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6 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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8 SECURITIES AND EXCHANGE
9 COMMISSION,

Plaintiff,

10 v.

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

Defendants.
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Case No.: 3:12-cv-2164-GPC-JMA

**(1) GRANTING RECEIVER'S
FOURTEENTH INTERIM FEE
APPLICATION;**

[ECF No. 1327]

**(2) GRANTING ALLEN MATKINS'
FOURTEENTH INTERIM FEE
APPLICATION;**

[ECF No. 1328]

**(3) GRANTING RECEIVER'S
FIFTEENTH INTERIM FEE
APPLICATION;**

[ECF No. 1329]

**(4) GRANTING ALLEN MATKINS'
FIFTEENTH INTERIM FEE
APPLICATION;**

[ECF No. 1330]

**(5) GRANTING DUFFY,
KRUSPODIN & COMPANY'S
SIXTH INTERIM FEE
APPLICATION;**

1 [ECF No. 1331]

2 (6) APPROVING RECEIVER'S
3 REVISED FOURTEENTH INTERIM
4 REPORT IN PART;

5 [ECF No. 1315]

6 (7) APPROVING RECEIVER'S
7 FIFTEENTH AND SIXTEENTH
8 INTERIM REPORTS IN PART;

9 [ECF No. 1319, 1353]

10 (8) VACATING HEARING DATES
11

12 Before the Court are five fee applications by the court-appointed receiver Thomas
13 C. Hebrank (the "Receiver"); counsel to receiver Allen Matkins Leck Gamble Mallory &
14 Natsis LLP ("Allen Matkins"); and tax accountants for receiver Duffy, Kruspodin &
15 Company, LLP ("Duffy Kruspodin"):

- 16 1. Fourteenth Interim Application for Approval and Payment of Fees and Costs
17 to Thomas C. Hebrank, as Receiver ("Receiver's Fourteenth Interim
18 Fee Application"), ECF No. 1327;
- 19 2. Fourteenth Interim Fee Application of Allen Matkins Leck Gamble Mallory
20 & Natsis LLP, Counsel to Receiver ("Allen Matkins's Fourteenth
21 Interim Fee Application"), ECF No. 1328.
- 22 3. Fifteenth Interim Application for Approval and Payment of Fees and Costs
23 to Thomas C. Hebrank, as Receiver ("Receiver's Fifteenth Interim Fee
24 Application"), ECF No. 1329
- 25 4. Fifteenth Interim Fee Application of Allen Matkins Leck Gamble Mallory &
26 Natsis LLP, Counsel to Receiver, ("Allen Matkins's Fifteenth Interim
27 Fee Application"), ECF No. 1330.
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1 In the Fourteenth Interim Fee Application, Thomas C. Hebrank, the Receiver,
 2 asserts that he incurred \$76,124.25 in fees and \$655.49 in costs for the application period
 3 covering October 1, 2015 through December 31, 2015 (“Fourteenth Application Period”).
 4 ECF No. 1327 at 2. The breakdown of the fees amassed is as follows:

5 Category	Total
6 General Receivership	\$6,583.50
7 Asset Investigation & Recovery	\$0.00
8 Reporting	\$7,836.75
9 Operations & Asset Sales	\$59,278.50
10 Claims & Distributions	\$2,326.50
11 Legal Matters & Pending Litigation	\$99.00
12 Total	\$76,124.25

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 16 *Id.* at 3–5. Receiver now seeks payment of 80% of fees incurred, amounting to
 17 \$60,899.40, and 100% of the costs, which account for postage, website maintenance, and
 18 copies. *Id.* at 2 & Exhibit C.

19 In the Fifteenth Interim Fee Application, the Receiver asserts that he incurred
 20 \$153,785.25³ in fees and \$2,048.90 in costs for the application period covering January 1,
 21 2016 through March 31, 2016 (“Fifteenth Application Period”). ECF No. 1329 at 2. The
 22 breakdown of the fees amassed is as follows:

23 Category	Total
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26 ³ In the Fifteenth Interim Fee Application, Receiver states that he incurred \$153,893.25 in fees. (ECF No. 1329 at
 27 2). This number is slightly inconsistent with the itemized list of fees provided by Receiver and as indicated in the
 28 corresponding table reproduced here. *Id.* at 3–6. Accordingly, the Court will adopt the sum total of the itemized
 fees as the true representation of the costs incurred by Receiver over the applicable period.

General Receivership	\$10,485.00
Asset Investigation & Recovery	None
Reporting	\$805.50
Operations & Asset Sales	\$101,367.00
Claims & Distributions	\$19,041.75
Legal Matters & Pending Litigation	\$22,086.00
Total	\$153,785.25

Id. at 3–6. Receiver now seeks payment of 80% of fees incurred, amounting to \$123,114.60, and 100% of the costs, which account for travel, postage, website maintenance, and copies. *Id.* at 2 & Exhibit C.

B. Allen Matkins

In the Fourteenth Interim Fee Application, Allen Matkins, counsel for receiver, asserts that it incurred \$19,852.20 in fees and \$379.33 in costs for the application period covering October 1, 2015⁴ through December 31, 2015, same as the Fourteenth Application Period identified previously. ECF No. 1328 at 2. The breakdown of the fees amassed is as follows:

Category	Total
Reporting	\$3,159.00

⁴ In the Fourteenth Interim Fee Application Allen Matkins indicates that the applicable fee period runs from September 1, 2016 to December 31, 2016. (ECF No. 1328 at 2). However, as evident from Allen Matkins’ Thirteenth Interim Fee Application (ECF No. 1154 at 2) and this Court’s order granting that application (ECF No. 1167 at 2) any fees incurred from September 1, 2015 through September 30, 2015 were already accounted for by the Thirteenth Interim Fee Application. Because none of the time entries provided by Allen Matkins in its Fourteenth Interim Fee Application fall within the September 1, 2015 to September 31, 2015 period, the Court is assured that there has been no double counting of fees in this application period. Accordingly, the Court has corrected this error and will process this application for the appropriate period of October 1, 2015 through December 31, 2015.

Operations & Asset Sales	\$13,024.80
Claims & Distributions	\$1,944.00
Third Party Recoveries	\$1,432.80
Employment/Fees	\$291.60
Total	\$19,852.20

Id. Allen Matkins now seeks payment of 80% of the fees incurred, amounting to \$15,881.76, and 100% of the costs, accounting for document searches, filing fees, and service of process. *Id.* at 2 & Exhibit A.

In the Fifteenth Interim Fee Application, Allen Matkins, counsel for receiver, asserts that it incurred \$100,615.05 in fees and \$63.40 in costs for the application period covering January 1, 2016 through March 31, 2016, same as the Fifteenth Application Period identified previously. ECF No. 1330 at 2. The breakdown of the fees amassed is as follows:

Category	Total
General Receivership	\$936.90
Reporting	\$2,089.80
Operations & Asset Sales	\$31,084.65
Claims & Distributions	\$65,726.10
Third Party Recoveries	\$583.20
Employment/Fees	\$194.40
Total	\$100,615.05

1 *Id.* Allen Matkins now seeks payment of 80% of the fees incurred, amounting to
2 \$80,492.04, and 100% of the costs, accounting for document searches and service of
3 process. *Id.* at 2 & Exhibit A.

4 **C. Duffy Kruspodin**

5 In the Sixth Interim Fee Application, Duffy Kruspodin, tax accountants for
6 Receiver, asserts that it incurred \$135,207.00 in fees and \$15,108.77 in costs for work in
7 preparing the 2015 federal and state tax returns for the General Partnerships (“GPs”) and
8 the 2014 federal and state tax returns for Western and its subsidiaries, including Real
9 Asset Locators, Inc. ECF No. 1331 at 2. The breakdown of the fees amassed is as
10 follows:

11 Category	11 Total
12 General Engagement Services	12 \$15,216.75
13 IT Consulting	13 \$4,376.25
14 Preparation of 2015 Income Tax Returns for GPs	14 \$102,610.35
15 Preparation of 2014 Income Tax Returns for First 16 Financial, Real Asset Locators, and related entities	15 \$13,003.65
17 Total	17 \$135,207.00

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20 *Id.* at 3–6. Duffy Kruspodin now seeks payment for all fees and costs incurred in
21 carrying out these tasks. *Id.* at 2. The costs are itemized in Exhibit D of the application
22 and account for tax software, electronic filing, envelopes, and postage. *Id.* at 2 & Exhibit
23 D.

24 **LEGAL STANDARD**

25 “[I]f a receiver reasonably and diligently discharges his duties, he is entitled to fair
26 compensation for his efforts.” *Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560, 1577
27 (11th Cir. 1992). “The court appointing [a] receiver has full power to fix the
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1 compensation of such receiver and the compensation of the receiver's attorney or
2 attorneys." *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934).
3 A receiver's fees must be reasonable. *See In re San Vicente Med. Partners Ltd.*, 962 F.2d
4 1402, 1409 (9th Cir. 1992).

5 As set forth in the Court's prior fee orders, *see, e.g.*, ECF No. 1167, the Court will
6 assess the reasonableness of the requested fees using the factors enumerated in *Sec. &*
7 *Exch. Comm'n v. Fifth Avenue Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)
8 and *In re Alpha Telcom, Inc.*, 2006 WL 3085616, at *2-3 (D. Or. Oct. 27, 2006). Those
9 factors include: (1) the complexity of the receiver's tasks; (2) the fair value of the
10 receiver's time, labor, and skill measured by conservative business standards; (3) the
11 quality of the work performed, including the results obtained and the benefit to the
12 receivership estate; (4) the burden the receivership estate may safely be able to bear; and
13 (5) the Commission's opposition or acquiescence. *See* 364 F. Supp. at 1222; 2006 WL
14 3085616, at *2-3.

15 DISCUSSION

16 **Interim Fee Applications**

17 **A. Complexity of Tasks**

18 **1. Receiver**

19 The Court finds that the tasks performed by the Receiver during the Fourteenth and
20 Fifteenth Application Periods were moderately complex. The Receiver undertook the
21 following tasks during both periods:

- 22 - participating in meetings and conferences with the SEC's legal counsel;
- 23 - handling general administrative issues, including reviewing mail, email, and
24 other correspondence directed at the Receivership Entities;
- 25 - administering the bank accounts of the Receivership Entities;
- 26 - reviewing and approving expenditures;

- 1 - maintaining and updating the Receiver's website with case information and
- 2 documents;
- 3 - responding to investor inquiries and misinformation put out by certain
- 4 investors;
- 5 - preparing Receiver's fee interim reports;
- 6 - managing and overseeing the GPs' operations and real property;
- 7 - managing and overseeing Western's operations;
- 8 - performing accounting functions of the Receivership Entities, including paying
- 9 expenses, clearing checks, and ACH entries;
- 10 - managing and overseeing tax reporting for Receivership Entities;
- 11 - managing and overseeing GP operational bills, loan payments, and cash
- 12 management;
- 13 - analysis relating to purchase offers received;
- 14 - closing property sales.

15 The Receiver completed the following additional tasks during the Fourteenth Application
16 Period:

- 17 - preparing the Court Ordered Information Packets for the GPs per the Court's
- 18 May 12, 2015 Order;
- 19 - obtaining listing agreements and marketing of properties for sale with brokers;
- 20 - issuing and tracking capital calls for GPs without sufficient cash;
- 21 - responding to and noticing investors on multiple purchase offers and letters of
- 22 intent;
- 23 - conducting investor votes, negotiations, and acceptance of purchase offers;
- 24 - participating in meetings and communications relating to the settlement of the
- 25 LinMar IV judgment.

26 Finally, the Receiver completed the following additional tasks during the Fifteenth
27 Application Period:

- 1 - preparing *Ex Parte* Application for Order Confirming Sale of Jamul Valley
- 2 Property;
- 3 - preparing Recommendation re: Engagement of Real Estate Brokers;
- 4 - soliciting, reviewing, and negotiating listing agreements with brokers;
- 5 - consulting with brokers regarding marketing properties for sale;
- 6 - negotiations and documentation of purchase and sale agreements;
- 7 - steps associated with the sale of Jamul Valley, Reno Vista/Reno View, and
- 8 Silver Springs So.;
- 9 - filing Receiver's Motion for (a) Authority to Conduct Orderly Sale of GP
- 10 Properties; (b) Approval Plan of Distributing Receivership Assets; (c) Approval
- 11 of Procedures for the Administration of Investor Claims;
- 12 - responding to informal requests for documents and information from investors'
- 13 attorneys.

14 ECF No. 1327 at 3–5; ECF No. 1329 at 3–6.

15 **2. Allen Matkins**

16 The Court finds that the tasks performed by Allen Matkins, counsel for Receiver,
17 during the Fourteenth Application Period were somewhat complex. Counsel undertook
18 the following tasks during this period:

- 19 - assisting Receiver with ongoing operations of Western and the GPs; addressing
- 20 letters of intent received for GP properties; preparation of the information
- 21 packets for GPs pursuant to the Court's May 12, 2015 order; response to
- 22 investor's letter concerning termination of a property tax consultant; follow-up
- 23 regarding the capital calls sent to tenants; recommendation to engage brokers;
- 24 - managing sale of the Jamul Valley property;
- 25 - assisting Receiver in preparing Thirteenth Interim Report;
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- 1 - advising Receiver regarding correspondence with investors, creditors, and their
- 2 counsel; issues raised by certain investors with regards to transferring their GP
- 3 units;
- 4 - conducting analysis of issues with respect to the proposed distribution plan and
- 5 methodology of funds;
- 6 - assisting Receiver with the collection and satisfaction of the LinMar IV
- 7 judgment pursuant to the Court-approved settlement.

8 ECF No. 1328 at 3–6.

9 The Court finds that the tasks performed by Allen Matkins during the Fifteenth
10 Application Period were moderately complex. Allen Matkins undertook the following
11 tasks during this period:

- 12 - assisting Receiver with legal issues relating to the ongoing operations of
- 13 Western and the GPs, including addressing water rights issues to the Minden
- 14 property; with the closing of the Jamul Valley property; and seeking authority
- 15 to engage real estate brokers for certain GP properties;
- 16 - addressing letters of intent received for GP properties;
- 17 - responding to requests for information by the SEC and the IRS relating to
- 18 Defendants; informal requests for documents and information from investors;
- 19 - assisting Receiver in preparing the Fourteenth Interim Report;
- 20 - seeking confirmation of the sale of the Jamul Valley Property;
- 21 - analyzing issues and formulating a plan for the distribution of receivership
- 22 assets;
- 23 - assisting Receiver in preparing motions regarding the Orderly Sale of GP
- 24 Properties; Plan for Distributing Receivership Assets; Procedures for the
- 25 Administration of Investor Claims;
- 26 - reviewing and responding to communications from investors, creditors, and
- 27 their counsel with respect to the receivership;

- 1 - assisting Receiver with the collection and satisfaction of the LinMar IV
2 judgment pursuant to the Court-approved settlement.

3 ECF No. 1330 at 3–7.

4 **3. Duffy Kruspodin**

5 The Court finds that the tasks performed by Duffy Kruspodin, tax accountants for
6 Receiver, during the Sixth Application Period were moderately complex. Tax
7 Accountants to Receiver undertook the following tasks during this period:

- 8 - engaging in communication and meetings with the Receiver with respect to the
9 receivership;
10 - updating the accounting documents necessary to prepare the tax returns;
11 - providing services related to information technology to assist with the tax
12 preparation process;
13 - preparing the 2015 income tax returns for GPs and 2014 income tax returns for
14 Western and its subsidiaries, including Real Asset Locators.

15 ECF No. 1331 at 3–7.

16 **B. Fair Value of Time, Labor, and Skill**

17 The Receiver billed his time at \$247.50 per hour and the time of those working for
18 him at \$180.00 per hour during both application periods. ECF No. 1327 at 3; ECF No.
19 1329 at 2–3. Allen Matkins billed its time at \$306.00 – \$670.50 per hour, with the
20 overwhelming majority of work being billed at \$486.00 per hour. ECF No. 1330, Exhibit
21 A at 26; ECF No. 1328, Exhibit A at 12–26. Duffy Kruspodin billed its time from \$65 –
22 \$375 per hour, with a blended billing rate of \$159.10. ECF No. 1331 at 9. These rates
23 reflect a ten percent discount from the Receiver’s, Allen Matkins’, and Duffy
24 Kruspodin’s ordinary rates. ECF No. 1327 at 2; ECF No. 1329 at 2; ECF No. 1328 at 2;
25 ECF No. 1330 at 2; ECF No. 1331 at 2.

26 The Court continues to find, as it has in previous fee orders, that the rates charged
27 by the Receiver, Allen Matkins, and Duffy Kruspodin are comparable to rates charged in
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1 this geographic area and therefore represent a fair value of the time, labor, and skill
2 provided.

3 **C. Quality of Work Performed**

4 The Court finds that the quality of work performed by the Receiver, Allen Matkins,
5 and Duffy Kruspodin to be above average. As the Court mentioned in its January 14,
6 2016 order granting the Thirteenth Interim Fee Application (ECF No. 1167), the Receiver
7 and his counsel have kept the Receivership Entities afloat despite the fact that Western's
8 main source of income — that is, selling GP interests — had ceased prior to this
9 litigation. The Receiver has, and continues to, competently operate the Receivership as
10 evidenced by Receiver's Fourteenth, Fifteenth, and Sixteenth Status Reports (ECF No.
11 1315, 1319, 1353), while at the same time marshalling assets — through capital calls,
12 post-judgment collection, and sale of GPs — to support its continued financial integrity.
13 These actions benefit all investors. The Receiver and his counsel have, moreover,
14 complied with the Court's orders and have made every effort to protect investors'
15 interests in the GP properties during the pendency of this litigation. The Court likewise
16 finds the quality of Duffy Kruspodin's work to be satisfactory. Duffy Kruspodin
17 prepared all 98 of the GP tax returns for 2015 and 2014 in a timely manner, fulfilling the
18 Receivership's responsibility to the federal and state governments and to investors. ECF
19 No. 1331 at 10–11.

20 **D. Receivership Estate's Ability to Bear Burden of Fees**

21 Since Receiver last filed an interim fee application, the Court has approved
22 Receiver's Modified Orderly Sale Process (ECF No. 1359) and the use of the One Pot
23 approach to distribute receivership assets (ECF No. 1304 at 31). These actions were
24 taken for the dual purpose of increasing the value of the receivership estate by selling GP
25 properties and lowering administrative costs. ECF No. 1304 at 30. On August 30, 2016
26 the Court approved the sale of the Jamul Valley Property (ECF No. 1361 at 2), the Reno
27 Vista and Reno View Properties (ECF No. 1360 at 2), and the property known as Silver
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1 Springs So. (ECF No. 1362 at 2). Further, pursuant to the One Pot approach, Receiver
2 has since pooled the assets of the Receivership Entities thereby “creating a common pool
3 of receivership estate cash from which mortgages, property taxes, and other operating
4 expenses have been and will continue to be paid.” ECF No. 1327 at 7. Given the
5 increase in the Receivership’s cash balance as evidenced by the sale of the above-
6 mentioned properties and the decrease in administrative costs as evidenced by the
7 implementation of a common pool of receivership estate cash, the Court finds that the
8 receivership estate has sufficient ability to bear the instant fee requests.

9 **E. Commission’s Opposition or Acquiescence**

10 Receiver indicates that the SEC does not oppose any of the proposed fees or costs
11 submitted by Receiver, Allen Matkins, or Duffy Kruspodin. ECF No. 1327 at 7; ECF
12 No. 1328 at 9; ECF No. 1329 at 8; ECF No. 1330 at 10; ECF No. 1331 at 10.

13 **Interim Reports**

14 **A. Compliance with Standardized Fund Accounting Requirements (SFAR)**

15 In its May 25 Order (ECF No. 1304), the Court directed the Receiver to submit all
16 future interim reports in compliance with the SFAR. (ECF No. 1304). In both of the fee
17 applications Receiver submitted (ECF Nos. 1327 & 1329), as well as the fee reports (ECF
18 No. 1304, 1319, 1353), Receiver included an Exhibit titled “Standardized Fund
19 Accounting Report.” The SFAR submitted with the Receiver’s Fourteenth Interim
20 Report and Fourteenth Interim Fee Application covers the period from 9/6/2012 to
21 12/31/15 (i.e., from the beginning of the Receivership to the end), rather than the
22 Fourteenth Application Period. To the extent that the SFAR does not coincide with the
23 Fourteenth Application Period, the Court DIRECTS Receiver to withdraw and resubmit
24 the SFAR report to reflect the accounting for the correct reporting period.

25 The Court is further dissatisfied by the fact that Receiver has failed to describe the
26 source of income listed in Line 8 “Miscellaneous – Other*” of the SFAR reports
27 submitted with the Fourteenth, Fifteenth, and Sixteenth Interim Reports. The billing
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1 instructions for the SFAR indicate that Line 8 includes “Amounts received from, an
2 identified payor.” Billing Instructions for Receivers in Civil Actions Commended by the
3 U.S. Securities and Exchanges Commission (“SEC Billing Instructions”),
4 <https://www.sec.gov/oiea/Article/billinginstructions.pdf>. Moving forward, the Court
5 DIRECTS the Receiver to make clear, by reference to other exhibits or otherwise, the
6 source of income in that category.

7 CONCLUSION

8 Considering the above five factors taken together, and considering that “[i]nterim
9 fees are generally allowed at less than the full amount,” *Alpha Telcom*, 2006 WL
10 3085616, at *2–3, the Court awards fees and costs as set forth in the following table:

11 Applicant	12 Fees Allowed	13 % of Fees 14 Incurred ⁵	15 Costs Allowed	16 % of Costs 17 Requested
18 Receiver	\$184,014.00	80	\$2,704.39	100
19 Allen Matkins	\$96,373.80	80	\$442.73	100
20 Duffy Kruspodin	\$135,207.00	100	\$15,108.77	100

21 ORDER

22 After a review of the parties’ submissions, the record in this matter, and the
23 applicable law, and for the foregoing reasons, **IT IS HEREBY ORDERED** that:

- 24 1. The Receiver’s Fourteenth Interim Fee Application, ECF No. 1327, is
25 **GRANTED;**
- 26 2. The Receiver’s Fifteenth Interim Fee Application, ECF No. 1329, is **GRANTED;**
- 27 3. Allen Matkins’ Fourteenth Interim Fee Application, ECF No. 1328, is
28 **GRANTED;**

⁵ The Court includes the percentage of fees *incurred* rather than a percentage of the fees requested, given that the Receiver and Allen Matkins request only a percentage of their actual fees. In addition, Duffy Kruspodin’s billing rate already incorporated a discount of 10%. ECF No. 1331 at 2.

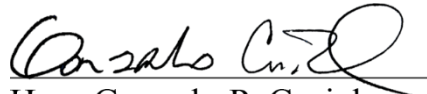
- 1 4. Allen Matkins' Fifteenth Interim Fee Application, ECF No. 1330, is **GRANTED**;
- 2 5. Duffy Kruspodin's Sixth Interim Fee Application, ECF No. 1331, is **GRANTED**;
- 3 6. The Receiver's Revised Fourteenth Interim Report, ECF No. 1315, is
- 4 **APPROVED IN PART**. The Court **DIRECTS** the Receiver to withdraw, within
- 5 seven days of this order, Receiver's Revised Fourteenth Interim Report and submit
- 6 a second revised interim report reflecting that the SFAR should address the
- 7 Fourteenth Application Period, October 1, 2015 to December 31, 2015. The Court
- 8 also **DIRECTS** the Receiver to clearly indicate, by reference or otherwise, the
- 9 source of accounting in Line 8 "Miscellaneous – Other*" of the SFAR attached to
- 10 the Revised Fourteenth Interim Report within seven days of this order.
- 11 7. The Receiver's Fifteenth Interim Report, ECF No. 1319, and Sixteenth Interim
- 12 Report, ECF No. 1353, are **APPROVED IN PART**. The Court **DIRECTS** the
- 13 Receiver to withdraw and resubmit Receiver's Fifteenth and Sixteenth Interim
- 14 Reports and submit revised SFAR reports indicating, by reference or otherwise, the
- 15 source of accounting in Line 8 "Miscellaneous – Other*" of the respective SFARs
- 16 attached to those reports within seven days of this order.
- 17 8. The hearing set for **September 16, 2016**, is **VACATED**.

18 **IT IS SO ORDERED.**

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21 Dated: September 14, 2016

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23 Hon. Gonzalo P. Curiel
24 United States District Judge

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