Dkt. No. 1234-2,
11 at 31. And this raises another fundamental flaw in the Receiver’s team. The Receiver has
12 never hired anyone to analyze whether any of the properties have promise for significant
13 appreciation. He merely assumes—in an evidentiary void—that none does. Obviously,
14 no party will “undoubtedly” make this argument. No party is “capable and willing” to
15 make this argument. Once again, the *Arakaki* factors are satisfied. 324 F.3d at 1086.

16 Fourth, the Receiver would strip investors, including the 197 Investors who bring
17 this motion, of their rights under the GP agreements which are fully enforceable under
18 California law. Each of these Investors would suffer significant financial loss if their
19 contractual rights were voided by the Receiver. Obviously, the Receiver has committed
20 himself to opposing any rights Investors or any other investor has under those
21 agreements. Aside from the Investors who are seeking to intervene in this case, no one
22 will argue that position. Consequently, the factors in *Arakaki* are established.

23 Fifth, the SEC and the Receiver have invited the Court to cross the Due Process
24 boundary. Page limitations prohibit us from going into detail. Very simply, however, this
25 has been a seizure. The SEC has placed the GPs in the evidence locker for four years.
26 And now, the Receiver and the SEC wish to rid themselves of the evidence, since it is no
27

28 ⁹ See Dkt. No. 1258-2, ¶¶ 24-26, Exs. 17-18.

1 longer useful and inconvenient to have around. Rather than acknowledge the investors'
2 Due Process rights, the Receiver has run a steamroller over them with the SEC directing.
3 In this case, Due Process entitles Investors to plenary proceedings. The Receiver has
4 failed to provide 3,500 investors with Due Process at its lowest rung, summary
5 proceedings. As the court observed in the SEC's favorite case, *TLC Investments*, Due
6 Process would require the Receiver to give actual notice to all investors and the
7 opportunity to be heard. *TLC Investments*, 147 F.Supp.2d, 1034. The Receiver did not
8 begin his liquidation proceedings until February 4, 2016. To the best of our knowledge,
9 the Receiver has not served notice on investors of his intention to liquidate the 87 GPs
10 other than putting his filing on his website. He has informed the Court previously that
11 investors do not review the information posted on the receivership website. Dkt. No.
12 852, at 2, 12-13. Obviously, the Receiver will not make this argument on behalf of any
13 investors. Consequently, the factors in *Arakaki* are established.

14 Sixth, assuming *arguendo* liquidation is necessary, the Receiver has never
15 considered the alternative of a Chapter 11 or any other bankruptcy court. This is not an
16 option the SEC permits. The restraining order proposed by the SEC stayed the filing of
17 any bankruptcy proceeding, including a Chapter 11. Consequently, the Receiver has
18 taken this case down a path which should be rarely followed, according to strongly
19 worded decisions from the Ninth and Second Circuits. In *SEC v. Lincoln Thrift Asso.*,
20 577 F.2d 600 (9th Cir. 1978), the Ninth Circuit observed: "In recognition that liquidation
21 of a corporation under a securities receivership may more properly be the subject of a
22 bankruptcy proceeding, this Court has reversed a district court order for liquidation of a
23 corporation in a securities receivership." See also: *TLC Invs.*, 147 F.Supp.2d at 1036 ("It
24 is only in rare cases that it is appropriate for a receiver, rather than the bankruptcy court
25 and particularly before judgment has been entered, to liquidate, rather than manage, the
26 assets of a receivership."); *SEC v. American Bd. of Trade, Inc.*, 830 F.2d 431, 437-438
27 (2d Cir. N.Y. 1987)("[T]he functions undertaken by the district court in this case
28 demonstrate the wisdom of not using a receivership as a substitute for bankruptcy." The

1 court directed the SEC staff member “as an officer of the court ... to bring our views ...
2 to the attention of the district court before the court embarks on a liquidation through an
3 equity receivership.”).¹⁰ Again, only Investors would even look into this option.

4 Seventh, the Receiver has a proclivity to violate 28 USC § 2001 in selling realty
5 and does his best to conceal the violations from any investor client who might have the
6 background to spot it. That statute is designed to protect owners of real estate from
7 court-ordered sales that deprive them of the value of their property. It is especially
8 important for the parties to comply with that statute when the owner of the realty is not a
9 party. For the Receiver, that is an invitation for him to ignore 28 USC § 2001, because
10 no “party” objects and thus the violation is waived. Obviously, the Receiver will not
11 argue that he has failed to comply with 28 USC § 2001. He is vigorously defending his
12 non-compliance. Again, the *Arakaki* factors are established.

13 Eighth, the Receiver has aligned himself in favor of the group of investors who
14 would be better served by pooling against those who would not be. The Receiver’s
15 opposition proves our very point: he vehemently opposes Investors’ non-pooling
16 approach and with the same intensity embraces the other group of investors who would
17 be better served by pooling. He argues, “Unlike the Aguirre Investors, the Dillon
18 Investors set forth a coherent plan - approve the One Pot Approach, pool receivership
19 assets, and sell GP properties consistent with the recommendations of Xpera Group
20 (‘Xpera’).” Dkt. No. 1262 at 1, 11-13. Obviously, the Receiver cannot represent
21 Investors under the *Arakaki* factors.

22 Ninth, the Receiver follows the same practice the SEC has proposed in every case
23 where it has had a receiver appointed. It is human nature for the Receiver to try to please
24

25 ¹⁰ See also Megan E. Smith, Comment, *SEC Receivers and the Presumption of*
26 *Innocence: The problem with Parallel Proceedings in Securities Cases and the Ever*
27 *Increasing Powers of the Receivers*, 11 HOUS. BUS. & TAX L.J. 1, 203-31 (2011);
28 Sonia A. Steinway, Comment, *SEC “Monetary Penalties Speak Very Loudly,” But What*
Do They Say? A Critical Analysis of the SEC’s New Enforcement Approach, 124 YALE
L.J. 209 (2014)

1 the SEC. Displeasing its staff could cost the Receiver future appointments. An article in
 2 the American Bankruptcy Institute recognizes this as a real risk: “This result might even
 3 be prompted by the receiver’s interest in future appointments from the SEC.”¹¹ The SEC
 4 alone decides who it recommends to the courts. And the reward for pleasing the SEC is
 5 seven-figure fees, as Thomas Hebrank expects in this case.¹² And following the SEC’s
 6 instructions in SEC liquidation cases can be disastrous for investors and overwhelming
 7 for the courts. *Supra*, Sixth point at 12. The SEC’s track record for investors has not
 8 been a stellar one.¹³ The Receiver had the SEC editing his briefs until the Court ordered
 9 him to stop that practice. Dkt. No. 1004, at 12, 16-23. For his part, the SEC has
 10 reciprocated. It has ignored the Receiver’s violations of SEC mandates requiring him to
 11 submit financial statements to the Court specifying his receipts and disbursements down
 12 to the penny.¹⁴ Again, the *Arakaki* factors are established.

13 Tenth, there is virtually no possibility that this case can settle with only the current
 14 parties: the SEC and the Receiver. In the absence of a settlement, the probabilities of an
 15 appeal are high, thereby extending the case. The participation by two groups of

17 ¹¹ Marcus F. Salitore, *SEC Receivers vs. Bankruptcy Trustees Liquidation by Instinct or*
 18 *Rule*, American Bankruptcy Institute Journal, Oct. 2003, available at
 19 [http://www.abi.org/abi-journal/sec-receivers-vs-bankruptcy-trustees-liquidation-by-](http://www.abi.org/abi-journal/sec-receivers-vs-bankruptcy-trustees-liquidation-by-instinct-or-rule)
 20 [instinct-or-rule](http://www.abi.org/abi-journal/sec-receivers-vs-bankruptcy-trustees-liquidation-by-instinct-or-rule).

21 ¹² Through Dec. 7, 2015, the Receiver’s team had applied for almost \$2.2 million in
 22 fees. From that amount, \$1 million are fees for the Receiver. See interim fee applications
 23 1 through 13.

24 ¹³
 25 However, based on an analysis of SEC data, this enthusiastic rhetoric does not
 26 reflect reality. Efforts to distribute funds to harmed investors have tapered off
 27 over time, such that the vast majority of sums collected are still deposited in
 28 Treasury’s General Fund. This ensures that the SEC contributes more revenue
 to the government than any other independent agency.
 Sonia A. Steinway, Comment, *SEC “Monetary Penalties Speak Very Loudly,” But What
 Do They Say? A Critical Analysis of the SEC’s New Enforcement Approach*, 124 YALE
 L.J. 209, 211 (2014). See also Investors Request for Judicial Notice, Ex. 4, U.S.
 Government Accountability Office Report No. GAO-10-448R SEC Fair Fund collections
 and Distributions, April 22, 2010.

¹⁴ Aguirre Decl. ¶¶ 15-20, Exs. 22-25 .

1 aggrieved investors—one seeking pooling and one other non-pooling—represented by
 2 attorneys seeking a pragmatic solution creates an improved environment for settlement.
 3 The Receiver is hopelessly conflicted in trying to settle this case. And we doubt the SEC
 4 would allow him to consider that possibility. He has also antagonized investors. He
 5 created the term “Schooler investors” to label those who had the foresight to speak
 6 against his receivership and claimed that was proof they were mindlessly manipulated by
 7 Schooler “into believing the receivership is harming them.” Dkt. No. 852 at 2, 24-25.
 8 There is no way this case can be settled unless Investors are permitted to intervene.
 9 Again, the *Arakaki* factors are established.

10 Eleventh, and finally, there are the huge gaps and irregularities in the Receiver’s
 11 financial statements to the Court and his record keeping. On this issue, we have filed a
 12 separate motion (Dkt. No. 1258) stating the material issues known to us at that time. We
 13 have also filed with this reply the declaration of Investors’ counsel that addresses one
 14 aspect of the gaps and irregularities: gaps in the Receiver’s interim reports to the
 15 Court.¹⁵ We do not ask the Court to rule on that motion, since it is set for hearing on
 16 June 3. Rather, we request judicial notice in relation to the issue whether the Receiver
 17 can be expected to adequately represent Investors. Obviously, the Receiver is not going
 18 to bring that motion. No one will do that, but these Investors. Again, the *Arakaki* factors
 19 are established.

20 **VI. The SEC’s Own Ninth Circuit Authority Refutes Its Impairment Theory**

21 The SEC cites *Northwest Forest Res. Council v. Glickman*, 82 F.2d 825, 836 (9th
 22 Cir. 1996) for its statement of the four factors a non-party must establish to intervene, but
 23 then ignores its third factor: “the disposition of the action may impair or impede the
 24 applicant’s ability to protect the interest.” The SEC nowhere applies the *Northwest*
 25 *Forrest* third factor to this case. Instead, it cites two Ninth Circuit cases: one does not
 26
 27

28 ¹⁵ See also Aguirre Decl. ¶¶ 2-15 and 21-37; Exs. 1-22 and 26-38.

1 even mention Rule 24, *CFTC v. Topworth International, Ltd.*, 205 F.3d 1107 (9th Cir.
2 1999) and the other, *TLC Investments*, refutes the SEC’s contention on impairment.

3 The primary question on appeal in *Topworth* was whether an investor who had
4 participated, but not moved to intervene, had standing to appeal. The Court held he did.
5 *Topworth*, 205 F.3d at 1112. As the defendants did here, *Topworth*, the corporate
6 defendant, challenged the “summary proceedings” on behalf of non-parties as a
7 “violation of due process.” The court rejected the contention in a brief paragraph with no
8 analysis. *Id.* at 1113. The case stands for the principle that a liquidation plan, absent other
9 facts, does not constitute a violation of due process.

10 Once again, the SEC’s favorite case, *TLC Investments*, lends no support to its
11 argument. To the contrary, on comparatively weak facts, the Court in *TLC Investments*
12 held “The disposition of the action, because it is likely to use up all remaining assets of
13 the TLC entities, may, as a practical matter, impair the Applicants' ability to protect their
14 interests in the property in other forums” *TLC Investments*, 147 F.Supp.2d at 1041.
15 Investors have no rights in other forums. The Receiver is about to distribute the assets
16 held in their GPs in violation of the GP agreements to non-partners.

17 The SEC’s cites *TLC Investments* as authority on its impairment argument, even
18 though the case held the opposite on the issue the SEC cited it for. This takes finesse. The
19 SEC seizes on a passing comment in *TLC Investments* on a different factor, the *adequacy*
20 *of representation*, and passes it off as if it relates to the *impairment factor*. On the
21 adequacy of representation factor, discussed in the last section, *TLC* comments in passing
22 on cases from other circuits holding intervention was unnecessary where “applicants may
23 assert their claim in summary claims process.” *Id.*, at 1042. Two of those cases have a
24 very simple fact pattern. In *CFTC v. Chilcott Portfolio Mgmt. Inc.*, 725 F.2d 384 (10th Cir.
25 1984), the investor tried to sue the receiver to recover his investment; the court held he
26 should use the claims procedure. In *CFTC v. Heritage Capital Advisory Servs. Ltd.*, 736
27 F.2d 384 (7th cir. 1984), the investor sought to recover his funds; the court held he could
28 sue the receiver or file a separate action, presumably against the defendants. That option

1 has not been available in this case since the Court issued the stay. The issue in *SEC v.*
2 *Charles Plohn & Co.* 448 F.2d 546 (2d Cir. 1971) was different. The third party was
3 allowed to effectively intervene and fully litigate the issue that affected him. The court
4 reasoned: “They were served with notice of motion, they were permitted to file papers,
5 submit proof, and be heard on oral argument.” *Plohn*, 448 F.2d at 549.

6 Finally, the Court dismissed without prejudice these Investors’ motions and
7 directed us to proceed under Fed. R. Civ. P. 24. Obviously, the path for Investors to raise
8 the issue raised earlier is through this motion. And that is what we have done. As
9 discussed above, we propose a surgical intervention focused on the issues where
10 Investors need protection. Contrary to the SEC’s suggestion, these Investors’ rights are
11 not currently protected. To the contrary, they are threatened by the two remaining active
12 parties in this case.

13 **VII. Alternatively, The Motion for Permissive Intervention Should Be Granted**

14 The SEC and the Receiver collectively oppose Investors’ permissive intervention
15 on three grounds: (1) it raises no common fact or law with the main action; (2) Investors’
16 “legitimate interests” are adequately represented by the Receiver; and (3) it would delay
17 the distribution of assets. None of these contentions are true. We have fully addressed
18 above the inadequacy of the Receiver as representative of investors.

19 All of the issues Investors are raising are inherently at issue as the Court proceeds
20 with the termination of the receivership. They all relate to the procedures the Court will
21 follow in returning the assets to investors. The Receiver argues the procedures relating to
22 the sales of properties are an old issue. We disagree. No property has yet been sold. And
23 any sale of the property must comply with 28 USC § 2001. The Receiver and the SEC
24 contend the motion for an accounting involves issues already decided by this Court. The
25 accounting must be provided to the Court before it can approve any plan of distribution.
26 *SEC v. Harris*, 2015 U.S. Dist. LEXIS 11975, 5-6 (N.D. Tex. Feb. 2, 2015)(Plan denied
27 until receiver provides statement of “assets and liabilities, or any other ‘account [of] all
28 monies, securities, and other properties which [have] come into her hands during the

1 course of her receivership.” The SEC and the Receiver argue the delay would prejudice
2 investors. It is curious a group of investors is not making the same contention. We have
3 seen the letters written by investors to the Court recently, none by Investors, and so far,
4 all oppose the Receiver’s plan. Consequently, only the SEC and the Receiver are
5 pressing for an early distribution. As we discussed before, we believe this is not to
6 protect investors, but to protect themselves.

7 **VIII. Section 21(g) of the Exchange Act Does Not Bar Investors from Intervening**
8 **in This Action without the SEC’s Consent**

9 The SEC contends that Section 21(g) of the Exchange Act would bar Investors
10 from intervening in this case, unless the SEC consents. This Court discussed the
11 conflicts between the district courts in different circuits whether Section 21(g) barred
12 intervention in SEC cases in *SEC v. ABS Fund, LLC* 2013 WL 3752119 (S.D. Cal.
13 2013). We do not believe it is necessary in this case for the Court to weigh in on which
14 side of the split is better reasoned.

15 Rather, Investors submit the statute is not applicable to the post judgment
16 proceedings in this case. As a practical matter, this case could have no effect on the
17 SEC’s enforcement proceeding. It is over. There is a final judgment. The Receiver has
18 informed the Court his receivership is failing, because it is not conserving assets. It is
19 losing them.

20 The return of the assets is now delinked from the SEC Enforcement case, if it
21 were ever linked. Indeed, the SEC should allow the Court and the true parties in interest
22 to decide how to return the assets to investors. As the court noted in *SEC v. Credit*
23 *Bancorp, Ltd.*, 194 F.R.D. 457, 468 (S.D.N.Y. 2000), “[N]othing requires the SEC to
24 continue its participation in this action once it has obtained the relief it seeks on its
25 discrete claims.”

26 Nor is there any underlying policy served by barring Investors’ from participating
27 as parties in deciding what should be done with their assets. The SEC argues in its
28

1 opposition brief that the Court should consider the legislative history stated in *SEC v.*
2 *Benger*, 2010 U.S. Dist. LEXIS 16545 (N.D. Ill. Feb. 23, 2010) as follows:

3 The initial impetus for section 21(g) was the SEC's and Congress's concern
4 that private litigants frequently file actions that track the Commission's
5 enforcement cases and seek to "ride along on the Government's cases." The
6 Commission thought this contrary to the "public interest in securing prompt
7 relief from violations of the securities laws" and in the effective enforcement
8 of those laws. Dkt. No. 1266, at 20.

9 The legislative history is on point, but provides no support for the SEC. Investors do not
10 seek to "ride along on the Government's cases." They are vigorously trying to end a ride
11 they had no choice in taking.

12 *Benger* also offers this insight regarding the legislative history of 21(g):

13 The Senate Committee in charge of the legislation observed ... involve more
14 parties and more issues than the Commission's enforcement action, thus
15 greatly increasing the need for extensive pretrial discovery. In particular,
16 issues related to . . . scienter, causation, and the extent of damages, are
17 elements not required to be demonstrated in a Commission injunctive
18 action."

19 *Id.*, 30-31. All of these issues described in *Benger* come into play when an intervenor
20 seeks to litigate *with the SEC* against those who allegedly violated the securities acts.
21 Investors have neither the intent nor the ability to do so. The SEC's case is over and on
22 appeal. Even if it were reversed, we have no intent in participating in a securities fraud
23 case. In fact, it is most likely that any course this Court takes in terminating the
24 receivership will likely be completed before any decision is made on the pending appeal.
25 Looking through form to substance, this case is essentially a claim by Investors to get
26 their assets out of the receivership and, to do that, they need clarity on how much of their
27 assets is left.

28 If the Court weighs in on the circuit split over 21(g), case law suggests the Ninth
Circuit leans toward rejecting Section 21(g) as a bar. The only Ninth Circuit decision,
SEC v. Lincoln Thrift Ass'n, 577 F.2d 600, 609 (9th Cir. 1978), as this Court noted,

1 “mentioned in *dicta* that intervention should possibly have been allowed.” *SEC v. ABS*
 2 *Manager, LLC*, 2013 U.S. Dist. LEXIS 98822 (S.D. Cal. July 15, 2013). Further,
 3 “another court allowed intervention, while making no mention of Section 21(g). *SEC v.*
 4 *Navin*, 166 F.R.D. 435, 440 (N.D. Cal. 1995) (citing *Flight Transportation Corp.*, 699 F.
 5 2d at 949-50).”

6 We find no case where 21(g) barred investors from intervening in the liquidation
 7 phase of an SEC case. For one thing, 21(g) bars “consolidation” or “coordination: with
 8 another “action.” To define these three terms to include Investors’ motion to intervene in
 9 this case to get their GPs released from the receivership would rewrite the text of 21(g)
 10 contrary to a basic rule of construction. See Sutherland Stat. Construction § 47.01 (5th
 11 ed. 1992)(stating that “[t]he starting point in statutory construction is to read and
 12 examine the text of the act and draw inferences concerning the meaning from its
 13 composition and structure”). Nothing in the text, the context, or the legislative history
 14 would suggest the interpretation proposed by the SEC.

15 We did find several cases where the court permitted intervention, finding that
 16 section 21(g) did not apply: “Where, as is the case here, the primary concern behind the
 17 passage of Section 21(g) is not implicated, and given the plain language of that section,
 18 which does not prohibit intervention, the Court finds intervention is not precluded under
 19 Section 21(g).” *SEC v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 667 (D. Kan.
 20 2004). See also: *SEC v. Credit Bancorp, Ltd.*, 194 F.R.D. 457, 466 (S.D.N.Y. 2000).

21 For the foregoing reasons, Investors respectfully submit that Investors’ motion to
 22 file the proposed complaint in intervention should be granted.

23 Dated: April 29, 2016

Respectfully submitted,

24
 25 By: /s/ Gary J. Aguirre
 26 GARY J. AGUIRRE
 27 Attorney for Investors
 28

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8 Attorney for Proposed Intervenor-Plaintiffs

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

**DECLARATION OF GARY J
AGUIRRE IN SUPPORT OF
INVESTORS' REPLY TO SEC'S
AND RECEIVER'S OPPOSITION TO
INVESTORS' MOTION TO
INTERVENE**

Date: May 6, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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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 197 investors who bring this motion. Information they
5 have provided me indicate that they have collectively invested in one or more
6 partnerships that have ownership interests in each of the properties that are the subject of
7 the receivership in this matter.

8 3. I state below a few well-established principles of accountancy. I have
9 studied accounting at Georgetown University Law Center as part of my LL.M. program
10 focused in part on securities regulation. In particular, my professor was David M.
11 Estabrook, currently Associate Chief Accountant at the SEC's Division of Enforcement
12 in Washington, DC. While staff attorney at the SEC in 2004 and 2005, I worked on
13 accounting matters with accountants in the SEC Division of Enforcement. Since leaving
14 the SEC in 2005, my cases have required that I continue to familiarize myself with
15 accounting principles. I learned from Mr. Estabrook that Intermediate Accounting by
16 Donald E. Kieso, Jerry J. Weygandt and Terry D. Warfield, is a well-respected reference
17 book for accounting principles. I believe the discussion of accounting principles below
18 relates to simple and fundamental principles of accounting.

19 4. I have attached a schedule to this declaration as Exhibit 1 (Comparison of
20 Receipts and Disbursements ("R&D") and Revenue and Expenses ("R&E")) for Western
21 Financial Planning Corporation ("Western") that states the total amounts of Western's
22 R&D and R&E to the extent stated from the Receiver's third interim report (reporting
23 the last quarter of 2012) through his fourteenth interim report (reporting the last quarter
24 of 2015), the last interim report filed with the Court. Seven of the interim reports provide
25 no table for R&D. The omission of that data in the interim reports is indicated in Exhibit
26 1 as "no data." The interim reports which provide both R&D and R&E for the same
27 quarter appear in bold font.

28

1 5. The Receiver provided Western’s R&D in tables on the last page of Exhibit
2 A to six interim reports:

- 3 • The third for 2012Q4 (Dkt. No. 80), attached hereto as Exhibit 2;
- 4 • The fourth for 2013Q1 (Dkt. No. 184), attached hereto as Exhibit 3;
- 5 • The sixth for 2013Q3 (Dkt. No. 517), attached hereto as Exhibit 4;
- 6 • The seventh for 2013Q4 (Dkt. No. 547), attached hereto as Exhibit 5;
- 7 • The eighth for 2014Q1 (Dkt. No. 596), attached hereto as Exhibit 6; and
- 8 • The ninth for 2014Q2 (Dkt. No. 759), attached hereto as Exhibit 7.

9 The amount of the total of “receipts” and “disbursements” on Exhibit 1 is taken from the
10 highlighted line on tables attached as Exhibits 2 through 7. The Receiver provided no
11 table and no statements for R&D in his fifth (Dkt. No. 481), tenth (Dkt. No. 1000),
12 eleventh (Dkt. No. 1065), twelfth (Dkt. No. 1103), thirteenth (Dkt. No. 1142) and the
13 fourteenth (Dkt. No. 1189) interim reports.

14 6. The Receiver’s tables (Exhibits 2 through 7) stating the amount of
15 Western’s R&D only state the gross amounts; there is no breakdown by category, e.g.,
16 payroll, taxes, professional fees. The table below restates the dollar amounts of
17 Western’s R&D for the last quarter of 2012 from the Receiver’s third interim report
18 (Dkt. No. 80, Ex. A, p. 3), Ex. 2.

Bank Name	9/5/12 Balance	9/5/12 to 12/21/12 Deposits	9/5/12 to 12/21/12 Disbursements	12-31/12 Balance
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

Bank Name	9/5/12 Balance	9/5/12 to 12/21/12 Deposits	9/5/12 to 12/21/12 Disbursements	12-31/12 Balance
WFPC– MMKT	\$847.27	\$0.13	\$20.0	\$827.40
WFPC– Special	\$222.88	\$1,741.34	\$0.00	\$1,964.22
WFPC– FFP	\$1,598.24	\$9,087.05	\$6,000	\$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
Total WFPC Bank Accounts	\$127,357.72	\$2,047,023.13	\$2,099,247.62	\$75,133.23

As is evident from the table, it provides no breakdown by category of Western's R&D for any the last quarter of 2012. The tables for the other quarters (Exhibits 3 through 7) likewise do not provide any breakdown by category of Western's R&D. In my opinion, these tables do not comply with the requirements of the SEC Billing Instructions for Receivers in Civil Actions Commenced by the SEC and SFAR. See ¶ 15 below and Exhibit 22.

7. The Receiver attached Western's R&E quarterly statements as Exhibit B to 11 interim reports: 3 through 6 and 8 through 14. The Receiver did not provide a quarterly report for 2013Q4. Those 11 quarterly statements for R&E are attached as Exhibit 8 through 18 as follows:

- Third for 2012Q4 (Dkt. No. 80), attached hereto as Exhibit 8;
- Fourth for 2013Q1 (Dkt. No. 184), attached hereto as Exhibit 9;
- Fifth for 2013Q2 (Dkt. No. 481), attached hereto as Exhibit 10;
- Sixth for 2013Q3 (Dkt. No. 517), attached hereto as Exhibit 11;
- Eighth for 2014Q1 (Dkt. No. 596) attached hereto as Exhibit 12;
- Ninth for 2014Q2 (Dkt. No. 759), attached hereto as Exhibit 13;

- 1 • Tenth for 2014Q3 and 2014Q4 (Dkt. No. 1000), attached hereto as Exhibit
- 2 14;
- 3 • Eleventh for 2015Q1 (Dkt. No. 1065), attached hereto as Exhibit 15;
- 4 • Twelfth for 2015Q2 (Dkt. No. 1103), attached hereto as Exhibit 16;
- 5 • Thirteenth for 2015Q3 (Dkt. No. 1148) attached hereto as Exhibit 17; and
- 6 • Fourteenth for 2015Q4 (Dkt. No. 1189), attached hereto as Exhibit 18.

7 As mentioned above, the Receiver provided no R&E statement for Western for 2013Q4
 8 in his seventh interim report. Instead, he provided a statement of R&E “for the 12
 9 months ending on December 31, 2013.” That statement is attached hereto and
 10 incorporated by reference as Exhibit 19.

11 8. Western’s R&E statements are broken down by category. For example,
 12 Western’s R&E statement for the fourth quarter of 2012 (Ex. 8) shows the following
 13 income (revenue) as follows:

14 INCOME

15 Interest Income	\$85,474.08
16 Interest Income Bank Accts.	\$0.06
17 Commissions	\$1,505.64
18 TOTAL INCOME	\$86,976.78

19 The same statement provides breakdowns for five categories of expenses, which are
 20 further broken down by subcategories. Exhibit 8. The same pattern is followed in
 21 Exhibits 9 through 11 and 19. Starting with the eighth interim report (Dkt. No. 596), the
 22 Receiver changed the format of the R&E statement and provided less detail regarding
 23 categories and subcategories. Exhibits 12-18.

24 9. Of the 12 interim reports (3 through 14) that contained financial statements,
 25 only five statements contained both the table showing Western’s R&D (Exhibits 2-7)
 26 and the statements showing Western’s R&E (Exhibits 8, 9, 11-13). The revenues and
 27 expenses table below shows the amount in dollars (Column E) and percentage (column
 28

1 F) that receipts exceeded revenue where the interim reports provided the amounts for
2 both revenues and expenses:

Column A	Column B	Column C	Column D	Column E	Column F
Period	Interim Report	Receipts	Revenue	Difference in \$	% Difference
2012Q4	Third, Dkt. No. 80	2,047,000	87,000	1,960,000	2252%
2013Q1	Fourth, Dkt. No. 184	1,348,000	76,000	1,272,000	1673%
2013Q3	Sixth, Dkt. No. 517	1,010,000	24,000	986,000	4108%
2014Q1	Eighth, Dkt. No. 596	1,635,000	481,000	1,154,000	240%
2014Q2	Ninth, Dkt. No. 759	1,385,000	356,000	1,029,000	289%
TOTAL		\$7,425,000	1,024,000	\$6,401,000	

15 10. As the table above indicates, the difference between total receipts and total
16 revenues for those quarters where data was provided for both receipts and revenues is a
17 total of \$6.4 million. This is the amount for which there is no breakdown in the interim
18 reports regarding the sources or the nature of the receipts, whether it was for note
19 payment, interest accrual, or any other proper or improper purpose.

20 11. The table below shows the amount in dollars (Column E) and percentage
21 (Column F) that disbursements exceeded expenses where the interim reports included
22 Western's statements for both receipts and revenues:

Column A	Column B	Column C	Column D	Column E	Column F
Period	Interim Report	Disbursements	Expenses	Difference in \$	% Difference
Q4 2012	Third, Dkt. No. 80	2,099,000	254,000	1,845,000	726%
Q1 2013	Fourth, Dkt. No. 184	1,318,000	145,000	1,173,000	809%

Column A	Column B	Column C	Column D	Column E	Column F
Period	Interim Report	Disbursements	Expenses	Difference in \$	% Difference
Q3 2013	Sixth, Dkt. No. 517	901,000	37,000	864,000	2335%
Q1 2014	Eighth, Dkt. No. 596	1,638,000	445,000	1,193,000	268%
Q2 2014	Ninth, Dkt. No. 759	1,398,000	358,000	1,040,000	290%
Total		\$7,354,000	\$1,239,000	6,115,000	

12. The total difference between gross disbursements and expenses is \$6.115 million. This is the sum for which there is no breakdown by category in the interim reports provided to the Court indicating whether it was for payroll, mortgage payments, professional services, printing, or any other proper or improper purpose.

13. There are eight quarters for which no comparison can be made between gross receipts and revenues and between disbursements and expenses, because one of the statements is not provided in the Receiver's interim reports (2013 Q2 and Q4, 2014 Q3 and Q4, and all of 2015). If we assume (extrapolate) the amount of receipts for the missing quarters was the average of the receipts for the quarters for which that data was provided, total receipts would have been \$19.341 million. If we assume (extrapolate) the amount of disbursements for the missing quarters was the average of the disbursements for the quarters for which that data was provided, total disbursements would have been \$19.350 million. We attach as Exhibit 20 a table that states the total projected R&D using this process of extrapolation. It shows total receipts of \$19.341 million and total disbursements of \$19.350 million. Regarding R&E, the Receiver has provided the statements for 12 of the 13 quarters and they are reflected in Exhibit 20. If we assume (extrapolate) the amount of revenues for the missing quarter was the average of the receipts for the quarters for which that data was provided, total revenues would have been \$3.593 million. If we assume (extrapolate) the amount of expenses for the missing

1 quarter was the average of the expenses for the quarters for which that data was
 2 provided, total expenses would have been \$3.874 million. Using the extrapolated
 3 numbers for R&D and R&E, a comparison can be made between receipts and revenues
 4 and between disbursements and expenses. That comparison shows that receipts exceeded
 5 revenues by \$15.747 million. And disbursements exceeded expenses by \$15,475 million
 6 as shown in the table below. These are the sums for which the interim reports do not
 7 provide breakdown of receipts and disbursements by categories.

Total Receipts	Total Disburs.	Total Revenue	Total Expenses	Difference Receipts & Revenue	Difference Disburs. & Expenses
19,341,091	19,350,048	3,593,614	3,874,269	15,756,434	15,475,779

13 14. The Receiver stated receipts and disbursements for the GPs in Exhibit A to
 14 interim reports 3 through 14. Like with Western, there was no breakdown by category
 15 for R&D. It is unknown where the funds came from, for what reason, or to whom they
 16 were paid. There is no receipts and disbursement data for 2013Q2. There is no
 17 disbursement data for 2014Q3. There were no R&E statements for any quarter in the
 18 interim reports for the GPs and thus no breakdown in any quarter by category. I attach as
 19 Exhibit 21 a table reflecting the data provided by the Receiver regarding R&D for the
 20 GPs. If we assume (extrapolate) the amount of receipts for the missing quarters was the
 21 average of the disbursements for the quarters for which that data was provided, total
 22 receipts would have been \$6.033 million. If we assume (extrapolate) the amount of
 23 disbursements for the missing quarter was the average of the disbursements for the
 24 quarters for which that data was provided, total disbursements would have been \$8.836
 25 million. This is the amount for which there is no breakdown in the interim reports
 26 regarding the sources or the nature of the receipts, whether it was for note payment,
 27 interest accrual, or any other proper or improper purpose.

1 15. In my opinion, the Receiver's reporting of the financial data to the Court in
2 his interim reports violates the SEC standards as contained in its Billing Instructions for
3 Receivers in Civil Actions Commenced by the SEC and SFAR, a true and correct copy
4 of which is attached hereto and incorporated by reference as Exhibit 22. The reporting
5 instructions are found on pages 89 through 99, and the actual form the receivers are
6 required to prepare are included as pages 101 through 106.

7 16. A true and correct copy of the SEC Office of the Inspector General Report
8 No. OIG Report No. 432, Oversight of Receivers and Distribution Agents (December
9 12, 2007) is attached hereto and incorporated by reference as Exhibit 23.

10 17. I believe the following bullet points from the OIG Report 432 relate to the
11 issues in this case:

- 12 • Oversight of receivers can be enhanced through better reporting;
- 13 • Orders appointing receivers vary in their reporting requirements: how often and in
14 what format.
- 15 • The Commission should but does not consistently track reporting requirements;
- 16 • Enforcement should better ensure that receivers provide periodic, formal reports
17 describing receivers' efforts to garner assets, administrative costs incurred and the
18 financial condition of the assets collected;
- 19 • Enforcement should request receivers to provide a final accounting of all assets
20 collected and disbursed in a specified format;
- 21 • The Commission does not have complete or consistent records showing the
22 amount of assets overseen by receivers;
- 23 • Enforcement staff do not receive training on how to work with and monitor
24 receivers/distribution agents;
- 25 • Enforcement should develop written guidelines on how to manage receivers and a
26 list of red flags;
- 27 • Enforcement should provide guidance or training to staff on receiver oversight,
28 including:

- 1 ○ An explanation of the receiver’s status as an independent fiduciary who has
- 2 ultimate responsibility to the appointing court (not Enforcement) and how
- 3 this impacts issues related to attorney/client privilege and access to records
- 4 by receivers and Enforcement staff;
- 5 ○ How to identify excessive billings and overcharges;
- 6 ○ How to question or to object to excessive administrative costs;
- 7 ○ Whether to recommend that a receiver not be permitted to charge for the
- 8 preparation of billings, expenses and other fee documentation.
- 9 ○ When it is appropriate for a receiver to provide the courts and Enforcement
- 10 with financial statements describing the condition of assets collected;
- 11 ○ How to keep informed of a receiver current and planned activities, including
- 12 understanding a receiver’s strategies for garnering assets and ensuring that
- 13 planned actions are cost-effective;
- 14 ○ How to draft a distribution plan or review a plan drafted by a
- 15 receiver/distribution agent.

16 18. On March 29, 2016, I sent an email to Alistaire Bambach, Assistant
17 Regional Director and Chief Bankruptcy Counsel, Division of Enforcement at the SEC
18 New York office. According to her biography on the Practising Law Institute, “in her
19 current position, Ms. Bambach...has oversight over the SEC’s receivership program.”
20 My March 29 email to Ms. Bambach included the following question and comment:

- 21 3. Did the SEC ever implement the recommendations by the OIG in its
22 report No. 432 referred to in my letter of March 18, 2016? If so, was
23 there any public statement by the SEC when the report was
24 implemented? If so, would you kindly guide me to that statement or
25 statements?

26 Ms. Bambach replied to my email on March 31, 2016. This is her answer to my question
27 above:

28 With respect to question 3 below about the OIG report, the SEC staff has
 fully implemented the OIG’s recommendations and has continued to do so.

1 Consistent with the OIG's policy, there is no public statement issued when
2 the staff has satisfied the recommendations in an OIG report.

3 In the same email, Ms. Bambach also states:

4 Since each case differs substantially based on the assets available to fund the
5 receivership, potential claims, the investor body, and the nature of the fraud,
6 there is no one structure or standard that is applied in each matter. Rather,
7 the operation of a receivership is determined on a case by case basis. Most
8 importantly, once appointed, unless the receiver has been expressly
9 appointed to liquidate the SEC's judgment, the receiver is the agent of the
appointing court, not the SEC, and he or she can only take actions approved
by the court.

10 A true and correct copy of my March 29, 2016, email to Ms. Bambach and her answer of
11 March 31, 2016, is attached hereto and incorporated by reference as Exhibit 24.

12 19. Ms. Bambach's statement that the SEC "operation of a receivership is
13 determined on a case by case basis," seems to conflict the following statements in the
14 OIG report 432 (Exhibit 23), which she says was fully implemented:

- 15 • Uniformity in receivers' reporting requirements: how often and in what format.
- 16 • The Commission should but does not consistently track reporting requirements;
- 17 • Enforcement should develop written guidelines on how to manage receivers and
18 a list of red flags;
- 19 • Enforcement staff do not receive training on how to work with and monitor
20 receivers/distribution agents; and
- 21 • Enforcement should request that receivers provide a final accounting of all
22 assets collected and disbursed in a specified format.

23 20. On April 18, 2016, I sent an email to SEC staff members John Berry, Sara
24 Kalin, Lynn Dean and Alistaire Bambach. My email contained the following request:

25
26 I am requesting the SEC to provide me with a signed copy of the signed
27 statement by Thomas Hebrank as required by the attached Billing
28 Instructions. In this regard, please note that PDF page 11 of those
instructions requires the applicant for an appointment as an SEC receiver to

1 date and sign a statement representing that he will comply with the attached
2 Billing Instructions.

3 I am also requesting the SEC provide me with a copy of any submittal by
4 Mr. Hebrank requesting a deviation from the Billing Instructions. Please
5 note the procedure specified on page 1 of the Billing Instructions in relation
6 to any deviation from those standards. Also, I am requesting the SEC to
7 provide any response to any such request.

8 I would appreciate your prompt response.

9 Since I received no response, on April 19, I forwarded the same email to Alistaire
10 Bambach and again requested the Receiver's submittals to the SEC pursuant to the
11 billing instructions, including SFAR (Exhibit 22). I copied the other SEC staff members
12 to whom I sent my first email. I received no response to this email either. Attached
13 hereto and incorporated by reference as Exhibit 25 is a true and correct copy of both
14 emails without attachment.

15 21. I am unable to verify from source documents the Receiver's statements of
16 R&D and R&E for Western or R&D for the GPs, because I have not received the books
17 and records necessary to make that analysis. I have repeatedly requested the Receiver's
18 counsel his books and records for both Western and the 87 GPs. I have learned the
19 accounting system in place for the GPs when the Receiver was appointed was OPADS
20 and for Western it was ACCPAC. The Receiver has refused to provide access to either
21 system or data (electronic or paper) from either system.

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

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

27 7. All statements of receipts and disbursements, audited or unaudited,
28 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.

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

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

9 6. No such documents exist.

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

20 A true and correct copy of my email and Mr. Fates’ reply is attached hereto and
21 incorporated by reference as Exhibit 27.

22 24. By my email of February 25, 2016, I rephrased my request for financial
23 records as follows:

24 I also understand that neither you nor E3 Advisors have the records
25 described in paragraphs 6 and 7 of my February 22 email. The investors seek
26 a clear accounting of the receipts and disbursements while the Receiver had
27 control of the partnerships in which they were invested. One among many
28 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?

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

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

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

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

16 Mr. Fates replied the next day by email:

17 With regard to your remaining requests, we understand your reference to
18 “acceleration of loans” to mean the GP payments to Western referenced on
19 Exhibit B to the attached Ex Parte Application. The amounts these GPs paid
20 Western were used to pay the underlying mortgages on the applicable
21 properties. If this is not what you are asking about, please let us know.
22 Once we have an understanding of what you’re requesting, we can respond.

23 A true and correct copy of my email and Mr. Fates’ reply is attached hereto and
24 incorporated by reference as Exhibit 28.

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

27 You did not respond to my question whether you would produce the
28 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.

1 A true and correct copy of my email reply is attached hereto and incorporated by
2 reference as Exhibit 29.

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

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

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

15 A true and correct copy of Mr. Fates' email is attached hereto and incorporated by
16 reference as Exhibit 30.

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

19 Although we have not heard from you regarding my 2/26/16 attempt to
20 clarify your request for financial statements, which I then repeated in my
21 3/1/16 email below, the Receiver has nonetheless gathered the available
22 2012 and 2013 financial statements for the GPs and we will provide them to
23 you today via Dropbox. These statements were prepared by Louise Cohen,
24 an independent contractor hired by the GPs prior to the Receiver's
25 appointment to prepare financial statements as necessary for federal and
26 state tax returns.

27 The receipts and disbursements for the GPs for 2014 and 2015, as well as
28 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.

Later that day I received an email with a link to the records in Dropbox. A true and
correct copy of Mr. Fates' email is attached hereto and incorporated by reference as
Exhibit 31.

1 28. By my letter of March 14, 2016, I requested one more time, among other
2 things:

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

7 A true and correct copy of said letter is attached hereto and incorporated by reference as
8 Exhibit 32.

9 29. As a response to Exhibit 32, Mr. Fates emailed on the same day, March 14,
10 2016, stating:

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

21 A true and correct copy of Mr. Fates' email is attached hereto and incorporated by
22 reference as Exhibit 33.

23 30. I understood Mr. Fates' reply to be a refusal to provide the books and
24 records for the individual transactions. I therefore tried again with my email of March 14,
25 2016, which reads in relevant part:

26 I take your response below to be a refusal by the Receiver to open his books
27 of account for an inspection by those whose assets he has been entrusted to
28 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 34.

1 31. Mr. Fates replied to my email with his own of March 15, where he claimed
2 he had provided “what is available as far as financial records showing the receipts and
3 disbursements since the Receiver’s appointment.” His email also read:

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

8 *You have now asked for individual transactions, which was not part of your*
9 *prior request for “ledgers, journals, and other booking and accounting*
10 *records”. Individual transaction information would be reflected only on the*
11 *bank statements. ... If you are now requesting the over 3,500 bank*
12 *statements for all of the GPs since the inception of the receivership, please*
13 *advise accordingly.*

14 A true and correct copy of Mr. Fates’ email is attached hereto and incorporated by
15 reference as Exhibit 34.

16 32. By my letter of March 17, 2016, I responded to Mr. Fates’ to provide the
17 3,500 bank statements:

18 In view of your statement that the only records relating to individual
19 transactions are bank statements which have been posted to spreadsheets, I
20 am requesting you to produce those records—the bank statements and the
21 spreadsheets—from the date of Mr. Hebrank’s appointment to the present. I
22 am assuming these records are maintained electronically. Accordingly, I am
23 requesting that you provide these records electronically by making them
24 available to me in Dropbox as soon as possible. Kindly advise me when you
25 expect to place them in Dropbox.

26 A true and correct copy of my letter of March 17, 2016, without the exhibits, which are
27 voluminous and repetitive of these exhibits, is attached hereto and incorporated by
28 reference as Exhibit 35.

 33. As a reply to Exhibit 35, Mr. Fates sent me a letter dated March 21, 2016,
where he engaged in his customary personal accusations but agreed to produce “the excel
[sic] spreadsheets and over 3,500 bank statements-to you via Dropbox.” A true and

1 correct copy of Mr. Fates' letter is attached hereto and incorporated by reference as
2 Exhibit 36.

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

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

11 A true and correct copy of my letter of March 24, 2016, is attached hereto and
12 incorporated by reference as Exhibit 37.

13 35. On March 24, 2016, David R. Zaro, co-counsel to the Receiver, responded to
14 my letter with a new concession: "The Receiver did not produce the OPADS software or
15 records because these are not relevant to the requests that you have made and the
16 information contained in OPADS is not relevant to any pending motion." A true and
17 correct copy of Mr. Zaro's letter of March 24, 2016, is attached hereto and incorporated
18 by reference as Exhibit 38.

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

25 37. On April 6, 2016, the Receiver's counsel provided me with the records kept
26 by the current GP administrator, Lincoln Property Group ("Lincoln"). The records go
27 from March 2015 to February 2016, except for the month of May 2015. I found that the
28 Lincoln records could not be reconciled with the Receiver's Fourteenth Interim Report

1 (Receiver's 14th Report") and noted the following inconsistencies:

- 2 a. Clearwater Bridge Partners shows total disbursements for December 2015 of
3 \$1,171 in Lincoln's records, but \$4,048 in the Receiver's 14th Report;
- 4 b. Lyons Valley Partners shows disbursements for December 2015 of \$1,576
5 in the Receiver's 14th Report, but only \$118 in the Lincoln records. Further,
6 the beginning balance for Lyons Valley Partners in December 2015 is
7 different in each document;
- 8 c. Honey Springs Partners shows an ending balance for December 2015 of
9 \$8,365 in the Receiver's 14th Report, but the Lincoln records show an
10 ending balance of \$4,503.04.

11 38. I contacted SEC counsel Sara Kalin by phone on August 5, 2015. I told her
12 I had looked briefly at the case file and seen it was voluminous. To the best of my
13 recollection, I asked her if the Court had issued any orders that were particularly relevant
14 to the status of the case at that time. I did not discuss any informal discovery with her. I
15 did not know enough about the case to discuss either formal or informal discovery. At
16 that time, I was simply trying to find out what had been decided in the case to
17 understand whether I could be of assistance to the potential clients who had contacted
18 me. At that point, I had spoken with four or five investors and had made no decision
19 whether I would take the case. As I stated in my declaration of February 18, 2016 (Dkt.
20 No. 1187-1, ¶ 7), I declined to take the case for personal matters of unknown duration. I
21 was not retained by any client until February 26 (Dkt. No. 1194-3, ¶ 9). A true and
22 correct copy of SEC counsel Sara Kalin's email of August 5, 2015, with attachment, and
23 my reply to it is attached hereto and incorporated by reference as Exhibit 39.

24 Executed this 29th day of April 2016, at San Diego, California.

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

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

Exhibits Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1.....	21
Exhibit 2.....	23
Exhibit 3.....	26
Exhibit 4.....	29
Exhibit 5.....	32
Exhibit 6.....	35
Exhibit 7.....	35
Exhibit 8.....	41
Exhibit 9.....	45
Exhibit 10.....	48
Exhibit 11.....	51
Exhibit 12.....	54
Exhibit 13.....	57
Exhibit 14.....	60
Exhibit 15.....	63
Exhibit 16.....	66
Exhibit 17.....	69
Exhibit 18.....	72
Exhibit 19.....	75
Exhibit 20.....	79
Exhibit 21.....	81
Exhibit 22.....	83
Exhibit 23.....	107
Exhibit 24.....	118
Exhibit 25.....	122
Exhibit 26.....	125

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 27.....	128
Exhibit 28.....	133
Exhibit 29.....	136
Exhibit 30.....	142
Exhibit 31.....	149
Exhibit 32.....	156
Exhibit 33.....	158
Exhibit 34.....	161
Exhibit 35.....	166
Exhibit 36.....	171
Exhibit 37.....	174
Exhibit 38.....	176
Exhibit 39.....	179

Exhibit 1

**Comparison of Receipts and Disbursements and Revenue and Expenses
for Western Financial Planning Corporation**

Column A	Column B	Column C	Column D	Column E	Column F
Period	Interim Report	Receipts	Disbursements	Revenue	Expenses
Q4 2012	Third, Dkt. No. 80	2,047,000	2,099,000	87,000	254,000
Q1 2013	Fourth, Dkt. No. 184	1,348,000	1,318,000	76,000	145,000
Q2 2013	Fifth, Dkt. No. 481	No data	No data	115,000	196,000
Q3 2013	Sixth, Dkt. No. 517	1,010,000	901,000	24,000	37,000
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	1,635,000	1,638,000	481,000	445,000
Q2 2014	Ninth, Dkt. No. 759	1,385,000	1,398,000	356,000	358,000
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

Exhibit 2

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11 Attorneys for Receiver
12 THOMAS C. HEBRANK

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-LAB-JMA

**RECEIVER'S THIRD INTERIM
REPORT**

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

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

Total GP Bank Accounts	\$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
Total WFPC Bank Accounts	\$127,357.72	\$2,047,023.13	\$2,099,247.62	\$75,133.23
Total All Bank Accounts	\$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 3

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

17 Defendants.
18

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

**RECEIVER'S FOURTH INTERIM
REPORT**

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

Bank Name	Opening Balance 01/01/13	Total Deposits	Total Disbursements	Ending Balance 03/31/13
Frontage 177, LLC	(\$299.00)	\$7,289.75	\$4,886.46	\$2,104.29
High Desert Shadow, LLC	\$1,055.11	\$7,700.00	\$6,678.37	\$2,076.74
Night Hawk Partners, LLC	\$5,854.88	\$11,800.00	\$16,091.12	\$1,563.76
Osprey Pescador, LLC	\$9,767.96	\$5,000.00	\$13,538.54	\$1,229.42
P-39 Aircobra, LLC	\$11,004.33	\$0.00	\$6,410.40	\$4,593.93
P-40 Warhawk, LLC	\$3,025.22	\$7,000.00	\$6,188.37	\$3,836.85
Pueblo Partners, LLC	\$2,148.68	\$8,000.04	\$6,197.22	\$3,951.50
Pyramid Highway 177, LLC	\$6,795.75	\$0.00	\$2,390.94	\$4,404.81
Santa Fe View, LLC	\$3,505.14	\$11,403.46	\$8,256.86	\$6,651.74
The Pecos Partnership, LLC	\$3,527.02	\$3,000.00	\$3,712.05	\$2,814.97

Total GP Bank Accounts	\$6,361,566.30	\$469,662.36	\$650,628.39	\$6,180,600.27
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Fernley I, LLC	\$9.42	\$8,630.12	\$7,675.00	\$964.54
P51 LLC	\$1,007.03	\$12,598.77	\$11,664.59	\$1,941.21
Santa Fe Venture	\$50.52	\$48,644.56	\$48,620.48	\$74.60
SFV II, LLC	\$2,702.16	\$9,777.40	\$10,485.46	\$1,994.10
WFPC - Corp	\$67,770.62	\$358,669.20	\$368,446.47	\$57,993.35
WFPC - Business	(\$18,749.44)	\$346,163.72	\$355,212.29	(\$27,798.01)
WFPC - Payroll	\$0.00	\$2,082.85	\$2,082.85	\$0.00
WFPC - MMKT	\$827.40	\$40.18	\$867.58	\$0.00
WFPC - Special	\$1,964.22	\$0.00	\$1,900.00	\$64.22
WFPC - FFP	\$4,044.33	\$6,969.77	\$11,000.00	\$14.10
WFPC - Las Vegas Prop Tax	\$1,771.53	\$0.00	\$0.00	\$1,771.53
WSSC, LLC	\$55,737.78	\$554,444.10	\$500,212.91	\$109,968.97
First Financial Planning	\$4,044.33	\$0.00	\$0.00	\$4,044.33
Total WFPC Bank Accounts	\$121,179.90	\$1,348,020.67	\$1,318,167.63	\$151,032.94

Total All Bank Accounts	\$6,482,746.20	\$1,817,683.03	\$1,968,796.02	\$6,331,633.21
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Note: Beginning balance differs slightly from amount in prior Receiver's Report due to reporting of these amounts now on a cash basis.

Exhibit 4

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

17 Defendants.
18

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

**RECEIVER'S SIXTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

Bank Name	Balance at the end of Q2	Ending Balance			Deposits			Disbursements		
		July	August	September	July	August	September	July	August	September
BANK ACCOUNTS:		July	August	September	July	August	September	July	August	September
Fernley I, LLC	94.26	2,970.90	47.54	-	2,876.64	2,876.64	-	-	5,800.00	-
P51 LLC	513.10	4,509.01	1,363.28	5,302.37	4,199.59	4,199.59	4,199.59	203.68	7,345.32	260.50
Santa Fe Venture	32.91	16,114.43	8,436.72	-	16,081.52	6,881.52	-	-	14,559.23	-
SFV II, LLC	981.46	3,407.26	3,336.38	5,762.18	2,425.80	2,425.80	2,425.80	-	2,496.68	-
WFPC - Corp	25,898.11	92,390.03	126,141.76	145,326.79	134,670.39	94,881.17	89,069.47	68,178.47	61,129.44	69,884.44
WFPC - Business	-	-	-	-	58,978.47	61,129.44	-	58,978.47	61,129.44	-
WFPC - Payroll	-	-	-	-	-	-	-	-	-	-
WFPC - MMKT	-	-	-	-	-	-	-	-	-	-
WFPC - Special	64.22	64.22	64.22	64.22	-	-	-	-	-	-
WFPC - FFP	627.26	2,924.93	269.18	-	-	2,244.25	-	-	4,900.00	-
WFPC - Las Vegas Prop	1,771.53	1,771.53	1,771.53	1,771.53	-	-	-	-	-	-
WSCC, LLC	-	60,591.11	66,945.76	57,759.39	174,482.12	182,318.41	163,857.80	197,123.73	175,963.76	173,044.17
First Financial Planning	-	-	-	-	-	-	-	-	-	-
Receiver Operating Acct	-	-	-	-	-	-	-	-	-	-
Total WFPC Bank	29,982.85	184,743.42	208,376.37	215,986.48	393,714.53	356,956.82	259,552.66	324,484.35	333,323.87	243,189.11
Total All Bank	5,961,665.07	5,947,336.26	5,836,871.12	5,804,258.86						

Exhibit 5

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

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

17 Defendants.
18

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

**RECEIVER'S SEVENTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

Bank Name	Balance at the end of Q2	Balance at the end of Q3	Ending Balance			Deposits			Disbursements		
Clearwater Bridge, LLC	5,038.38	3,144.18	2,135.33	1,126.48	2,635.46	-	-	3,026.55	1,008.85	1,008.85	1,517.57
Eagle View Partners, LLC	25,170.98	16,409.83	16,409.83	8,646.07	26,792.78	7,763.76	-	28,792.67	7,763.76	7,763.76	10,645.96
F-86, LLC	50.00	50.00	50.00	50.00	50.00	-	-	-	-	-	-
Falcon Heights Partners, LLC	14,058.83	6,139.86	19,981.30	13,059.74	27,749.63	20,763.00	-	24,594.90	6,921.56	6,921.56	9,905.01
Frontage 177, LLC	5,659.13	2,107.75	3,736.57	3,736.57	4,943.37	3,257.64	-	5,296.26	1,628.82	-	4,089.46
High Desert Shadow, LLC	5,412.32	2,659.19	4,526.98	2,659.19	5,946.80	3,735.58	-	5,603.37	1,867.79	1,867.79	2,315.76
Night Hawk Partners, LLC	11,941.09	5,709.89	16,177.47	10,943.68	22,296.73	15,701.37	-	19,531.59	5,233.79	5,233.79	8,178.54
Osprey Pescador, LLC	9,130.03	3,899.69	12,365.55	8,132.62	17,074.00	12,698.79	-	16,529.01	4,232.93	4,232.93	7,587.63
P-39 Aircobra, LLC	8,364.28	2,813.45	7,087.05	4,950.25	8,677.36	6,410.40	-	6,410.43	2,136.80	2,136.80	2,683.32
P-40 Warhawk, LLC	8,059.18	3,032.27	7,632.85	5,120.06	17,686.19	6,663.37	-	15,330.69	2,062.79	2,512.79	2,764.56
Pueblo Partners, LLC	6,287.13	4,721.39	16,398.43	14,332.69	16,840.38	13,742.78	-	15,330.69	2,065.74	2,065.74	12,823.00
Pyramid Highway 177, LLC	5,398.77	2,679.23	2,679.23	1,882.25	3,130.74	796.98	-	2,800.74	796.98	796.98	1,552.25
Santa Fe View, LLC	8,437.33	4,758.90	16,515.76	16,515.76	18,673.07	15,485.29	-	20,496.72	3,728.43	-	18,339.41
The Pecos Partnership, LLC	3,843.81	3,256.46	8,031.46	6,944.11	7,459.59	5,862.35	-	12,627.74	1,087.35	1,087.35	12,112.26
Total GP Bank Accounts	5,931,682.22	5,588,272.38	5,538,398.56	5,486,452.67	5,527,083.29	171,981.30	61,163.13	499,727.30	221,855.12	113,109.02	459,096.68

Fernley I, LLC	94.26	24.18	2,900.82	2,977.46	5,854.10	2,876.64	2,876.64	2,876.64	-	2,800.00	-
P51 LLC	513.10	5,302.37	9,501.96	4,431.29	7,993.55	4,199.59	4,199.59	4,199.59	-	9,270.26	637.33
Santa Fe Venture	32.91	5,759.01	9,728.67	15,198.33	32,783.84	6,881.52	8,381.52	46,703.97	2,911.86	2,911.86	29,118.46
SFV II, LLC	981.46	5,762.18	3,194.62	5,620.42	5,691.94	2,425.80	2,425.80	2,568.20	4,993.36	-	2,496.68
WFPC - Corp	25,898.11	145,326.79	119,096.36	18,691.37	23,554.97	118,788.16	91,679.88	130,195.15	145,018.59	192,084.87	125,331.55
WFPC - Business	-	-	-	-	-	145,018.59	160,767.40	94,784.93	145,018.59	160,767.40	94,784.93
WFPC - Payroll	-	-	-	-	-	-	-	-	-	-	-
WFPC - MMKT	-	-	-	-	-	-	-	-	-	-	-
WFPC - Special	64.22	64.22	64.22	64.22	64.22	-	-	-	-	-	-
WFPC - FFP	627.26	313.43	2,404.35	1,051.35	3,277.26	2,090.92	2,047.00	2,225.91	-	3,400.00	-
WFPC - Las Vegas Prop Tax	1,771.53	1,771.53	1,771.53	1,771.53	1,771.53	-	-	-	-	-	-
WSCC, LLC	-	57,759.39	80,139.45	50,311.98	66,390.57	167,494.12	182,793.25	255,010.06	145,114.06	212,620.72	238,931.47
First Financial Planning	-	-	-	-	-	-	-	-	-	-	-
Receiver Operating Acct	-	-	58,120.25	-	-	58,120.25	23.79	-	-	58,144.04	-
Total WFPC Bank Accounts	29,982.85	222,083.10	286,922.23	100,117.95	147,381.98	507,895.59	455,194.87	538,564.45	443,056.46	641,999.15	491,300.42

Total All Bank Accounts	5,961,665.07	5,810,355.48	5,825,320.79	5,586,570.62	5,674,465.27						
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Exhibit 6

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8 **UNITED STATES DISTRICT COURT**
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11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

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

17 Defendants.
18

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

**RECEIVER'S EIGHTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

Via 188 Partners	2,193.63	2,885.54	3,884.48	4,553.47	2,253.04	1,165.46	968.99	1,561.13	166.52	300.00
Victory Lap Partners	11,329.96	16,948.55	17,864.58	20,161.08	6,118.59	2,784.73	2,496.50	500.00	1,868.70	200.00
Vista Del Sur Partners	102,052.54	99,862.80	97,793.17	95,703.43	1,874.03	1,874.03	1,874.03	4,063.77	3,943.66	3,963.77
Vista Tecate Partners	6,087.51	5,790.91	4,164.12	4,485.41	1,856.51	244.37	621.29	2,153.11	1,871.16	300.00
Wild Horse Partners	27,788.14	28,346.54	28,893.73	14,215.63	758.40	758.40	941.40	200.00	211.21	15,619.50
Clearwater Bridge, LLC	2,635.46	1,326.61	4,460.76	3,326.91	-	4,143.00	-	1,308.85	1,008.85	1,133.85
Eagle View Partners, LLC	26,792.78	17,752.28	36,587.78	26,387.53	-	27,876.00	-	9,040.50	9,040.50	10,200.25
F-86, LLC	50.00	50.00	50.00	50.00	-	-	-	-	-	-
Falcon Heights Partners, LLC	27,749.63	19,551.33	33,219.03	24,660.98	-	21,866.00	-	8,198.30	8,198.30	8,558.05
Frontage 177, LLC	4,943.37	3,278.95	7,386.53	5,722.11	-	5,772.00	-	1,664.42	1,664.42	1,664.42
High Desert Shadow, LLC	5,946.80	3,779.01	7,896.22	6,028.43	-	5,985.00	-	2,167.79	1,867.79	1,867.79
Night Hawk Partners, LLC	22,296.73	15,786.20	26,467.67	19,597.39	-	17,192.00	-	6,510.53	6,510.53	6,870.28
Osprey Pescador, LLC	17,074.00	11,564.33	22,464.66	16,595.24	-	16,410.00	-	5,509.67	5,509.67	5,869.42
P-39 Aircobra, LLC	8,677.36	6,540.56	8,972.76	6,835.96	-	4,569.00	-	2,136.80	2,136.80	2,136.80
P-40 Warhawk, LLC	17,686.19	15,623.40	13,560.61	11,497.82	-	-	-	2,062.79	2,062.79	2,062.79
Pueblo Partners, LLC	16,840.38	11,730.15	20,440.92	15,330.69	-	13,821.00	-	5,110.23	5,110.23	5,110.23
Pyramid Highway 177, LLC	3,130.74	2,298.16	3,755.58	2,923.00	-	2,290.00	-	832.58	832.58	832.58
Santa Fe View, LLC	18,673.07	11,900.15	30,820.23	24,047.31	17.96	25,693.00	-	6,790.88	6,772.92	6,772.92
The Pecos Partnership, LLC	7,459.59	3,002.75	18,527.91	14,396.07	-	19,657.00	-	4,456.84	4,131.84	4,131.84
Total GP Bank Accounts	5,527,083.29	5,505,791.55	5,355,834.11	5,296,387.69	210,945.83	241,054.13	143,656.09	232,237.57	391,011.57	203,102.51

Fernley I, LLC	5,854.10	230.74	3,107.38	184.02	2,876.64	2,876.64	2,876.64	8,500.00	-	5,800.00
P51 LLC	7,993.55	1,050.92	4,951.80	449.00	4,199.59	4,199.59	4,199.59	11,142.22	298.71	8,702.39
Santa Fe Venture	32,783.84	44,659.89	60,674.88	60,072.08	22,787.91	16,014.99	16,014.99	10,911.86	-	16,617.79
SFV II, LLC	5,691.94	9,853.36	12,350.36	7,357.32	4,161.42	2,497.00	2,497.00	-	-	7,490.04
WFPC - Corp	23,554.97	159,396.70	41,081.53	59,740.92	231,660.26	115,442.20	134,347.31	95,818.53	233,757.37	115,687.92
WFPC - Business	-	-	-	-	88,567.92	229,290.62	113,846.03	88,567.92	229,290.62	113,846.03
WFPC - Payroll	-	-	-	-	-	-	-	-	-	-
WFPC - MMKT	-	-	-	-	-	-	-	-	-	-
WFPC - Special	64.22	64.22	64.22	64.22	-	-	-	-	-	-
WFPC - FFP	3,277.26	6,202.58	1,179.81	1,248.17	2,925.32	1,077.23	2,068.36	-	6,100.00	2,000.00
WFPC - Las Vegas Prop Tax	1,771.53	1,771.53	1,771.53	1,771.53	-	-	-	-	-	-
WSSC, LLC	66,390.57	21,886.17	30,060.94	12,614.72	204,749.94	212,410.11	212,989.28	249,254.34	204,235.34	230,435.50
First Financial Planning	-	-	-	-	-	-	-	-	-	-
Receiver Operating Acct	-	-	-	-	-	-	-	-	-	-
Total WFPC Bank Accounts	147,381.98	245,116.11	155,242.45	143,501.98	561,929.00	583,808.38	488,839.20	464,194.87	673,682.04	500,579.67
Total All Bank Accounts	5,674,465.27	5,750,907.66	5,511,076.56	5,439,889.67						

Exhibit 7

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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 NINTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

WFPC Receipts and Disbursements Schedule

Q2 2014

Bank Name	Balance at the end of Q4 2013	Balance at the end of Q2 2014	Ending Balance			Deposits			Disbursements		
Fernley I, LLC	5,854.10	184.02	260.66	0.30	2,876.94	2,876.64	3,198.64	2,876.64	2,800.00	3,459.00	-
P51 LLC	7,993.55	449.00	245.26	160.21	4,211.70	4,199.59	4,199.59	4,199.59	4,403.33	4,284.64	148.10
Santa Fe Venture	32,783.84	60,072.08	15,594.22	16,586.93	32,601.92	16,014.99	16,014.99	16,014.99	60,492.85	15,022.28	-
SFV II, LLC	5,691.94	7,357.32	6,557.64	8,575.84	11,072.84	2,497.00	2,497.00	2,497.00	3,296.68	478.80	-
WFPC - Corp	23,554.97	59,740.92	44,419.23	20,728.83	57,735.40	116,140.38	132,208.18	107,164.49	131,462.07	155,898.58	70,157.92
WFPC - Business	-	-	-	-	-	113,846.03	113,846.03	113,846.03	113,846.03	113,846.03	113,846.03
WFPC - Payroll	-	-	-	-	-	-	-	-	-	-	-
WFPC - MMKT	-	-	-	-	-	-	-	-	-	-	-
WFPC - Special	64.22	64.22	64.22	64.22	64.22	-	-	-	-	-	-
WFPC - FFP	3,277.26	1,248.17	277.26	1,875.08	3,261.96	2,029.09	2,597.82	1,386.88	3,000.00	1,000.00	-
WFPC - Las Vegas Prop Tax	1,771.53	1,771.53	1,771.53	1,771.53	1,771.53	-	-	-	-	-	-
WSSC, LLC	66,390.57	12,614.72	18,797.57	3,852.47	17,499.28	203,469.42	201,879.02	199,660.44	197,286.57	216,824.12	186,013.63
First Financial Planning	-	-	-	-	-	-	-	-	-	-	-
Receiver Operating Acct	-	-	-	-	-	-	-	-	-	-	-
Total WFPC Bank Accounts	147,381.98	143,501.98	87,987.59	53,615.41	131,095.79	461,073.14	476,441.27	447,646.06	516,587.53	510,813.45	370,165.68
Total All Bank Accounts	5,674,465.27	5,439,889.67	5,231,761.40	5,087,213.02	5,109,521.49						

Exhibit 8

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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-LAB-JMA

**RECEIVER'S THIRD INTERIM
REPORT**

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

**FIRST FINANCIAL PLANNING
DBA WESTERN FINANCIAL PLANNING
STATEMENT OF REVENUE AND EXPENDITURES
4 MONTHS ENDED 12/31/2012 CASH BASIS**

	SEPT-DEC
INCOME	
Interest Income	85,474.08
Interest Income Bank Accts	0.06
Commissions	1,502.64
TOTAL INCOME	86,976.78
EXPENSES	
PAYROLL EXPENSE	
Salary	72,962.21
Commissions	
Outside Temp Services	7,635.35
Service Fee Residuals	-
Payroll Taxes	5,886.42
Payroll & 401k	3,141.60
Benelect admin fees	
Insurance Medical & Dental	7,101.48
Insurance	
Insurance Disability	1,279.80
Insurance Group Term Life	59.80
COBRA Medical & Dental General	(445.68)
TOTAL PAYROLL EXPENSE	97,620.98
SALES EXPENSE	
Client Referrals	
TOTAL SALES EXPENSE	-
TRAVEL EXPENSE	
Air Travel	
Lodging	
Auto Rental Parking Tolls	1,297.20
Mileage Reimbursement	
Meals	
Entertainment	
TOTAL TRAVEL EXPENSE	1,297.20
OFFICE EXPENSE	
Subscriptions & Forms	29.29
Licenses	(662.00)
Membership dues	145.00
Printing Letterhead Env. Bus Cards	
Building Rent	12,412.40
Grounds Maint	
Storage	3,731.97
Telephone	5,607.37

Computer Expense	4,642.05
Equipment Lease Copier	
Equipment Lease Postage Meter	449.32
Copier Supplies & Maintenance	949.11
Postage	3,588.37
Express Couriers	22.31
Office Expense	(74.58)
Office Supplies	257.42
Kitchen Supplies Admin SD	
TOTAL OFFICE EXPENSE	<u>31,098.03</u>
GENERAL OPERATING EXPENSE	
Partnership Related Expenses	(13,643.02)
Accounting	10,000.00
Legal General General	15,000.00
Legal Human resources HR	75.45
Consulting	7,371.12
Political Contributions General	
Insurance Liability General	2,023.68
Interest Expense General	86,735.30
Fees and Finance Charges	1,070.73
FTB Penalties General	
Depreciation	14,216.00
Taxes Property	759.64
Taxes California Franchise General	
Income/Loss Partnerships General	
TOTAL GENERAL EXPENSE	<u>123,608.90</u>
TOTAL EXPENSE	<u>253,625.11</u>
NET INCOME (LOSS)	<u><u>(166,648.33)</u></u>

Exhibit 9

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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 FOURTH INTERIM
REPORT**

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

**FIRST FINANCIAL PLANNING
DBA WESTERN FINANCIAL PLANNING
STATEMENT OF REVENUE AND EXPENDITURES
3 MONTHS ENDED 3/31/2013**

	YEAR TO DATE
INCOME	
Interest Income	75,312.41
Interest Income Bank Accts	0.13
Commissions	<u>1,008.85</u>
TOTAL INCOME	<u><u>76,321.39</u></u>
EXPENSES	
PAYROLL EXPENSE	
Salary	735.92
Outside Temp Services	71,108.92
Insurance	<u>(136.00)</u>
TOTAL PAYROLL EXPENSE	<u><u>71,708.84</u></u>
SALES EXPENSE	
TOTAL SALES EXPENSE	<u><u>0.00</u></u>
TRAVEL EXPENSE	
TOTAL TRAVEL EXPENSE	<u><u>0.00</u></u>
OFFICE EXPENSE	
Subscriptions & Forms	513.02
Storage	831.57
Telephone	2,310.04
Computer Expense	2,283.39
Equipment Lease Postage Meter	454.54
Copier Supplies & Maintenance	743.07
Office Expense	110.00
Office Supplies	35.94
Kitchen Supplies Admin SD	<u>63.38</u>
TOTAL OFFICE EXPENSE	<u><u>7,344.95</u></u>
GENERAL OPERATING EXPENSE	
Partnership Related Expenses	<u>(4,417.90)</u>
Legal General General	175.00
Consulting	190.00
Insurance Liability General	1,460.05
Interest Expense General	57,692.12
Bank Service Charges General	10.00
Fees and Finance Charges	375.76
Depreciation	<u>10,662.00</u>
TOTAL GENERAL EXPENSE	<u><u>66,147.03</u></u>
TOTAL EXPENSE	<u><u>145,200.82</u></u>
NET INCOME (LOSS)	<u><u>(68,879.43)</u></u>

Prepared Internally

Exhibit 10

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

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

17 Defendants.
18

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

**RECEIVER'S FIFTH INTERIM
REPORT**

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

FIRST FINANCIAL PLANNING DBA WESTERN FINANCIAL PLANNING
STATEMENT OF REVENUE AND EXPENDITURES
(3 MONTHS ENDED 6/30/2013)

INCOME	
Interest Income	113,934.48
Interest Income Bank Accts	0.00
Commissions	1,127.65
TOTAL INCOME	115,062.13
EXPENSES	
PAYROLL EXPENSE	
Salary	346.26
Outside Temp Services	90,623.23
Insurance	-2,367.00
TOTAL PAYROLL EXPENSE	88,602.49
OFFICE EXPENSE	
Subscriptions & Forms	0
Licenses	822.50
Membership dues	50
Storage	1210.69
Utilities	1856.13
Telephone	3323.35
Computer Expense	3430.72
Equipment Lease Postage Meter	450.37
Copier Supplies & Maintenance	809.47
Postage	4000
Express Couriers	84.49
Office Expense	55
Office Supplies	75.51
Kitchen Supplies Admin SD	8.14
TOTAL OFFICE EXPENSE	16,176.37
GENERAL OPERATING EXPENSE	
Partnership Related Expenses	-1,393.98
Legal General General	1,803.00
Consulting	0.00
Insurance Liability General	3,651.25
Insurance Land General	1,776.00
Interest Expense General	77,694.54
Bank Service Charges General	0.00
Fees and Finance Charges	1,254.97
Depreciation	10,662.00
Taxes Property	2,502.42
Taxes California Franchise General	-6,000.00
Capital Gain Income/Loss General	-264.90
TOTAL GENERAL EXPENSE	91,685.30
TOTAL EXPENSE	196,464.16
NET INCOME (LOSS)	-81,402.03

Prepared Internally

Exhibit 11

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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 SIXTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

**FIRST FINANCIAL PLANNING
DBA WESTERN FINANCIAL PLANNING
STATEMENT OF REVENUE AND EXPENDITURES
3 MONTHS 6/30/2013 - 9/30/2013**

	YEAR TO DATE
INCOME	
Interest Income	23,827.34
Interest Income Bank Accts	0.00
Commissions	360.29
TOTAL INCOME	24,187.63
EXPENSES	
PAYROLL EXPENSE	
Salary	0.00
Outside Temp Services	3,625.00
Insurance	(308.00)
TOTAL PAYROLL EXPENSE	3,317.00
SALES EXPENSE	
TOTAL SALES EXPENSE	0.00
TRAVEL EXPENSE	
TOTAL TRAVEL EXPENSE	0.00
OFFICE EXPENSE	
Subscriptions & Forms	0.00
Licenses	0.00
Membership dues	0.00
Building Rent	1,896.00
Storage	849.49
Utilities	0.00
Telephone	2,376.53
Computer Expense	1,014.63
Equipment Lease Postage Meter	450.37
Copier Supplies & Maintenance	178.57
Postage	1,000.00
Express Couriers	0.00
Office Expense	114.00
Office Supplies	0.00
Kitchen Supplies Admin SD	0.00
TOTAL OFFICE EXPENSE	7,879.59
GENERAL OPERATING EXPENSE	
Partnership Related Expenses	0.00
Legal General General	0.00
Consulting	0.00
Insurance Liability General	448.25
Insurance Land General	0.00
Interest Expense General	20,846.86
Bank Service Charges General	0.00
Fees and Finance Charges	249.99
Depreciation	3,554.00
Taxes Property	523.21
Taxes California Franchise General	0.00
Capital Gain Income/Loss General	0.00
TOTAL GENERAL EXPENSE	25,622.31
TOTAL EXPENSE	36,818.90
NET INCOME (LOSS)	(12,631.27)

Prepared Internally

Exhibit 12

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

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

17 Defendants.
18

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

**RECEIVER'S EIGHTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

Western Financial Planning
Statement of Revenues and Expenses
Q1 2014

Cash Basis

	January	February	March	Totals
Revenues				
Note Payments from GPs	171,703.80	111,940.43	134,040.43	417,684.66
Legacy Commissions	344.45	301.77	306.11	952.33
Reversal of Bank Fees	757.01	-	-	757.01
Repayment of GP Operational Loans	56,800.00	3,200.00	-	60,000.00
Miscellaneous	2,055.00	-	0.77	2,055.77
Total Revenues	231,660.26	115,442.20	134,347.31	481,449.77
Expenses				
Operational Expenses				
Storage	-	-	1,790.81	1,790.81
Phone	-	-	1,189.15	1,189.15
Mailing	-	-	1,442.01	1,442.01
Computer/IT	-	-	550.00	550.00
Operational Misc.	-	-	-	-
Accounting	2,692.31	1,754.08	1,058.00	5,504.39
Payments to Underlying Mortgage Holders	88,567.92	169,290.62	105,548.29	363,406.83
Bank Fees	757.01	-	-	757.01
Transfers to WSCC to cover intercompany transfers	3,801.29	2,712.67	784.66	7,298.62
Corporate Filing Expenses	-	-	3,325.00	3,325.00
Court Approved Fees and Costs of the Receivership	-	60,000.00	-	60,000.00
Total Expenses	95,818.53	233,757.37	115,687.92	445,263.82
Net Operating Revenue/(Loss)	135,841.73	(118,315.17)	18,659.39	36,185.95
Beginning Cash	23,554.97	159,396.70	41,081.53	41,081.53
Ending Cash	159,396.70	41,081.53	59,740.92	59,740.92

Exhibit 13

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

17 Defendants.
18

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

**RECEIVER'S NINTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

**Western Financial Planning
Statement of Revenues and Expenses
Q1 - Q2 2014**

Cash Basis

	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>Totals</u>
Revenues							
Note Payments from GPs	171,703.80	111,940.43	134,040.43	115,627.23	131,379.17	106,890.92	771,581.98
Legacy Commissions	344.45	301.77	306.11	513.15	297.37	273.57	2,036.42
Reversal of Bank Fees	757.01	-	-				757.01
Repayment of GP Operational Loans	56,800.00	3,200.00	-				60,000.00
Miscellaneous	2,055.00	-	0.77		531.64		2,587.41
Total Revenues	231,660.26	115,442.20	134,347.31	116,140.38	132,208.18	107,164.49	836,962.82
Expenses							
Operational Expenses							
Storage	-	-	1,790.81	-	-	-	1,790.81
Phone	-	-	1,189.15	-	-	-	1,189.15
Mailing	-	-	1,442.01	1,442.01	1,442.01	-	4,326.03
Computer/IT	-	-	550.00	44.99	45.00	45.00	684.99
Operational Misc.	-	-	-	1,475.63	95.44	-	1,571.07
Accounting	2,692.31	1,754.08	1,058.00	-	-	992.31	6,496.70
Payments to Underlying Mortgage Holders	88,567.92	169,290.62	105,548.29	91,983.59	99,694.31	68,658.95	623,743.68
Bank Fees	757.01	-	-	515.85	482.82	461.66	2,217.34
Transfers to WSCC to Cover Intercompany Transfers	3,801.29	2,712.67	784.66	-	697.00	-	7,995.62
Corporate Filing Expenses	-	-	3,325.00	-	842.00	-	4,167.00
Court Approved Fees and Costs of the Receivership	-	60,000.00	-	36,000.00	52,600.00	-	148,600.00
Total Expenses	95,818.53	233,757.37	115,687.92	131,462.07	155,898.58	70,157.92	802,782.39
Net Operating Revenue/(Loss)	135,841.73	(118,315.17)	18,659.39	(15,321.69)	(23,690.40)	37,006.57	34,180.43
Beginning Cash	23,554.97	159,396.70	41,081.53	59,740.92	44,419.23	20,728.83	23,554.97
Ending Cash	159,396.70	41,081.53	59,740.92	44,419.23	20,728.83	57,735.40	57,735.40

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 TENTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

WESTERN FINANCIAL PLANNING
STATEMENT OF REVENUES AND EXPENSES
(Third and Fourth Quarters of 2014)

Cash Basis	January	February	March	April	May	June	July	August	September	October	November	December	Totals
Income													
Note Payments from GPs	171,703.80	111,940.43	134,040.43	115,627.23	131,910.81	106,890.92	106,799.87	123,085.12	122,134.10	120,934.10	118,220.75	117,298.36	1,480,585.92
Legacy Commissions	344.45	301.77	306.11	513.15	297.37	273.57	327.59	256.21	486.30	280.38	250.96	354.08	3,991.94
Reversal of Bank Fees	757.01	-	-	-	-	-	-	-	-	-	-	-	757.01
Repayment of GP Operational Loans	¹ 56,800.00	3,200.00	-	-	-	-	-	-	-	-	-	-	60,000.00
Miscellaneous	2,055.00	-	0.77	-	-	-	-	88.04	-	-	-	-	2,143.81
Total Revenue	231,660.26	115,442.20	134,347.31	116,140.38	132,208.18	107,164.49	107,127.46	123,429.37	122,620.40	121,214.48	118,471.71	117,652.44	1,547,478.68
Expenses													
Operational Expenses													
Storage	-	-	1,790.81	-	-	-	1,217.62	797.47	-	434.94	-	434.94	4,675.78
Phone	-	-	1,189.15	-	-	-	-	-	-	-	-	-	1,189.15
Postage	-	-	1,442.01	1,442.01	1,442.01	-	1,442.01	1,442.01	1,645.07	-	-	-	8,855.12
Computer/IT	-	-	550.00	44.99	45.00	45.00	45.00	45.00	45.00	184.96	45.00	45.00	1,094.95
Operational Misc.	-	-	-	1,475.63	95.44	-	1,211.31	333.29	1,654.55	2,850.00	150.00	200.00	7,970.22
WFPC bookkeeping employee fees	2,692.31	1,754.08	1,058.00	-	-	992.31	3,412.51	5,026.55	3,419.24	4,497.07	3,444.24	3,425.23	29,721.54
Payments to Underling Mortgage Holders	² 88,567.92	169,290.62	105,548.29	91,983.59	99,694.31	68,658.95	108,866.06	75,893.95	101,631.03	88,762.49	88,746.92	83,667.70	1,171,311.83
Property Taxes (WFPC Owned RE)	-	-	-	-	-	-	-	-	3,675.81	-	-	-	3,675.81
Bank Fee	757.01	-	-	515.85	482.82	461.66	573.98	545.62	-	225.79	257.24	245.16	4,065.13
Transfers to WSCC to Cover Intercompany Transfers	3,801.29	2,712.67	784.66	-	697.00	-	-	-	-	4,144.33	-	-	12,139.95
Corporate Filing Expenses	-	-	2,525.00	-	42.00	-	35.00	25.59	-	575.00	-	575.00	3,777.59
Franchise Tax Board	-	-	800.00	-	800.00	-	-	-	-	-	-	-	-
Court Approved Fees and Costs of the Receivership	-	60,000.00	-	36,000.00	52,600.00	-	-	22,424.49	70,000.00	-	-	-	65,000.00
Total Expenses	95,818.53	233,757.37	115,687.92	131,462.07	155,898.58	70,157.92	116,803.49	106,533.97	182,070.70	101,674.58	92,643.40	153,593.03	1,556,101.56
Net Operating Surplus/(Loss)	135,841.73	(118,315.17)	18,659.39	(15,321.69)	(23,690.40)	37,006.57	(9,676.03)	16,895.40	(59,450.30)	19,539.90	25,828.31	(35,940.59)	(8,622.88)
Beginning Cash	23,554.97	159,396.70	41,081.53	59,740.92	44,419.23	20,728.83	57,735.40	48,059.37	64,954.77	5,504.47	25,044.37	50,872.68	23,554.97
Ending Cash	159,396.70	41,081.53	59,740.92	44,419.23	20,728.83	57,735.40	48,059.37	64,954.77	5,504.47	25,044.37	50,872.68	14,932.09	14,932.09

¹ Funds received from GPs based on 11/22/13 operational billings

² Payments are sent timely, however some checks may not clear the bank until the following month and are recorded accordingly

Exhibit 15

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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 ELEVENTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

STATEMENT OF REVENUE AND EXPENDITURES FOR WESTERN FOR THE RECEIVERSHIP ENTITIES FOR THE FIRST QUARTER 2015

Cash Basis	2014 Totals	January	February	March	April	May	June	July	August	September	October	November	December	2015 Totals
Income														
Note Payments from GPs	1,480,585.92	116,608.32	111,942.81	112,087.35										340,638.48
Legacy Commissions	3,991.94	334.17	277.85	549.40										1,161.42
Reversal of Bank Fees	757.01													-
Repayment of GP Operational Loans	² 60,000.00	²												-
Miscellaneous	2,143.81			10,936.93										³ 10,936.93
Total Revenue	1,547,478.68	116,942.49	112,220.66	123,573.68	-	-	-	-	-	-	-	-	-	352,736.83
Expenses														
Operational Expenses														
Storage	4,675.78			797.47										797.47
Phone	1,189.15													-
Postage	8,855.12													-
Computer/IT	1,094.95	3,200.37	1,474.95	345.00										5,020.32
Operational Misc.	7,970.22		3,560.00											3,560.00
WFPC bookkeeping employee fees	29,721.54	4,161.55	3,225.23	3,569.24										10,956.02
Payments to Underlying Mortgage Holders	³ 1,171,311.83	95,596.63	85,121.05	78,624.43										259,342.11
Property Taxes (WFPC Owned RE)	3,675.81													-
Bank Fee	4,065.13	203.61	240.48	313.13										757.22
Transfers to Cover Intercompany Transfers	12,139.95			10,289.57										³ 10,289.57
Corporate Filing Expenses	3,777.59		685.00											685.00
Franchise Tax Board				800.00										800.00
Court Approved Fees and Costs of the Receivership	306,024.49		45,000.00											45,000.00
Total Expenses	1,556,101.56	103,162.16	139,306.71	94,738.84	-	-	-	-	-	-	-	-	-	337,207.71
Net Operating Surplus/(Loss)	(8,622.88)	13,780.33	(27,086.05)	28,834.84	-	-	-	-	-	-	-	-	-	15,529.12
Beginning Cash	23,554.97	14,932.09	28,712.42	1,626.37	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	14,932.09
Ending Cash	14,932.09	28,712.42	1,626.37	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21	30,461.21

¹ Funds received from GPs based on 11/22/13 operational billings

² Payments are sent timely, however some checks may not clear the bank until the following month and are recorded accordingly

³ During the Administrator transition in March and April 2015, since the Receiver did not have access to partnership checks, the Receiver transferred funds from partnership accounts into the Western account to cover normal operating expenses. Checks to cover the respective operating expenses were then cut out of the Western account. Lincoln Property has taken over this function from the Receiver.

Exhibit 16

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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 TWELFTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

Western Financial Planning
Statement of Revenues Expenses
2014

Cash Basis	2014							2015
	Totals	January	February	March	April	May	June	Totals
Income								
Note Payments from GPs	1,480,585.92	116,608.32	111,942.81	112,087.35	97,644.25	110,952.98	104,068.33	653,304.04
Legacy Commissions	3,991.94	334.17	277.85	549.40	277.85	268.35	292.38	2,000.00
Reversal of Bank Fees	757.01							-
Repayment of GP Operational Loans	¹ 60,000.00							-
Miscellaneous	² 2,143.81			10,936.93	2,033.11	10,252.02		23,222.06
Total Revenue	1,547,478.68	116,942.49	112,220.66	123,573.68	99,955.21	121,473.35	104,360.71	678,526.10
Expenses								
Operational Expenses								
Storage	4,675.78			797.47		1,000.00	1,000.00	2,797.47
Phone	1,189.15							-
Postage	8,855.12							-
Computer/IT	1,094.95	3,200.37	1,474.95	345.00	2,395.00	435.00	782.35	8,632.67
Operational Misc.	7,970.22		3,560.00		108.00		309.22	3,977.22
WFPC bookkeeping employee fees	29,721.54	4,161.55	3,225.23	3,569.24	3,169.24	3,425.23	4,460.55	22,011.04
Payments to Underling Mortgage Holders	³ 1,171,311.83	95,596.63	85,121.05	78,624.43	71,450.98	33,317.22	115,610.02	479,720.33
Property Taxes (WFPC Owned RE)	3,675.81							-
Bank Fee	4,065.13	203.61	240.48	313.13	100.07	106.21	109.24	1,072.74
Transfers to WSCC to Cover Intercompany Transfers	12,139.95				786.68			786.68
Corporate Filing Expenses	3,777.59		685.00	800.00	3,599.00	975.00		6,059.00
Franchise Tax Board								-
GP Operational bills Paid by Western	⁴			10,289.57				10,289.57
Court Approved Fees and Costs of the Receivership	306,024.49		45,000.00				90,820.00	135,820.00
Total Expenses	1,556,101.56	103,162.16	139,306.71	94,738.84	81,608.97	39,258.66	213,091.38	671,166.72
Net Operating Surplus/(Loss)	(8,622.88)	13,780.33	(27,086.05)	28,834.84	18,346.24	82,214.69	(108,730.67)	7,359.38
Beginning Cash	23,554.97	14,932.09	28,712.42	1,626.37	30,461.21	48,807.45	131,022.14	14,932.09
Ending Cash	14,932.09	28,712.42	1,626.37	30,461.21	48,807.45	131,022.14	22,291.47	22,291.47

¹ Funds received from GPs based on 11/22/13 operational billings

² Miscellaneous Income in March and April 2015 due to the transition with the GP Administrators. The Receiver paid some GP Operational bills with funds from Western and contemporaneously reimbursed Western from those respective GPs.

Miscellaneous Income in May was due to recovery of funds in the Linmar Management Bank Levy.

³ Payments are sent timely, however some checks may not clear the bank until the following month and are recorded accordingly. Additionally a number of underlying mortgages are scheduled to be paid off in 2015; this total amount will continue to decline after August and December 2015.

⁴ GP Operational bills that were paid by Western (referenced in footnote #2 above)

Exhibit 17

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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 THIRTEENTH
INTERIM REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

Western Financial Planning
Statement of Revenues Expenses
2014

Cash Basis	2014										2015
	Totals	January	February	March	April	May	June	July	August	September	Totals
Income											
Note Payments from GPs	1,480,585.92	116,608.32	111,942.81	112,087.35	97,644.25	110,952.98	104,068.33	104,390.56	110,529.42	78,027.39	946,251.41
Legacy Commissions	3,991.94	334.17	277.85	549.40	277.85	268.35	292.38	318.74	238.00	452.53	3,009.27
Reversal of Bank Fees	757.01										-
Repayment of GP Operational Loans	¹ 60,000.00										-
Miscellaneous	² 2,143.81			10,936.93	2,033.11	10,252.02			9,519.78		32,741.84
Total Revenue	1,547,478.68	116,942.49	112,220.66	123,573.68	99,955.21	121,473.35	104,360.71	104,709.30	120,287.20	78,479.92	982,002.52
Expenses											
Operational Expenses											
Storage	4,675.78			797.47		1,000.00	1,000.00	1,000.00	1,000.00		4,797.47
Phone	1,189.15										-
Postage	8,855.12										-
Computer/IT	1,094.95	3,200.37	1,474.95	345.00	2,395.00	435.00	782.35	45.00	45.00	45.00	8,767.67
Operational Misc.	7,970.22		3,560.00		108.00		309.22				3,977.22
WFPC bookkeeping employee fees	29,721.54	4,161.55	3,225.23	3,569.24	3,169.24	3,425.23	4,460.55	3,961.55	3,569.24	3,369.24	32,911.07
Payments to Underling Mortgage Holders	³ 1,171,311.83	95,596.63	85,121.05	78,624.43	71,450.98	33,317.22	115,610.02	57,613.55	58,582.93	16,047.34	611,964.15
Property Taxes (WFPC Owned RE)	3,675.81							2,104.10			2,104.10
Bank Fee	4,065.13	203.61	240.48	313.13	100.07	106.21	109.24	26.38	157.15	244.40	1,500.67
Transfers to WSCC to Cover Intercompany Transfers	12,139.95				786.68			222.00	630.00	14,726.29	16,364.97
Corporate Filing Expenses	3,777.59		685.00	800.00	3,599.00	975.00				900.00	6,959.00
Franchise Tax Board											-
GP Operational bills Paid by Western	⁴			10,289.57							10,289.57
Court Approved Fees and Costs of the Receivership	306,024.49		45,000.00				90,820.00		85,997.71		221,817.71
Total Expenses	1,556,101.56	103,162.16	139,306.71	94,738.84	81,608.97	39,258.66	213,091.38	64,972.58	149,982.03	35,332.27	921,453.60
Net Operating Surplus/(Loss)	(8,622.88)	13,780.33	(27,086.05)	28,834.84	18,346.24	82,214.69	(108,730.67)	39,736.72	(29,694.83)	43,147.65	60,548.92
Beginning Cash	23,554.97	14,932.09	28,712.42	1,626.37	30,461.21	48,807.45	131,022.14	22,291.47	62,028.19	32,333.36	14,932.09
Ending Cash	14,932.09	28,712.42	1,626.37	30,461.21	48,807.45	131,022.14	22,291.47	62,028.19	32,333.36	75,481.01	75,481.01

¹ Funds received from GPs based on 11/22/13 operational billings

² Miscellaneous Income in March and April 2015 due to the transition with the GP Administrators. The Receiver paid some GP Operational bills with funds from Western and contemporaneously reimbursed Western from those respective GPs.

Miscellaneous Income in May was due to recovery of funds in the Linmar Management Bank Levy.

Miscellaneous Income in August was due to the recovery of some GP Operational expenses reimbursed to Western and the return of funds paid to Kern County Sheriff in the execution of the Linamar judgement.

³ Payments are sent timely, however some checks may not clear the bank until the following month and are recorded accordingly. Additionally a number of underlying mortgages are scheduled to be paid off in 2015; this total amount will continue to decline after August and December 2015.

⁴ GP Operational bills that were paid by Western (referenced in footnote #2 above)

Exhibit 18

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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 FOURTEENTH
INTERIM REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

STATEMENT OF REVENUE AND EXPENDITURES FOR WESTERN
FOURTH QUARTER 2015

Cash Basis	2014				2015
	Totals	October	November	December	Totals
Income					
Note Payments from GPs	1,480,585.92	94,995.61		129,146.47	1,170,393.49
Legacy Commissions	3,991.94	261.84	250.81	268.21	3,790.13
Reversal of Bank Fees	757.01				-
Repayment of GP Operational Loans	¹ 60,000.00				-
Miscellaneous	² 2,143.81	259,508.88	721.42		292,972.14
Total Revenue	1,547,478.68	354,766.33	972.23	129,414.68	1,467,155.76
Expenses					
Operational Expenses					
Storage	4,675.78	2,000.00		2,000.00	8,797.47
Phone	1,189.15				-
Postage	8,855.12				-
Computer/IT	1,094.95	45.00	45.00	45.00	8,902.67
Operational Misc.	7,970.22				3,977.22
WFPC bookkeeping employee fees	29,721.54	3,169.24	3,369.24	4,161.55	43,611.10
Payments to Underling Mortgage Holders	³ 1,171,311.83	44,625.60	39,078.27	73,193.54	768,861.56
Property Taxes (WFPC Owned RE)	3,675.81				2,104.10
Bank Fee	4,065.13	109.43	194.93	222.05	2,027.08
Transfers to WSCC to Cover Intercompany Transfers	12,139.95	12,756.76	17,355.69	20,849.67	67,327.09
Corporate Filing Expenses	3,777.59				6,959.00
Franchise Tax Board					-
GP Operational bills Paid by Western	⁴				10,289.57
Court Approved Fees and Costs of the Receivership	306,024.49	82,738.77	159,903.38	721.42	465,181.28
Total Expenses	1,556,101.56	145,444.80	219,946.51	101,193.23	1,388,038.14
Net Operating Surplus/(Loss)	(8,622.88)	209,321.53	(218,974.28)	28,221.45	79,117.62
Beginning Cash	23,554.97	75,481.01	284,802.54	65,828.26	14,932.09
Ending Cash	14,932.09	284,802.54	65,828.26	94,049.71	94,049.71

¹ Funds received from GPs based on 11/22/13 operational billings.

² Miscellaneous Income in October was due to the LinMar settlement and the reimbursement of GP K1 expenses. Miscellaneous Income in November was due to reimbursement of GP K1 expenses.

³ Payments are sent timely, however some checks may not clear the bank until the following month and are recorded accordingly. Additionally a number of underlying mortgages are scheduled to be paid off in 2015; this total amount will continue to decline after August and December 2015.

⁴ GP Operational bills that were paid by Western.

Exhibit 19

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12 THOMAS C. HEBRANK

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 SEVENTH INTERIM
REPORT**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

FIRST FINANCIAL PLANNING
 DBA WESTERN FINANCIAL PLANNING
 STATEMENT OF REVENUE AND EXPENDITURES
 12 MONTHS ENDED 12/31/2013

	YEAR TO DATE
INCOME	
Interest Income	171,676.64
Interest Income Bank Accts	0.13
Commissions	<u>2,496.79</u>
TOTAL INCOME	<u><u>174,173.56</u></u>
EXPENSES	
PAYROLL EXPENSE	
Salary	1,082.18
Outside Temp Services	165,357.07
Insurance	<u>(2,811.00)</u>
TOTAL PAYROLL EXPENSE	<u><u>163,628.25</u></u>
SALES EXPENSE	
TOTAL SALES EXPENSE	<u><u>0.00</u></u>
TRAVEL EXPENSE	
TOTAL TRAVEL EXPENSE	<u><u>0.00</u></u>
OFFICE EXPENSE	
Subscriptions & Forms	513.02
Licenses	822.50
Membership dues	50.00
Building Rent	1,896.00
Storage	2,891.75
Utilities	<u>(75.84)</u>
Telephone	8,009.92
Computer Expense	6,728.74
Equipment Lease Postage Meter	1,355.28
Copier Supplies & Maintenance	1,731.11
Postage	5,000.00
Express Couriers	84.49
Office Expense	279.00
Office Supplies	111.45
Kitchen Supplies Admin SD	<u>71.52</u>
TOTAL OFFICE EXPENSE	<u><u>29,468.94</u></u>
GENERAL OPERATING EXPENSE	
Partnership Related Expenses	<u>(5,811.88)</u>
Legal General General	175.00
Consulting	190.00
Insurance Liability General	3,253.05
Insurance Land General	1,776.00
Interest Expense General	125,580.78

Bank Service Charges General	10.00
Fees and Finance Charges	1,845.72
Depreciation	24,878.00
Taxes Property	3,025.63
Taxes California Franchise General	(9,200.00)
Capital Gain Income/Loss General	(264.90)
TOTAL GENERAL EXPENSE	<u>145,457.40</u>
TOTAL EXPENSE	<u>338,554.59</u>
NET INCOME (LOSS)	<u>(164,381.03)</u>

Prepared Internally

Exhibit 20

Period	Source	Receipts	Disbursements	Revenue	Expenses
Q4 2012	Third, Dkt. No. 80	2,047,023.13	2,099,247.62	86,976.78	253,625.11
Q1 2013	Fourth, Dkt. No. 184	1,348,020.67	1,318,167.63	76,321.39	145,200.82
Q2 2013	Fifth, Dkt. No. 481	1,487,776 Extrapolated	1,488,465.3 Extrapolated	115,062.13	196,464.16
Q3 2013	Sixth, Dkt. No. 517	1,010,224.01	900,997.33	24,187.63	36,818.90
Q4 2013	Seventh, Dkt. No. 547	1,501,654.91	1,576,356.03	276,431.86 Extrapolated	298,020.72 Extrapolated
Q1 2014	Eighth, Dkt. No. 596	1,634,576.58	1,638,456.58	481,449.77	445,263.82
Q2 2014	Ninth, Dkt. No. 759	1,385,160.47	1,397,566.66	355,513.05	357,518.57
Q3 2014	Tenth, Dkt. No. 1000	1,487,776 Extrapolated	1,488,465.3 Extrapolated	353,177.23	405,408.16
Q4 2014	Tenth, Dkt. No. 1000	1,487,776 Extrapolated	1,488,465.3 Extrapolated	357,338.63	347,911.01
Q1 2015	Eleventh, Dkt. No. 1065	1,487,776 Extrapolated	1,488,465.3 Extrapolated	352,736.83	337,207.71
Q2 2015	Twelfth, Dkt. No. 1103	1,487,776 Extrapolated	1,488,465.3 Extrapolated	325,789.27	333,959.01
Q3 2015	Thirteenth, Dkt. No. 1148	1,487,776 Extrapolated	1,488,465.3 Extrapolated	303,476.42	250,286.88
Q4 2015	Fourteenth, Dkt. No. 1189	1,487,776 Extrapolated	1,488,465.3 Extrapolated	485,153.24	466,584.54
TOTAL		19,341,091.77	19,350,049.00	3,593,614.23	3,874,269.41

Exhibit 21

Quarter	Opening Balance	Receipts	Disburs.	Closing Balance	Source
Q4 2012	6,444,942.67	504,942.23	605,794.47	6,344,090.43	Third, Dkt. No. 80
Q1 2013	6,361,566.30	469,662.36	650,628.39	6,180,600.27	Fourth, Dkt. No. 184
Q2 2013	No data	464,099.63 Extrapolated	679,732.96 Extrapolated	5,814,830.96	Fifth, Dkt. No. 481
Q3 2013	5,931,682.22	324,755.39	549,818.92	5,588,272.38	Sixth, Dkt. No. 517
Q4 2013	5,588,272.38	732,871.73	794,060.82	5,527,083.29	Seventh, Dkt. No. 547
Q1 2014	5,527,083.29	595,656.05	826,351.65	5,296,387.69	Eighth, Dkt. No. 596
Q2 2014	5,296,387.69	479,512.51	797,474.50	4,978,425.70	Ninth, Dkt. No. 759
Q3 2014	4,952,041.00	464,099.63 Extrapolated	678,733.85	4,703,485.00	Tenth, Dkt. No. 1000
Q4 2014	4,703,485.00	590,632.00	875,365.00	4,418,752.00	Tenth, Dkt. No. 1000
Q1 2015	4,419,955.00	460,080.00	838,713.00	4,041,323.00	Eleventh, Dkt. No. 1065
Q2 2015	4,042,672.00	273,249.00	494,450.00	3,821,470.00	Twelfth, Dkt. No. 1103
Q3 2015	3,834,883.00	302,128.00	487,161.00	3,649,849.00	Thirteenth, Dkt. No. 1148
Q4 2015	3,648,871.00	371,607.00	558,244.00	3,462,236.00	Fourteenth, Dkt. No. 1189
Total		6,033,295.53	8,836,528.56		

**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,

SEC Receivership Billing Instructions, pg. 4 of 11

- (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

SEC Receivership Billing Instructions, pg. 5 of 11

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

REPORT INSTRUCTIONS

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):			
	Increases in Fund Balance:			
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			
	Total Funds Available (Lines 1 - 8):			
	Decreases in Fund Balance:			
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			
	Total Third-Party Litigation Expenses			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations			
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			
	Total Plan Development Expenses			
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			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 - 11):			
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

Line 14	Ending Balance of Fund – Net Assets:			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund – Net Assets			
OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
	Report of Items NOT To Be Paid by the Fund:			
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
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			
	Total Plan Development Expenses Not Paid by the Fund			
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			
	Total Plan Implementation Expenses Not Paid by the Fund			
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund:			
Line 17	DC & State Tax Payments			
Line 18	No. of Claims:			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			
Line 19	No. of Claimants/Investors:			
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 23

M E M O R A N D U M

To: Linda Thomsen
From: Mary Beth Sullivan *MBSullivan*
Date: December 12, 2007
Re: Oversight of Receivers and Distribution Agents (Report No. 432)

Attached is our evaluation report on the Oversight of Receivers and Distribution Agents. The report reflects the comments we received on prior drafts.

We hope you found the report useful and welcome any suggestions from you concerning how we could improve future evaluations and audits. The courtesy and cooperation of you and your staff are greatly appreciated.

Attachment

Cc: Mark Adler
Beth Badawy
Alistaire Bambach
Joan McKown
Lou Mejia
Nancy Morris
Lynn Powalski
Darlene Pryor
Diego Ruiz
Chuck Staiger
Peter Uhlmann

Rick Hillman, GAO

OVERSIGHT OF RECEIVERS AND DISTRIBUTION AGENTS

EXECUTIVE SUMMARY

Our evaluation found that the Division of Enforcement's (Enforcement's) oversight of receivers and other third party agents (distribution agents)¹ responsible for collecting, safeguarding or disbursing assets can be enhanced through better reporting by receivers and distribution agents.

Orders appointing receivers and distribution agents do not typically specify how often, and in what format, they should report financial information about cash and non-cash assets collected by receivers and administrative costs incurred by receivers/distribution agents. Also, the Commission does not consistently track this information.

Enforcement should better ensure that receivers and/or distribution agents provide periodic, formal reports describing receivers' efforts to garner assets, administrative costs incurred and the financial condition of the assets collected. Enforcement should also request that receivers/distribution agents provide a final accounting of all assets collected and disbursed in a specified format. Enforcement should provide guidance or training to staff on receiver/distribution agent oversight.

Enforcement generally agreed with the report's findings and recommendations.

OBJECTIVES, SCOPE AND METHODOLOGY

Our objective was to review Enforcement's coordination with receivers and distribution agents and to identify improvements in Enforcement's oversight of receivers/distribution agents.

We considered the following topics:

- How often and in what format receivers/distribution agents should report their activities, administrative costs (billings; job-related expenses such as lodging and travel; professional fees paid for legal, accounting and other services), and the financial condition of the assets collected by receivers;

¹ For simplicity, we use the term "distribution agent" to include all third-party agents (except receivers) in both civil and administrative proceedings who oversee or disburse funds through an appointment outlined in a court or Commission order. Examples of third party agents include distribution consultants, fund administrators, and plan administrators.

- Whether receivers/distribution agents should provide a final accounting of all assets collected and disbursed;
- Whether Enforcement should issue staff guidance or provide training on receiver/distribution agent oversight (*e.g.*, reviewing administrative costs and drafting distribution plans); and
- Whether receivers/distribution agents should be audited at the conclusion of the receivership or funds distribution.

We discussed these topics with Enforcement staff who work with receivers and distribution agents. We reviewed documentation, such as orders appointing receivers/distribution agents, administrative costs, activity reports, and financial statements from receivers/distribution agents, and distribution plans from seven Enforcement cases (five civil cases and two administrative proceedings) in which receivers/distribution agents were appointed.

We conducted this evaluation from March 2007 to September 2007 in accordance with the Quality Standards for Inspections, issued in January 2005, by the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency.

BACKGROUND

A court or the Commission may appoint a receiver or a distribution agent to safeguard assets, create a proposed distribution plan, and distribute assets in accordance with a distribution plan approved by the court or the Commission. In some administrative proceeding cases, Commission staff distribute assets.

For assets that are within the jurisdiction of the court presiding over an Enforcement civil case, the Commission typically recommends a receiver to the court. A court appoints a receiver to preserve the property of a defendant pending action against him. A receiver may be appointed when there is danger that, in the absence of such an appointment, the property could be lost, removed or dissipated. In Commission civil cases, a receiver is authorized to garner assets and take over a business or public company.

While a judge in a securities case brought by the Commission usually appoints a receiver recommended by Enforcement staff, the judge may select any qualified receiver. An Enforcement attorney typically drafts a proposed court order appointing and outlining the receiver's responsibilities. The judge may make changes to and issues the final order.

Although a receiver reports to the court (not the Commission), Commission staff monitor a receiver's activities and review a receiver's administrative costs. The judge must approve a receiver's administrative costs before the receiver is paid. Enforcement attorneys may object to any administrative costs that appear too high or unreasonable.

Other third party agents, such as distribution consultants, fund administrators and

plan administrators (distribution agents)², perform several functions similar to those performed by receivers. They may safeguard assets, develop a proposed distribution plan, and distribute assets in accordance with an approved plan. In Commission civil cases, distribution agents (unlike receivers) are not permitted to garner assets or take over a business or public company. Distribution agents may be appointed through a court order in civil cases or a Commission order in administrative proceedings. Commission staff monitor the activities of distribution agents similarly to the way they monitor receivers' activities.

Receivers and/or distribution agents should provide the courts (in civil cases) and Enforcement staff with periodic reports documenting their activities to garner assets³, administrative costs incurred, and a description of the assets garnered and disbursed (inflows and outflows). Receivers/distribution agents generally use their discretion in deciding how often, and in what format, to report this information, as the manner for reporting this information is not routinely specified in the appointment orders.

Inflows include cash and non-cash assets collected by the receiver/distribution agent and interest earned. Outflows include administrative costs, taxes, and distributions to harmed investors and the U.S. Treasury, and may also include expenses related to a business or public company taken over by a receiver.

When practicable, penalties and disgorgements collected by a receiver/distribution agent are distributed to harmed investors. One vehicle for the distribution of penalties is provided through the Fair Funds provision of Section 308(a) of the Sarbanes-Oxley Act of 2002.⁴ The Fair Funds provision allows the Commission to combine civil monetary penalties with disgorgements collected in Enforcement cases to establish funds for investors harmed by securities laws violations. Since 2002, \$8.4 billion has been ordered to be distributed to harmed investors, and \$1.8 billion has been paid out, through Fair Funds.⁵

In February 2007, Enforcement began using a new database system called Phoenix to track funds ordered and collected in civil cases and administrative proceedings. In 2008, Enforcement and OIT plan to record in Phoenix activities related to Enforcement actions, debt collections and distributions such as administrative costs and disbursements. Enforcement estimates it will take until 2008 to develop the Phoenix database and implement procedures to receive and record this information.

Previously, financial information was recorded in the Commission's Case Activity Tracking System (CATS). Phoenix can accommodate more detailed financial information than CATS did, and unlike CATS, Phoenix provides an audit trail showing changes to system data.

² See footnote 1.

³ Garnering assets refers only to receivers.

⁴ 15 U.S.C. § 7246.

⁵ GAO Report 07-830 "Securities and Exchange Commission: Additional Actions Needed to Ensure Planned Improvements Address Limitations in Enforcement Division Operations", August 2007, page 5.

RESULTS

Our interviews with Enforcement staff and review of a judgmental sample of seven cases (five civil cases and two administrative proceedings) indicated that Enforcement's oversight of receivers/distribution agents could be improved through better reporting by receivers/distribution agents. Currently, orders appointing receivers/distribution agents vary in their reporting requirements.

Enforcement staff could develop templates suggesting standard requirements in the proposed court orders they draft (for civil cases) or in the Commission orders for administrative proceedings. While each order needs to reflect the specific circumstances of a case, the templates could better ensure standard reporting requirements are included in the order.

In the seven cases we sampled, the orders appointing receivers/distribution agents required them to produce activity reports five out of seven times, statements showing administrative costs six out of seven times, reports on the financial condition of the assets collected three out of seven times and a final accounting two out of seven times. Documentation in the orders specified the frequency and format for reporting this information to a lesser extent (see Appendix).⁶

A Commission inter-office working group on distributions policy concluded in May 2007 that receivers/distribution agents currently do not use a standard format for their accounting reports. This group also found that the Commission does not have complete or consistent records showing the amount of assets overseen by receivers/distribution agents.

A report issued by the Government Accountability Office (GAO) in August 2007 concluded that Enforcement does not systematically collect or analyze key Fair Fund data, such as administrative costs incurred by consultants. GAO also concluded that Enforcement has not ensured that reports intended to provide expense data for completed Fair Fund plans contain consistent information or are analyzed. According to GAO, without such information, Enforcement's Fair Fund oversight capacity is limited.⁷

Enforcement generally agreed with this report's findings and recommendations, which are described below.

PERIODIC AND FORMALIZED REPORTING

Receivers and/or distribution agents typically report to varying degrees:

- Their activities to garner assets⁸ and planned future activities;

⁶ Even if reporting provisions are not specifically stated in a court order, receivers/distribution agents may produce documentation at their discretion or at the request of the Commission or other parties. For example, receivers/distribution agents typically report their administrative costs on a monthly or quarterly basis.

⁷ GAO report 07-830, page 6.

⁸ Activities to garner assets refers only to receivers.

- Their administrative costs; and
- The financial condition of the assets collected by receivers (including a final accounting).

The orders appointing receivers/distribution agents or related documentation, however, do not consistently require the above information to be reported. The orders also do not typically specify the reporting frequency or format (presentation).⁹ As a result, information may often be provided at the receivers'/distribution agents' discretion, in their selected format. Even if the receivers/distribution agents provide the information listed above, a lack of consistency and the high volume of receivers'/distribution agents' reports makes this information difficult to identify and review.

According to Enforcement staff, while receivers/distribution agents generally act responsibly and charge reasonable fees, they sometimes fail to discuss their current or planned activities with Enforcement staff, over-bill for their time, claim unreasonably high expenses and, in the case of receivers, undertake actions to garner assets when there is little chance of success.

Enforcement staff also told us that it is often difficult to determine the administrative costs, interest and taxes that accrued over a particular reporting period or since the inception of the receivership/collection period. Sometimes this information is not provided or, if it is, it is not separately identified. This makes it difficult to determine the current value of the assets collected, as well as a receiver's/distribution agent's aggregate administrative costs at a given time.

Financial statement reporting might be appropriate when a receiver takes over and manages a business or public company, depending on the complexity of the receivership and the amount of assets available to distribute to harmed investors. In such cases, it could be useful if a receiver provided to Enforcement periodic financial statements (*i.e.*, income statement, balance sheet, statement of cash flow, statement of owner's equity).

Periodic and formalized reporting by receivers/distribution agents would help Enforcement staff to timely review and comment on receivers'/distribution agents' reports, evaluate the reasonableness of their administrative costs, and provide the Commission with current information on the value of the assets collected and accumulated administrative costs.

Recommendation A

As discussed above, Enforcement should decide how often (*e.g.*, monthly or quarterly) and in what format receivers and/or distribution agents should submit information documenting:

⁹ Based on our evaluation, we concluded that the format for reporting a receiver's/distribution agent's administrative costs and the financial condition of the assets collected were particularly important to ensure that financial information was completely, clearly and consistently reported. The manner of reporting a receiver's activities to garner assets may be less susceptible to a prescribed format.

- Activities taken to garner assets¹⁰ and planned future activities;
- Administrative costs; and
- The financial condition of the assets collected by receivers.

Enforcement should specify the above reporting requirements in a written document (e.g., in the proposed court or Commission order appointing a receiver or distribution agent).

FINAL ACCOUNTING

Enforcement staff told us that at the conclusion of a receivership or disbursement of funds, receivers/distribution agents generally provide a detailed accounting of what assets were collected and how the assets were distributed (e.g., to pay administrative costs, disbursements to harmed investors, the U.S. Treasury and others).

Receivers/distribution agents, however, are not typically required to present the information described above in a specific format, and a final accounting requirement is not consistently specified in the appointment order¹¹ (see Appendix). Receipt of a final accounting, in a specified format, would allow Enforcement staff to determine more easily how all assets were distributed.

Recommendation B

Enforcement should request that receivers/distribution agents provide a final accounting, in a particular format, which identifies the assets collected and disbursed. The receivers/distribution agents should document the details of all inflows and outflows and the ending fund balance. Enforcement should specify this reporting provision in a written document (e.g., in the proposed court or Commission order appointing a receiver or distribution agent).

GUIDANCE ON STAFF OVERSIGHT OF RECEIVERS/DISTRIBUTION AGENTS

Enforcement staff do not currently receive training on how to work with and monitor receivers/distribution agents. Such training would better ensure that appointment orders specify receivers'/distribution agents' responsibilities and could assist Enforcement staff in identifying and objecting to excessive administrative costs. Enforcement staff to whom we spoke generally agreed that staff training on monitoring receivers/distribution agents would be useful.

The training should cover:

- 1) An explanation of the receiver's status as an independent fiduciary who has ultimate responsibility to the appointing court (not Enforcement) and how this impacts issues related to attorney/client privilege and access to

¹⁰ See footnote 8.

¹¹ A final accounting requirement for administrative proceedings is specified in Rule 1105(f) of the Commission's *Rules of Practice and Rules on Fair Fund and Disgorgement Plans*, issued January 2006.

records by receivers and Enforcement staff.

- 2) How to draft an order appointing a receiver/distribution agent and to specify the receiver's/distribution agent's reporting responsibilities in the order.
- 3) How to identify excessive billings for processing, preparation, and application fees; partner billings for work that could be completed by lower-paid attorneys or paralegals; excessive taxi or air fares; and overcharges for other job-related expenses.
- 4) How to question or to object to excessive administrative costs;
- 5) How to request information about a receiver's/distribution agent's fees, and when to suggest that a receiver/distribution agent be paid on a contingent fee basis.
- 6) Whether to recommend that a receiver/distribution agent not be permitted to charge for the preparation of billings, expenses and other fee documentation.
- 7) When it is appropriate for a receiver/distribution agent to provide the courts and Enforcement with financial statements describing the condition of assets collected and how to ensure that the costs of compiling financial statements do not outweigh the benefits to harmed investors who may receive compensation.
- 8) How to coordinate with a receiver/distribution agent and to keep informed of their current and planned activities, including understanding a receiver's strategies for garnering assets and ensuring that planned actions are cost-effective.
- 9) How to draft a distribution plan or review a plan drafted by a receiver/distribution agent.

Enforcement officials told us it would be useful if Enforcement developed written guidelines on how to manage receivers/distribution agents and a list of red flags. Additional oversight training could be included in Enforcement's chief enforcement conference, or informally by assigning more experienced staff to work with newer staff.

Recommendation C

Enforcement should provide guidance and/or training to its staff on overseeing receivers/distribution agents. The guidance and/or training should address the points listed above.

RECEIVER/DISTRIBUTION AGENT AUDIT

In any receivership or distribution, it is possible for a receiver/distribution agent to submit inflated or erroneous billings and expenses. It is also possible for a receiver/distribution agent to erroneously or fraudulently identify a person as a harmed investor who is entitled to compensation. Improper disbursements could be made to persons who submitted fabricated claims.

Currently, there are no provisions for an audit of a receiver's/distribution agent's records. An audit could include reviewing a sample of a receiver's/distribution agent's administrative costs and fund recipients.

We discussed with Enforcement the benefits and drawbacks of including a provision in the receiver/distribution agent appointment order that an audit may be conducted at the conclusion of a receivership or distribution.

Some Enforcement staff we interviewed suggested that an audit may be appropriate in certain circumstances, such as when Enforcement staff question bills or expenses, when a receiver/distribution agent fails to follow material reporting provisions specified in the appointment order, or when a receivership or distribution is unreasonably delayed. Enforcement staff also said the possibility of an audit might deter unscrupulous behavior by a receiver/distribution agent.

The majority of Enforcement staff we interviewed stated, however, that an audit is not an effective use of resources and Enforcement does not have the staff resources to conduct an audit. Hiring an outside party to conduct an audit could reduce funds distributed to harmed investors. Staff also said it is unlikely that a receiver/distribution agent would fraudulently identify a person as a harmed investor or inflate costs because doing so would risk the person's reputation and is punishable by law. In addition, receivers/distribution agents are expected to employ internal controls to address such risks.

Enforcement management said that once Enforcement adopts the recommendations already included in this report, its ongoing monitoring of receivers/distribution agents will be enhanced. Enforcement also plans to analyze and track (in the Phoenix database) the financial information it receives from receivers/distribution agents. Enforcement management stated that these types of on-going monitoring activities would make an audit unnecessary in most instances. Enforcement management also said they could request an audit of a receiver's records even if an audit provision is not included in the appointment order. Further, in an administrative proceeding, the Commission may remove a distribution agent. In court proceedings, the court, on its own initiative or on the Commission's motion, may remove the receiver/distribution agent. Management also said that receivers/distribution agents have, in the past, reduced administrative costs that were questioned by Enforcement staff. Asking a receiver/distribution agent to reduce costs could be more efficient than conducting an audit, according to Enforcement.

Based on the information provided to us by Enforcement, we are not making a recommendation regarding receiver/distribution agent audits at this time.

AGGREGATE DATA BASED ON REVIEW OF SEVEN ORDERS APPOINTING RECEIVERS/ DISTRIBUTION AGENTS

		Yes	No
1	Does the order state whether the receiver/distribution agent must produce activity reports describing his/her progress and activities? If yes:	5	2
	• Does the order state the frequency?	2	3
	• Does the order state the format?	0	5
2	Does the order state that the receiver/distribution agent must provide reports detailing his/her administrative costs? If yes:	6	1
	• Does the order state the frequency?	2	4
	• Does the order state the format?	0	6
3	Does the order state that the receiver/distribution agent must produce interim reports on the financial condition of the assets collected? If yes:	3	4
	• Does the order state the frequency?	2	1
	• Does the order state the format?	0	3
4	Does the order state that the receiver/distribution agent must provide a final accounting? If yes:	2	5
	• Does the order state the format?	1	1

Exhibit 24

Subject: FW: SEC v. Schooler

Date: Thursday, March 31, 2016 at 1:45:57 PM Pacific Daylight Time

From: Bambach, Alistaire

To: Gary Aguirre

CC: TFates@Allenmatkins.com, Berry, John W., Dean, Lynn M., Kalin, Sara

Dear Mr Aguirre,

As you have requested, I am providing further information in response to the questions you have posed below.

With respect to questions 1 and 2 below about whether the SEC has guidance regarding how receivers should manage the receivership, it is important to remember that receivers are appointed by and are officers of the court and are not agents of the SEC. Throughout your emails, you refer to the SEC's relationship with receivers as "its receivers," which is not the proper manner in which to characterize the relationship. While the staff may recommend potential applicants to the court and coordinate with the receiver on how to operate the receivership, operation of the receivership is ultimately determined by the court. With respect to your specific question about staff guidance, as I have referenced in my March 29, 2016 letter to you, which I have attached above, along with my March 22 letter, the staff has promulgated Billing Guidelines that contain guidance on the operation of receiverships. For example, those guidelines contain information on how matters should be billed for and how financial statements for the receivership should be prepared. In each receivership, the staff coordinates with the receiver at the onset of the matter and discusses the manner in which the receivership should be conducted. Since each case differs substantially based on the assets available to fund the receivership, potential claims, the investor body, and the nature of the fraud, there is no one structure or standard that is applied in each matter. Rather, the operation of a receivership is determined on a case by case basis. Most importantly, once appointed, unless the receiver has been expressly appointed to liquidate the SEC's judgment, the receiver is the agent of the appointing court, not the SEC, and he or she can only take actions approved by the court.

With respect to question 3 below about the OIG report, the SEC staff has fully implemented the OIG's recommendations and has continued to do so. Consistent with the OIG's policy, there is no public statement issued when the staff has satisfied the recommendations in an OIG report.

With respect to question 4, the SEC counsel litigating the Schooler case, as I do, believe that Mr Hebrank is operating the receivership effectively and in the interests of the stakeholders. You disagree, but I do not think there is more to say on that point.

With respect to questions 5 and 6 about whether the SEC approves of the recordkeeping of "its receivers," again, the receivers are not the SEC's receivers; they are appointees and officers of the court. In any event, the SEC has not issued formal statements concerning specific receipts and bills that a receiver must generate or maintain. Rather, the manner of accounting and the records associated with such treatment is determined on a case by case basis by the receiver with due regard to the assets administered and the cost associated with preparing accounting records for such assets. (Since receivers are required to generate consolidated financial statements consistent with the SFAR attached to the guidelines, information sufficient to generate these statements should be maintained by receivers.) Ordinarily, the SEC staff reviews the Receiver's reports and fee applications and can object if it has any

concerns.

With respect to question 7, as I previously stated in my letter dated March 29, the process for the sale of receivership property is ultimately determined by the receivership court that appoints and oversees the receiver. Again, what procedure a receiver will recommend to its appointing court for a sale of property varies on a case by case basis depending on, among other things, the nature of the property, the market for the property, the costs associated with marketing the property, and the status of any secured claims on the property.

At this point, I believe I have answered all of your questions. As I mentioned in my March 29th letter, I am not part of the SEC team litigating the Schooler case. If you have further specific questions on the operation of the receivership in that case, I refer you to the staff in the Los Angeles Regional office who are litigating the matter and who are copied on this email.

Sincerely,

Alistaire Bambach

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

Sent: Tuesday, March 29, 2016 5:09 PM

To: Bambach, Alistaire

Cc: Tim Dillon (tdillon@dghmalaw.com); Ted Fates (tfates@allenmatkins.com); Thomas C. Hebrank (thebrank@ethreadvisors.com); Dean, Lynn M.; Kalin, Sara; Berry, John W.; dzaro@allenmatkins.com

Subject: SEC v. Schooler

Dear Ms. Bambach:

Thank you for your letter this afternoon.

I asked you a number of very specific and pointed questions and, most respectfully, found no answers to most of them. For the sake of clarity, I restate the questions below and the answer I have elicited from you in response. I have shortened and simplified the questions as follows:

1. First, does the SEC have a manual, guidelines or other standards it provides to its receivers regarding the manner in which they should manage their receiverships.

Your response: I believe your answer is no, other than the bulletin written for investors to which you provided me a link.

2. Does the SEC have a manual, guidelines or other standards it provides to its receivers regarding the manner they should record their receipts and disbursements of assets and particularly funds entrusted to them?

Your response: I believe your answer is no, other than the bulletin written for investors to which you provided me a link.

3. Did the SEC ever implement the recommendations by the OIG in its report No. 432 referred to in my letter of March 18, 2016?. If so, was there any public statement by the SEC when the report was implemented? If so, would you kindly guide me to that statement or statements?

Your response: your silence implies no, nor could I find any.

4. You state that, "We do not agree with your characterizations regarding the court appointed receiver." I would appreciate some clarification where and how you disagree.

Your response: I could not find one.

5. Does the SEC approve of its receivers keeping no records of individual statements except for bank statements? If so, would you kindly provide me the release, CRF section or SEC internal rule or other document that authorizes that practice?

Your response: I could not find one.

6. Does the SEC approve of its receivers keeping no records of their individual transaction of receipts and disbursements?

Your response: I could not find one.

7. Does the SEC provide its receivers any guidelines how its receivers should sell realty?

Your response: I could not find one. This would mean the SEC does not require its receives to comply with 28 USC 2001.

By copy of this email, I am inquiring of staff in the Los Angeles Regional Office whether they can provide any supplemental responses to the questions above.

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

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Exhibit 25

From: Gary Aguirre
To: BambachA@SEC.GOV
Cc: berryj@sec.gov; kalins@sec.gov; deanl@sec.gov
Subject: SEC v. Schooler
Date: Tuesday, April 19, 2016 9:28:00 AM
Attachments: [billinginstructions.pdf](#)

Dear Ms. Bambach:

I did not receive a response from the LARO staff in response to my email below yesterday. Filing deadlines are rapidly approaching.

I have reviewed the Receiver's filings and cannot find a single filing of a SFAR or anything remotely similar to a SFAR.

In this light, I am again requesting your assistance in obtaining the records requested in my email below..

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

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From: Gary Aguirre
Sent: Monday, April 18, 2016 10:22 AM
To: berryj@sec.gov; kalins@sec.gov; deanl@sec.gov
Cc: BambachA@SEC.GOV
Subject: SEC v. Schooler

Dear counsel:

By this email on behalf of the approximately 190 investors I represent in this case, I am requesting the SEC to provide me with a signed copy of the signed statement by Thomas Hebrank as required by the attached Billing Instructions. In this regard, please note that PDF page 11 of those instructions requires the applicant for an appointment as an SEC receiver to date and sign a statement representing that he will comply with the attached Billing

Instructions.

I am also requesting the SEC provide me with a copy of any submittal by Mr. Hebrank requesting a deviation from the Billing Instructions. Please note the procedure specified on page 1 of the Billing Instructions in relation to any deviation from those standards. Also, I am requesting the SEC to provide any response to any such request.

I would appreciate your prompt response.

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

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Exhibit 26

From: [Fates, Ted](#)
To: [Gary Aguirre](#)
Cc: [Thomas Hebrank](#)
Subject: RE: SEC v. Schooler
Date: Tuesday, February 23, 2016 9:38:55 AM

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>
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

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Exhibit 27

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

www.aguirrelawapc.com

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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>
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

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Exhibit 28

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

www.aguirrelawapc.com

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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)
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 29

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

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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)

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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

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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)
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>
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)

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

www.aguirrelawapc.com

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Exhibit 30

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 24th:

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 26th:

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

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

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(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, 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,

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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)
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>
Subject: RE: SEC v. Schooler

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

Gary J. Aguirre
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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)
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 31

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>
Cc: Thomas C. Hebrank (thebrank@ethreadvisors.com) <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 24th:

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 26th:

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) 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

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.

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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

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(619) 233-1158 (fax)

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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

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Please advise.

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To: Gary Aguirre
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To: Fates, Ted <tfates@allenmatkins.com>
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Subject: RE: SEC v. Schooler

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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,

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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>

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.

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Regards,

Gary J. Aguirre

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Exhibit 32

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 33

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>
Cc: Aguirre Gary <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

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Exhibit 34

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

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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

(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>

Cc: Aguirre Gary <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

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Exhibit 36

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 investors¹ 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.² Sometimes you ignored the requests.³ Sometimes you sidestepped them.⁴ On one

¹ 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/>.

² 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)."

³ 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.

⁴ 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,⁵ but later contradicted yourself by producing some of them.⁶

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.

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."

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

⁶ 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 CPAs⁷ 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

⁷ 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 36

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

Ted Fates
E-mail: tfates@allenmatkins.com
Direct Dial: 619.235.1527 File Number: 372640-00002/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 37

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 38

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
515 South Figueroa, 9th 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 39

From: [Kalin, Sara](#)
To: [Gary Aguirre](#)
Subject: Western Financial
Date: Wednesday, August 05, 2015 4:02:13 PM
Attachments: [Doc 1003 Order keeping GPs in receivership \(3-4-15\).pdf](#)

Mr. Aguirre,

As a follow-up to our discussion earlier today, I'm attaching for your reference a copy of the Court's March 4, 2015 Order regarding the receivership over the GPs.

Thanks,
Sara

Gary Aguirre

From: Gary Aguirre
Sent: Wednesday, August 05, 2015 11:57 PM
To: Kalin, Sara
Subject: RE: Western Financial

Ms. Kalin:

Your courtesy and assistance are appreciated.

Regards,

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

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From: Kalin, Sara [<mailto:KALINS@SEC.GOV>]
Sent: Thursday, August 06, 2015 1:02 AM
To: Gary Aguirre
Subject: Western Financial

Mr. Aguirre,

As a follow-up to our discussion earlier today, I'm attaching for your reference a copy of the Court's March 4, 2015 Order regarding the receivership over the GPs.

Thanks,
Sara

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

SECURITIES AND EXCHANGE
COMMISSION,

v.

LOUIS V. SCHOOLER and FIRST
FINANCIAL PLANNING
CORPORATION, dba Western
Financial Planning Corporation,

Defendants.

CASE NO. 3:12-cv-2164-GPC-JMA
**ORDER KEEPING GENERAL
PARTNERSHIPS UNDER
RECEIVERSHIP**

I. INTRODUCTION

Before the Court is the issue of whether all, some, or none of the approximately 86 general partnerships (“GPs”) currently under receivership in this case should be released from the receivership and under what conditions, if any. Receiver Thomas C. Hebrank (the “Receiver”) has filed a Receiver’s Report and Recommendations Regarding General Partnerships (the “Report and Recommendation”) on this issue. (ECF No. 852.) The parties, (ECF Nos. 874, 880), and the investors, (*see, e.g.*, ECF Nos. 854, 869, 871, 882, 884, 886, 888, 890, 892, 894, 896, 900, 902, 904, 906, 908, 911, 913, 915, 917, 919, 921, 929, 931, 933, 937, 939, 941, 943, 945, 951, 953), have responded to the Receiver’s Report and Recommendation, and included both critiques and counterproposals. A hearing on the Receiver’s Report and Recommendation was

1 and ordered that the receivership be permanent (the “Preliminary Injunction Order”).
2 (ECF No. 44, at 21–22.)

3 On October 22, 2012, the case was transferred to the Honorable Gonzalo P.
4 Curiel. (ECF No. 52.) On May 29, 2013, Defendants moved to remove the GPs from
5 the Receivership in a motion to modify preliminary injunction. (ECF No. 195.) The
6 Defendants asserted thirteen grounds for removing the GPs from the receivership,
7 including the arguments that: (1) the imposition of costs on investors before the SEC
8 carried the burden of proving its case at trial was unwarranted; (2) removal of the GPs
9 from the receivership would not hinder the SEC’s ability to fully litigate all pending
10 claims; and (3) there was no danger or risk to the GPs that necessitated a receivership
11 over the GPs. (ECF. 195-1 at 6-7.) On August 16, 2013, this Court issued its Order
12 Granting in Part and Denying in Part Defendants’ Motion to Modify Preliminary
13 Injunction Order (the “Modification Order”). (ECF No. 470.) Based upon the status of
14 the case at the time, the Court concluded that the GPs should be released from the
15 receivership upon the satisfaction of certain conditions. (*Id.* at 25–27.) The
16 Modification Order was thereafter appealed by the Defendants and the SEC filed a
17 cross appeal. (ECF Nos. 499, 514.) While the appeals were pending, on April 25, 2014,
18 the Court issued its Order Granting in Part and Denying in Part Plaintiff’s Motion for
19 Partial Summary Judgment (the “Partial Summary Judgment Order”). (ECF No. 583.)
20 The Partial Summary Judgment Order concluded that the SEC had proven that the GPs,
21 as a matter of law, were securities. (*Id.*) Based upon these legal developments, the
22 Court, sua sponte, found good cause to reconsider the Modification Order. (*Id.* at 16,
23 20.)

24 On July 22, 2014, the Court issued its Order on Sua Sponte Reconsideration of
25 August 16, 2013 Order to Release General Partnerships from Receivership (the
26 “Reconsideration Order”). (ECF No. 629.) Because the Reconsideration Order
27 maintained the GPs in the receivership, the Court concluded that the GPs’ due process
28 rights were implicated and the GPs were entitled to a hearing. (*Id.* at 7–8.) On October

1 10 and 15, 2014, an investor hearing was held and the GPs were afforded the
2 opportunity to speak (the “Investor Hearing”).² (ECF Nos. 790, 794.) On October 17,
3 2014, the Court issued its Order Regarding Investor Hearing (the “Investor Hearing
4 Order”) and ordered the Receiver to file a report and recommendation addressing the
5 question whether it was appropriate to treat all GPs the same in light of their varying
6 financial conditions. (*Id.* at 3–6.) . (ECF No. 808.)

7 **B. Alleged Investment Scheme**

8 Defendants’ investment plan generally involved: (1) purchasing an undeveloped
9 property, (2) forming between two and four general partnerships to take undivided
10 fractional interests in the property, and (3) raising money from investors to become
11 general partners in those GPs. (*See* ECF No. 182, at 1–2.) For the 46 GPs that the
12 Receiver has performed a forensic accounting, Western paid approximately \$21 million
13 to purchase the 13 underlying properties and raised approximately \$101 million from
14 investors. (*Id.* at 15.) Western retained the approximately \$80 million difference. (*Id.*)

15 The Dayton Valley II property serves as an illustrative example. (*See id.* at 5–7.)
16 Western purchased the Dayton Valley II property from a third party for approximately
17 \$1,989,393 in 2003. (*Id.* at 5.) The \$1,989,393 was divided as follows: (1)
18 approximately \$309,393 was paid in cash; (2) \$1,500,000 was owed to the seller in the
19 form of a note (i.e., a mortgage); and (3) \$180,000 as commission was owed to Schafer
20 Pacific Properties in the form of a note (*Id.* at 5–6; ECF No. 504, at 3.)

21 Western then created four GPs—Storey County Partners, Comstock Partners,
22 Silver City Partners, and Nevada View Partners—that would take title to the Dayton
23 Valley II property as cotenants. (ECF No. 182, at 6.) Western raised approximately
24 \$8,994,800 from the investors in these four GPs. (*Id.*) The \$8,994,800 was divided as
25 follows: (1) approximately \$7,554,550 in cash paid by investors; (2) \$92,368 in
26 “Western Notes” representing funds advanced by Western to GPs for the investor down

27
28 ² The Court additionally gave all investors who wanted to speak an opportunity
to do so, even if another investor who represented their GP had already spoken. (*See*
ECF No. 790.)

1 payment; and (3) \$1,347,882 in “Partnership Notes” payable from investors to the four
 2 GPs (the four GPs, in turn, had notes payable in the same amount to Western). (*Id.* at
 3 6–7.) Any interest in each GP that Western had was nominally as a nonvoting partner,
 4 (*see* ECF No. 195-3, Ex. 1), but Western collected loan payments from investors
 5 directly on behalf of the GPs. (ECF No. 504, at 4.)

6 Though Western raised significantly more cash than the price it had paid for the
 7 Dayton Valley II property, the mortgage that Western took out on the property was not
 8 immediately paid off and a balance was still owed on the mortgage as of October 1,
 9 2014. (*See* ECF No. 852-1, Ex. A.) Additionally, several investors have indicated that
 10 they were not informed that the property they were investing in was encumbered by a
 11 mortgage. (*See, e.g.*, ECF No. 7 ¶ 8; ECF No. 8 ¶ 9.)

12 **III. LEGAL STANDARD**

13 **A. Authority of the District Court**

14 District courts have extremely broad authority to supervise and determine the
 15 appropriate action to be taken in a federal equity receivership. *Sec. and Exch. Comm’n*
 16 *v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). Though the GPs are
 17 legally separate entities from Western, the Ninth Circuit has made it clear that the Court
 18 has authority to place a nonparty’s property under a receivership even where the
 19 nonparty is not accused of any wrongdoing. *See In re San Vicente Med. Partners Ltd.*,
 20 962 F.2d 1402, 1408 (9th Cir. 1992). To include the properties of third parties in
 21 receivership, three requirements must be met: (1) the third party must meet
 22 *International Shoe’s* minimum contacts standard, (2) the third party must receive actual
 23 notice, and (3) the third party must be given an opportunity for a hearing. *Id.*

24 First, for legal entities such as general partnerships, *International Shoe’s*
 25 minimum contacts standard is satisfied in the state under whose laws the entity is
 26 formed or in the state where the entity has its principal place of business. *Daimler AG*
 27 *v. Bauman*, 134 S. Ct. 746, 760 (2014). The GPs in this case were formed under the
 28 laws of California and list their principal place of business as “5186 Carroll Canyon

1 Road, San Diego, California, 92121.” (*See, e.g.*, ECF No. 195-3, Ex. 1.) Second, under
2 California law, where one general partner receives notice, the entire general partnership
3 is deemed to have received notice. *In re San Vicente*, 962 F.2d at 1407 n.3 (citations
4 omitted). The Receiver, per this Court’s order, gave notice of the Investor Hearing to
5 the GPs by: (1) posting the Reconsideration Order to the Receiver’s website, (2)
6 emailing the Reconsideration Order to individual investors, and (3) mailing the
7 Reconsideration Order to the address of record for each GP. (ECF No. 629, at 9.) Third,
8 a hearing was held on the inclusion of the GPs within the receivership at which all GPs
9 who wished to speak were given the opportunity to do so. (ECF No. 790.) Thus the
10 Court has authority to include third party property, such as the GPs, within the
11 receivership and has respected the due process rights of the GPs. *See In re San Vicente*,
12 962 F.2d at 1407.

13 **B. Authority of the Receiver**

14 Some investors have argued that the Receiver has exercised more authority than
15 Western did prior to the receivership, (*see, e.g.*, ECF No. 869), and that the Receiver
16 has operated beyond the scope of the GPs’ partnership agreements. (*See id.*) Contrary
17 to the investors’ assertions, the Receiver’s authority to manage the GPs does not stem
18 from the GPs’ partnership agreements, rather it stems from the Receiver’s authority as
19 an officer of the Court tasked with managing the property under the Court’s control.
20 *See In re San Vicente*, 962 F.3d at 1409–10. As such, the Receiver has the legal
21 authority to take actions beyond the scope of the GPs’ partnership agreements and ones
22 that could not have been taken by Western in order to protect the status quo. *See id.*;
23 *see also Sec. and Exch. Comm’n v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1143–45 (9th
24 Cir. 1996) abrogated on other grounds by *Steel Co. v. Citizens for a Better*
25 *Environment*, 523 U.S. 83 (1998).

26 Ultimately, the Receiver may only take action pursuant to this Court’s orders and
27 the Receiver is tasked with preserving receivership assets, administering receivership
28 property suitably, and assisting in any equitable distribution of those assets if

1 appropriate. *See Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir.
2 2006) (citation omitted). Additionally, the preliminary injunction in this case protects
3 the investors by preventing litigation against the GPs or concerning GP properties, such
4 as for the recovery of debts or for foreclosure. (ECF No. 10, at 15–16; ECF No. 44.)

5 **IV. DISCUSSION**

6 **A. Clarification**

7 Before turning to the Receiver’s Report and Recommendation, the Court finds
8 it appropriate to clarify several issues as well as to address concerns that have been
9 brought up by investors through their letters and briefs.

10 **1. Paying Receivership Fees**

11 Some investors have claimed that they are paying for the Receiver’s fees and that
12 such fees are unreasonable. (*See, e.g.*, ECF No. 906.) This is an argument that
13 Defendants have previously made. (*See, e.g.*, ECF No. 869; *see also* ECF No. 790.)
14 These investors argue that, because the investors are paying their debts to the GPs, the
15 GPs are paying their debts to Western, and Western is paying receivership fees, the
16 investors are therefore paying receivership fees. (*See id.* at 1–3.) What this argument
17 ignores is that the investors would be paying the debts they owed the GPs and the GPs
18 would paying the debts they owe Western, even if the receivership were not in place.
19 Here, the Receiver is billing GPs so that those GPs’ operational funds, such as property
20 taxes, mortgage payments, and other expenses, can be met. The Receiver is not billing
21 the GPs to pay receivership fees and this Court’s orders specifically require that any
22 fees paid by Western are not paid out of money needed to make mortgage payments on
23 GP properties. (*See* ECF No. 470, at 26–27; ECF No. 922, at 12.) Moreover, the
24 Receiver is required to submit his fees to this Court for approval before he can collect
25 them and this Court has reviewed all fees requested by the Receiver and ensured that
26 the Receiver only collects reasonable amounts. (*See, e.g.*, ECF Nos. 511, 637, 922.)

27 **2. Increased Operational Bills**

28 Several investors have indicated incredulity at the fact that the operational bills

1 sent by the Receiver have been significantly higher than those sent by Western. (*See*,
2 *e.g.*, ECF No. 969.) For example, Investor David Butler states that “[s]omething smells
3 fishy” because he is now being billed \$109.44 per month for SunTec Partners whereas
4 his previous bills averaged \$19.25 per month. (*Id.*) However, the Receiver’s report
5 makes clear that the Receiver is not doing anything “fishy.” Rather it is the failure of
6 investors to pay their bills that is resulting in higher overall bills to all investors. (*See*
7 ECF No. 852-1, Ex. C.) Because only a certain percentage of investors pay their bills,
8 the Receiver has increased the amount billed to ensure that he can recover sufficient
9 funds to pay for GP expenses and prevent any potential default on mortgages or taxes
10 relating to GP properties. (*See id.*)

11 Turning to SunTec Partners specifically, SunTec will have a total of \$27,314 in
12 expenses for 2014–2015. (ECF No. 852-1, Ex. A.) This comes out to approximately
13 \$1,138 per month. Multiplied by Mr. Butler’s 2.356793% share in SunTec, his share
14 of expenses is approximately \$26.82 per month, which is close to his previous monthly
15 average. (*See* ECF No. 969.) The problem lies in the fact that SunTec’s general partner
16 investors are, collectively, only paying 7% of their operational bills. (ECF No. 852-1,
17 Ex. C.) Thus Mr. Butler’s bill is higher not because of the receivership but because his
18 fellow investors in SunTec are not paying their share of SunTec’s expenses.

19 Moreover, if such nonpayment had occurred in the past, the investors would
20 likely not have seen an increase in their bills. This is because any shortfalls due to
21 investor nonpayment that occurred prior to the receivership were often covered by
22 Western loaning money to the GPs without investor knowledge. (ECF No. 852, at 26.)
23 Prior to the receivership, Schooler himself put funds back into Western to cover
24 shortfalls that Western itself incurred. (*See* ECF No. 519, at 2.) Because Western has
25 had minimal capital since before the receivership was put in place, Western, through
26 the Receiver, is unable to cover any shortfalls as it had in the past. (*See* ECF Nos. 519,
27 524.)

28 //

1 **B. Receiver's Report and Recommendation**

2 **1. Receiver's Recommendation**

3 The Receiver's overall recommendation is that the receivership be continued as
4 to all GPs pending a determination of whether Defendants defrauded investors. (ECF
5 No. 852, at 6.) The SEC agrees with this recommendation. (ECF No. 880, at 9.)

6 **2. Receiver's First Proposal**

7 The Receiver's First Proposal categorizes the GPs into three categories, A, B,
8 and C, from most to least financially stable, based on their cotenancy's ability to pay
9 its operating expenses through the end of 2015. (ECF No. 852, at 12–19.) Because
10 most cotenancies include multiple GPs in varying financial condition, each cotenancy
11 is categorized according to the least financially healthy GP in the cotenancy. (*Id.* at 14.)
12 There are seven Category A cotenancies, fifteen Category B cotenancies, and three
13 Category C cotenancies. (*Id.* at 13.) Under the Receiver's First Proposal, a renewed
14 appraisal on each GP property and an informational packet would be sent to all
15 investors. (*Id.* at 17.) Cotenancies in three groups would then be liquidated and any
16 proceeds distributed to their investors: (1) Category A and B cotenancies where a
17 majority of each GP votes to sell; (2) Category B cotenancies that do not raise
18 sufficient capital to pay their 2015 operating expenses; and (3) all Category C
19 cotenancies. (*Id.* at 18–19.) Cotenancies in two categories would then be released from
20 the receivership: (1) Category A cotenancies without majority votes of all GPs to sell;
21 and (2) Category B cotenancies without majority votes of all GPs to sell that raise
22 sufficient capital to pay their 2015 operating expenses. (*Id.* at 18.)³ GPs that exit
23 receivership would be required to meet additional requirements such as assuming their
24 respective mortgages and liquidating Western's interest. (*Id.* at 14–15, 18.) This
25 proposal allows each cotenancy that is financially able to cover its 2015 operating
26

27 ³ Essentially the default presumption is that Category B cotenancies that raise
28 sufficient capital and Category A cotenancies will be released from the receivership.
Though opposed to the Receiver's First Proposal, the SEC argues that if the Receiver's
First Proposal is adopted, the default presumption should be that cotenancies stay in
the receivership. (ECF No. 880, at 12 n.6.)

1 expenses to achieve the outcome that a majority of its investors want.

2 **3. Receiver’s Second Proposal**

3 The Receiver’s Second Proposal divides investors between those who wish to
4 remain in their GP and those who wish to exit their GP. (ECF No. 852, at 20–22.)
5 Investors who wished to remain in their GP would be asked to raise sufficient capital
6 to buyout their co-investors who do not wish to remain in the their GP. (*Id.*) If the
7 buyout amount is raised, the capital is transferred and the cotenancy exits the
8 receivership in the hands of the investors who wish to retain control. (*Id.*) If the buyout
9 amount is not raised, the cotenancy’s property is liquidated. (*Id.*) This proposal
10 attempts to allow investors with differing desires but who are in the same cotenancy
11 to get what they want. However, it is not clear what the Buyout Amount for each GP
12 would be until a ballot was sent to investors and it is also unclear whether it would be
13 feasible for some investors to raise enough capital to buyout dissatisfied investors.

14 **4. Post Proposal**

15 Investor Gregory M. Post makes an alternate proposal where each GP would
16 seek out volunteers to serve on a committee to manage the GP. (ECF No. 869, at 8–11.)

17 **4. Defendants’ Proposal**

18 Defendants simply propose that the receivership over all the GPs be “dissolved.”
19 (ECF No. 874, at 15.)

20 **C. Objections**

21 **1. Receiver**

22 The Receiver argues that all GPs should be treated similarly because “investors’
23 losses cannot be determined until the GP has sold its property interest and investors
24 have received their distribution.” (ECF No. 852, at 7.) Thus, the Receiver states,
25 allowing GPs to hold on to their properties would delay the recovery of those GPs’
26 investors. (*Id.*)

27 **2. SEC**

28 The SEC argues that treating GPs differently would be inequitable. (ECF No.

1 880, at 9–10.) The SEC also argues that releasing the GPs would prohibit those GPs’
2 investors from recovering from any distribution plan that may be instituted in this case.
3 (*Id.* at 12.) While the investment scheme was, at least in part, “factually similar” for
4 each investor, the investors were investing in different pieces of property which does
5 distinguish them from each other and may merit different treatment in a distribution
6 plan. *Capital Consultants*, 397 F.3d at 738–39; (*see also* ECF Nos. 8-2, 8-3, 8-4). The
7 Court must do what is the most equitable, even if that equitable relief treats victims
8 differently and thus results in some investors being treated more favorably than others.
9 *See Sec. and Exch. Comm’n v. Credit Bancorp, Ltd.*, No. 99-cv-11395-RWS, 2000 WL
10 1752979, at *29 (S.D.N.Y. Nov. 29, 2000). As discussed above, the Court has broad
11 authority in fashioning equitable relief and does not see why releasing a GP from the
12 receivership requires that the GP’s investors therefore forfeit any claim towards any
13 distribution plan that may be instituted. While the Court acknowledges that a
14 distribution plan, if ordered, may give investors a choice of either retaining their
15 interest or receiving proceeds from Western’s assets, it is too early to assess whether
16 such a binary choice is appropriate.

17 The SEC also reiterates the bases that this Court previously found for
18 permanently including the GPs in the receivership. (ECF No. 880, at 13–18.) The SEC
19 requests that the Court vacates the portion of its order releasing the GPs from the
20 receivership, (ECF No. 470), and formally deny in full Defendants’ initial motion to
21 remove the GPs from the receivership, (ECF No. 195). (ECF No. 880, at 6.)

22 **3. Investors**

23 Investor Curt Johnson, speaking on behalf of hundreds of fellow investors, states
24 that a certain number of his fellow investors have declined to pay their operational bills
25 because of the receivership. (ECF No. 917.) He further states that these same investors
26 indicate that they would resume payment if the receivership was ended. (*Id.*) While Mr.
27 Johnson interprets this as justification for ending the receivership, (*see id.*), the Court
28 does not see it the same way. The debts that investors owe to their GP are valid and

1 owed whether or not the property is in receivership. The fact that some investors
2 believe it appropriate to ignore their legal obligations when something happens to their
3 investment that they do not wish for is troubling. This does not lend any confidence
4 that such investors would be able to adequately guide their GP going forward.

5 Mr. Johnson also makes several requests: (1) stop the Receiver from making the
6 GPs pay Western beyond any valid and outstanding debts that the GPs owe to Western;
7 (2) compel the Receiver to sign the listing agreement presented by Rainbow and
8 Horizon Partners; (3) require the Receiver to pay Western's share of operational
9 expenses before he takes any fees; (4) do not require a repurchase of Western's
10 ownership interest in the GPs; and (5) release all GPs from the receivership. (*Id.*)

11 As the Court discussed above, the Court is only ordering increased payment by
12 the GPs to Western so that expenses can be paid. (*See* ECF No. 524.) While this may
13 mean that the GPs are paying more than they owe on their notes, the Court authorized
14 these increased payments to ensure that the mortgages for those GPs' properties were
15 paid. (*See id.*) As the Court discussed in its prior order, the Court believes this to be the
16 most equitable way to ensure that those GPs do not lose their properties to foreclosure
17 even though the investors may not have agreed to or even known about their property
18 securing a mortgage paid by Western. (*See id.*)

19 The Court has already reviewed the proposed listing agreement from Investor
20 Nancy Kemper that Mr. Johnson is referring to. (*See* ECF No. 629, at 6–7.) As the
21 Court previously discussed, there are significant flaws with the listing price and thus
22 the Court does not find it appropriate to use that listing agreement at this time. Listing
23 the property owned by Rainbow and Horizon Partners at a price that would almost
24 assuredly not sell would be a waste of the receivership estate's resources as the
25 Receiver would be required to oversee and manage the listing agent.

26 With regards to Western's share of operational expenses, the Court notes that
27 Western has been covering shortfalls that occurred due to GP expenses exceeding GP
28 payments to Western. (*See* ECF No. 519, at 2.) The Court is cognizant that Western is

1 an investor in most of the GPs, and thus has required that any fees paid to the Receiver
2 by Western are not paid out of money needed to make mortgage payments on GP
3 properties. (*See* ECF No. 922, at 12.) Finally, the Court, as discussed below, does not
4 find it equitable to release the GPs from receivership or to consider a buyout of
5 Western’s interest prior to the conclusion of this case.

6 **4. Defendants**

7 Defendants object that the Receiver is attempting to engage in a “fire sale” of GP
8 properties. (ECF No. 874, at 7.) Specifically Defendants object that the Receiver’s
9 proposals prevent investors from choosing what to do with their investment. (*Id.* at 8.)
10 While the proposals may temporarily remove some control from investors, the Court
11 must do what is equitable. Moreover, Defendants’ argument stands on questionable
12 footing as at least some investors have claimed that Defendants or their agents stated
13 that the investment would be passive and managed by Defendants. (*See* ECF No. 8 ¶
14 9.) The Court must ensure that the investors, as a whole, are treated as fairly as
15 possible. Such action may mean that some investors are prevented from taking certain
16 actions so that the investors as a whole may benefit.

17 Defendants object to the GP property appraisals, arguing that they are
18 unsupported and dated. (ECF No. 874, at 4–5.) However, the Receiver has already
19 addressed this contention, in part, by proposing a new appraisal for every GP property.
20 (ECF No. 852, at 12.) Additionally, Defendants’ objection to the Receiver’s appraisals
21 is mostly attorney argument and contains scant evidence. The only evidence that
22 Defendants point to is a single appraisal for a single property. (*See* ECF No. 874, at 5.)
23 Merely because Defendants’ attorneys argue that this is a “historically low market” and
24 imply that “development” will “reach[]” the GPs’ properties does not make such
25 arguments true. (*See id.*) A single appraisal does not suffice to counter the dozens of
26 appraisals already obtained by the Receiver and that would be obtained if further
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1 appraisals are ordered by the Court.⁴

2 Next, citing a Western brochure, (ECF No. 12-1), Defendants argue that there
3 is a “track record[]” showing success by prior GPs in obtaining “a 239% profit” on
4 their investment that counsels against liquidating any GP properties. (ECF No. 874, at
5 6–7.) Ignoring the fact that the brochure lacks support and is marketing material
6 published by Western, it is unclear whether the brochure actually supports Defendants’
7 argument. The brochure simply refers to “Purchase Price” and “Sold Price.” (ECF No.
8 12-1, at 2–3.) First, it is not clear whether the “Purchase Price” refers to the amount of
9 money actually invested by GP investors or whether it refers to the amount that the GP
10 or GPs paid for the land itself. As the Receiver’s forensic accounting reports have made
11 clear, in many instances, the amount paid for a property was significantly less than the
12 amount invested. (*See* ECF No. 852-1, Ex. A.) Second, it is not clear whether either of
13 these prices includes the amount paid by GP investors in operational expenses each
14 year or includes any amount that would not go to investors, such as to pay Western’s
15 interest in the GP or to pay closing costs. In light of the information regarding the
16 investment process revealed by the Receiver’s forensic accounting reports and the
17 limited information supplied by the brochure, the brochure does not support
18 Defendant’s proposition that these investments have proven to be successful.

19 In addition, Defendants object to the acceleration and payment of the GPs’ debt
20 obligations to Western. (ECF No. 874, at 10-11.) Defendants further object that the
21 Receiver has a conflict of interest as receiver over both Western and the GPs. (*Id.* at
22 11.) The Court’s duty is to treat the investors as a group equitably, even if, in some
23 instances, the most equitable course of action overall is less favorable to some
24 individual investors. The Receiver’s goal is to maximize the receivership estate so that
25 its funds may be available for possible investor restitution. *See Liberte Capital*, 462
26 F.3d at 551. While both Western and the GPs are under the receivership, the Receiver

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28 ⁴ Overall it appears that Defendants seek to perpetuate the investment scheme
that Defendants were engaged in prior to the SEC filing suit and not what is equitable
to all the investors. (*See* ECF No. 874, at 5–6.)

1 can ensure that any obligations are met. However, any GPs that leave the receivership
2 may not meet their obligations to Western and would no longer be protected by the
3 preliminary injunction's litigation hold. Such action would harm the investors who may
4 lose their properties to foreclosure. Moreover, Defendants have repeatedly advanced
5 the argument that the loans the GPs owe to Western constitute unsecured, subordinated
6 debt and that, if the Receiver were acting in the best interests of the GPs, the GPs
7 would object to paying this debt to Western. (*See, e.g.*, ECF No. 470, at 12.) As the
8 Court has previously discussed, these payments are made to ensure that expenses, such
9 as mortgages, are paid. If the GPs did not make these payments to Western, they would
10 risk foreclosure and loss of their property. As should be obvious, such a result would
11 be problematic and would harm the investors in this case.

12 Defendants also make several additional objections that do not relate to whether
13 it is appropriate to release the GPs from the receivership such as that the Receiver has
14 been biased by his interactions with the SEC and that Western's investments have a
15 "track record[]" of success. (ECF No. 874, at 6–7, 12–14.) As these objections are
16 irrelevant to whether it is appropriate to keep the GPs in the receivership and do not
17 address the issue of Western's assets being intertwined with the investors' assets, the
18 Court does not address them.

19 Finally, at oral argument, Defendants argued that receivership over the GPs on
20 the basis of Western's intertwined assets was improper because the GPs were legally
21 separate entities. (ECF No. 790.) Defendants analogized that if Western owned shares
22 of a completely separate company, e.g., IBM, it would be inequitable to place IBM
23 under receivership merely to create district court oversight of the actions of IBM
24 executives to ensure that the value of those shares would be maximized. (*Id.*)
25 Defendants' IBM analogy overlooks several key factors regarding this case. First, there
26 are no allegations that Western ever managed IBM whereas there are allegations that
27 Western managed the GPs. (*See* ECF No. 1.) Second, there are no allegations that
28 Western defrauded investors during the formation of IBM whereas there are allegations

1 that Western defrauded investors during the formation of the GPs. (*See id.*) These
2 allegations distinguish the GPs from other third party entities and make receivership
3 over them appropriate even where receivership over other third party entities may not
4 be.

5 **D. Analysis**

6 **1. Alleged Fraud**

7 The first issue is that, though the GPs have been found to be securities, (ECF No.
8 583), the SEC has not yet moved on any other element of its securities fraud causes of
9 action. Whether or not Defendants are liable for securities fraud, independent of any
10 15 U.S.C. §§ 77e(a)–(c) violations, may bear significantly on whether investor
11 restitution is appropriate. *See Sec. and Exch. Comm’n v. Fischbach Corp.*, 133 F.3d
12 170, 175 (2d Cir. 1997) (noting that disgorged funds “may often go to compensate
13 securities fraud victims for their losses”). The Court will not know whether Defendants
14 defrauded investors until after summary judgment or trial. Even though the SEC
15 represents that it will seek to return any disgorgement from the SEC’s sale of
16 unregistered securities cause of action to investors, (*see* ECF No. 880, at 9), the SEC’s
17 motion for disgorgement, (ECF No. 685), is still pending and has not yet been reviewed
18 by the Court.⁵

19 **2. Investor Preferences**

20 The second issue is that there is a split between investors. Some investors desire
21 to either continue the receivership or at least liquidate the property of their GP so that
22 they can be done with the investment. (*See, e.g.*, ECF Nos. 884, 888, 896, 900, 904,
23 953.) Other investors desire that their GP’s property be released from the receivership
24 so that they can manage their investment themselves, pursuant to the partnership
25 agreement they signed when they invested. (*See, e.g.*, ECF No. 917.) Additionally, a
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27 ⁵ The SEC believes that Defendants will only be opposing the amount of
28 disgorgement, not the liability. (ECF No. 880, at 9.) However, the Court has not
reviewed the briefs on the SEC’s motion for disgorgement and finds it inappropriate
to reach the merits of those briefs until the Court actually considers the SEC’s motion.

1 certain number of investors have changed their mind as this litigation has gone on.
2 (*See, e.g.*, ECF No. 888; *compare* ECF No. 352 with ECF No. 884.) As a factual matter,
3 conflicting information from investors makes it unclear whether the investors were led
4 to believe that they would actively manage the investment or led to believe that the
5 investment would be passive. (*Compare* ECF No. 8 ¶ 9 (stating that “Western took care
6 of everything related to land investment”) with ECF No. 917 (stating that “[o]ur intent
7 was to have the control necessary to make the decision”).) It is entirely possible that,
8 despite investing in the same venture, different investors were told different things.

9 Unlike cases where the investments were in actual securities, *see, e.g., Credit*
10 *Bancorp, Ltd.*, 2000 WL 1752979, honoring the differing desires of investors would
11 be difficult if not impossible in this case. If a GP contains investors who wish to be
12 done with the investment and those who wish to continue managing it, the Court cannot
13 easily fashion relief that allows both groups to get what they want. Had the investment
14 been in actual securities traceable to each investor, the Receiver may have been able
15 to transfer those securities to investors who wished to keep them while simultaneously
16 liquidating the securities of investors who wished to walk away. Here, each GP is made
17 up of nearly a hundred investors and many GP properties are held by up to four GPs.
18 Even if the Court were to make a property by property determination as to whether to
19 continue the receivership, this would still leave hundreds, if not thousands, of investors
20 unsatisfied with the outcome.

21 While the Receiver’s Second Proposal presents a compromise, the Court is
22 skeptical about its feasibility. Such a compromise may also create an inequitable result
23 between investors or groups of investors who have significant funds and can afford to
24 buy out dissatisfied investors and those who lack funds and thus cannot buy out
25 dissatisfied investors.

26 **3. Perpetuating the Scheme**

27 Allowing GPs to exit the receivership also risks further perpetuating the scheme
28 created by Defendants; a scheme that may have been fraudulent. (*See* ECF No. 1.)

1 Many GP properties are under mortgages that pre-receivership were paid by
2 Defendants and post-receivership have been paid by the Receiver. (*See* ECF No. 852-1,
3 Ex. A.) Moreover, due to the general partnership structure of the GPs, the general
4 partner investors are personally liable for *all* debts of their partnership under California
5 law. *Mariani v. Price Waterhouse*, 70 Cal. Rptr. 2d 671,684 (Cal. Ct. App. 1999)
6 (citation omitted). Indeed several investors have expressed concern that they may face
7 personal liability. (*See, e.g.*, ECF No. 871; ECF No. 880, Ex. 5.) As it stands, the GPs
8 collectively owe approximately \$3.6 million to Western. (ECF No. 852-1, Ex. A.) An
9 additional approximately \$1 million is owed on mortgages secured by GP properties.
10 (*Id.*) While Western, not the GPs, is the debtor on the mortgages, the approximately
11 half of GPs whose properties are mortgaged risk losing their land to foreclosure if
12 Western were to fail to make timely mortgage payments. (*See* ECF No. 852, at 14–15.)

13 Currently, the receivership protects GP properties from foreclosure because the
14 preliminary injunction in this case prevents such action against receivership entities
15 without leave of this Court. (*See* ECF No. 174, at 6–7.) Releasing a GP risks that
16 mortgage payments may not be made by the GP, ultimately resulting in foreclosure and
17 the GP’s loss of its property. Additionally, if a GP is released from the receivership
18 estate, the Receiver would no longer be under a fiduciary duty towards that GP. At that
19 time, it may be appropriate for the Receiver to attempt to collect what is owed by the
20 GP to Western, for which investors would be personally liable pursuant to their status
21 as general partners.

22 **D. Keeping the GPs in Receivership**

23 The Court understands that no matter the decision it makes, a certain number of
24 investors will not get the outcome they desire. While releasing all or some of the GPs
25 from the receivership is an appealing option, the Court does not believe such a course
26 to be the most equitable. The Court finds that, consistent with “the public interest in
27 maintaining the receivership estate’s assets while the SEC pursues charges against the
28 Defendants,” the most equitable decision is to keep all the GPs within the receivership

1 until the conclusion of this case. *Sec. and Exch. Comm'n v. Small Bus. Capital Corp.*,
2 No. 5:12-cv-3237-EJD, 2013 WL 6701928, at *4 (N.D. Cal. Dec. 19, 2013).

3 Generally, during the pendency of an SEC enforcement action, property related
4 to the allegedly fraudulent investment scheme is held in receivership. *See Small Bus.*
5 *Capital Corp.*, 2013 WL 6701928, at *4; *see also In re San Vicente Med. Partners Ltd.*,
6 962 F.2d at 1404–05. While Defendants and some investors argue that the general rule
7 should be departed from in this case, the Court disagrees.

8 In SEC enforcement actions, defendants may be ordered to disgorge their ill-
9 gotten gains. *Sec. and Exch. Comm'n v. First Jersey Sec.*, 101 F.3d 1450, 1474 (2d Cir.
10 1996). These funds can then be then be distributed *pro rata* back to investors, which
11 the SEC has indicated it intends to seek. (*See* ECF No. 880.) In this case, the SEC has
12 moved for disgorgement, (ECF No. 685), but the hearing on the SEC's motion will not
13 be held for several months. (ECF No. 849.) Outside of moving to establish that the GPs
14 are securities, the SEC has not yet moved on its fraud causes of action. (*See* ECF No.
15 1.) Whether disgorgement is granted and whether investors were defrauded bear
16 significantly on whether distribution to investors is appropriate. *See Fischbach Corp.*,
17 133 F.3d at 175 (noting that disgorged funds “may often go to compensate securities
18 fraud victims for their losses”). An order on either disgorgement or fraud will take
19 months if decided on summary judgment, and potentially upwards of a year if decided
20 at trial. (*See* ECF No. 850.)

21 Western's assets include an interest in at least one GP that holds each GP
22 property except one—Washoe I—and notes from nearly two-thirds of GPs, including
23 two of the GPs that own Washoe I. (*See* ECF No. 852-1, Ex. A.) The value of
24 Western's interest in GP properties and the debt owed to Western by the GPs is
25 approximately \$4.6 million. (*Id.*) If Western is ordered to disgorge its ill-gotten gains,
26 that disgorgement may include its share of each GP property and the GP notes. Though
27 the investors own the vast majority of the GPs and thus the GP properties, Western has
28 essentially intertwined its assets with those of investors by taking an interest in at least

1 one GP that owns almost every GP property and holding notes from nearly two-thirds
2 of GPs. If restitution to investors of Western's disgorged funds is appropriate, every
3 Western investor would arguably have an interest in every GP property. Were the Court
4 to release the GPs, a GP property would be subject to the control of its several hundred
5 general partner investors who would have no obligation to consider the interests of the
6 thousands of investors who may be able to lay claim to Western's interest through
7 investor restitution. Continuation of the receivership ensures that the Receiver and the
8 Court maintain oversight of these properties and that any action taken in relation to the
9 GPs or GP properties is the most equitable overall. *See Credit Bancorp, Ltd.*, 2000 WL
10 1752979, at *13, 43.

11 Though the Court could order Western to divest its interest and the GPs to pay
12 the notes, and thus release the GPs without the aforementioned issue, this too is
13 problematic. Western may not be liable for disgorgement or fraud and altering the
14 structure of the GPs at this stage may be prejudging Western's liability. As the
15 appropriate course of action is significantly influenced by Western's liability, the Court
16 finds it appropriate to wait until these issues are resolved before removing the GPs
17 from the receivership or altering their structure.

18 **E. Administration of the Receivership**

19 **1. Information**

20 While the Court finds that continuation of the receivership over all the GPs is
21 appropriate, the Court does have some concerns regarding their current financial status
22 as well as the information available to their investors. As the Receiver has indicated,
23 some investors are not paying their share of costs and these costs are shifted onto other
24 investors who are paying more than their share of costs. (*See* ECF No. 852-1, Ex. C.)
25 Due to comments at the investor hearing, it appears that the operational bills sent to
26 investors lack detail. Thus the Court finds it appropriate to order that additional
27 information be provided to investors so that they can make a choice as to whether to
28 pay the higher operational bill or not. Though choosing not to cover their delinquent

1 co-investors may result in the sale of a property if insufficient funds are raised to pay
2 operating expenses, the investors should be informed and knowledgeable as to exactly
3 why they are paying an outsized share of costs before they are asked to do so. To that
4 end, the Court orders the Receiver to take three actions to help inform investors: (1)
5 include a detailed list of expenses in any future bills sent to investors, (2) obtain
6 updated appraisals of all GP properties, and (3) prepare an informational packet to be
7 sent to investors.

8 **2. Liquidation**

9 At this juncture, it is unclear whether liquidation of some GP properties is
10 appropriate. However, the Receiver's Report and Recommendation appears to indicate
11 that liquidation of GPs that will be unable to pay their bills may be warranted. It may
12 also be the case that billing investors to maintain GP properties is not the wisest course
13 of action based on the valuation of their GP and its property. Thus the Court orders the
14 Receiver to provide a report and recommendation whether liquidation is warranted for
15 any GP that is unable to meet its payment obligations.

16 **3. Property Company**

17 Finally, based on issues with the partnership administrators as well as the
18 savings that could be provided by a professional management company, the Court
19 grants the Receiver's request to transition administration of the GPs to the Lincoln
20 Property Company.

21 **V. CONCLUSION AND ORDER**

22 Based on the reasons stated above, **IT IS HEREBY ORDERED** that:

- 23 1. The portion of the Modification Order, (ECF No. 470), granting in part
24 Defendants' Modification Motion, (ECF No. 195), and releasing the GPs
25 from the receivership is **VACATED**;
- 26 2. Defendants' Modification Motion, (ECF No. 195), is therefore **DENIED**
27 and the GPs shall be kept in the receivership through the conclusion of
28 this case;

- 1 3. The Receiver’s request to transition administration of the GPs to the
2 Lincoln Property Company is **GRANTED**;
- 3 4. The Receiver shall include a detailed list of expenses in any future bills
4 sent to investors;
- 5 5. The Receiver shall obtain updated appraisals of all GP properties as soon
6 as is practicable;
- 7 6. On or before **March 27, 2015**, the Receiver shall file a proposed
8 comprehensive informational packet that includes—in lay terms—the
9 following:
 - 10 a. the SEC’s allegations;
 - 11 b. the Receiver’s findings to date, including the original purchase
12 prices of the GP properties, the funds raised by Western from the
13 GPs, how the difference between the purchase prices and the
14 money raised was spent by Western, and the results of the
15 appraisals on the GP properties;
 - 16 c. the current and projected financial status of the GPs and their
17 properties;
 - 18 d. the amount and purpose of the expenses being billed to investors,
19 the amount of billed expenses that are actually paid, and what may
20 occur if insufficient funds are raised from investors to pay
21 operational expenses; and
 - 22 e. any other information the Receiver finds necessary to include;
- 23 7. On or before **April 17, 2015**, the Receiver shall file a report and
24 recommendation regarding the appropriate course of action with regards
25 to each GP in light of the Court keeping the GPs in receivership.

26 DATED: March 4, 2015

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HON. GONZALO P. CURIEL

United States District Judge

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Attachment A: Investors

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, Nevada Ormonde, IRA,

Attachment A: Investors

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, 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 R. Nighswonger, William R. Diehl, William R. Rattan Rev. Trust, William V. and Carol J. Dascomb Trust, Carmen Slabby, Lawrance Slabby, Kristine Mikulka IRA, Thomas Goff IRA, Goff/Mikulka Trust, and Virginia Kelly.