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10 Attorneys for Receiver
11 THOMAS C. HEBRANK

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14
15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 LOUIS V. SCHOOLER and FIRST
19 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
20 FINANCIAL PLANNING
CORPORATION,

21 Defendants.
22

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AUTHORITY TO
MAKE SECOND INTERIM
DISTRIBUTION TO HOLDERS OF
ALLOWED CLAIMS**

Date: June 21, 2019
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 **I. INTRODUCTION**

2 In March 2018, the Receiver previously sought and was granted authority to
3 distribute a total of \$13 million to the holders of allowed claims. Dkt. Nos. 1594,
4 1610. The vast majority of those distribution checks (a total of \$12,692,351) have
5 been cashed by investors and the Receiver's staff has worked diligently to make sure
6 as many investors as possible received and cashed their distribution checks.

7 Since then, the Receiver has been able to sell further properties pursuant to the
8 Modified Orderly Sale Process and has accumulated approximately \$8.1 million in
9 cash in the receivership estate. Accordingly, the Receiver seeks authority to make a
10 second interim distribution totaling \$6 million to the holders of allowed claims
11 pursuant to the Court-approved Distribution Plan, *i.e.*, all investors with allowed
12 claims will receive a *pro rata* distribution based on their allowed claim amounts.
13 The remaining cash will be held in reserve while the Receiver continues efforts to
14 maximize the value of the remaining properties through the Modified Orderly Sale
15 Process.

16 **II. BACKGROUND FACTS**

17 On February 23, 2016, the Court entered Final Judgment against Defendant
18 Louis Schooler. Dkt. No. 1190. On May 25, 2016, the Court approved the
19 Receiver's proposed Distribution Plan, including the One Pot Approach, *i.e.*, investor
20 claims would be based on their net losses from their investments in all General
21 Partnerships, all assets of the receivership estate would be pooled together, and all
22 investors with allowed claims would receive *pro rata* distributions from the pooled
23 assets based on their allowed claim amounts. Dkt. No. 1304. On August 30, 2016,
24 the Court approved the Modified Orderly Sale Process for selling properties included
25 in the receivership estate. Dkt. No. 1359. On March 24, 2017, the investors
26 represented by Gary Aguirre voluntarily dismissed their appeals of several of the
27 Court's orders, including the Court's May 25, 2016 Order. On February 20, 2018, the
28

1 Court approved the Receiver's proposed allowed amounts of all investor claims. Dkt.
2 No. 1591.

3 As a result of these orders, the Receiver's efforts to maximize the value of
4 receivership properties, and the Court's orders approving each proposed sale, the
5 Receiver has been able to sell a total of 24 properties (including one property owned
6 by Western) for a total of \$22,418,073 in net sale proceeds. In June 2018, pursuant
7 to authorization from the Court, the Receiver issued distribution checks totaling
8 \$13 million to the holders of allowed claims. As noted above, the vast majority of
9 those distribution checks (a total of \$12,692,351) have been cashed by investors.
10 Declaration of Thomas Hebrank filed herewith ("Hebrank Declaration"), ¶ 2.

11 III. PROPOSED SECOND INTERIM DISTRIBUTION

12 The Receiver proposes to distribute a total of \$6 million at this time, which is
13 the vast majority of cash in the receivership estate. The remaining approximately
14 \$2.1 million will be held in reserve to cover operating expenses (including property
15 taxes and property insurance premiums),¹ administrative expenses (such as fees and
16 costs of the Receiver and his professionals, including amounts held back from prior
17 interim fee applications),² as well as a reasonable contingency reserve. The
18 Receiver's projections that form the basis of the proposed \$6 million distribution are
19 reflected on Exhibit A to the Hebrank Declaration. These are *projections only* – the
20 actual operating expenses and administrative expenses that are incurred may vary
21 considerably depending on a multitude of factors. Hebrank Declaration, ¶ 3.

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¹ Although 24 properties have been sold, the receivership estate still holds 14 properties (including those previously held by Western), meaning there are still substantial property taxes and insurance premiums that must be paid until these properties are sold.

² At this time, the interim fee applications of the Receiver and his counsel, Allen Matkins, have been approved and paid on an interim basis through September 30, 2018. The holdbacks from these interim fee applications currently total \$450,867.96 for the Receiver and \$355,760.20 for Allen Matkins.

1 The Receiver continues to generate sale proceeds from the sales of properties
2 and is hopeful that the full reserve amount will not be necessary to cover operating
3 expenses and administrative expenses, and therefore expects that a significant
4 amount will be available for distribution at a later date. However, it is important to
5 maintain a reasonable contingency reserve in the event unanticipated expenses arise.
6 Hebrank Declaration, ¶ 4.

7 The Receiver will use an outside vendor to print and mail the approximately
8 3,307 checks to investors with allowed claims. Checks will be mailed approximately
9 45 days after entry of the order. Pursuant to the approved Distribution Plan (Dkt.
10 No. 1181-1, Exhibit E), the Receiver will conduct a reasonable investigation into
11 distribution checks that remain uncashed 90 days after they were issued for the
12 purpose of identifying correct addresses for the applicable claimants, including
13 contacting the applicable investors or any known family members by telephone or
14 email (if available) and searching available online databases for possible current
15 addresses. If a correct address can be identified, the check will be reissued as soon
16 as practicable. If a correct address cannot be identified, the claimant's claim will be
17 automatically and permanently extinguished and the uncashed distribution amount
18 will go back into the reserve for future distribution. Hebrank Declaration, ¶ 5.

19 The Receiver has reminded investors throughout the case of the importance of
20 informing the Receiver of any change to their contact information. Accordingly,
21 other investors with allowed claims should not have to bear the expense of extensive
22 searches (beyond that described above) and attempts to locate investors who do not
23 receive or cash their distribution checks. A reasonable investigation, as outlined
24 above and provided for in the approved Distribution Plan, is sufficient under the
25 circumstances. Hebrank Declaration, ¶ 6.

26 IV. ARGUMENT

27 "The power of a district court to impose a receivership or grant other forms of
28 ancillary relief does not in the first instance depend on a statutory grant of power

1 from the securities laws. Rather, the authority derives from the inherent power of a
2 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
3 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
4 and efficient administration of the estate by the district court for the benefit of
5 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
6 of a receiver is authorized by the broad equitable powers of the court, any
7 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
8 953 F.2d 1560, 1569 (11th Cir. 1992).

9 District courts have the broad power of a court of equity to determine the
10 appropriate action in the administration and supervision of an equity receivership.
11 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
12 Circuit explained:

13 A district court's power to supervise an equity receivership
14 and to determine the appropriate action to be taken in the
15 administration of the receivership is extremely broad. The
16 district court has broad powers and wide discretion to
17 determine the appropriate relief in an equity receivership.
18 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. A district court's decision
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

19 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
20 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
21 and 'we generally uphold reasonable procedures instituted by the district court that
22 serve th[e] purpose' of orderly and efficient administration of the receivership for the
23 benefit of creditors."). Accordingly, the Court has broad discretion in approving
24 procedures for the sale of receivership estate assets.

25 Here, all of the necessary steps prior to making a second interim distribution
26 have been completed – the Court has approved a Distribution Plan, the Court has
27 approved the allowed amounts of all claims, and there is a substantial amount of cash
28 available in the receivership estate to be distributed. Accordingly, the Receiver

1 should be authorized to distribute a total of \$6 million to investors with allowed
2 claims pursuant to the Distribution Plan, with the remaining cash in the receivership
3 held in reserve pending further orders of the Court. The Receiver will continue his
4 work to sell receivership properties through the Modified Orderly Sale Process and
5 will seek authorization to make further distributions when a substantial sum of cash
6 is available for distribution.

7 **V. CONCLUSION**

8 Based on the foregoing, the Receiver requests an order authorizing him to
9 make a second interim distribution totaling \$6 million to holders of allowed claims.

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Dated: April 8, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates
EDWARD G. FATES
Attorneys for Receiver
THOMAS C. HEBRANK

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

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF
MOTION FOR AUTHORITY TO
MAKE SECOND INTERIM
DISTRIBUTION TO HOLDERS OF
ALLOWED CLAIMS**

Date: June 21, 2019
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 I, Thomas C. Hebrank, declare:

2 1. I am the Court-appointed receiver for First Financial Planning
3 Corporation d/b/a Western Financial Planning Corporation ("Western"), its
4 subsidiaries, and the General Partnerships listed on Schedule 1 to the Preliminary
5 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"). I
6 make this declaration in support of my Motion for Authority to Make Second Interim
7 Distribution to Holders of Allowed Claims ("Motion"). I have personal knowledge
8 of the facts stated herein, and if called upon to do so, I could and would personally
9 and competently testify to them.

10 2. Pursuant to Modified Orderly Sale Process and the Court's orders
11 approving each proposed sale, to date I have been able to sell 24 properties
12 (including one property owned by Western) for a total of \$22,418,073 in net sale
13 proceeds. In June 2018, pursuant to authorization from the Court, I issued
14 distribution checks totaling \$13 million to the holders of allowed claims. The vast
15 majority of those distribution checks (a total of \$12,692,351) have been cashed by
16 investors with allowed claims.

17 3. I propose to distribute a total of \$6 million at this time, which is the vast
18 majority of cash in the receivership estate. The remaining approximately
19 \$2.1 million will be held in reserve to cover operating expenses (including property
20 taxes and property insurance premiums),¹ administrative expenses (such as fees and
21 costs me and my professionals, including amounts held back from prior interim fee
22 applications),² as well as a reasonable contingency reserve. My projections that form
23

24 _____
25 ¹ Although 24 properties have been sold, the receivership estate still holds
26 14 properties (including those previously held by Western), meaning there are
still substantial property taxes and insurance premiums that must be paid until
these properties are sold.

27 ² At this time, the interim fee applications for me and my counsel, Allen Matkins,
28 have been approved and paid on an interim basis through September 30, 2018.
The holdbacks from these interim fee applications currently total \$450,867.96 for
me and my company and \$355,760.20 for Allen Matkins.

1 the basis of the proposed \$6 million distribution are reflected on Exhibit A attached
2 hereto. These are *projections only* – the actual operating expenses and
3 administrative expenses that are incurred may vary considerably depending on a
4 multitude of factors.

5 4. I continue to generate sale proceeds from the sales of properties and am
6 hopeful that the full reserve amount will not be necessary to cover operating
7 expenses and administrative expenses, and therefore expect that a significant amount
8 will be available for distribution at a later date. However, it is important to maintain
9 a reasonable contingency reserve in the event unanticipated expenses arise.

10 5. I will use an outside vendor to print and mail the approximately
11 3,307 checks to investors with allowed claims. Checks will be mailed approximately
12 45 days after entry of the order. Pursuant to the approved Distribution Plan (Dkt.
13 No. 1181-1, Exhibit E), I will conduct a reasonable investigation into distribution
14 checks that remain uncashed 90 days after they were issued for the purpose of
15 identifying correct addresses for the applicable claimants, including contacting the
16 applicable investors or any known family members by telephone or email (if
17 available) and searching available online databases for possible current addresses. If
18 a correct address can be identified, the check will be reissued as soon as practicable.
19 If a correct address cannot be identified, the claimant's claim will be automatically
20 and permanently extinguished and the uncashed distribution amount will go back
21 into the reserve for future distribution.

22 6. I have reminded investors throughout the case of the importance of
23 informing me of any change to their contact information. Accordingly, other
24 investors with allowed claims should not have to bear the expense of extensive
25 searches (beyond that described above) and attempts to locate investors who do not
26 receive or cash their distribution checks. A reasonable investigation, as outlined
27 above and provided for in the approved Distribution Plan, is sufficient under the
28 circumstances.

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

Executed this 4th day of April, 2019, at San Diego, California.


THOMAS C. HEBRANK

EXHIBIT INDEX

Exhibit A	Receiver's Basis of the Proposed \$6 Million Distribution	6
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EXHIBIT A

EXHIBIT A

WFP - Investor Distribution #2**April 2018**

Cash on Hand 3-31-19		\$ 8,115,593
<u>Est Operating Expenses</u>		
2019	\$ (200,000)	
2020	\$ (175,000)	
		\$ (375,000)
<u>Professional Fees</u>		
Receiver		
2019	\$ (250,000)	
2020	\$ (200,000)	
		\$ (450,000)
Allen Matkins		
2019	\$ (175,000)	
2020	\$ (150,000)	
		\$ (325,000)
Duffy		
2019	\$ (30,000)	
2020	\$ (30,000)	
		\$ (60,000)
<u>Prof Fee Holdbacks</u>		
Receiver	\$ (450,868)	
Allen Matkins	\$ (355,760)	
Duffy	\$ -	
		\$ (806,628)
1% Contingency		\$ (81,156)
Amt Available for Distribution		<u>\$ 6,017,809</u>