

1 DAVID R. ZARO (BAR NO. 124334)  
TED FATES (BAR NO. 227809)  
2 KIM A. BUI (BAR NO. 274113)  
ALLEN MATKINS LECK GAMBLE  
3 MALLORY & NATSIS LLP  
501 West Broadway, 15th Floor  
4 San Diego, California 92101-3541  
Phone: (619) 233-1155  
5 Fax: (619) 233-1158  
E-Mail: dzaro@allenmatkins.com  
6 tfates@allenmatkins.com  
kbui@allenmatkins.com

7 Attorneys for Receiver  
8 THOMAS C. HEBRANK

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11  
12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

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

18 Defendants.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**REPLY IN SUPPORT OF MOTION  
FOR AUTHORITY TO PURSUE  
CLAIMS AGAINST LINMAR  
BORROWERS**

Date: July 26, 2013

Time: 1:30 p.m.

Ctrm.: 9D

Judge: Hon. Gonzalo P. Curiel

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

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial  
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),  
3 and its subsidiaries and affiliates (collectively, "Receivership Entities"), submits this  
4 Reply in Support of Motion for Authority to Pursue Claims Against Linmar  
5 Borrowers ("Motion").

## 6 I. INTRODUCTION

7 It is important to understand from whom the Opposition to the Motion comes.  
8 Defendant Louis Schooler owns three of the five LinMar Borrowers outright and  
9 owns a minority interest in the other two LinMar Borrowers through LinMar  
10 Management, Inc. The proposed actions to collect on loans to the LinMar  
11 Borrowers are directly adverse to Mr. Schooler's own financial interests. Naturally,  
12 he asks the Court not to authorize the Receiver to collect on the loans. However,  
13 even setting aside Mr. Schooler's clear self-interest in preventing the Receiver from  
14 collecting the loans, the Opposition fails to present any basis on which to deny the  
15 Motion.

## 16 II. ARGUMENT

### 17 A. The Term Non-Recourse Has No Application to Unsecured Loans

18 Defendants assert that the loans are non-recourse. This is a red herring. With  
19 the exception of the loan to the LinMar Tacoma entities (which the Receiver does  
20 not intend to pursue), the loans are unsecured. The terms recourse and non-recourse  
21 apply to secured loans. A loan is "recourse" if the lender can look to the collateral  
22 and the other assets of the borrower to collect, whereas a loan is "non-recourse" if  
23 the lender can only look to the collateral to collect. The terms recourse and non-  
24 recourse do not apply to unsecured loans. The unsecured promissory notes issued to  
25 Western by the LinMar Borrowers made no reference to being recourse or non-  
26 recourse.

27  
28

1           **B. The LinMar Borrowers and Mr. Schooler Have The Ability to Pay**

2           Defendants argue that the Receiver will not be able to collect sufficient  
3 amounts to warrant pursuing collection of the loans. Having provided only a small  
4 portion of the documents subpoenaed by the Receiver concerning the LinMar  
5 Borrowers' assets and liabilities,<sup>1</sup> Mr. Schooler now presents a series of unsupported  
6 figures, including net operating income, capitalization rates, deferred maintenance,  
7 total liabilities, estimated leasing and sale commissions, and other figures which he  
8 contends show collection on the loans is not possible. There is no evidence such as  
9 tax returns, balance sheets, profit and loss statements, leases, rent rolls, comparable  
10 sales, or appraisals supporting any of these figures. Moreover, as discussed above,  
11 Mr. Schooler has every incentive to make the value of the LinMar Borrowers' assets  
12 appear low and the amount of their liabilities appear high.

13           Even using Mr. Schooler's self-serving figures, however, the properties  
14 owned by LinMar III and LinMar IV have approximately \$1.35 million in equity  
15 and LinMar IV has "approximately \$250,000 in cash available." Schooler  
16 Declaration, ¶¶ 31-32. Appraisals of these properties, as well as the property owned  
17 by the LinMar Shaw entities, may well show substantially more equity.

18           Moreover, as evidenced by his Financial Statement (Docket No. 37), the fact  
19 that he paid over \$1 million to Western in 2012 prior to the Receiver's appointment,  
20 and Part Two of the Receiver's Forensic Accounting (which will show Mr. Schooler  
21 received approximately \$\_\_\_\_\_ from Western since \_\_\_\_\_), Mr. Schooler  
22 has the financial resources to repay the loans in full. If the loans were truly  
23 uncollectible because the LinMar Borrowers had no assets of value, Mr. Schooler  
24  
25

26 <sup>1</sup> Defendants argue the Receiver issued "excessive" and "highly intrusive"  
27 subpoenas in trying to investigate the collectability of the loans. To the contrary,  
28 the Receiver issued one subpoena to each LinMar Borrower, and one to  
Mr. Schooler, requesting eight categories of documents tailored to provide  
information necessary to assessing the financial condition of the LinMar  
Borrowers, the value of their assets, and the amounts of their liabilities.

1 would not have offered to pay them off over time, albeit with various unacceptable  
2 conditions and restrictions.

3       **C. There is No Reason to Believe the Litigation Will Be Unusually**  
4       **Complex or Expensive**

5       Next, Defendants contend that allowing the Receiver to pursue collection  
6 actions will result in "full-bore litigation against the LinMar Borrowers" that will  
7 run up costs for the receivership estate. The expense of the proposed collection  
8 actions is a valid consideration and is addressed in the Motion. Defendants have  
9 articulated no potential defenses to collection of the loans which would suggest that  
10 the collective actions would be unusually complex or expensive. Mr. Schooler's  
11 self-serving statement that the collection actions will be highly expensive is not  
12 supported by any facts. If Mr. Schooler were truly concerned about the GPs and  
13 their investors, he would repay the loans so Western would have cash available to  
14 make loan payments and pay other expenses that may otherwise have to be borne by  
15 the GPs.

16       **D. Collection of the Loans Should Be Pursued**

17       There is no reason not to pursue collection of the loans, including obtaining  
18 judgments for the amounts owed, recording judgment liens on the LinMar  
19 Borrowers' properties, and taking other appropriate steps to preserve and protect the  
20 value of the loans and maximize the recovery for the receivership estate. With the  
21 assistance of counsel, the Receiver will re-evaluate the collection actions at each  
22 juncture of the litigation and will advise the Court if he believes (a) the costs will  
23 vary substantially from those projected, (b) the likelihood of success in the litigation  
24 is materially lower than anticipated, or (c) the prospects for collection do not justify  
25 continuing the litigation.

26   **III. CONCLUSION**

27       WHEREFORE, the Receiver requests an order authorizing him to pursue  
28 claims against the LinMar Borrowers.

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

Dated: July 19, 2013

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Ted Fates            
TED FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

1 I am employed in the County of San Diego, State of California. I am over the  
2 age of eighteen (18) and am not a party to this action. My business address is  
3 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

4 On June 5, 2013, I served the within document(s) described as:

5 **➤ REPLY IN SUPPORT OF MOTION FOR AUTHORITY TO  
6 PURSUE CLAIMS AGAINST LINMAR BORROWERS**

7 on the interested parties in this action by:

8  **BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):**  
9 the foregoing document(s) will be served by the court via NEF and hyperlink  
10 to the document. On July 19, 2013, I checked the CM/ECF docket for this  
11 bankruptcy case or adversary proceeding and determined that the following  
12 person(s) are on the Electronic Mail Notice List to receive NEF transmission  
13 at the email addressed indicated below:

- 14 • Philip H. Dyson - phildysonlaw@gmail.com; jldossegger2@yahoo.com;  
15 phdtravel@yahoo.com
- 16 • Edward G. Fates - tfates@allenmatkins.com; bcrfilings@allenmatkins.com;  
17 jbatiste@allenmatkins.com
- 18 • Eric Hougen - eric@hougenlaw.com
- 19 • Sara D. Kalin - kalins@sec.gov
- 20 • Sam S Puathasnanon - puathasnanons@sec.gov; irwinma@sec.gov;  
21 cavallones@sec.gov
- 22 • Edward P. Swan, Jr - pswan@jonesday.com; dpippin@jonesday.com

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

25 Executed on July 19, 2013, at San Diego, California.

26  
27 Janine L. Batiste

28  
\_\_\_\_\_  
(Type or print name)

\_\_\_\_\_  
(Signature of Declarant)