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15 UNITED STATES DISTRICT COURT  
 16 SOUTHERN DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE  
 18 COMMISSION,

19 Plaintiff,

20 v.

21 TOTAL WEALTH MANAGEMENT,  
 22 INC.; et al.,

23 Defendants.

Case No. 15-cv-226 BAS (DHB)

NO ORAL ARGUMENT UNLESS  
 REQUESTED BY THE COURT

OPPOSITION OF RECEIVER,  
 THOMAS A. SEAMAN, TO  
 DEFENDANT JACOB COOPER'S  
 MOTION TO STAY

Date: NONE SPECIFIED  
 Time: NONE SPECIFIED  
 Ctrm: 4B  
 Judge: Hon. Cynthia Bashant

24 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

25 **PLEASE TAKE NOTICE THAT** Thomas A. Seaman (the "Receiver"), the  
 26 Court-appointed permanent receiver for Total Wealth Management, Inc., and its  
 27 subsidiaries and affiliates, including, but not limited to Altus Capital Management,  
 28 LLC (collectively, the "Receivership Entities") hereby submits the following,  
 limited opposition, to Defendant Jacob Cooper's recently filed Motion to Stay.

**I. DISCUSSION.**

The Receiver opposes Mr. Cooper's Motion to Stay for the following reasons:

1           **A.     The Motion To Stay Is Procedurally Inappropriate.**

2           As a preliminary matter, the Motion to Stay is procedurally inappropriate, and  
3 filed in violation of the Court's Civil Local Rules (the "Local Rules" or "L.R.") and  
4 Standing Order for Civil Cases (the "Standing Order"). Specifically, the Local  
5 Rules provide that, on a motion where a hearing is requested, a movant must obtain  
6 a hearing date from the Court's clerk, and file no fewer than twenty-eight (28) days  
7 before the hearing date in order to provide other parties a timely opportunity to  
8 oppose. See, e.g., L.R. 7.1(b) and (e). Likewise, the Court's Standing Order  
9 requires parties to meet and confer at least seven (7) days prior to the filing of any  
10 noticed motion, and to select a hearing date in connection with *any* noticed motion.  
11 (See Standing Order at Section 4(A) and (B).)

12           Here, Mr. Cooper did not, either directly or through his new counsel,  
13 participate in any formal meet and confer effort prior to filing the Motion to Stay,  
14 nor did he secure a hearing date, despite specifically requesting oral argument on the  
15 face of his Motion to Stay. The Motion to Stay hearing date and time are specified  
16 as "TBD", a designation not permitted under the Local Rules or Standing Order.  
17 (See Dkt. Nos. 173, 173-1 – 3.) The Receiver therefore respectfully submits that the  
18 Motion to Stay is procedurally inappropriate and may be denied – or at least rejected  
19 pending compliance with the Local Rules and Standing Order – on that basis.

20           **B.     The Stay Requested By Mr. Cooper Should Not Affect The**  
21                   **Pending Receivership.**

22           While the Receiver appreciates that Mr. Cooper has specifically alerted the  
23 Court that it is *not* his intention, via the filing of the Motion to Stay, to affect the  
24 pending joint motion to approve settlement (the "Settlement Motion") – submitted  
25 by and between the Plaintiff Securities and Exchange Commission, the Receiver,  
26 and Mr. Cooper, and which was the subject of a recently granted *ex parte* motion by  
27  
28

1 the Receiver<sup>1</sup> (see Dkt. No. 168) – Mr. Cooper's unspecified request that the Court  
2 "stay ... all other proceedings in this matter" is problematic.

3 It appears that Mr. Cooper's Motion to Stay requests that, with the exception  
4 of the Court's consideration of the Settlement Approval Motion, all other actions and  
5 activities in the above-entitled action be indefinitely suspended, including,  
6 ostensibly, the pending receivership. A stay so broad as to encompass the pending  
7 receivership would be significantly disruptive to the Receiver's asset recovery and  
8 claims processing and distribution efforts, both of which are substantially underway,  
9 and therefore prejudicial to the interests of the investors and creditors the Receiver's  
10 appointment was, in part, intended to protect. As of the date of this Opposition, and  
11 in addition to the Settlement Motion pending before the Court, the current status of  
12 the pending receivership is, and is expected to be, as follows:

- 13 • Receivership has been pending for more than two and a half years, with  
14 more than \$3 million recovered for the benefit of the Receivership  
15 Entities and their investors and creditors;
- 16 • Receiver is the plaintiff in two (2) pending actions in an effort to  
17 recover assets for the benefit of the Receivership Entities and their  
18 investors and creditors, both of which includes pending appellate  
19 components<sup>2</sup>;
- 20 • By agreement, the Receiver has right to assert a claim against net  
21 proceeds from sales of personal property recently released from the  
22 ambit of the Court's asset freeze and which Mr. Cooper is in the process  
23 of selling (see Dkt. No. 156);

24  
25 <sup>1</sup> The Court has granted the Receiver's *ex parte* motion, sealing the Settlement  
26 Motion, which the Receiver believes is presently under consideration by the  
27 Court.

28 <sup>2</sup> See Seaman v. Lively, et al., San Diego Superior Court Case No. 37-2016-00003644-CU-PN-CTL and California Court of Appeal Case No. D071462 and Seaman v. Private Placement Capital Notes II, LLC, et al., USDC, S.D. Cal. Case No. 16-cv-00578-BAS-DHS and Ninth Circuit Court of Appeals Case No. 17-55599.

- 1 • The Court has approved the Receiver's proposed claims process (see  
2 Dkt. No. 137), the claims bar date established by the Court has lapsed,  
3 and the Receiver is presently processing approximately 290 timely  
4 claims;
- 5 • Upon the completion of his processing of all timely claims, the  
6 Receiver will petition the Court to approve a recommended claims  
7 treatment and distribution; and
- 8 • Upon Court approval of his distribution proposal, the Receiver will  
9 make distributions to all investors and creditors with allowed claims.

10 Accordingly, and notwithstanding Mr. Cooper's unsubstantiated conclusion  
11 that "[g]ranting the stay will not harm third parties[,]" halting the receivership at this  
12 time will result in substantial disruption to the Receiver's asset recovery and  
13 administration efforts and, perhaps more importantly, to his efforts to complete the  
14 processing of timely claims and make distributions to investors and creditors. The  
15 Receiver therefore respectfully submits that, to the extent the Court enters a stay, the  
16 pending receivership should be exempted.

17 Moreover, Mr. Cooper has not provided the Court with any legitimate basis to  
18 stay the pending receivership. Mr. Cooper's request for an apparent blanket stay is  
19 predicated upon the contention that a stay is necessary to protect his Fifth  
20 Amendment rights in a pending state court criminal matter (see, e.g., Dkt. No. 173-1  
21 at 1:2-3), yet he fails to link the exercise of those rights to any of the matters  
22 pending before this Court, let alone to the pending receivership. It is well-  
23 established that, while a defendant may seek to stay a civil action on the grounds  
24 that his Fifth Amendment rights are implicated, he "has no absolute right to be  
25 forced to choose between testifying in a civil matter and asserting his Fifth  
26 Amendment privilege." Keating v. Office of Thrift Supervision, 45 F.3d 322, 325-  
27 26 (9th Cir. 1995). It is therefore entirely "permissible to conduct a civil proceeding  
28 at the same time as a related criminal proceeding, even if that necessitates

1 invocation of the Fifth Amendment privilege[.]” Id. In the receivership context,  
2 where a stay would substantially interfere with the administration of a pending  
3 receivership, a stay may be properly denied. See, e.g., Fed. Sav. & Loan Ins. Corp.  
4 v. Molinaro, 889 F.2d 899, 903 (9th Cir. 1989).

5 **II. CONCLUSION.**

6 For the foregoing reasons, the Receiver respectfully requests that, to the  
7 extent the Court determines it is appropriate to enter a stay of proceedings in the  
8 above-entitled action, that stay should be limited, and should apply to the pending  
9 receivership, the Receiver, or the Receiver's administration of the Receivership  
10 Entities in accordance with the Court's prior orders.

11  
12 Dated: September 12, 2017

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15 By:           /s/          Joshua A. del Castillo  
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18 THOMAS A. SEAMAN  
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**PROOF OF SERVICE**

*Securities and Exchange Commission v. Total Wealth Management, Inc., et al.*  
USDC, Southern District of California – Case No. 15-cv-226 BAS (DHB)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**OPPOSITION OF RECEIVER, THOMAS A. SEAMAN, TO  
DEFENDANT JACOB COOPER'S MOTION TO STAY**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **September 12, 2017**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Vincent J. Brown**  
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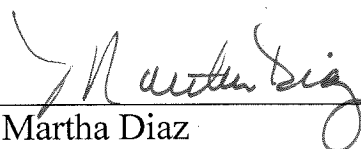
- **Mikel R. Bistrow**  
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On September 12, 2017, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit.

Franchise Tax Board (FTB) **Via U.S. Mail**  
P.O. Box 2952  
Sacramento, CA 95812-2952

Internal Revenue Service **Via U.S. Mail**  
880 Front Street  
San Diego, CA 92101-8869

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 12, 2017 at Los Angeles, California.

  
\_\_\_\_\_  
Martha Diaz