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7 THOMAS C. HEBRANK

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 RESPONSE TO
OPPOSITIONS TO FEE
APPLICATIONS OF THE
RECEIVER AND HIS
PROFESSIONALS**

Date: May 10, 2013
Time: 1:30 p.m.
Ctrm.: 9
Judge: Hon. Gonzalo P. Curiel

**NO ORAL ARGUMENT UNLESS
REQUESTED BY COURT**

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1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),
3 and its subsidiaries and affiliates (collectively, "Receivership Entities"), hereby
4 replies to Defendants' response to the second interim fee applications of the Receiver
5 and his counsel ("Second Fee Applications").

6 I. INTRODUCTION

7 Defendants do not deny that the Receiver has properly performed the duties
8 assigned to him by the Court over the last eight months. Nevertheless, they continue
9 to argue that approving the requested fees and costs will somehow result in a
10 "windfall." This is nonsense. Among other things, the Receiver has preserved and
11 protected the assets of the Receivership Entities, substantially reduced Western's
12 operating expenses, investigated the Receivership Entities' assets and liabilities,
13 taken steps to collect on loans, sold assets to help make mortgage payments,
14 completed GP tax returns and issued K-1s to investors, completed a substantial
15 portion of the forensic accounting, and kept the Court and parties apprised of his
16 activities. Defendants have presented no basis on which to deny any portion of fees
17 or costs requested by the Receiver and Allen Matkins. Accordingly, the fee
18 applications should be approved.

19 II. THE REQUESTED FEES AND COSTS ARE REASONABLE

20 Defendants only address three of the five factors the Court considered in
21 granting the First Interim Fee Applications, subject to a holdback – (1) the fair value
22 of the time, labor and skill, (2) the complexity of tasks, and (3) the quality of the
23 work performed, including the results obtained and the benefit to the receivership
24 estate.

25 A. Fair Value of Time, Labor & Skill

26 In its Order Granting in Part First Interim Fee Applications ("First Fee
27 Order"), the Court determined that the hourly rates charged by the Receiver and
28 Allen Matkins "represent the fair value of the time, labor, and skill required."

1 Docket No. 169, p. 9. The Court also encouraged the Receiver and his professionals
2 to submit evidence regarding comparable rates in future fee applications. *Id.* at fn. 4.

3 In their Second Fee Applications, the Receiver and Allen Matkins included a
4 table listing the hourly rates of receivers and counsel in other Securities and
5 Exchange Commission ("Commission") enforcement actions in Southern California.
6 Defendants argue that these other cases are factually distinct from this case. This
7 misses the point. Every enforcement action brought by the Commission has unique
8 facts. The rates of the Receiver and Allen Matkins, however, are comparable to
9 those charged by receivers and their counsel in these other enforcement actions in
10 Southern California. Defendants cannot dispute that. This shows that the rates of the
11 Receiver and Allen Matkins represent the fair value of their time, labor and skill.
12 Accordingly, this factor supports approval of the Second Fee Applications.

13 **B. Complexity of Tasks**

14 Another factor the Court considered is the complexity of tasks. This factor
15 should be weighed in relation to the number of hours billed. A less complex task
16 should be completed in less time. Therefore, the proper question is whether the
17 number of hours billed is reasonable in relationship to the tasks completed. The
18 Receiver and Allen Matkins have provided detailed bills with their Second Fee
19 Applications. Defendants have not identified a single instance in which the amount
20 of time billed by the Receiver or Allen Matkins to complete a task is excessive. Nor
21 have defendants identified any work performed by the Receiver or Allen Matkins
22 that was not necessary and appropriate for the Receiver's performance of his duties
23 under the Court's orders.

24 Defendants argue only that each GP is a relatively simple entity, and therefore
25 the Receiver's work is not complex. No one disputes that each GP, in isolation, is a
26 relatively simple entity. However, the notes and other financial obligations between
27 and among the numerous GPs, their investors, Western, and the various third party
28 lenders are quite complex. Indeed, the Court asked the Receiver to help clarify these

1 financial affairs in its Order Re Receiver's Second Report and Proposal.
2 Docket No. 59, pp. 9-10.

3 More importantly, however, the Receiver's tasks go far beyond administering
4 the GPs. During the Second Application Period, the Receiver, with the assistance of
5 counsel, (a) investigated and protected the real properties and other assets of the
6 Receivership Entities, including Western, (b) operated Western and the GPs,
7 including handling issues relating to bank accounts, loan payments, operating
8 expenses, taxes and employees, (c) communicated with investors about the status of
9 the receivership and their investments, (d) provided a detailed report and proposal to
10 the Court, and (e) protected the Receivership Entities' interests in various pending
11 legal proceedings.

12 The tasks completed by the Receiver and his counsel are significantly complex
13 and the time spent to complete each task is reasonable. Therefore, this factor
14 supports approval of the Second Fee Applications.

15 **C. Quality of Work Performed**

16 Another factor the Court considered is the quality of the work performed,
17 including the results obtained and the benefit to the receivership estate. Defendants
18 do not address the quality of work performed or the results obtained by the Receiver,
19 but argue only that the Receiver's work has not benefitted the GPs. Defendants made
20 this same objection to the First Interim Fee Applications and the Court overruled it,
21 finding that "the Receiver and his professionals have maintained the status quo of the
22 receivership entities, which the Court finds has benefitted the receivership entities
23 during these turbulent initial phases of litigation." First Fee Order, p. 10. The Court
24 also noted that it expected the Receiver would soon be able to fully clarify the
25 financial affairs of the receivership entities.

26 The Receiver continued to maintain the status quo of the Receivership Entities
27 during the Second Application Period. In addition, the Receiver's Third Interim
28 Report (Docket No. 80) and Forensic Accounting Report: Part One (Docket No. 182)

1 provide substantial detail and clarification of the financial affairs of the Receivership
2 Entities, the financial obligations between and among Western, the GPs, their
3 investors, and the various third party lenders, and the assets and liabilities of each
4 entity. Further information regarding the value of the GP properties and loans
5 secured by the GP properties will be provided in the next 30 days once all appraisals
6 of the GP properties have been received.

7 The benefit of the Receiver's work on the GPs is further demonstrated by the
8 fact that all loans secured by GP properties have been kept current since the
9 Receiver's appointment without using any cash in GP bank accounts. Prior to the
10 receivership, Western's only source of income was funds raised by investors. This
11 income was insufficient to cover payments on loans secured by GP properties and
12 Western's operating expenses. Keeping the loans current and paying Western's
13 operating expenses required infusions of capital from Mr. Schooler. Mr. Schooler
14 transferred more than \$1 million to Western in 2012.

15 Defendants now argue that the Receiver's fees should be denied because
16 Western continues to be short on cash. However, Mr. Schooler is no longer making
17 cash infusions and all sales of GP ownership units ceased upon the Receiver's
18 appointment. Nevertheless, the Receiver has been able to timely make all payments
19 on loans secured by GP properties over the last eight months without using any funds
20 in the GPs accounts to do so. The Receiver has been able to accomplish this by
21 substantially reducing Western's expenses and selling automobiles and gold coins
22 owned by Western. This is a substantial benefit to the GPs.

23 Finally, the Receiver was able to keep in place the key personnel necessary to
24 complete the 2012 tax returns for all GPs and issue all K-1s to investors in time for
25 them to file their personal tax returns. This is another substantial benefit to investors.
26 Accordingly, this factor supports approval of the Second Fee Applications.

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1 GPs. By selling Western assets, collecting on loans Western made to LinMar entities
 2 (totaling more than \$1.26 million) and other entities, and pursuing other potential
 3 sources of cash, this may be possible. However, to the extent it is not, the Receiver
 4 should be authorized to reduce Western's equity in the GPs, as he was in the First Fee
 5 Order. Although not all GPs currently have cash in their accounts, the Receiver will
 6 ensure that the reduction in Western's equity interests is spread across the GPs as
 7 evenly as possible such that all GPs are treated as fairly as possible. The specific
 8 reduction in Western's equity in each GP will be stated in the Receiver's reports to
 9 the Court, which are posted on the Receiver's website. Investors can review the
 10 reports and object if they believe an adjustment or reallocation should be made.¹

11 Moreover, although Western has very little cash at the moment, it is very
 12 possible that in the future Western's liquid assets, after reserving sufficient cash to
 13 make payments on loans secured by GP properties, will be sufficient to cover
 14 administrative expenses of the receivership.

15 IV. CONCLUSION

16 WHEREFORE, the Receiver requests that the Second Fee Applications be
 17 approved.

18
 19 Dated: May 2, 2013

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

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 21 By: /s/ Ted Fates

TED FATES
 Attorneys for Receiver
 THOMAS C. HEBRANK

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 25 ¹ Defendants argue that "the GP investor-partners have yet to be given an
 26 opportunity to be heard by this Court with regard to even the existence of the
 27 Receivership" This statement is difficult to comprehend. This case has been
 28 pending for almost eight months. Investors have been sent multiple letters from
 the Receiver, were mailed notice of the First Fee Applications, and can access all
 pleadings and orders relevant to the receivership on the Receiver's website.
 Indeed, some investors filed objections to the First Interim Fee Applications.
 Their arguments were considered by the Court in its First Fee Order (pp. 3-5).

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 May 2, 2013, I served the within document(s) described as:

5 **➤ RECEIVER'S RESPONSE TO OPPOSITIONS TO FEE APPLICATIONS OF THE RECEIVER AND HIS PROFESSIONALS**

6 on the interested parties in this action by:

7 **BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):** the
8 foregoing document(s) will be served by the court via NEF and hyperlink to the
9 document. On May 2, 2013, I checked the CM/ECF docket for this bankruptcy
10 case or adversary proceeding and determined that the following person(s) are on
11 the Electronic Mail Notice List to receive NEF transmission at the email
12 addressed indicated below:

- 13 • Philip H. Dyson - phildysonlaw@gmail.com; jldossegger2@yahoo.com;
14 phdtravel@yahoo.com
- 15 • Edward G. Fates - tfates@allenmatkins.com; bcrfilings@allenmatkins.com;
16 jbatiste@allenmatkins.com
- 17 • Eric Hougen - eric@hougenlaw.com
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20 cavallones@sec.gov

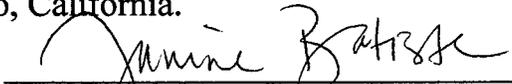
21 **BY MAIL:** I placed a true copy of the document in a sealed envelope or
22 package addressed as indicated on the attached Service List on the above-
23 mentioned date in San Diego, California for collection and mailing pursuant to
24 the firm's ordinary business practice. I am familiar with the firm's practice of
25 collection and processing correspondence for mailing. Under that practice it
26 would be deposited with the U.S. Postal Service on that same day in the ordinary
27 course of business. I am aware that on motion of party served, service is
28 presumed invalid if postal cancellation date or postage meter date is more than
one day after date of deposit for mailing in affidavit.

BY OVERNIGHT DELIVERY: I deposited in a box or other facility regularly
maintained by an overnight courier service, or delivered to a courier or driver
authorized by said express service carrier to receive documents, a true copy of
the foregoing document(s) in sealed envelopes or packages designated by the
express service carrier, addressed as indicated in the attached service list on the
above-mentioned date, with fees for overnight delivery paid or provided for.

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

Executed on May 2, 2013, at San Diego, California.

Janine L. Batiste
(Type or print name)


(Signature of Declarant)