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18 Attorneys for Defendants LOUIS V. SCHOOLER
19 and FIRST FINANCIAL PLANNING CORPORATION

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

22 SECURITIES AND EXCHANGE)
23 COMMISSION,)

24 Plaintiff,)

25 v.)

26 LOUIS V. SCHOOLER and)
27 FIRST FINANCIAL PLANNING)
28 CORPORATION d/b/a)
WESTERN FINANCIAL)
PLANNING CORPORATION,)

Defendants.)

Case No. 12 CV 2164 GPC JMA

**DECLARATION OF PHILIP H.
DYSON IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
RECEIVER'S EX PARTE
APPLICATION FOR AUTHORITY
TO USE FUNDS IN CERTAIN
GENERAL PARTNERSHIP
ACCOUNTS TO COVER
SHORTFALL IN FUNDS**

Ctrm.: 2D

Judge: Hon. Gonzalo P. Curiel

1 I, Philip H. Dyson, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I have personal knowledge of the matters set forth herein and, if called
3 as a witness, I could and would testify competently hereto under oath.

4 2. At all times described herein, my office has been co-counsel of record
5 for Defendants.

6 3. On March 6, 2013, my office received a phone call from Ted Fates,
7 Esq. of Allen Matkins Leck Gamble Mallory & Natsis LLP, counsel of record for
8 the Receiver (“Allen Matkins”), regarding repayment of loans made by Defendant
9 Western Financial Planning Corporation (“Western”) to LinMar Management, Inc.,
10 LinMar Shaw LLC et al., LinMar III, LLC, LinMar IV, LLC, LM-Tacoma I, LLC,
11 and fifteen LLC’s named “LMT” and numbered LMT-1 through LMT-15
12 (collectively, “the LinMar Borrowers”) and the production of certain documents.
13 My office responded by email on March 7, 2013. A true and correct copy of the
14 responsive email thread is attached as Exhibit 1.

15 4. On March 20, 2013, my office received an email from Mr. Fates stating
16 that collection actions would commence because the LinMar Borrowers had not
17 provided the requested documents. The email is included in the email thread
18 attached as Exhibit 1.

19 5. On April 22, 2013, after my office had sent several emails containing
20 the requested documents, my office sent two letters by email and fax to Mr. Fates.
21 In one letter, Defendants offered a monthly payment of \$12,000 on behalf of
22 LinMar Management, LinMar III, and LinMar IV beginning May 2013, and with a
23 halt to further production of documents. A true and correct copy of that letter is
24 attached as Exhibit 2. In the second letter, I asked Mr. Fates to refrain from
25 pursuing collection actions against LinMar Shaw and LinMar Tacoma. A true and
26 correct copy of that letter is attached as Exhibit 3.

27 6. On April 24, 2013, Mr. Fates emailed me a letter rejecting the
28 settlement offer of April 22, 2013. A true and correct copy is attached as Exhibit 4.

1 7. On August 21, 2013, Mr. Fates emailed me a letter containing a new
2 offer, including payment of \$100,000 now and \$50,000 per month beginning on
3 October 1, 2013. A true and correct copy is attached as Exhibit 5.

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

6 Executed this 27th day of November, 2013, in La Mesa, California.

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/s/Philip H. Dyson
PHILIP H. DYSON

1 **CERTIFICATION**

2 I hereby certify that on the 27th day of November 2013, I submitted the
3 foregoing via electronic mail to the Court's chambers together with Defendants'
4 Opposition To Receiver's Ex Parte Application For Authority To Use Funds In
5 Certain General Partnership Accounts To Cover Shortfall In Funds, with the
6 following counsels of record included on that electronic mail communication:

7 Sam S. Puathasnanon, Esq.
8 Sara D. Kalin, Esq.
9 Securities and Exchange Commission
10 5670 Wilshire Boulevard, 11th Floor
11 Los Angeles, CA 90036

12 Ted Fates, Esq.
13 Allen Matkins Leck Gamble Mallory & Natsis LLP
14 501 West Broadway, 15th Floor
15 San Diego, CA 92101

16 /s/ Philip H. Dyson
17 Philip H. Dyson

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EXHIBIT 1

RE: SEC v. Schooler: LinMar loans and Real Asset Locators

From: **Fates, Ted** (tfates@allenmatkins.com) You moved this message to its current location.

Sent: Wed 3/20/13 10:03 AM

To: David Herman (david@phildysonlaw.com)

Cc: Tom Hebrank (thebrank@ethreadvisors.com); phil@phildysonlaw.com
(phil@phildysonlaw.com); eric@hougenlaw.com (eric@hougenlaw.com)

David,

Pursuant to my email below, yesterday was the deadline for the LinMar borrowers to provide the documents listed in my email below. Having received no documents to date, we will proceed with actions to collect on the loans.

On a separate note, the Court has directed the Receiver to investigate and take control of the bank accounts and other assets of Real Asset Locators, Inc. ("RAL"). Accordingly, we request that Mr. Schooler provide the following information for RAL:

Names and contact information of current directors and officers;

Articles of incorporation, bylaws and statements filed with the secretary of state;

Financial statements and tax returns;

A list of bank and brokerage accounts, including financial institutions and account numbers; and

A schedule of assets, including locations of assets and estimated values.

Mr. Schooler has been ordered to cooperate with and assist the Receiver. Your prompt attention to this matter is appreciated.

Ted Fates

Senior Counsel

Allen Matkins Leck Gamble Mallory & Natsis LLP

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

(619) 235-1527 (direct)

(619) 233-1155 (main)

(619) 233-1158 (fax)

From: Fates, Ted

Sent: Thursday, March 07, 2013 3:53 PM

To: 'David Herman'

Cc: 'Tom Hebrank'

Subject: RE: SEC v. Schooler: Western Financial's loans to LinMar entities

David,

Thanks for your email.

If the LinMar borrowers want the Receiver to delay collection actions on the loans, we will need the following documents for each of them no later than March 19:

Tax returns (federal and state) for 2010 and 2011

Balance sheets – as of 12/31/12 and current

P&Ls for 2012

Closing statements for all properties acquired

Appraisals (if available)

Copies of all leases

Notes, deeds of trust and other pertinent loan documents for loans secured by properties

Ledgers showing payments on the notes

Let me know if you have any questions. We look forward to hearing from you.

Ted Fates

Senior Counsel

Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)

(619) 233-1155 (main)

(619) 233-1158 (fax)

From: dlherman1975@hotmail.com [mailto:dlherman1975@hotmail.com] **On Behalf Of** David Herman

Sent: Thursday, March 07, 2013 9:48 AM

To: Fates, Ted

Subject: SEC v. Schooler: Western Financial's loans to LinMar entities

Dear Ted,

Thank you for your phone call yesterday regarding the issue of collection on Western Financial's loans to the various LinMar entities.

Because Mr. Dyson is in the middle of last-minute preparations for his weeklong trial in Tucson next week, he will not be able to discuss the production of any records of LinMar's operations or ownership, or any arrangement for payment of the notes to Western, this week.

However, we are working on assembling the relevant records and formulating a response, and will have a response to you around March 18 or 19.

Thank you for your patience in this matter.

David L. Herman, Attorney
Law Offices of Philip H. Dyson

8461 La Mesa Boulevard
La Mesa, CA 91942
p: (619) 462-3311
f (619) 462-3382
david@phildysonlaw.com

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, please be advised that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used or relied upon, and cannot be used or relied upon, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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EXHIBIT 2

PHILIP H. DYSON
ATTORNEY AT LAW

8461 LA MESA BOULEVARD
LA MESA, CALIFORNIA 91942
TELEPHONE 619.462.3311
FACSIMILE 619.462.3382
PHILDYSONLAW.COM

April 22, 2013

VIA FACSIMILE (619) 233-1158 AND EMAIL

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

RE: *SEC v. Schooler et al.*
U.S. Dist. Ct. (S.D. Cal.) 3:12-cv-2164-GPC-JMA

CONFIDENTIAL SETTLEMENT COMMUNICATION
(Fed. R. Evid. 408; Cal. Evid. Code §§ 1152, 1154)

Dear Mr. Fates:

In response to your email of March 20, 2013, announcing the Receiver's plan to proceed with collecting repayment on the outstanding loans from Western Financial to the various LinMar entities, we wish to make the following offer on behalf of Mr. Schooler and Western Financial.

1. One global payment of \$12,000 will be made each month to Western Financial, on behalf of LinMar III, LinMar IV, and LinMar Management.
 - A. The monthly payments will begin in May 2013, and continue until all outstanding principal and accrued interest on the loans for LinMar III, LinMar IV, and LinMar Management are paid in full.
 - B. The monthly payment may be made at any time during the month, up to and including the last business day of the month.
2. Upon receipt of the monthly payment, the Receiver on behalf of Western Financial shall apportion and apply the funds as follows, in this order:
 - A. To all carry-back notes provided by Western Financial to the sellers of the real estate that was acquired by Western Financial and subsequently transferred to the general partnerships established through Western Financial, to the extent that current contributions to the carry-back notes by

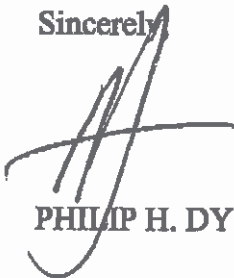
Ted Fates, Esq.
April 22, 2013
Page 2

the general partners (including Mr. Schooler and Western Financial) are insufficient.

- B. A portion shall be paid to American West Bank, the lender for Loan 1792, to be used toward the unpaid interest, foreclosure costs, and legal fees, plus unpaid principal.
 - C. The remainder shall be used for payments in the *Tracota*, *Coleman*, and *Polley* cases.
3. The Receiver will cease all efforts to collect or foreclose upon the LinMar notes unless and until the monthly payments described in section 1 are more than one month in arrears.
 4. The Receiver will withdraw its subpoenas for continued production of documents from the LinMar entities, with all documents provided through this office as of April 10, 2013 deemed sufficient response to the subpoenas.

Thank you for your cooperation in this matter. If you have any questions, please contact our office.

Sincerely,



PHILIP H. DYSON

PHD/dlh

cc: Eric Hougen, Esq. via email
Pat Swan, Esq. via email

EXHIBIT 3

PHILIP H. DYSON
ATTORNEY AT LAW

8461 LA MESA BOULEVARD
LA MESA, CALIFORNIA 91942
TELEPHONE 619.462.3311
FACSIMILE 619.462.3382
PHILDYSONLAW.COM

April 22, 2013

VIA FACSIMILE (619) 233-1158 AND EMAIL

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

RE: *SEC v. Schooler et al.*
U.S. Dist. Ct. (S.D. Cal.) 3:12-cv-2164-GPC-JMA

CONFIDENTIAL SETTLEMENT COMMUNICATION
(Fed. R. Evid. 408; Cal. Evid. Code §§ 1152, 1154)

Dear Mr. Fates:

As a followup to the production of documents for the various LinMar entities and the plans for repayment of the LinMar notes, I would like to address the Receiver's attempts to collect from the LinMar Shaw and LinMar Tacoma entities. It is Defendants' position that the Receiver's work to obtain information and repayment from LinMar Shaw and LinMar Tacoma is wasteful and unnecessary, and therefore unjustified for purposes of fee and cost billing.

As you know, the property that is held by LinMar Tacoma LLC (913-919 Pacific Avenue, Tacoma, WA) is in foreclosure and the foreclosure auction will take place by the end of April. The money loaned by Western Financial was lent to the various LLCs holding tenancy-in-common interests (LM Tacoma I LLC and LMT-1 through LMT-15 LLCs) without any personal recourse or hypothecation. The trust deed in favor of Western Financial is a junior lien to the purchase mortgage. Therefore, any attempts by the Receiver to collect on the loan to LinMar Tacoma would be fruitless, and any fees or costs incurred by the Receiver and counsel in doing so would be unjustified and strenuously opposed by Defendants when the Receiver's Third Interim Fee Applications are filed.

The property held by LM Shaw I LLC et al. (2350 West Shaw Avenue, Fresno, CA) is not in foreclosure, but there is insufficient money being paid in rents, and there is little to no equity. The Fresno commercial real estate market, particularly with regard to Class B and Class C space, has been poor for years, which is no surprise given that the economy in the

Ted Fates, Esq.
April 22, 2013
Page 2

San Joaquin Valley, in terms of unemployment, business failures, and business bankruptcies, is worse than the rest of California as a whole. Vacancy rates are high. The buildings in the complex are in need of renovations, but there is no money to pay for them. Any capital calls for raising the funds to repay the loan from Western Financial and to provide the necessary renovations would be unsuccessful because of the weak demand for Class B and Class C space, and because of the costs for preparing the necessary offering documents.

Also, as with the LinMar Tacoma property, all of the funds were disbursed non-recourse to the various LLCs holding tenancy-in-common interests (LM Shaw I and LMS-1 through LMS-14) so there is nothing to pursue. Furthermore, the purchase loan matures in two years but there is little to no equity in the West Shaw buildings, which means that it is not possible to refinance the property to raise the necessary funds.

Given these situations, I strongly urge your office, and the Receiver, to cease all work for trying to collect on the loans from Western Financial to LinMar Shaw and LinMar Tacoma, including the collection of documents by subpoena (apart from what has been produced already). Please notify this office within ten days of this letter, in writing, that the Receiver will refrain from proceeding with collection efforts against LinMar Shaw and LinMar Tacoma. Otherwise, Defendants will seek any and all remedies to stop the collection actions as wasteful.

Thank you for your cooperation in this matter. If you have any questions, please contact our office.

Sincerely,



PHILIP H. DYSON

RHD/dlh

cc: Eric Hougen, Esq. via email
Pat Swan, Esq. via email

EXHIBIT 4

Allen Matkins

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/SD803607.01

Confidential Settlement Communication

Via Electronic Mail

April 24, 2013

Philip H. Dyson, Esq.
8461 La Mesa Boulevard
La Mesa, CA 91941

**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

LinMar Loan Payments

Dear Mr. Dyson:

I am in receipt of your letters dated April 22, 2013. Unfortunately, the terms of your proposal for repayment of the loans made by Western Financial to LinMar Management, Inc., LinMar III, LLC and LinMar IV, LLC are unacceptable. Mr. Schooler has the net worth to fully pay off the loans in a short period of time. Accordingly, the Receiver makes the following counter-proposal:

- 1) LinMar Management, LinMar III and LinMar IV shall repay 50% of the full balance due within 30 days hereof and the remainder in six monthly installments due on the first of each month starting July 1, 2013.
- 2) The Receiver will agree not to take any action to collect on the loans as long as the payments are timely made.
- 3) The Receiver will agree to extend the deadline to produce additional documents pursuant to the subpoenas as long as the payments are timely made (and to withdraw the subpoenas once all payments are timely made).

There shall be no restrictions on the Receiver's use of the funds repaid other than as directed by the District Court.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Privileged and Confidential
Settlement Communication

Philip H. Dyson, Esq.
April 24, 2013
Page 2

Please advise if these terms are acceptable. If so, I will prepare a Forbearance Agreement consistent with them. If we do not hear from you within 10 days, the Receiver will proceed with steps to collect on the loans.

Very truly yours,



Ted Fates

EGF/jlb

cc: Thomas C. Hebrank (via email)

EXHIBIT 5

Allen Matkins

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: 372640-00007/SD808707.01

Confidential Settlement Communication

Via Electronic Mail

August 21, 2013

Philip H. Dyson, Esq.
8461 La Mesa Boulevard
La Mesa, CA 91941

**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**

Proposed LinMar Payment Plan

Dear Mr. Dyson:

As you know, the Court recently approved the Receiver's motion for authority to pursue claims against the LinMar entities that borrowed money from Western ("LinMar Borrowers"). The Receiver is prepared to commence actions to enforce the loan agreements and collect all amounts due. As a final effort to avoid such litigation, the Receiver proposes a payment plan on the following terms and conditions:

- 1) LinMar Management, LinMar III and LinMar IV shall pay \$100,000 now (in conjunction with execution of a Forbearance Agreement) and make 12 monthly payments of \$50,000 each starting on October 1, 2013.
- 2) The Receiver will not take any action to collect from the LinMar Borrowers as long as all payments are timely made and will fully release the LinMar Borrowers upon receipt of the final \$50,000 payment.
- 3) The Receiver will agree to extend the deadline to produce additional documents pursuant to the subpoenas issued to the LinMar Borrowers and Mr. Schooler as long as all payments are timely made and will withdraw the subpoenas once the final payment is received.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Privileged and Confidential
Settlement Communication

Philip H. Dyson, Esq.
August 21, 2013
Page 2

There shall be no restrictions on the Receiver's use of the funds repaid other than as directed by the District Court.

Please advise if these terms are acceptable. If so, I will prepare a Forbearance Agreement consistent with them. If we do not hear from you within 10 days, the Receiver will proceed with actions to collect on the loans as authorized by the Court.

Very truly yours,



Ted Fates

EGF/jlb
cc: Thomas C. Hebrank (via email)