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9 Attorneys for David A. Gill, Receiver

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11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA**

13

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 vs.

17 WESTMOORE MANAGEMENT,
18 LLC, et al.,

19 Defendants.

20

Case No. 8:10-cv-00849-AG (MLGx)

**RECEIVER’S NOTICE OF INTENT
TO COMPROMISE LITIGATION
WITH MATTHEW R. JENNINGS**

*[Per order entered December 5, 2011,
no hearing required unless an objection
is filed]*

21 **COMES NOW** David A. Gill, the permanent receiver (the “Receiver”) for
22 Westmoore Management, LLC, Westmoore Investment, L.P., Westmoore Capital
23 Management, Inc., Westmoore Capital, LLC, and their subsidiaries and entities
24 otherwise majority-owned, managed or controlled, directly or indirectly, by any of
25 them (collectively “Westmoore” or the “Westmoore Entities”) and hereby provides
26 notice pursuant to the Court’s *Order Granting Receiver’s Motion for Order Limiting*
27 *Meeting and Notice Requirements in Local Rules 7-3 and 66-7, Establishing*
28 *Procedures Re: the Sale of Real and Personal Property and Approval of Settlements*

1 (the “Procedural Order”) that the Receiver has reached a settlement and compromise
2 of any and all claims between the Receiver and Matthew R. Jennings (“Jennings”).

3 In support of the proposed compromise, the Receiver reports as follows:

4 1. On June 15, 2010, the Securities and Exchange Commission (the
5 “SEC”) filed its *Complaint for Violation of the Federal Securities Laws* against four
6 Westmoore Entities and Jennings.

7 2. On August 12, 2011, the Court entered its judgment of permanent
8 injunction, appointment of a receiver, and related relief against the four Westmoore
9 defendants. Pursuant to the judgment, the Receiver was appointed as the permanent
10 receiver for the Westmoore Entities.

11 3. Also on August 12, 2011, the Court entered its *Final Judgment as to*
12 *Defendant Matthew R. Jennings* pursuant to which, among other things, Jennings
13 was required to pay the sum of \$492,265.06 to the Receiver. The balance owed by
14 Jennings is approximately \$250,000.

15 4. In late 2012 and early 2013, the Receiver filed four separate lawsuits to
16 avoid and recover transfers that had been made by the Westmoore Entities to former
17 employees, borrowers, investors and attorneys. In *Gill v. Jennings* (case no. 8:12-cv-
18 02235-AG), the Receiver filed a complaint against former principals and employees,
19 titled *Complaint for: (1) Fraudulent Transfer, (2) Unjust Enrichment, (3) Breach of*
20 *Fiduciary Duty, (4) Aiding and Abetting/Participation in Breach of Fiduciary Duty,*
21 *and (5) Suit on a Note/Breach of Contract.*

22 5. At this juncture, the Receiver has settled with and/or dismissed claims
23 against all of the defendants in *Gill v. Jennings* other than Matthew Jennings. Trial
24 in *Gill v. Jennings* is currently scheduled to commence in July 2015.

25 6. Subject to Court approval in accordance with the Procedural Order, the
26 Receiver and Jennings have entered into a *Settlement and Release Agreement* (the
27 “Agreement”). Without limiting the terms set forth in the Agreement, the Agreement
28 may be summarized as follows:

1 (a) The settlement is subject to the approval of the Court pursuant to
2 the procedures set forth in the Procedural Order.

3 (b) Jennings agrees to cooperate with the Receiver in the Receiver's
4 asset recovery and litigation efforts.¹

5 (c) Jennings will agree to entry of a judgment against him personally
6 and in favor of the Receiver (in his capacity as permanent receiver of the Westmoore
7 Entities) for the sum of \$5 million.

8 (d) Jennings will make regular payments to the Receiver, with the
9 amount of such payments based on Jennings' gross income. Jennings will not be
10 required to make payments to the Receiver if his gross annual income is \$50,000 or
11 less; he will pay 10% of any gross annual income over \$50,000 and up to \$100,000;
12 he will pay 20% of any gross annual income over \$100,000 and up to \$200,000; and
13 he will pay 30% of any gross annual income over \$200,000.

14 (e) Until the \$5 million judgment is paid in full, Jennings will
15 provide the Receiver quarterly reports identifying the amount of his and his spouse's
16 gross income, and copies of his (and his spouse's, if married and filing separately)
17 federal and state income tax returns.

18 (f) A failure by Jennings to make the payments, or to provide the
19 required reports and other documents, will constitute an "Event of Default" under the
20 Agreement.

21 (g) No interest will accrue on the judgment as long as Jennings is not
22 in default. However, if there is an Event of Default, the Receiver will be permitted to
23

24 ¹ Jennings has provided some cooperation to the Receiver since general terms of
25 an initial settlement were reached in late 2013. Among other things, Jennings put the
26 Receiver's attorneys in contact with certain former employees who could, if needed,
27 assist the Receiver in developing factual allegations against recipients of fraudulent
28 transfers, and testify as a witness at trial. Jennings provided the Receiver's attorneys
with some basic information helpful to the prosecution of the Receiver's claims. He
also assisted the Receiver in settling with certain former employees in exchange for
their cooperation.

1 recover the unpaid amount of the judgment, plus interest at the state judgment rate of
2 10% per annum.

3 (h) The Receiver will be entitled to record an abstract of judgment
4 and a UCC judgment lien (JL-1) in order to perfect judgment liens, but unless there
5 has been an uncured Event of Default the Receiver will not be permitted to enforce
6 and collect on the judgment through execution, writs and processes. If there is an
7 uncured Event of Default, the Receiver will be permitted to enforce the judgment.

8 (i) If the Receiver discovers that Jennings has been diverting income
9 to his spouse (or any other party), the Receiver retains the right to sue to recover such
10 income as fraudulent transfers.

11 (j) Except with regard to obligations created under the Agreement, as
12 of the Effective Date of the Agreement, the Receiver and Jennings will release each
13 other of any and all known and unknown claims.

14 (k) Nothing in the Agreement or the agreed-upon \$5 million
15 judgment is intended to be or shall be construed to constitute a waiver, release,
16 discharge or settlement of the SEC's outstanding judgment against Jennings.

17 7. In arriving at this settlement, the Receiver took into account a variety of
18 factors typically considered by equity receivers and bankruptcy trustees, including
19 but not limited to the additional legal fees and costs that would be incurred to litigate
20 the matter, the complexity of the litigation involved, the probability of success on the
21 merits, and the difficulties that would be encountered in collection.

22 8. In that regard, proceeding with trial against Jennings will be time
23 consuming and expensive. Witnesses at the trial would include the Receiver, his
24 forensic analyst, and potentially his general counsel, all of whom would need to be
25 compensated for significant time preparing for and appearing at the trial. Also, if the
26 matter goes to trial, the percentage fee owed to the Receiver's litigation counsel will
27 increase, and the Receivership Estate will incur additional costs associated with the
28 calling of witnesses and travel to/from trial.

1 9. Litigation against Jennings will be complex. The Receiver's primary
2 claim against Jennings is for breach of fiduciary duty, for allegedly causing and/or
3 directing the Westmoore Entities to commit fraud and illegal acts and engage in a
4 Ponzi scheme. This will require the Receiver to call multiple witnesses and submit
5 substantial financial documentation to the Court (and a jury, if the case is tried before
6 a jury). All litigation is inherently uncertain, and also it is uncertain that the Receiver
7 will succeed in establishing that Jennings personally should be liable for over \$100
8 million (or such other amount proven at trial) of transfers made by Westmoore to
9 investors during the years prior to Westmoore's closure.

10 10. Also, it appears that collection of any judgment against Jennings is
11 uncertain. Jennings filed for chapter 13 bankruptcy in January 2013, shortly after
12 *Gill v. Jennings* was filed. According to his bankruptcy schedules, his only valuable
13 asset was his Yorba Linda residence, which he valued at \$1.5 million. However, also
14 according to his schedules, the property was encumbered by various liens, including
15 liens in favor of Chase (owed \$2.2 million), GreenPoint Mortgage Funding (owed
16 \$200,000), and Wells Fargo (owed about \$64,000). Later in the case, Deutsche Bank
17 National Trust Company (apparently the successor to Chase) filed a motion for relief
18 from the automatic stay, confirming that the amount needed to satisfy the most senior
19 lien was approximately \$2.25 million. Jennings' case was converted from chapter 13
20 to chapter 7, and ultimately dismissed. Based on Jennings' schedules, and to the best
21 of the Receiver's knowledge, Jennings does not have tangible assets against which
22 the Receiver could execute. Therefore, even if the Receiver were to incur the time
23 and expense of proceeding to trial and reducing his claims to judgment, collection of
24 that judgment would be uncertain. Under the settlement, the Receiver has at least
25 some hope of a recovery from Jennings' future earnings.

26 11. Under the circumstances, in his business judgment, the Receiver
27 believes that the proposed settlement is a fair and reasonable settlement of his claims
28 against Jennings.

1 12. In accordance with the terms of the Court-approved retention agreement
2 of special litigation counsel Castillo Snyder P.C., 30% of all settlement payments
3 received from Jennings will be paid to Castillo Snyder for its work on this matter.
4 The Receiver will also reimburse Castillo Snyder and its local counsel actual costs
5 incurred by them in connection with this matter.

6
7 **PLEASE TAKE FURTHER NOTICE** that pursuant to the Procedural Order
8 the Receiver will post a copy of this Notice available for download on the Receiver’s
9 website: www.westmoorereceivership.com. Service of the notice is deemed
10 complete upon the posting of the notice on the website.

11 **PLEASE TAKE FURTHER NOTICE** that pursuant to the Procedural Order,
12 objections to the Receiver’s proposed compromise with Jennings must be (a) in
13 writing and (b) filed with the Court and served in accordance with the Court’s Local
14 Rules not later than fourteen (14) days from the date on which this notice was filed
15 with the Court or, if later, posted on the Receiver’s website.

16 **PLEASE TAKE FURTHER NOTICE** that if an objection is timely filed and
17 served, the Receiver may file a reply and notice the matter for hearing. In that event,
18 a separate notice of the hearing will be filed and served.

19 **PLEASE TAKE FURTHER NOTICE** that if no objection is timely filed and
20 served, pursuant to the Procedural Order the Receiver will be authorized to proceed
21 with the proposed compromise without further notice or order of the Court.

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23 DATED: May 28, 2015

CASTILLO SNYDER, PC.

/s/ Edward C. Snyder

Edward C. Snyder
Special litigation counsel for David A. Gill,
Receiver

1 DATED: May 28, 2015

THE COOPER LAW FIRM, P.C.

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/s/ Scott Cooper

Scott Cooper
Special litigation counsel for David A. Gill,
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