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11 Attorneys for Receiver
 12 THOMAS C. HEBRANK

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

16 SECURITIES AND EXCHANGE
 17 COMMISSION,

18 Plaintiff,

19 v.

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

25 Defendants.

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

**FIRST INTERIM FEE
 APPLICATION OF COTTON,
 DRIGGS, WALCH, HOLLEY
 WOLOSON & THOMPSON,
 SPECIAL COUNSEL TO RECEIVER**

Date: May 10, 2013

Time: 1:30 p.m.

Ctrm: 9D

Judge: Hon. Gonzalo P. Curiel

**NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT**

1 Cotton, Driggs, Walch, Holley, Woloson & Thompson ("Cotton Driggs"), special
2 counsel for Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First
3 Financial Planning Corporation d/b/a Western Financial Planning Corporation
4 ("Western"), and its subsidiaries, including the general partnerships ("GPs") set up by
5 Western (collectively, "Receivership Entities"), hereby submits this first interim
6 application for payment of professional fees and reimbursement of costs for the
7 period September 6, 2012, through February 28, 2013 ("First Application Period").
8 Cotton Driggs incurred \$10,165.00 in fees and \$573.28 in costs during the First
9 Application Period and seeks interim approval and payment of the fees and costs
10 incurred.

11 I. FEE APPLICATION

12 The Temporary Restraining Order ("TRO") and the recently entered Preliminary
13 Injunction Order vests the Receiver with authority to employ professionals to assist in
14 his efforts. TRO, Dkt. No. 10, Part VII.C. and G; Preliminary Injunction, Dkt. No.
15 174, Part III.C. and G. Pursuant to that authority, the Receiver engaged Cotton
16 Driggs as his special counsel to represent four of the GPs (Gold Ridge partners,
17 Grand View partners, Rolling Hills partners, and Sky View partners) engaged in an
18 ongoing eminent domain litigation in Nevada that commenced prior to the issuance
19 of the TRO. Cotton Driggs is a law firm with offices only in Las Vegas and Reno,
20 Nevada. To be engaged as special counsel, Cotton Driggs agreed that all outstanding
21 pre-receivership fees (incurred on or before September 5, 2012) would be treated as
22 any other pre-receivership trade creditor bills and that Cotton Driggs would not
23 object to the Receiver's recommendations to the Court or the Court's decision on
24 distributions to trade creditors. Cotton Driggs now seeks interim approval of
25 payment for its post-receivership fees and costs incurred beginning September 6,
26 2012.

27 The eminent domain matter began in 2008 and Cotton Driggs was hired to
28 represent Gold Ridge partners, Grand View partners, Rolling Hills partners, Sky

1 View partners, and Western, all of which are included in the receivership. Each of
2 the GPs held a quarter, undivided interest in 620 acres of land in Dayton, Nevada,
3 and Western held a deed of trust on the property. In 2008, Sierra Pacific Power
4 ("Sierra Pacific") filed to condemn 480 acres of the property for a substation and
5 transmission lines. In April 2010, a jury awarded the GPs \$4.4 million for the taking
6 of the land. All the parties stipulated to Sierra Pacific paying out the judgment and
7 having that judgment paid out to the various interest holders, including all three deed
8 of trust holders on the property. Sierra Pacific then recorded the judgment of
9 condemnation against the property taking title. The GPs voted to appeal the
10 judgment because certain valuation evidence was excluded by the judge. Sierra
11 Pacific cross-appealed based on its assertion that the district court should not have
12 admitted evidence of the price paid by the GPs for the property or allowed the
13 method of valuation offered by the GPs and Western through its witnesses. While on
14 appeal, Sierra Pacific sought to abandon the action in the district court, *i.e.*, give the
15 property back to the four GPs and force the GPs to return their distribution of the
16 \$4.4 million. The GPs opposed the abandonment. Because of the pending appeal,
17 the district court determined that it did not have jurisdiction to enter the
18 abandonment, but certified that it would do so if the Nevada Supreme Court
19 remanded the case. Sierra Pacific then requested a remand from the Nevada Supreme
20 Court, which the GPs opposed. Because it was a matter of first impression, the
21 *en banc* Nevada Supreme Court took oral argument on the issue before taking the
22 matter under submission. All of the foregoing occurred prior to this Court's issuance
23 of the TRO putting the GPs and Western in receivership.

24 Prior to the Nevada Supreme Court issuing its decision, and about the same time
25 that this Court issued the TRO, Cotton Driggs engaged in telephone and written
26 discussions with the partners to inform them of the case status and to facilitate a vote
27 of the partners to approve Sierra Pacific's proposed settlement of a "walk away,"
28 whereby Sierra Pacific would keep the property, the GPs would keep their

1 distribution of the judgment, and all parties would dismiss their pending actions and
2 bear their own fees and costs. On September 27, 2012, the Nevada Supreme Court
3 issued its decision that provided Sierra Pacific could seek to abandon the matter and
4 that the district court retained jurisdiction to make the decision. After that decision
5 issued, Sierra Pacific no longer sought to pursue the previously proposed settlement.
6 Pursuant to the litigation stay in the TRO, Cotton Driggs notified the courts and
7 Sierra Pacific that the matter was stayed. Since that time, Cotton Driggs has prepared
8 and reviewed status reports required by the Nevada Supreme Court, kept the Receiver
9 informed of the case status, and engaged in continued settlement discussions with
10 Sierra Pacific.

11 During the First Application Period, Cotton Driggs provided a total of 31.8 hours
12 of service for a total of \$10,165.00 in fees and \$573.28 in costs. Cotton Driggs
13 requests payment on an interim basis of 100% of this amount.¹ The firm has
14 recorded its services as set forth task-by-task in Exhibit A.

15 **II. TASKS PERFORMED DURING FIRST APPLICATION PERIOD**

16 During the First Application Period, Cotton Driggs worked diligently to resolve
17 the eminent domain matter and to keep all affected parties notified of the case status.
18 As reflected in the bills attached as Exhibit A, the legal work performed by Cotton
19 Driggs' attorneys during the First Application Period consisted of reviewing,
20 preparing, and communicating to the partners of the four GPs the status of the case,
21 the proposed settlement, and answering specific questions submitted by partners;
22 reviewing and analyzing the Nevada Supreme Court decision allowing Sierra Pacific
23 to abandon the eminent domain action; communicating with the Receiver to establish
24 the status of this case and its effect on the eminent domain action; filing notices with
25

26 ¹ Based on this Court's prior order, providing that photocopies are to be reimbursed
27 at \$.05 per page, Cotton Driggs has reduced its request for photocopy
28 reimbursement from the \$79.05 reflected in its bills (\$.15 per page) to \$26.35
(\$0.05 per page).

1 the district court and Nevada Supreme Court regarding the litigation stay and
2 reviewing Sierra Pacific's status reports to the Nevada Supreme Court; continuing to
3 update the Receiver on the status of the case; and participating in settlement talks
4 with Sierra Pacific.

5 The amount of reasonable and necessary fees for this work during the First
6 Application Period totals \$10,165.00. Although this is an interim fee application,
7 Cotton Driggs requests full payment of its fees. Full payment is appropriate because
8 (a) the amount incurred by the firm over the five month period is modest, (b) the firm
9 has been engaged as special counsel to handle one pending litigation matter on behalf
10 of four GPs, and (c) the firm's future work on the matter is not expected to be
11 significant. Under these circumstances, a holdback should not be imposed.

12 Cotton Driggs also requests that the Court approve reimbursement of \$573.28 in
13 costs, which were incurred in executing the above-described task. The majority of the
14 costs (\$457.98) are for Global Services, a teleconferencing service that was used in
15 the teleconference with the general partners. Cotton Driggs was required to use this
16 service because there are over 300 partners in the four GPs and all were invited to
17 participate in the call. The remaining costs include copy costs (\$26.35), charged at
18 \$.05 per copy,² postage (\$8.75); messenger service to deliver filings to the rural
19 Storey County district court (\$64.00); and PACER copies of documents filed into this
20 case (\$16.20).

21 **III. COTTON DRIGGS' FEES ARE REASONABLE**
22 **AND SHOULD BE APPROVED**

23 In its Order Granting in Part First Interim Fee Applications, the Court analyzed
24 the case law regarding approval of interim fee applications in regulatory
25 receiverships and determined that the following factors should be considered: (1) the
26 complexity of the task; (2) the fair value of the time, labor, and skill measured by

27 _____
28 ² Cotton Driggs has reduced its request for photocopy reimbursement from the
\$79.05 (\$.15 per page) reflected in its bills to \$26.35 (\$.05 per page).

1 conservative business standards; (3) the quality of work performed, including the
2 results obtained and the benefit to the receivership estate; (4) the burden the
3 receivership estate may safely be able to bear; and (5) the Commission's opposition
4 or acquiescence.

5 **A. Complexity of Tasks**

6 Here, the tasks performed by Cotton Driggs were complex in that they required
7 familiarity and research on eminent domain laws as Sierra Pacific's abandonment
8 mid-appeal was a new circumstance and was a matter of first impression before the
9 Nevada Supreme Court. As a result, it took significant time and research to
10 adequately communicate the case status and the impact of the Nevada Supreme
11 Court's decision to all interested parties, and advise the Receiver as to potential
12 resolutions. The majority of the tasks performed by Cotton Driggs occurred just prior
13 to and after the Nevada Supreme Court's September 27, 2012 decision issued when
14 significant discussion and research was required in an effort to either resolve the
15 matter without further litigation or be prepared for the continued hearings in the
16 district court. At the time, Sierra Pacific indicated it would seek to lift the litigation
17 stay. Since then, Sierra Pacific has elected not to seek such relief. Since
18 October 2012, Cotton Driggs fees on the matter have been *de minimus* as the focus
19 has centered on further settlement discussions.

20 **B. Fair Value of Time, Labor & Skill**

21 The timekeepers in this matter include Stacy D. Harrop, who billed at an hourly
22 rate of \$275 in 2012 and \$285 beginning February 2013, and Gregory J. Walch who
23 billed at an hourly rate of \$400. These rates represent typical rates in Nevada for
24 attorneys of similar experience and expertise. Mr. Walch has been an attorney in
25 Nevada since 1992 and has significant experience representing both governmental
26 entities and landowners in eminent domain matters. Ms. Harrop has been an attorney
27 in Nevada since 2006 and also has been representing both governmental entities and
28 landowners in eminent domain matters since joining Cotton Driggs in 2007.

EXHIBIT INDEX

Exhibit A	Detailed Time Reports	1-14
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EXHIBIT A

EXHIBIT A

**COTTON, DRIGGS, WALCH
HOLLEY, WOLOSON & THOMPSON**

ATTORNEYS AT LAW

*400 South Fourth Street
Third Floor
Las Vegas, Nevada 89101
Telephone (702) 791-0308*

For Period Ending October 24, 2012
Statement No. 405248

First Financial Planning Corp.
Louis Schooler & Alice Jacobson
5186 Carroll Canyon Road, Suite 100
San Diego, California 92121

October 25, 2012

Matter ID 00016-108
Gold Ridge Partners

SUMMARY

Current Activity

Total Services	7,435.00
Total Expenses	515.13
Total Finance Charges	0.00
Total Current Charges	7,950.13

PLEASE MAKE CHECKS PAYABLE TO COTTON, DRIGGS ET AL.
WE ACCEPT VISA, MASTER CARD, DISCOVER CARD, AND AMERICAN EXPRESS.
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TAX ID NUMBER 88-0356668

COTTON, DRIGGS, WALCH

Page: 2

405248

Statement as of October 24, 2012

First Financial Planning Corp.
Louis Schooler & Alice Jacobson
5186 Carroll Canyon Road, Suite 100
San Diego, California 92121
Name of Matter: Gold Ridge Partners

Our Identifying Code for this case: 00016-108

Services			Hours	Amount
9/6/2012	SDH	Review questions from partners and prepare answers to same	3.30	907.50
9/7/2012	SDH	Complete preparing answers to partners' questions; meet with Mr. Walch regarding same; participate in telephone conference with partners	3.00	825.00
9/7/2012	GJW	Prepare for and attend telephone conference with all partners regarding response to Sierra Pacific and risks and advantages of potential responses	4.00	1,600.00
9/10/2012	SDH	Telephone conference with a partner regarding case status and availability of conference call recording; meet with Ms. Dalton regarding the recording	0.20	55.00
9/11/2012	GJW	Attention to status and strategy; conference with Ms. Harrop regarding same	0.40	160.00
9/12/2012	SDH	Meet with Mr. Driggs regarding SEC's temporary restraining order; telephone conference with Mr. Schooler regarding same	1.20	330.00
9/12/2012	GJW	Attention to status and strategy	0.30	120.00
9/27/2012	SDH	Review decision from Nevada Supreme Court; telephone conference with Attorney Dyson regarding receiver status; telephone conference with Attorney Hougen regarding receiver status and Nevada Supreme Court's decision	1.40	385.00
9/27/2012	GJW	Review Court's decision and exchange e-mails with Ms. Harrop regarding same	1.00	400.00

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COTTON, DRIGGS, WALCH

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405248

9/28/2012	SDH	Meet with Mr. Walch regarding Nevada Supreme Court decision and case strategy; telephone conference with Mr. Schooler regarding same	0.80	220.00
9/28/2012	GJW	Conference with Ms. Harrop regarding strategies for responses to Supreme Court Mootness Order; telephone conference with Mr. Schooler regarding same	1.80	720.00
10/1/2012	SDH	Prepare email to Attorney Dyson regarding summary of the eminent domain case; conduct legal research on bringing section 1983 claim	1.70	467.50
10/2/2012	JDD	Conference regarding: issues relating to SEC injunction	0.10	37.50
10/3/2012	JDD	Telephone conference with SEC counsel	0.60	225.00
10/5/2012	SDH	Meet with Mr. Walch regarding current status; telephone conference with Mr. Walch and Attorney Chapman regarding potential settlement; review court order regarding preliminary injunction in SEC matter	2.00	550.00
10/15/2012	SDH	Prepare email to Attorney Stone regarding objection to submitting an order to Judge Russell	0.20	55.00
10/16/2012	SDH	Prepare email to Mr. Hebrank (receiver) regarding summary of the eminent domain action and status; exchange emails with Attorney Stone regarding Sierra Pacific's sending a proposed order to the judge	0.20	55.00
10/17/2012	JDD	Conference regarding conference with SEC	0.20	75.00
10/17/2012	SDH	Telephone conferences with Mr. Fates and Mr. Hebrank regarding status of eminent domain action; prepare notice to the court advising of TRO stay of proceedings	0.40	110.00
10/19/2012	SDH	Telephone conference with Attorney Chapman regarding TRO staying proceedings	0.20	55.00
10/23/2012	SDH	Review Siera Pacific's draft status report to the Nevada Supreme Court; exchange emails with Mr. Fates regarding status of case; email Attorney Stone requesting the Notice of TRO be attached to the status report	0.30	82.50
			Subtotal for Services	<u>7,435.00</u>

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COTTON, DRIGGS, WALCH

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Rate Summary			
J. Douglas Driggs, Jr.	0.90	hours at \$	375.00 /hr 337.50
Stacy D. Harrop	14.90	hours at \$	275.00 /hr 4,097.50
Gregory J. Walch	7.50	hours at \$	400.00 /hr 3,000.00
Total hours	<u>23.30</u>		

Expenses

	Photocopies		57.15
10/24/2012	Conference call		457.98
	<i>Premiere Global Services (Check No. 18926)</i>		
		Subtotal Expenses	<u>515.13</u>
		Total Current Billing	<u>7,950.13</u>

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**COTTON, DRIGGS, WALCH
HOLLEY, WOLOSON & THOMPSON**

ATTORNEYS AT LAW

*400 South Fourth Street
Third Floor
Las Vegas, Nevada 89101
Telephone (702) 791-0308*

For Period Ending November 20, 2012
Statement No. 407412

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

December 18, 2012

Matter ID 00016-108
Gold Ridge Partners

SUMMARY

<u>Current Activity</u>	
Total Services	760.00
Total Expenses	101.35
Total Finance Charges	0.00
Total Current Charges	861.35

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COTTON, DRIGGS, WALCH

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Statement as of November 20, 2012

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

Name of Matter: Gold Ridge Partners

Our Identifying Code for this case: 00016-108

Services			Hours	Amount
11/2/2012	GJW	Review status; conference with Ms. Harrop regarding status and strategies going forward	1.50	600.00
11/16/2012	GJW	Conference with Ms. Harrop regarding Stay impact and strategy going forward	0.40	160.00
			Subtotal for Services	<u>760.00</u>

Rate Summary			
Gregory J. Walch	1.90	hours at \$	400.00 /hr
	<u>1.90</u>	Total hours	760.00

Expenses			
		Photocopies	18.15
		Pacer online research	11.10
10/29/2012		United Parcel Service <i>Wells Fargo Bank (Check No. 19057)</i>	8.10
10/30/2012		Service of process <i>Reno/Carson Messenger Service (Check No. 18971)</i>	64.00
			Subtotal Expenses <u>101.35</u>

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COTTON, DRIGGS, WALCH

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407412

Total Current Billing 861.35

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**COTTON, DRIGGS, WALCH
HOLLEY, WOLOSON & THOMPSON**

ATTORNEYS AT LAW

*400 South Fourth Street
Third Floor*

*Las Vegas, Nevada 89101
Telephone (702) 791-0308*

For Period Ending December 20, 2012

Statement No. 408409

Allen Matkins Leck Gamble Mallory & Natsis, LLC

Ted Fates, Esq.

501 West Broadway, 15th Floor

San Diego, Ca 92101-3541

January 18, 2013

Matter ID 00016-108

Gold Ridge Partners

SUMMARY

Current Activity

Total Services	1,045.00
Total Expenses	4.40
Total Finance Charges	0.00
Total Current Charges	1,049.40

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TAX ID NUMBER 88-0356668

COTTON, DRIGGS, WALCH

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408409

Statement as of December 20, 2012

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

Name of Matter: Gold Ridge Partners

Our Identifying Code for this case: 00016-108

Services			Hours	Amount
11/28/2012	SDH	Telephone conference with Mr. Fates and Attorney Stone regarding case status	0.30	82.50
11/30/2012	SDH	Review and revise status report to Nevada Supreme Court prepared by Attorney Stone	0.30	82.50
12/7/2012	SDH	Telephone conference with Mr. Fates and Mr. Hebrank regarding case status and strategy; review documents relating to distribution of the judgment	1.50	412.50
12/12/2012	SDH	Telephone conference with Attorney Stone, Attorney Petlak, and Mr. Fates regarding receivership status and potential for settlement	0.40	110.00
12/17/2012	SDH	Prepare settlement proposal letter to Sierra Pacific and send to Mr. Fates and Mr. Hebrank for review	1.10	302.50
12/19/2012	SDH	Finalize settlement letter to Sierra Pacific	0.20	55.00
			Subtotal for Services	<u>1,045.00</u>

Rate Summary			
Stacy D. Harrop	3.80	hours at \$	275.00 /hr
	<u>3.80</u>	Total hours	1,045.00

Expenses

Postage 0.65

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COTTON, DRIGGS, WALCH

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408409

Photocopies

3.75

Subtotal Expenses 4.40

Total Current Billing 1,049.40

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TAX ID NUMBER 88-0356668**

**COTTON, DRIGGS, WALCH
HOLLEY, WOLOSON & THOMPSON**

ATTORNEYS AT LAW

*400 South Fourth Street
Third Floor
Las Vegas, Nevada 89101
Telephone (702) 791-0308*

For Period Ending January 20, 2013
Statement No. 408705

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

January 28, 2013

Matter ID 00016-108
Gold Ridge Partners

SUMMARY

<u>Current Activity</u>	
Total Services	782.50
Total Expenses	0.00
Total Finance Charges	0.00
Total Current Charges	<u>782.50</u>

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COTTON, DRIGGS, WALCH

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408705

Statement as of January 20, 2013

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

Name of Matter: Gold Ridge Partners

Our Identifying Code for this case: 00016-108

Services			Hours	Amount
12/14/2012	GJW	Conference with Ms. Harrop regarding status	0.60	240.00
12/21/2012	GJW	Conference with Ms. Harrop regarding status	0.20	80.00
1/3/2013	SDH	Telephone conference with Attorney Chapman regarding receivership and potential settlement	0.30	82.50
1/4/2013	SDH	Arrange telephone conference with Mr. Fates and Ms. Stone	0.10	27.50
1/9/2013	SDH	Telephone conference with Mr. Fates, Attorney Stone, and Attorney Petlak regarding financial status of partnerships; advise Attorney Stone and expected time frame for a report from the Receiver	0.70	192.50
1/18/2013	GJW	Conference with Ms. Harrop and Mr. Driggs regarding status and strategy	0.40	160.00
			Subtotal for Services	<u>782.50</u>

Rate Summary			
Stacy D. Harrop	1.10	hours at \$ 275.00 /hr	302.50
Gregory J. Walch	1.20	hours at \$ 400.00 /hr	480.00
Total hours	<u>2.30</u>		
			Total Current Billing <u>782.50</u>

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 TAX ID NUMBER 88-0356668

**COTTON, DRIGGS, WALCH
HOLLEY, WOLOSON & THOMPSON**

ATTORNEYS AT LAW

400 South Fourth Street

Third Floor

Las Vegas, Nevada 89101

Telephone (702) 791-0308

For Period Ending February 28, 2013

Statement No. 410130

Allen Matkins Leck Gamble Mallory & Natsis, LLC

Ted Fates, Esq.

501 West Broadway, 15th Floor

San Diego, Ca 92101-3541

March 13, 2013

Matter ID 00016-108

Gold Ridge Partners

SUMMARY

Current Activity

Total Services	142.50
Total Expenses	5.10
Total Finance Charges	0.00
Total Current Charges	147.60

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COTTON, DRIGGS, WALCH

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410130

Statement as of February 28, 2013

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

Name of Matter: Gold Ridge Partners

Our Identifying Code for this case: 00016-108

Services			Hours	Amount
2/12/2013	SDH	Telephone conference with Mr. Fates, Mr. Hebrank, and Attorney Stone regarding distribution of judgment	0.50	142.50
			Subtotal for Services	142.50

Rate Summary			
Stacy D. Harrop	0.50	hours at \$	285.00 /hr
	0.50		142.50

Expenses			Amount
	Pacer online research		5.10
			Subtotal Expenses
			5.10
			Total Current Billing
			147.60

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