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THOMAS A. SEAMAN, RECEIVER

8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

11

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 LAMBERT VANDER TUIG (a/k/a/
17 LAMBERT VANDER TAG a/k/a
18 DEAN I. VANDER TAG), THE
19 CAROLINA DEVELOPMENT
COMPANY, INC. (a/k/a THE
CAROLINA COMPANY AT
PINEHURST, INC.), AND
JONATHAN CARMAN,

20 Defendants.

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Case No. SACV06-172AHS(MLGx)

- (1) **SHEPPARD, MULLIN, RICHTER & HAMPTON LLP'S NINTH INTERIM APPLICATION FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR MAY 1, 2008 THROUGH OCTOBER 31, 2008;**
- (2) **DECLARATION OF ALAN H. MARTIN; and**
- (3) **DECLARATION OF THOMAS A. SEAMAN**

[Notice of Ninth Interim Fee Application of Sheppard Mullin Richter & Hampton and Proposed Order filed concurrently herewith]

Hearing:

Date: April 20, 2009
Time: 10:00 a.m.
Place: Courtroom 10A
411 W. Fourth Street
Santa Ana, California

Complaint Filed: February 16, 2006

1 Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin"),
2 attorneys for the court-appointed Receiver, Thomas A. Seaman ("Receiver"), hereby
3 submits its Ninth Interim Fee Application ("Application") for allowance of
4 compensation and reimbursement of expenses incurred from May 1, 2008 through
5 and including October 31, 2008 (the "Period") on behalf of the Receiver as its
6 counsel. In support of its Application, Sheppard Mullin respectfully represents as
7 follows:

8
9 **I. INTRODUCTION.**

10 **A. Sheppard Mullin is Duly Employed as Counsel for the Receiver.**

11 On February 16, 2006, the Court appointed a receiver for Lambert
12 Vander Tuig (a/k/a Lambert Vander Tag, a/k/a Dean L. Vander Tag, a/k/a Dean L.
13 Vandertag), The Carolina Development Company, Inc. (a/k/a The Carolina
14 Company at Pinehurst, Inc.), and Jonathan Carman (collectively, "Carolina"). The
15 Receiver has employed Sheppard Mullin as its counsel in connection with the
16 receivership since the receivership's creation on February 16, 2006.

17
18 **B. Compensation Requested/Amounts Available in the Estate.**

19 In this Application, Sheppard Mullin requests that the Court allow
20 compensation for legal services rendered on behalf of the Receiver during the Period
21 in the total amount of Three Hundred Ninety-Five Thousand Eighteen and 50/100
22 Dollars (\$395,018.50) and expenses incurred in the total amount of Twenty-Nine
23 Thousand Seven Hundred Fifty-Eight and 10/100 Dollars (\$29,758.10). This is the
24 Ninth Interim Fee Application filed by Sheppard Mullin. Details of the previous
25 eight fee applications submitted by Sheppard Mullin are as follows:

<u>Fee Application</u>	<u>Date Range</u>	<u>Amount Requested</u>	<u>Amount Approved</u>
First	February 16, 2006- April 30, 2006	Fees: \$126,417.50 Costs: \$14,575.65	\$140,993.15
Second	May 1, 2006- July 31, 2006	Fees: \$206,981.00 Costs: \$7,868.00	\$214,849.00
Third	August 1, 2006- October 31, 2006	Fees: \$156,058.50 Costs: \$9,002.89	\$165,061.39
Fourth	November 1, 2006- January 31, 2007	Fees: \$178,954.50 Costs: \$9,238.52	\$188,193.02
Fifth	February 1, 2007- April 30, 2007	Fees: \$241,422.50 Costs: \$7,457.94	\$248,880.44
Sixth	May 1, 2007- July 31, 2007	Fees: \$246,914.50 Costs: \$13,138.58	\$260,053.08
Seventh	August 1, 2007- October 31, 2007	Fees: \$200,484.50 Costs: \$7,011.60	\$207,496.10
Eighth	November 1, 2007- April 30, 2008	Fees: \$251,886.00 Costs: \$19,001.66	\$270,887.66

Sheppard Mullin understands that there is in excess of \$9 million in cash and liquid assets available in the estate.

As reflected in the attached declaration of Thomas A. Seaman, the Receiver instructed Sheppard Mullin to undertake the tasks discussed below, has approved the amounts billed by Sheppard Mullin in connection with these tasks, and has instructed Sheppard Mullin to prepare this fee application ("Ninth Fee Application"). **The Securities and Exchange Commission ("SEC") has also reviewed all of Sheppard Mullin's bills during the Period. The SEC is in agreement with the Receiver that Sheppard Mullin's Ninth Interim Fee Application should be approved in full, without any reduction from the invoices submitted to the SEC and the Receiver for review.**

1 **II. SHEPPARD MULLIN HAS MAINTAINED TIME RECORDS**
2 **ACCORDING TO SORT CODES.**

3 **A. Sheppard Mullin Sort Codes Utilized.**

4 Sheppard Mullin has developed a list of sort codes (a brief description
5 of each is provided below) to categorize its work on this matter. During the Period,
6 Sheppard Mullin performed services for the Receiver in eight basic categories which
7 are identified as follows: (i) general miscellaneous services provided to the
8 Receiver ("Sort Code CA01"); (ii) services related to legal research ("Sort
9 Code CA03"); (iii) services related to client meetings ("Sort Code CA04");
10 (iv) services related to court appearances ("Sort Code CA05"); (v) services related to
11 preparation and analysis of pleadings, schedules, reports and briefs ("Sort Code
12 CA06"); (vi) services related to claims issues ("Sort Code CA09"); (vii) services
13 related to real estate issues ("Sort Code CA10"); and (viii) services related to special
14 litigation matters ("Sort Code CA11"). No services were performed in Sort Codes
15 CA02, CA07, CA08, CA12, or CA13 during this Period.

16
17 **B. Distribution of Charges.**

18 Attached hereto as Exhibit A and incorporated herein by reference is a
19 table showing the distribution of hours and costs of services rendered among the
20 thirteen sort codes. Also included on Exhibit A is a distribution of hours and the
21 costs of services rendered by the various attorneys utilized by Sheppard Mullin in
22 connection with this case overall and with respect to each sort code. These tables
23 provide a quick reference to enable the Court to determine the distribution of efforts
24 by Sheppard Mullin among the various tasks required in connection with the
25 receivership and the seniority mix employed by Sheppard Mullin to maximize the
26 efficient delegation of tasks. As noted below, and at the direction of the Receiver,
27 the significance, magnitude and timing of certain tasks and issues (e.g., among other
28 things, litigation against former professionals, real estate transactional issues,

1 preparation of pleadings, court appearances, etc.) necessitated extensive
2 involvement by more senior Sheppard Mullin attorneys such as Alan Martin or
3 Finley Taylor. The steps taken by the Receiver and its counsel (at the specific
4 direction of the Receiver) are detailed more extensively in the Receiver's Ninth
5 Interim Fee Application and the Receiver's Sixth Six-Month Report (the "Six Month
6 Report"). Sheppard Mullin requests that the Court take judicial notice of the
7 Receiver's Ninth Interim Fee Application and the Six Month Report.¹

8
9 **III. HISTORY AND PRESENT STATUS OF CAROLINA AND THE**
10 **RECEIVERSHIP.**

11 **A. Events Leading up to Appointment of the Receiver.²**

12 Lambert Vander Tuig ("Vander Tuig") and Jonathan Carman
13 ("Carman") have raised at least \$52 million from hundreds of investors nationwide
14 through the fraudulent sale of unregistered shares of stock in The Carolina
15 Development Company, Inc. ("Carolina"). Vander Tuig and Carman marketed
16 Carolina as a real estate development company specializing in developing resort
17 communities surrounding prestigious golf courses.

18
19 In order to induce individuals to invest, Vander Tuig and Carman
20 prepared and distributed fraudulent private placement memoranda, fraudulent sales
21 materials, and published a website containing false statements. In addition, Vander
22 Tuig and Carman oversaw the operation of a "boiler room" operation located in
23 Orange County, in which potential investors were solicited by telephone. During

24 ¹ The Receiver's Ninth Interim Fee Application has been filed of even date
25 herewith.

26 ² The information in this section was derived from, among other things, the
27 SEC's complaint against Carolina, filed February 16, 2006, the Six Month
28 Report and the Factual Summary contained in the Receiver's First, Second,
Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Interim Fee
Applications.

1 communications with potential investors, Vander Tuig, Carman and Carolina
2 employees made significant misrepresentations, including: (a) leading investors to
3 believe that Carolina would soon be going public and that Carolina's stock would
4 likely trade at many times its offering price; (b) failing to disclose that the same
5 stock being offered through the "boiler room" operation is available to purchase
6 through the Pink Sheet quotation system at prices well below the "boiler room"
7 offering price; (c) representing that Carolina owns or is developing a number of
8 properties that it does not actually own; and (d) representing that the number of
9 outstanding shares is substantially less than the number actually outstanding. It is
10 estimated that Carolina has obtained over one thousand investments from
11 individuals in the United States and Canada.

12
13 **B. The SEC Complaint Against Vander Tuig, Carman and Carolina.**

14 Based on the actions described above, on February 16, 2006, the
15 Securities and Exchange Commission ("SEC") filed a complaint against Vander
16 Tuig, Carman and Carolina alleging various securities violations, including
17 (i) Section 5(a) and 5(c) of the Securities Act, (ii) 15 U.S.C. § 77e(a) and (c),
18 (iii) Section 17(a) of the Securities Act, (iv) 15 U.S.C. § 77q(a), (v) Section 10(b) of
19 the Exchange Act, (vi) 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder. The SEC's
20 complaint seeks the following relief:

- 21
- 22 1. An order permanently enjoining each defendant from violating
23 Section 5(a), 5(c), and 17(a) of the Securities Act, and Sections 10(b) of
24 the Exchange Act and Rule 10b-5 thereunder;
 - 25 2. An order permanently enjoining Vander Tuig and Carman from
26 violating Sections 15(a) of the Exchange Act;
 - 27 3. An order permanently enjoining Vander Tuig from violating Section
28 15(b)(6)(B) of the Exchange Act;

- 1 4. A preliminary injunction freezing the assets of each of the defendants
- 2 and prohibiting each of the defendants from destroying documents;
- 3 5. An order appointing a receiver over Carolina and all other entities
- 4 directly or indirectly controlled by Vander Tuig or Carman.

5

6 **C. The Court Appoints a Receiver and Grants Other Relief.**

7 On February 16, 2006, the Court ordered that Thomas A. Seaman be

8 appointed Receiver of Carolina "and all subsidiaries and affiliated entities" (the

9 "Order"). Pursuant to the Order, "[t]he Receiver shall take control of the

10 Companies' funds, assets and property wherever situated ... including powers over

11 all funds, assets, premises ... choses in action, books, records, and other property

12 belonging to or in the possession or control of the Companies." Among other

13 things, the Order gave the Receiver the authority to:

- 14
- 15 • Have access to and take control of all funds, assets and premises of
- 16 Carolina;
- 17 • Have control of all accounts, securities, funds, or other assets of
- 18 Carolina;
- 19 • Take action as is necessary and appropriate to preserve all assets in the
- 20 possession or custody of Carolina;
- 21 • Make or authorize such payments and disbursements from the funds
- 22 and assets of Carolina as necessary and advisable in discharging his
- 23 duties as Receiver;
- 24 • "Engage and employ persons in his discretion to assist him in carrying
- 25 out his duties and responsibilities hereunder, including, but not limited
- 26 to, accountants, attorneys, securities traders, registered representatives,
- 27 financial or business advisers, liquidating agents, real estate agents,
- 28 forensic experts, brokers, traders or auctioneers." (Order, ¶ f).

1 The Order also provided that the Receiver was to receive access to "any
2 customer or client information, assets, books, records or other property belonging to
3 or in the custody or control of" Carolina. In addition, the Receiver was given
4 authority to:

5
6 liquidate and convert into money all of the assets,
7 property, estate, effects and interests of every nature held
8 in his possession and control pursuant to this Order, by
9 selling, conveying, and disposing of the Property, either at
10 public or private sale, on terms and in the manner the
11 Receiver deems most beneficial to the persons or parties
12 entitled to the proceeds...Order, Art. II, ¶ b.

13 On the same day, the Court also issued an Order Granting Asset Freeze,
14 Ordering an Accounting, and Prohibiting the Destruction of Documents. This Order
15 prohibited all parties connected with Carolina from "destroying, mutilating,
16 concealing, altering, or disposing of any and all items, including, but not limited to,
17 any books, records, documents, correspondence, contracts, agreements, assignments,
18 obligations, tape recordings, computer media or other property of the Defendants,
19 relating to the Defendants or any of their securities, financial or business dealings."

20 **D. Sheppard Mullin is Retained to Help the Receiver Perform His
21 Duties.**

22 After the Order was issued, the Receiver has sought the assistance of
23 Sheppard Mullin to assist the Receiver in, among other things:

- 24 • Identifying all assets owned by Carolina or acquired with assets of
25 Carolina, including extensive real and personal property held in such
26 states as North Carolina, Texas, Nevada and California;

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- 1 • Identifying all persons and entities related to Carolina in which
- 2 Carolina, Vander Tuig or Carman may attempt to or actually did
- 3 illegally transfer assets;
- 4 • After identifying the assets owned by Carolina, which included
- 5 potential interests in well over 80 lots and total acreage in excess of
- 6 2500 acres, taking steps to protect those assets;
- 7 • After identifying persons or entities related to Carolina, having the
- 8 scope of the receivership expanded to include those persons and
- 9 entities;
- 10 • Assisting in determining the estimated value, development strategy and
- 11 disposition strategy of all Carolina assets;
- 12 • Pursuing claims against former Carolina salespeople, insiders, and
- 13 professionals; and
- 14 • Assisting with the successful disposition of assets and dispersing
- 15 collected funds to claimants.

16

17 **1. Gathering Information and Capturing Funds.**

18 The Receiver and Sheppard Mullin's initial efforts involved gathering

19 considerable information necessary to understand Carolina's general business

20 "scheme" and identify the type and location of all assets. Much of the initial

21 information was obtained from Carolina's corporate offices and related locations of

22 Lambert Vander Tuig. This information revealed many "leads" as to the location of

23 real and personal property assets and parties that may be holding funds on behalf of

24 Carolina.

25

26 Carolina's business practices and record keeping have made the

27 discovery of assets especially difficult. For example, in order to induce investment,

28 Carolina would often tell investors that it owned properties it did not own. Carolina

1 would also provide investors with extensive marketing materials regarding these
2 "fake" holdings. These misrepresentations by Carolina have made it difficult (and
3 time consuming) to distinguish between these assets and Carolina's actual real estate
4 interests. In addition, Carolina's accounting was not thorough or well organized,
5 making it even more difficult to determine the extent of Carolina's assets and the
6 value of those assets.

7
8 Throughout the receivership, the Receiver and Sheppard Mullin have
9 spent considerable time assessing the nature and extent of Carolina's assets and
10 accounting for Carolina's numerous transactions. This diligence revealed that
11 Vander Tuig and Carman repeatedly violated the Order Appointing Receiver and
12 Freeze Order by transferring several valuable Company assets to their wives and
13 relatives immediately after the Orders became effective. Specifically, among many
14 other things, Vander Tuig took \$1,000,000 from the Company on February 16,
15 2006, the day that the Orders were entered. The Receiver also learned that
16 approximately \$117,000 was illegally transferred to an escrow held by Stewart Title
17 in connection with Vander Tuig's wife, Jill Kraus', attempted purchase of a
18 condominium in Las Vegas, Nevada with receivership estate funds. In addition,
19 Vander Tuig stole \$573,000 from the Company by causing William Cannon, the
20 Company's former North Carolina counsel, to transfer \$573,000 of investor funds
21 directly to his wife, Jill Ann Kraus. After extensive efforts by the Receiver and
22 Sheppard Mullin, Vander Tuig eventually turned over the \$1,000,000 to the
23 Receiver, but Vander Tuig required that the \$1,000,000 be held in escrow by the
24 Receiver until the Court made a final determination as to whether those funds
25 belong to the receivership estate. With respect to the \$573,000 stolen by Vander
26 Tuig, none of these funds have been returned to the Receiver.

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1 Carman also violated the Orders by, among many other things, taking
2 at least \$1,400,000 from the Company after the Orders were entered. Most of these
3 funds were taken on February 17, 2006, the day after the Orders were entered.³ The
4 Receiver and Sheppard Mullin's diligence also indicated that Vander Tuig and
5 Carman deliberately failed to disclose certain other assets to the Receiver. As
6 described in Sheppard Mullin's prior fee application, the Receiver and Sheppard
7 Mullin have taken numerous steps to enforce the Orders against Vander Tuig and
8 Carman and to recover as many assets as possible from Vander Tuig and Carman.
9 These efforts have been successful. Among other things, the Court has entered
10 Contempt Orders against both Vander Tuig and Carman.

11
12 The Receiver's and Sheppard Mullin's diligence also revealed that
13 Vander Tuig and Kraus further violated the Court's orders by failing to return
14 \$117,000 held in escrow by Stewart Title to the Receiver. Instead of returning these
15 funds to the Receiver as ordered by the Court, Vander Tuig and Kraus caused the
16 \$117,000 to be transferred to the seller of a Las Vegas condominium in order to
17 complete Kraus' purchase of the condominium. Sheppard Mullin spent time during
18 the Period attempting to resolve this issue, including preparing a complaint against
19 Stewart Title.

20
21 **2. Pursuing Claims Against Former Carolina Professionals, Insiders,**
22 **and Salespeople**

23 During the Period, a significant portion of Sheppard Mullin's time was
24 spent pursuing the Receiver's claims against Gary Wykidal, William Cannon, Penny
25

26 ³ For a detailed explanation of Vander Tuig and Carman's violation of the
27 Orders, see the Motion for Contempt Against Jonathan Carman, filed May 18,
28 2007, and the Motion for Contempt Against Lambert Vander Tuig, filed
May 16, 2007.

1 Hayes, Robert Waldman, Rex Glendenning, and Kelley Moreno. The following is a
2 brief summary of each of these actions:

3
4 **a. Gary Wykidal**

5
6 Gary Wykidal ("Wykidal") represented Carolina as securities counsel
7 from May 17, 2005 through February 2006. His role at Carolina was to bring
8 Carolina into compliance with securities laws, including its offering documents.
9 The Receiver's diligence into Wykidal's actions reveals that as early September 2005
10 Wykidal knew Carolina used deficient and false offering documents to raise funds,
11 that Carolina had not properly screened investors for suitability, i.e., to accredit
12 investors, and that Carolina had authority to issue 2500 shares, but had over-issued
13 millions of shares by that time. Wykidal also knew or should have known by
14 October 18, 2005 that Vander Tuig had several aliases. Indeed, the Articles of
15 Incorporation he received from Carolina on September 8, 2005 revealed that the
16 "incorporator" of Carolina was "Lambert Vander Tuig". On October 18, 2005, he
17 filed a document with the Securities and Exchange Commission ("SEC") on behalf
18 of Carolina where a "Dean L. Vander Tag" was listed as "beneficial owner" of
19 Carolina. On or about October 25, 2005, Wykidal filed a false and misleading Form
20 D, Notice of Sale of Securities, with the SEC. He did so knowing there was no way
21 Carolina could claim a valid exemption under Regulation D, Rule 506. As a result
22 of his conduct, Carolina was allowed to raise \$43,303,228.10 during Wykidal's
23 tenure as securities counsel for Carolina, and Vander Tuig and Carman were able to
24 loot over \$3,000,000 in that timeframe.

25
26 Pursuant to an arbitration agreement between Wykidal and Carolina,
27 Wykidal made a motion to this Court compelling arbitration. As a result, the dispute
28 was submitted to arbitration. Wykidal refused to negotiate a settlement with the

1 Receiver. The Receiver and Sheppard Mullin were therefore forced to fully litigate
2 the action. The arbitration hearing was recently concluded. During the Period,
3 among many other things, Sheppard Mullin took the following actions on behalf of
4 the Receiver in the Wykidal litigation:

- 5
- 6 • Analyzed thousands of documents to be produced to Wykidal
7 during the discovery process, including hundreds of investor
8 questionnaires, the Receiver's audit, various deposition
9 transcripts, subpoenaed files from attorneys William Cannon,
10 Pendleton Hayes, Nancy Hampton, and auditor Ramirez
11 International.
- 12
- 13 • Prepared an opposition, statement of uncontroverted facts, and
14 declarations in support of same to Wykidal's motion for
15 summary judgment. Prepared for and appeared for hearing on
16 same.
- 17
- 18 • Wykidal refused to produce discovery responses, as such, the
19 Receiver was forced to file motions moving to compel
20 responses, and to prepare and appear for the hearing on same.
- 21
- 22 • Attended numerous hearings before the arbitrator.
- 23
- 24 • Performed extensive legal research into issues of professional
25 negligence, breach of fiduciary duties, securities fraud, breach
26 of contract, and damages resulting from same in the context of a
27 securities offering.
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- Conducted extensive discovery with respect to the Wykidal litigation.
- Conducted depositions. Prepared for same.
- Engaged and prepared an expert to testify at the arbitration hearing to demonstrate Wykidal had fallen under the standard of care.
- Prepared for the arbitration hearing.

The arbitrator has not yet ruled, but a ruling is expected within a month.

b. William Cannon

William Cannon ("Cannon") was one of Carolina's former legal counsel in North Carolina. Cannon assisted Carolina in purchasing several pieces of real estate in Moore County, and also helped Carolina record deeds of trust in favor of investors in connection with their investment in Carolina. The Receiver's diligence concluded that Cannon was at a minimum negligent in his representation of Carolina. Cannon admitted in deposition that he knew of Vander Tuig's previous SEC injunction early on in his engagement as counsel for Carolina. He also admitted he knew the collateralization agreements he was recording for investors constituted securities. Perhaps most damning for Cannon is the fact that he transferred \$573,000 to Vander Tuig's spouse, Jill Kraus, from the Carolina Trust Account on January 26, 2006 at the behest of Vander Tuig. Sheppard Mullin therefore prepared and filed a lawsuit against Cannon. Counsel for Cannon and Sheppard Mullin agreed to stay all discovery and focus on settling the dispute. As a

1 result, Sheppard Mullin then negotiated extensively with Cannon's counsel to settle
2 the dispute. A settlement was reached during the Period in which Cannon paid the
3 receivership estate \$300,000.

4
5 **c. Pendleton Hayes**

6
7 Pendleton Hayes ("Hayes") was another of Carolina's former legal
8 counsel in North Carolina. Hayes assisted Carolina in purchasing several pieces of
9 real estate in Moore County, and also helped Carolina record deeds of trust in favor
10 of investors in connection with their investment in Carolina. The Receiver's
11 diligence concluded that Hayes was at a minimum negligent in her representation of
12 Carolina as she knew Carolina's purchases were being recorded in the names of
13 individual directors and their spouses. Sheppard Mullin therefore prepared and filed
14 a lawsuit against Hayes. Hayes insisted on conducting some discovery, including
15 depositions before mediating with the Receiver. Sheppard Mullin then negotiated
16 extensively with Hayes' counsel to settle the dispute. A settlement was reached
17 during the Period whereby Hayes paid the receivership estate \$135,000.

18
19 **d. Robert Waldman**

20
21 Robert Waldman ("Waldman") was Carolina's former general counsel
22 and also served as a director on Carolina's board. The Receiver's diligence revealed
23 that Waldman was at a minimum negligent in his representation of Carolina.
24 Sheppard Mullin therefore prepared and filed a lawsuit against Waldman. Extensive
25 settlement negotiations took place during the Period, although a settlement has not
26 yet been reached. The Receiver propounded written discovery and took Waldman's
27 deposition. Sheppard Mullin has therefore actively moved forward with this
28 litigation. If the parties do not reach settlement within the next 30-45 days,

1 Sheppard Mullin will file a motion for summary judgment, or in the alternative,
2 summary adjudication.

3

4 **e. Rex Glendenning**

5

6 Rex Glendenning ("Glendenning") is a real estate broker that
7 represented Carolina in connection with Carolina's purchase of the Celina Bridges
8 Property in Collin County, Texas. As the Celina Bridges Property was Carolina's
9 largest real property acquisition, the Receiver spent a great time of deal researching
10 this transaction. This research revealed that Glendenning defrauded Carolina out of
11 \$1.2 million by creating a sham purchase agreement with one of his business
12 associates. As a result, during the Period, Sheppard Mullin prepared a detailed
13 complaint against Glendenning. Sheppard Mullin also spent time during the Period
14 researching potential lawsuits against other individuals involved with Carolina's
15 purchase of Celina Bridges. To preserve the estate's resources, Sheppard Mullin and
16 the Receiver are in the process of finding local Texas counsel to represent the
17 Receiver in these lawsuits on a contingency fee basis.

18

19 **3. Enforcement of Judgments Against Sales Agents**

20 In connection with the Receiver's "disgorgement" motion, the Receiver
21 obtained judgments against four of Carolina's former sales agents – Donald
22 Anderson, Sean Brazney, Fred Miller, and Elizabeth Quiroz. During the Period,
23 Sheppard Mullin took steps to enforce and collect on these judgments. These efforts
24 included, among other things, recording personal property judgment liens in
25 California. Sheppard Mullin also analyzed information regarding the sales agents'
26 assets to identify potential sources of recovery.

27

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1 **4. Disgorgement Motion**

2 Sheppard Mullin spent a significant amount of time during the Period
3 working on issues regarding the Receiver's "disgorgement" motion and numerous
4 ancillary items which concern the return of commissions paid to former Carolina
5 salespeople. Prior to the Period, several of the disgorgement orders previously
6 entered against former sales agents were vacated due to the decision in *SEC v. Ross*,
7 504 F.3d 1130 (9th Cir. 2007). As a result of this development, Sheppard Mullin
8 devoted time during the Period preparing and filing amended disgorgement motions
9 and personally serving several target sales agents.

10

11 **5. Selling Real Estate Assets and Resolving Real Estate-Related**
12 **Claims.**

13 After reviewing the voluminous documents produced in response to the
14 subpoenas, the Receiver and Sheppard Mullin have a thorough understanding of
15 Carolina's real property interests and other asset holdings. Specifically, the Receiver
16 and Sheppard Mullin have assessed the location and status of each major property
17 (legal description, assessor's parcel number, etc.), the current owner of record of
18 each property, the significant encumbrances on each property, the development
19 status of each property, and the marketability of each property. These actions have
20 allowed the Receiver to successfully market and sell all of Carolina's real property,
21 except for a few remaining lots in Moore County, North Carolina. During the
22 Period, Sheppard Mullin prepared and filed a motion seeking Court approval for the
23 Receiver to sell the remaining Moore County lots. The Court granted the motion.
24 As a result, the Receiver now has authority to sell the remaining real property
25 owned by Carolina (provided that the real property is sold for no less than the
26 amount stated in the Court's order granting the motion).

27

28

1 **6. SEC Plan of Distribution**

2 Sheppard Mullin spent time during the Period assisting the SEC and the
3 Receiver with various aspects of the SEC's Plan of Distribution (the "Plan"). The
4 Plan makes the Receiver responsible for assessing investors' claims, sending out
5 numerous documents to investors, and monitoring the receipt of numerous
6 documents sent by investors. Sheppard Mullin has assisted the Receiver with all of
7 these tasks. Specifically, during previous periods Sheppard Mullin prepared
8 "Property Election Forms" which were sent to all investors holding deeds of trust
9 against lots in North Carolina. These investors were given the option of either
10 (1) receiving a non-warranty deed to the lot subject to the deed of trust, or
11 (2) participating in pro rata distributions from the receivership estate. The
12 preparation of the over 100 Property Election Forms took a substantial amount of
13 time because it required the review of numerous deeds, title commitments, and
14 investor response forms. Furthermore, after the election forms were mailed out,
15 many issues arose with respect to certain investors. These issues related to, among
16 other things, the amount of certain investments, the amount of dividends received by
17 investors, and how certain deeds should be drafted. Sheppard Mullin communicated
18 extensively with the Receiver and numerous investors to resolve these issues.
19 Although the bulk of these issues were handled in prior periods, some of these
20 issues were resolved during this Period.

21
22 In addition, during this Period, Sheppard Mullin handled the
23 documentation and recording of the property elections made by investors.
24 Specifically, for investors that chose to receive a deed to their lot rather than
25 participate in pro rate distributions, Sheppard Mullin prepared non-warranty deeds
26 to these lots and coordinated the recording of these deeds. Sheppard Mullin also
27 fielded numerous phone calls and responded to numerous letters from investors with
28

1 questions as to their Moore County lots, including questions regarding taxes,
2 homeowners' association dues, and related issues.

3
4 **The Receiver has concurrently filed his Investment Analysis**
5 **detailing the amount to be distributed to Carolina's investors, among various**
6 **other issues.** Sheppard Mullin assisted the Receiver in preparing this analysis.

7
8 **IV. DESCRIPTION OF BENEFITS SHEPPARD MULLIN PROVIDED TO**
9 **THE RECEIVER AND THE RECEIVERSHIP ESTATE, OUTLINE**
10 **AND SUMMARY OF SERVICES RENDERED, TIME EXPENDED,**
11 **AND FEES CHARGED FOR EACH CATEGORY DURING THE**
12 **PERIOD COVERED BY THIS APPLICATION.**

13 As detailed above, Carolina has meritorious claims against several
14 former professionals. Sheppard Mullin spent considerable time during the Period
15 pursuing lawsuits against these professionals. These efforts included extensive
16 settlement negotiations in the case of Cannon and Hayes (both lawsuits were
17 successfully settled) and extensive litigation with Wykidal. Work on the
18 professional-litigation constitutes the majority of the time spent by Carolina during
19 the Period.

20
21 In addition, Sheppard Mullin took steps to obtain "disgorgement"
22 judgments against sales agents and to enforce the already-obtained disgorgement
23 judgments. Sheppard Mullin also continued to work toward selling Carolina's
24 remaining real property interests. Sheppard Mullin also assisted the Receiver and
25 the SEC with implementing the Plan of Partial Distribution. All of these efforts
26 have put the SEC and the Receiver in position to make a distribution to investors in
27 the near future.

28

1 As this Application details, Sheppard Mullin and the Receiver have
2 worked diligently and efficiently to increase the potential recovery for investors.

3 **Among many other things**, Sheppard Mullin has:

- 4
- 5 • Negotiated a favorable settlement with Hayes.
- 6 • Negotiated a favorable settlement with Cannon.
- 7 • Fully litigated Carolina's meritorious claims against Wykidal.
- 8 • Litigated claims against Waldman, Glendenning, and Stewart Title.
- 9 • Prepared numerous non-warranty deeds in connection with the property
10 election process.
- 11 • Taken steps to enforce Carolina's judgments against former sales
12 agents.
- 13 • Taken steps to obtain additional disgorgement judgments against sales
14 agents.
- 15 • Enforced the Court orders entered against Vander Tuig and Carman.
- 16 • Obtained approval for the Receiver to sell Carolina's remaining real
17 property in Moore County, North Carolina.
- 18 • Worked towards effectuating the SEC's Plan of Distribution.
- 19

20 As a result of the combined efforts of the SEC, the Receiver and
21 Sheppard Mullin, the identification, valuation, protection, marketing, sale, and
22 distribution of Carolina's assets has been very successful and is continuing.

23

24 During the Period covered by this Application, Sheppard Mullin
25 activities were segregated into thirteen categories. The work performed, the time
26 spent, and the fees incurred with respect to each of these categories are described in
27 detail below.

28

1 **A. Sort Code CA01: General/Miscellaneous.**

2 Sort Code CA01 reflects work by Sheppard Mullin attorneys which,
3 while necessary to the effective representation of the Receiver, does not fit into the
4 other categories of work described below. Only a relatively small portion of the
5 work undertaken by Sheppard Mullin is categorized as "General/Miscellaneous"
6 tasks. In connection with Sort Code CA01, Sheppard Mullin attorneys, among other
7 things, accomplished the following tasks at the Receiver's request:

- 8
- 9 • Communicated with the SEC regarding miscellaneous items.
 - 10 • Communicated with the SEC regarding enforcement action against
11 Carman.
 - 12 • Communicated with investors regarding property election form and
13 Moore County real property issues.
- 14

15 In connection with Sort Code CA01, Sheppard Mullin expended
16 approximate time and fees during this Period as follows:

17

18 Hours:	14.5
19 Fees Incurred:	\$6,887.00
20 Blended Rate:	\$474.97

21

22 **B. Sort Code CA02: Factual Development.**

23 As with any receivership, one of the most important issues for
24 Receiver's counsel is accomplishing a prompt and accurate assessment of the facts
25 surrounding the subject company. Sheppard Mullin's prompt assessment of the facts
26 surrounding this case allowed the Receiver to evaluate its options very quickly and
27 promptly take steps to protect and preserve receivership assets. Fortunately, the vast
28

1 majority of this diligence was performed during prior periods. During this Period,
2 only limited time was spent on factual development.

3

4 In connection with Sort Code CA02, Sheppard Mullin expended
5 approximate time and fees during this Period as follows:

6

7	Hours:	.4
8	Fees Incurred:	\$200.00
9	Blended Rate:	\$500.00

10

11 **C. Sort Code CA03: Legal Research.**

12 One of the services provided by Sheppard Mullin to the Receiver was
13 research and analysis of various legal issues, including analysis of the impact of key
14 rules of law on various factual circumstances in this case. This receivership poses
15 many difficult legal questions. In connection with Sort Code CA03, Sheppard
16 Mullin attorneys, among other things, accomplished the following tasks at the
17 Receiver's request:

18

- 19 • Performed extensive legal research regarding enforcement of orders
20 and judgments against Vander Tuig and Carman.
- 21 • Performed legal research to enforce Carolina's judgments against
22 former sales agents.
- 23 • Performed legal research in connection with the Receiver's motion for
24 summary judgment against Kelley Moreno.

25

26

27

28

1 In connection with Sort Code CA03, Sheppard Mullin expended
2 approximate time and fees during this Period as follows:

3
4 Hours: 3.4
5 Fees Incurred: \$1,049.00
6 Blended Rate: \$308.53
7

8 **D. Sort Code CA04: Client Meetings.**

9 In order to keep all parties up-to-date on all pertinent information,
10 Sheppard Mullin regularly met with the Receiver to discuss key issues. Most of
11 these meetings were over the telephone, with a few especially important meetings
12 occurring in person. In addition to discussing recent factual discoveries, these
13 meetings also focused on important issues regarding the litigation against former
14 professionals, the Plan of Distribution, disgorgement, and the protection and
15 marketing of certain Carolina assets. In connection with Sort Code CA04, Sheppard
16 Mullin attorneys, among other things, accomplished the following tasks at the
17 Receiver's request:

- 18
- 19 • Attended meetings with the Receiver to discuss pending litigation
20 against Wykidal.
 - 21 • Attended meetings with the Receiver to prepare for the upcoming
22 arbitration hearing against Wykidal.
 - 23 • Attended meetings with the Receiver to discuss the Plan of Distribution
24 and tax issues impacting distributions to investors.
 - 25 • Reviewed numerous documents provided by the Receiver's office
26 regarding litigation against former professionals.
 - 27 • Attended meetings with the Receiver to analyze several disgorgement-
28 related issues.

1 In connection with Sort Code CA04, Sheppard Mullin expended
2 approximate time and fees during this Period as follows:

3
4 Hours: 23.7
5 Fees Incurred: \$11,220.00
6 Blended Rate: \$473.42
7

8 **E. Sort Code CA05: Court Appearances.**

9 Sheppard Mullin's representation of the Receiver requires it to prepare
10 for and occasionally attend hearings on motions brought before the Court. In
11 connection with Sort Code CA05, Sheppard Mullin attended the hearing on the
12 Receiver's disgorgement motion.

13
14 In connection with Sort Code CA05, Sheppard Mullin expended
15 approximate time and fees during this Period as follows:

16
17 Hours: 3.3
18 Fees Incurred: \$1,417.50
19 Blended Rate: \$429.55
20

21 **F. Sort Code CA06: Preparation and Analysis of Pleadings,**
22 **Schedules, Reports and Briefs.**

23 During the Period, Sheppard Mullin spent time preparing pleadings in
24 the Wykidal arbitration, preparing the Receiver's motion for approval to sell
25 Carolina's remaining Moore County real estate, preparing the Receiver's motion for
26 summary judgment against Kelley Moreno, and working on issues pertaining to the
27 Plan of Distribution. In connection with Sort Code CA06, Sheppard Mullin
28

1 attorneys, among other things, accomplished the following tasks at the Receiver's
2 request:

- 3
- 4 • Prepared motion for approval to sell Carolina's remaining Moore
- 5 County, North Carolina real property.
- 6 • Prepared the Receiver's six-month report.
- 7 • Prepared several pleadings in the Wykidal arbitration, including the
- 8 Receiver's opposition to Wykidal's motion for summary judgment and
- 9 motions to compel.
- 10 • Resolved numerous issues relating to the Plan of Distribution,
- 11 including preparation of non-warranty deeds and related transactional
- 12 documents.
- 13

14 In connection with Sort Code CA06, Sheppard Mullin expended
15 approximate time and fees during this Period as follows:

16		
17	Hours:	71.7
18	Fees Incurred:	\$25,861.50
19	Blended Rate:	\$360.69
20		

21 **G. Sort Code CA07: Internal Office Meetings.**

22 Sheppard Mullin occasionally conducts internal meetings to discuss the
23 status of the receivership. As with prior periods, very limited time was spent in this
24 category.

25
26
27
28

1 In connection with Sort Code CA07, Sheppard Mullin expended
2 approximate time and fees during this Period as follows:

3
4 Hours: .3
5 Fees Incurred: \$87.00
6 Blended Rate: \$290.00
7

8 **H. Sort Code CA08: Employment.**

9 No work was performed during the Period within this Sort Code.
10

11 **I. Sort Code CA09: Claims Issues.**

12 A critical component to maximizing the return to investors is to
13 properly address and develop potential claims against the named defendants, former
14 employees, professionals, and third parties. During the Period, Sheppard Mullin
15 worked towards obtaining judgments against Carolina's former sales agents. The
16 Receiver previously obtained judgments against numerous sales agents, but all
17 except four of these orders were vacated due to the holding in *SEC v. Ross*, 504 F.3d
18 1130 (9th Cir. 2007). In response to *SEC v. Ross* and in response to the Court's
19 decision to vacate the disgorgement orders, Sheppard Mullin spent time during the
20 Period preparing a renewed disgorgement motion. Sheppard Mullin is in the
21 process of personally serving the renewed disgorgement motion on former sales
22 agents. In connection with Sort Code CA09, Sheppard Mullin attorneys, among
23 other things, accomplished the following tasks at the Receiver's request:
24

- 25 • Prepared the Receiver's renewed disgorgement motion and analyzed
26 several issues regarding personal service of the renewed pleadings.
- 27 • Prepared responses to certain objections filed to the disgorgement
28 motion.

- 1 • Took steps to enforce judgments against Vander Tuig, Carman, and
- 2 Kelley Moreno.
- 3 • Worked on numerous issues regarding litigation against Jill Kraus.
- 4

5 In connection with Sort Code CA09, Sheppard Mullin expended
6 approximate time and fees during this Period as follows:

7		
8	Hours:	68.7
9	Fees Incurred:	\$24,504.00
10	Blended Rate:	\$356.68
11		

12 **J. Sort Code CA10: Real Estate/Asset Issues.**

13 During the Period, Sheppard Mullin resolved certain issues relating to
14 Carolina's real property in Moore County, North Carolina.

15
16 In connection with Sort Code CA10, Sheppard Mullin expended
17 approximate time and fees during this Period as follows:

18		
19	Hours:	.6
20	Fees Incurred:	\$174.00
21	Blended Rate:	\$290.00
22		

23 **K. Sort Code CA11: Special Litigation Matters.**

24 During the Period, the vast majority of Sheppard Mullin's time was
25 spent performing work within this Sort Code. This is because the Receiver's
26 litigation against Wykidal was time consuming due to Wykidal's refusal to
27 participate in settlement negotiations. The Receiver's claims against Wykidal are
28 meritorious given, among other things, the fact that Wykidal either knowingly

1 assisted Carolina in defrauding investors, or at a minimum negligently representing
2 Carolina by failing to detect the fraud and take steps to stop the fraud. In connection
3 with the arbitration, Wykidal and the Receiver both conducted extensive discovery,
4 Wykidal filed a motion for summary judgment, and the parties attended several
5 hearings before the arbitrator. This litigation warranted a substantial amount of
6 Sheppard Mullin's time. In addition, the Cannon, Hayes, Waldman, and
7 Glendenning lawsuits consumed a significant amount of Sheppard Mullin's time.
8 Sheppard Mullin engaged in extensive settlement negotiations with both Cannon
9 and Hayes. Sheppard Mullin also moved forward with the Receiver's litigation
10 against Waldman. Sheppard Mullin also prepared a detailed complaint against
11 Glendenning.

12

13 In connection with Sort Code CA11, Sheppard Mullin attorneys,
14 among other things, accomplished the following tasks at the Receiver's request:

15

- 16 • Analyzed thousands of documents to be produced in Wykidal
17 arbitration.
- 18 • Prepared opposition to Wykidal's motion for summary judgment.
- 19 • Prepared oppositions to Wykidal's motion to dismiss the Receiver's
20 complaint, first amended complaint, and second amended complaint.
- 21 • Prepared responses to numerous sets of discovery served by Wykidal.
- 22 • Prepared numerous sets of discovery requests to Wykidal.
- 23 • Prepared motions to compel discovery responses.
- 24 • Attended numerous hearings in Wykidal arbitration.
- 25 • Performed extensive legal research regarding securities laws violations
26 committed by Wykidal.
- 27 • Performed extensive legal research into issues of professional
28 negligence, breach of fiduciary duties, securities fraud, breach of

1 contract, and damages resulting from same in the context of a securities
2 offering.

- 3 • Engaged and prepared expert to testify regarding Wykidal's securities
- 4 laws violations.
- 5 • Prepared numerous pleadings in connection with Waldman litigation.
- 6 • Prepared numerous sets of discovery requests to Waldman.
- 7 • Performed legal research re Waldman's right to assert fifth amendment
- 8 privilege.
- 9 • Negotiated settlement of Cannon action.
- 10 • Prepared settlement agreement with Cannon.
- 11 • Attended depositions and conducted discovery in the Hayes action.
- 12 • Negotiated settlement of Hayes action.
- 13 • Prepared settlement agreement with Hayes.
- 14 • Analyzed numerous documents in order to prepare complaint against
- 15 Glendenning.
- 16 • Prepared complaint against Glendenning.

17
18 In connection with Sort Code CA11, Sheppard Mullin expended
19 approximate time and fees during this Period as follows:

20		
21	Hours:	966.2
22	Fees Incurred:	\$323,618.50
23	Blended Rate:	\$334.94
24		

25 **L. Sort Code CA12: Preparation / Review of Transactional and**
26 **related Transactional Documents.**

27 No work was performed within this Sort Code during the Period.

28

1 **M. Sort Code CA13: Real Estate Issues.**

2 No work was performed within this Sort Code during the Period.

3
4 **V. DETAILED ANALYSIS OF ALL TIME RECORDED BY**
5 **PROFESSIONALS IN CONNECTION WITH THIS CASE.**

6 Exhibit A to this Application is an analysis of time expended and fees
7 incurred by Sheppard Mullin attorneys in connection with this case. Exhibit A
8 shows the total activity of each attorney who has billed time on this case, as well as
9 a breakdown of time and fees incurred on a sort code by sort code basis. Thus,
10 Exhibit A allows for the review of the total involvement of each attorney in this
11 case. Information provided in Exhibit E includes hours expended, billing rate, total
12 dollars billed and percentage of total dollars billed allocable to each attorney.

13
14 Included in Exhibit C to this Application is a monthly and total
15 summary of fees. The chart attached in Exhibit C allows the Court to see how much
16 work was accomplished during each month of Sheppard Mullin's employment on a
17 sort code by sort code basis. In addition, full billing reports for each month of
18 Sheppard Mullin's employment are attached in Exhibit C.

19
20 The amounts sought in this Application are reasonable for the
21 professional services performed by Sheppard Mullin on behalf of the Receiver.
22 Sheppard Mullin believes that the services that Sheppard Mullin has rendered
23 constitute necessary and appropriate services incident to the representation of the
24 Receiver. Moreover, Sheppard Mullin believes that the services rendered have also
25 provided substantial benefit to the Receiver and Carolina's investors. As such,
26 Sheppard Mullin submits that the fees requested are properly compensable.

1 **VI. REASONABLE AND NECESSARY EXPENSES INCURRED BY**
2 **SHEPPARD MULLIN.**

3 In connection with its representation of the Receiver in this case,
4 Sheppard Mullin has incurred reasonable and necessary expenses. Sheppard Mullin
5 requests reimbursement of these expenses because such expenses were both
6 necessary and reasonable under the circumstances.

7
8 A detailed statement of expenses, including a breakdown of expenses
9 by category, is attached to this Application as Exhibit B. Sheppard Mullin is
10 seeking reimbursement for filing fees, service of process, overnight delivery
11 services, messenger services, in-house photocopying, computerized legal research,
12 transcript, long distance telephone charges and telecopier charges, duplication, and
13 postage. As detailed in Exhibit B, Sheppard Mullin has made every effort to limit
14 expenses and to use the most economical means available for accomplishing the task
15 requiring expenditure of cost.

16
17 All of Sheppard Mullin's out-of-pocket expenses were incurred in the
18 best interest of Carolina investors and represent reasonable and necessary expenses
19 of the Receiver. Reimbursement is appropriate. An explanation of each specific
20 category of costs is set forth below:

21
22 **a. Document Duplication/Copying Expenses:**

23 Sheppard Mullin incurred document duplication expenses during
24 the Period. The bulk of these expenses were incurred through the
25 copying of documents to be produced in the Wykidal litigation.
26 Wykidal served substantial written discovery which required the
27 Receiver to produce thousands of documents. Numerous
28 documents were also produced in litigation against the other

1 former professionals. Duplication charges were also incurred in
2 connection with numerous pleadings filed by the Receiver during
3 the Period. Sheppard Mullin incurred duplication charges of
4 \$8,917.02 in connection with its representation of the Receiver
5 during the applicable Period.

6
7 **b. Facsimile and Telephone Charges:** Sheppard
8 Mullin incurred no facsimile and telephone charges during the
9 applicable Period.

10
11 **c. Attorney Service (including Filing, Recording and**
12 **Witness Fees and Messenger Costs):** Sheppard Mullin incurred
13 attorney service charges of \$7,513.71 in connection with its
14 representation of the Receiver during the applicable Period.
15 These charges were incurred in connection with the Receiver's
16 disgorgement efforts which required the Receiver to attempt to
17 personally serve pleadings on former sales agents. Also,
18 expenses were incurred in connection with the service and filing
19 of numerous pleadings in the Receiver's litigation against former
20 professionals. Several pleadings were also filed relating to the
21 Receiver's disgorgement motion and contempt motions against
22 Vander Tuig and Carman.

23
24 **d. Federal Express/Overnight Mail Charges:**
25 Sheppard Mullin has incurred certain Federal Express/overnight
26 mail charges in connection with its representations. Given that
27 the SEC and various Carolina professionals are located
28 substantial distances away from each other and Sheppard Mullin,

1 next day mail was the most efficient and appropriate way of
2 distributing certain time sensitive information. Sheppard Mullin
3 incurred Federal Express and overnight delivery charges of
4 \$407.97 in connection with its representation of the Receiver
5 during the applicable Period.

6
7 e. **Miscellaneous Charges:** Sheppard Mullin has
8 incurred and personally reimbursed expenses of \$80.00 for
9 CourtCall telephonic appearances, \$24.03 in postage, and
10 \$2,340.19 in online research. In connection with the Wykidal
11 litigation, Sheppard Mullin also advanced \$6,287.40 to JAMS on
12 behalf of the Receiver, advanced \$4,000.00 in consultant/expert
13 Spindler in connection with the Wykidal arbitration, and \$187.78
14 in court reporter fees.

15
16 f. **Secretarial Overtime or Word Processing**
17 **Expenses:** Sheppard Mullin has not requested reimbursement for
18 word processing or secretarial overtime, notwithstanding the fact
19 that Sheppard Mullin has incurred such expenses that are
20 normally charged to clients of Sheppard Mullin.

21
22 **VII. STATEMENT OF QUALIFICATIONS OF SHEPPARD MULLIN**
23 **PROFESSIONALS CHARGING MATERIAL TIME IN CONNECTION**
24 **WITH THIS CASE.**

25 The professional qualifications of those attorneys who have performed
26 most work on this matter to date — Finley Taylor, Alan H. Martin, Robert S. Beall,
27 Norma V. Garcia-Guillén, and Michael A. Wallin — are attached as Exhibit D.
28

1 **VIII. SUMMARY.**

2 Exhibit E provides a summary of (i) the total compensation requested;
3 and (ii) attorneys' applicable billing rates, time incurred, total billing amount, and
4 date of bar admission for each professional.

5
6 **IX. CONCLUSION.**

7 Based on the foregoing, Sheppard Mullin requests that its fees and
8 costs be approved and awarded as set forth in this Application.

9
10 Dated: March 24, 2009

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12
13 */s/ Michael A. Wallin*
14 By _____
15 MICHAEL A. WALLIN
16 Attorneys for
17 THOMAS A. SEAMAN, RECEIVER
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DECLARATION OF ALAN H. MARTIN

I, Alan H. Martin, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California and am a member of the bar of this Court. I am a partner in the law firm of Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin"), and one of the attorneys with principal responsibility for this matter. I have responsibility for overseeing the billing in this matter. I have personal knowledge of the facts set forth herein, and if called as a witness could testify competently thereto.

2. The Receiver has reviewed the fee and expense statements reflected in this Application and the Receiver has approved the Application.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on March 24, 2009.

/s/ Alan H. Martin

ALAN H. MARTIN

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DECLARATION OF THOMAS A. SEAMAN

I, Thomas A. Seaman, hereby declare as follows:

1. I am the Receiver for The Carolina Development Company, Inc. and related subsidiaries and affiliates.

2. The following facts are within my personal knowledge unless otherwise stated. I am over the age of eighteen and competent to testify in a court of law. If called to testify as a witness regarding the statements set forth below, I could and would competently testify thereto.

3. I have reviewed the time records and expense records of Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin") reflected in the within Application for compensation and expenses incurred in representing the Receiver in this matter. Based upon my knowledge of the Receiver's needs in this matter, I believe the legal services performed and the fees and expenses incurred by Sheppard Mullin were reasonably required to represent the Receiver adequately. Thus, I have no objection to the award of the compensation and reimbursement of expenses sought by Sheppard Mullin in the Application.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on March 24, 2009.

/s/ Thomas A. Seaman

THOMAS A. SEAMAN

List of Exhibits

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- Exhibit A Distribution of hours / costs of services rendered among the thirteen sort codes, by attorney
- Exhibit B Detailed statement of expenses (including breakdown by category)
- Exhibit C Monthly and total summary of fees, by sort code; detailed monthly billing reports
- Exhibit D Descriptions of professional education, experience and expertise of each attorney who billed time
- Exhibit E Summary of total compensation requested, attorneys' applicable billing rates and date of bar admission, breakdown of hours expended, time incurred, total billing amount, and percentage of total dollars billed allocable to each attorney