

1 JOHN N. TEDFORD, IV (State Bar No. 205537)
jtedford@dgdk.com
2 DANNING, GILL, DIAMOND & KOLLITZ, LLP
1900 Avenue of the Stars, 11th Floor
3 Los Angeles, California 90067-4402
Telephone: (310) 277-0077
4 Facsimile: (310) 277-5735

5 Attorneys for David A. Gill, Receiver
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 WESTMOORE MANAGEMENT,
15 LLC, et al.,

16 Defendants.
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Case No. 8:10-cv-00849-AG

**MOTION OF DAVID A. GILL,
RECEIVER, FOR AUTHORITY TO
DESTROY BOOKS AND
RECORDS; AND MEMORANDUM
OF POINTS AND AUTHORITIES
AND DECLARATION OF DAVID
A. GILL IN SUPPORT THEREOF**

Date: November 19, 2018
Time: 10:00 a.m.
Place: Courtroom 10D
411 West Fourth Street
Santa Ana, California

19
20 David A. Gill, the permanent receiver (the “Receiver”) for certain entities
21 generally referred to as “Westmoore,” hereby moves the Court for an order
22 authorizing the Receiver to destroy (a) Westmoore’s books and records (both paper
23 records and electronically stored records), (b) work product generated by the
24 Receiver’s forensic analyst and investigator, and (c) documents obtained by the
25 Receiver’s counsel in response to subpoenas and discovery requests.

26 This motion is based on this motion and the accompanying Memorandum of
27 Points and Authorities and declaration of David A. Gill, the separate notice of this
28 motion, the papers and pleadings filed with the Court in this case, and such other

1 papers and pleadings as may be properly presented to the Court at or before the
2 hearing on the motion.

3 Pursuant to the Court’s order limiting notice (*docket no. 104*), the Receiver is
4 not required to adhere to the “meet and confer” requirements set forth in Local Rule
5 7-3. Nevertheless, the Receiver has met and conferred with counsel for plaintiff
6 Securities and Exchange Commission (the “SEC”) prior to filing this motion and is
7 advised that the SEC does not object to the relief sought.

8 For the reasons set forth herein and the papers filed in support of this motion,
9 the Receiver requests that the Court grant this motion and enter an order substantially
10 in the form of the proposed order attached as Exhibit “1” hereto.

11
12 DATED: October 9, 2018

DANNING, GILL, DIAMOND &
KOLLITZ, LLP

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15 By: /s/ John N. Tedford, IV
16 JOHN N. TEDFORD, IV
17 Attorneys for David A. Gill, Receiver
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I.**

4 **INTRODUCTION**

5 During this case, David A. Gill (the “Receiver”) recovered hundreds of
6 thousands of documents belonging to or related to Westmoore. In addition, the
7 Receiver’s professionals – especially his forensic analyst and investigator – printed
8 out documents and generated substantial work product. The physical records and
9 documents fill over 370 banker’s boxes. The electronic records are on two servers
10 and numerous storage devices.

11 The boxes and electronic storage devices contain sensitive information about
12 Westmoore’s investors and employees, including social security numbers, e-mail
13 addresses and telephone numbers. Rather than abandon the physical and electronic
14 records and risk that the data falls into the wrong hands, the Receiver is requesting
15 authority to destroy them. The Receiver estimates that the cost of doing so will be
16 approximately \$3,000, and believes that the cost of destruction is justified.

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18 **II.**

19 **RELEVANT FACTS**

20 **A. BRIEF PROCEDURAL HISTORY**

21 On June 15, 2010, the Securities and Exchange Commission (the “SEC”) filed
22 a *Complaint for Violations of the Federal Securities Laws* (the “Complaint”) against
23 Westmoore Management, LLC, Westmoore Investment, LP, Westmoore Capital
24 Management, Inc., Westmoore Capital, LLC, and Matthew R. Jennings.

25 On August 12, 2011, the Court entered its *Judgment of Permanent Injunction,*
26 *Appointment of Permanent Receiver, and Imposing Other Relief as to Defendants*
27 *Westmoore Management, LLC; Westmoore Investment, L.P.; Westmoore Capital*
28 *Management, Inc.; and Westmoore Capital, LLC* (the “Judgment”). Pursuant to the

1 Judgment, David A. Gill was appointed as the permanent receiver for all four of the
2 named Westmoore defendants and their subsidiaries and entities otherwise majority-
3 owned, managed or controlled, directly or indirectly, by any of them.

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5 **B. WESTMOORE’S BOOKS AND RECORDS**

6 **1. ELECTRONIC RECORDS**

7 Soon after his appointment, the Receiver received an external hard drive from
8 the SEC containing, among other things, over 1.8 million pages of documents that
9 had been imaged by the SEC during its investigation, additional documents that were
10 produced to the SEC by Westmoore and others during the SEC’s investigation, and
11 thirteen transcripts (aggregating approximately 2,700 pages) of interviews conducted
12 by the SEC prior to filing the Complaint. The external hard drive is currently stored
13 at the Receiver’s office.

14 A few months after his appointment, the Receiver learned that two servers
15 were being housed at a company called Nextech. One server was used as an email
16 server, and the other was used as a QuickBooks server. The servers, which have
17 negligible value, are still housed at Nextech.

18 During this case, the Receiver retained PCG Consultants (“PCG”) as his
19 forensic analyst and investigator.¹ PCG downloaded Westmoore’s financial data
20 from the servers housed at Nextech, and has retained such data on its servers and
21 external drives located in its files.

22 The external hard drive, the servers, and the electronic files and drives contain
23 sensitive personal information about Westmoore’s investors and former employees.

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27 ¹ The Receiver also utilized PCG as an expert witness to testify regarding
28 Westmoore’s financial activities and evolution into a Ponzi scheme.

1 **2. PHYSICAL RECORDS**

2 Soon after his appointment, the SEC provided the Receiver approximately
3 twelve boxes containing copies of Westmoore’s corporate documents, such as
4 articles of incorporation, bylaws, operating agreements, and stock or membership
5 ledgers. These boxes currently are stored at the Receiver’s office.

6 Soon after his appointment, the Receiver learned that Westmoore’s non-
7 electronic books and records were located at (1) an Iron Mountain storage facility,
8 and (2) a facility operated by Rockwall Holdings, Inc. (“Rockwall”).² The Receiver
9 negotiated with Iron Mountain and Rockwall, and retrieved the boxes. The Receiver
10 also received dozens of additional boxes from Matthew Jennings and Westmoore’s
11 former counsel. There are approximately 350 boxes currently stored in a storage
12 facility operated by File Keepers.

13 In the course of fulfilling its duties, PCG printed documents and generated
14 work product. There are approximately 25 boxes of documents and work product
15 located in a storage facility operated by Public Storage.

16 During this case the Receiver’s attorneys printed out countless documents
17 from Westmoore’s electronic records. The attorneys also received bank records and
18 other documents in response to subpoenas and discovery requests. The attorneys
19 estimate that these documents (which do not include litigation files to be retained in
20 accordance with customary document retention policies) would fill another dozen
21 boxes.

22 Many – if not most – of the boxes stored at the Receiver’s and his attorneys’
23 offices, File Keepers, and Public Storage contain sensitive personal information
24 about Westmoore’s investors and former employees.

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² Most of the boxes at Rockwall were on pallets and accessible only by forklift.

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III.

GENERAL RULES AND PROCEDURES

GOVERNING RECEIVERSHIPS

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership.

“[A] district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad.” *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). “[T]he district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). “The basis for this broad deference to the district court’s supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions.” *Hardy*, 803 F.2d at 1037. A district court’s decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion. *Commodity Futures Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999).

SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). “The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief.” *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980).

IV.

THE COURT SHOULD AUTHORIZE THE RECEIVER TO

DESTROY WESTMOORE’S BOOKS AND RECORDS

Local Rule 66-8 provides, “Except as otherwise ordered by the Court, a receiver shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy.” In bankruptcy cases, a trustee may abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. 11 U.S.C. § 554(a). Generally, when estate property

1 is abandoned, ownership reverts in the debtor. However, in corporate chapter 7
2 cases where the books and records contain “personally identifiable information,”³
3 trustees often seek authority to use estate funds to destroy the books and records
4 rather than risk exposure of the information contained therein.

5 The Court should authorize the Receiver to do so in this case as well.
6 Westmoore long ago ceased doing business and has no further use for its books and
7 records. A countless number of Westmoore’s physical and electronic documents
8 contain personally identifiable information, and exposure of that information could
9 put investors, former employees, and others at an increased risk of having their
10 identities stolen or becoming victims of fraud.

11 The Receiver estimates that the cost of transporting and destroying the books,
12 records and other documents will be approximately \$3,000. Nextech has agreed to
13 wipe and recycle the servers at no additional cost to the estate. The cost of wiping
14 and disposing of external drives and storage devices will be minimal. In light of the
15 sensitive nature of the information contained in the physical and electronic files, the
16 Receiver believes that the cost of disposing of the documents is justified.

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18 **V.**

19 **CONCLUSION**

20 For the foregoing reasons, the Receiver requests that the Court authorize him
21 to destroy (a) Westmoore’s books and records (both paper records and electronically
22 stored records), (b) work product generated by the Receiver’s forensic analyst and
23 investigator, and (c) documents obtained by the Receiver’s counsel in response to
24 _____

25 ³ The term “personally identifiable information” is defined in the Bankruptcy
26 Code. It includes one’s name, residential address, e-mail address, home telephone
27 number, social security account number, birth date, and “any other information
28 concerning an identified individual that, if disclosed, will result in contacting or
identifying such individual physically or electronically.” 11 U.S.C. § 101(41A).

1 subpoenas and discovery requests. The Receiver also requests such other relief as
2 the Court deems just and proper.

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DATED: October 9, 2018

DANNING, GILL, DIAMOND &
KOLLITZ, LLP

By: /s/ John N. Tedford, IV
JOHN N. TEDFORD, IV
Attorneys for David A. Gill, Receiver

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DECLARATION OF DAVID A. GILL

I, David A. Gill, declare as follows:

1. I am the Permanent Receiver appointed by this Court for Westmoore Management, LLC, Westmoore Investment, L.P., Westmoore Capital Management, Inc., and Westmoore Capital, LLC, and their subsidiaries and entities otherwise majority owned, managed or controlled, directly or indirectly, by any of them (collectively the “Westmoore Entities” or “Westmoore”), pursuant to the *Judgment of Permanent Injunction, Appointment of Permanent Receiver, and Imposing Other Relief as to Defendants Westmoore Management, LLC; Westmoore Investment, L.P.; Westmoore Capital Management, Inc.; and Westmoore Capital, LLC* entered on or about August 12, 2011.

2. I have personal knowledge of the facts in this declaration and, if called as a witness, I could competently testify to these facts.

3. Soon after my appointment, I received an external hard drive from the SEC. According to software we use to access the images and documents, there are over 1.8 million pages of documents that had been imaged by the SEC during its investigation, additional documents that were produced to the SEC by Westmoore and others during the SEC’s investigation, and thirteen transcripts (aggregating approximately 2,700 pages) of interviews conducted by the SEC. The external hard drive is currently stored at my office, and copies of the hard drive may have been provided to my professionals.

4. The SEC also provided approximately twelve boxes containing copies of Westmoore’s corporate documents, such as articles of incorporation, bylaws, operating agreements, and stock or membership ledgers. These boxes currently are stored at my office.

5. Soon after my appointment, I learned that Westmoore’s non-electronic books and records were located at (1) an Iron Mountain storage facility, and (2) a

1 facility operated by an entity now known as Rockwall Holdings, Inc. (“Rockwall”).
2 Most of the boxes at Rockwall were on pallets and accessible only by forklift. I
3 negotiated with Iron Mountain and Rockwall, and retrieved the boxes. I also
4 received dozens of additional boxes from Matthew Jennings and Westmoore’s
5 former counsel. I am advised that there are approximately 350 boxes currently
6 stored in a storage facility operated by File Keepers.

7 6. A few months after my appointment, I learned that two servers were
8 being housed at a company called Nextech. One server was used as an email server,
9 and the other was used as a QuickBooks server. The servers, which I am advised to
10 have negligible value, are still housed at Nextech. Provided that I continue to pay
11 Nextech its storage fee in the interim, Nextech has offered to wipe the servers and
12 recycle the hardware for free.

13 7. During this case, I retained PCG Consultants (“PCG”) as my forensic
14 analyst and investigator. I also utilized PCG as an expert witness to testify regarding
15 Westmoore’s financial activities and evolution into a Ponzi scheme. I understand
16 that PCG downloaded Westmoore’s financial data from the servers at Nextech, and
17 has retained such data on its servers and external drives located in its files.

18 8. In the course of fulfilling its duties, PCG printed documents and
19 generated work product. I am advised that there are approximately 25 boxes of such
20 documents and work product located in a storage facility operated by Public Storage.

21 9. During this case, my attorneys printed out countless documents from
22 Westmoore’s electronic records. My attorneys also received bank records and other
23 documents in response to subpoenas and discovery requests. They estimate that
24 these documents (which do not include litigation files to be retained in accordance
25 with customary document retention policies) would fill another dozen boxes.

26 10. The external hard drive, the servers, and the electronic files and drives
27 all contain sensitive personal information about Westmoore’s investors and former
28 employees. Similarly, many – if not most – of the boxes stored at my and my

1 attorneys' office, File Keepers, and Public Storage contain sensitive personal
2 information about Westmoore's investors and former employees.

3 11. Generally, in bankruptcy cases, when property of the estate is
4 "abandoned" the ownership of the property reverts in the debtor. However, in
5 corporate chapter 7 cases, if the books and records contain "personally identifiable
6 information," trustees often seek authority to use estate funds to destroy the books
7 and records rather than risk exposure of the information contained therein.

8 12. In this case, I believe that it is appropriate for me to destroy
9 Westmoore's books and records rather than turn them over to Westmoore. The
10 books and records contain personally identifiable information, and I am concerned
11 that exposure of that information could put investors, former employees, and others
12 at an increased risk of having their identities stolen or becoming victims of fraud.

13 13. Based upon quotations from File Keepers and my field agent, and my
14 prior experience as a chapter 7 trustee, I estimate (but cannot guarantee) that the cost
15 of transporting and destroying the books, records and other documents I propose to
16 destroy will be approximately \$3,000.

17 14. In light of the sensitive nature of the information contained in the
18 physical and electronic files, I believe that the cost of disposing of the documents is
19 justified.

20
21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct.

23 Executed on October 5, 2018, at Los Angeles, California.

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27 _____
28 DAVID A. GILL

EXHIBIT "1"

1 JOHN N. TEDFORD, IV (State Bar No. 205537)
jtedford@dgd.com
2 DANNING, GILL, DIAMOND & KOLLITZ, LLP
1900 Avenue of the Stars, 11th Floor
3 Los Angeles, California 90067-4402
Telephone: (310) 277-0077
4 Facsimile: (310) 277-5735
5 Attorneys for David A. Gill, Receiver

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 WESTMOORE MANAGEMENT,
15 LLC, et al.,

16 Defendants.

Case No. 8:10-cv-00849-AG

**ORDER GRANTING MOTION OF
DAVID A. GILL, RECEIVER, FOR
AUTHORITY TO DESTROY
BOOKS AND RECORDS**

Date: November 19, 2018
Time: 10:00 a.m.
Place: Courtroom 10D
411 West Fourth Street
Santa Ana, California

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19 On November 19, 2018, the Court heard and considered the *Motion of David*
20 *A. Gill, Receiver, for Authority to Destroy Books and Records* (the “Motion”) filed
21 by David A. Gill, Receiver, the Honorable Andrew J. Guilford, United States District
22 Court Judge, presiding. Appearances were as noted on the record at the hearing.

23 The Court having considered the Motion, having heard the statements of
24 counsel at the hearing, for good cause appearing, it is

25 **ORDERED THAT:**

- 26 1. The Motion is granted.
27 2. The Receiver is authorized to destroy (a) Westmoore’s books and
28 records (both papers records and electronically stored records), (b) work product

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1 generated by the Receiver’s forensic analyst and investigator, and (c) documents
2 obtained by the Receiver’s counsel in response to subpoenas and discovery requests.

3 3. The Receiver is authorized to pay ordinary and customary costs of such
4 destruction, including the transportation and destruction of boxes of documents, as an
5 administrative expense.

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DATED: November____, 2018

ANDREW J. GUILFORD
UNITED STATES DISTRICT JUDGE

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 11th Floor, Los Angeles, CA 90067-4402.

On October 9, 2018, I served true copies of the following document(s) described as **MOTION OF DAVID A. GILL, RECEIVER, FOR AUTHORITY TO DESTROY BOOKS AND RECORDS; AND MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF DAVID A. GILL IN SUPPORT THEREOF** on the interested parties in this action as follows:

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 9, 2018, at Los Angeles, California.

/s/ Patricia Morris
PATRICIA MORRIS