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6 Attorneys for Court-appointed Receiver
7 THOMAS C. HEBRANK

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING CORPORATION
d/b/a WESTERN FINANCIAL PLANNING
16 CORPORATION,

17 Defendants.

Case No. 3:12-cv-02164-GPC-JMA

**NOTICE OF FILING OF RECEIVER'S
RESPONSE TO OBJECTIONS TO
PROPOSED PRELIMINARY INJUNCTION
ORDER**

Ctrm.: 9
Judge: Hon. Gonzalo P. Curiel

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1 **PLEASE TAKE NOTICE** that, pursuant to the Court’s Order issued on January 11, 2013,
2 Thomas C. Hebrank, Court-appointed receiver for First Financial Planning Corporation d/b/a
3 Western Financial Planning Corporation, and its subsidiaries and affiliates, hereby files his
4 Response to Objections to Proposed Preliminary Injunction Order, a copy of which is attached
5 hereto as Exhibit A.

6
7 Dated: January 18, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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9 By: _____ /s/ Ted Fates
10 TED FATES
11 Attorneys for Court-appointed Receiver
12 THOMAS C. HEBRANK
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EXHIBIT A

1 DAVID R. ZARO (BAR NO. 124334)
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7 THOMAS C. HEBRANK

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

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11 SECURITIES AND EXCHANGE
COMMISSION,
12
Plaintiff,
13
v.
14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING CORPORATION
d/b/a WESTERN FINANCIAL PLANNING
16 CORPORATION,
17 Defendants.

Case No. 3:12-cv-2164-GPC-JMA
**RECEIVER'S RESPONSE TO
OBJECTIONS TO PROPOSED
PRELIMINARY INJUNCTION ORDER**
Ctrm.: 9
Judge: Hon. Gonzalo P. Curiel

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1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial Planning
2 Corporation d/b/a Western Financial Planning Corporation ("Western"), and its subsidiaries and
3 affiliates (collectively, the "Receivership Entities"), hereby responds to Defendant Schooler's
4 Objections to the Preliminary Injunction Order ("PI Order") proposed by the Securities and
5 Exchange Commission ("Commission").

6 The Receiver submits that certain changes to the proposed PI Order contained in
7 Mr. Schooler's Objection will cause unnecessary confusion and expense for the receivership estate
8 and investors. The Receiver, therefore, recommends that these terms not be included in the form
9 of PI Order that is entered.

10 **A. Receiver Bond**

11 Mr. Schooler proposes that the Receiver be required to post a \$10 million bond. There is
12 no requirement that receivers post a bond. Whether a bond is required, and the amount of the
13 bond, is left to the discretion of the Court. Local Civil Rule 66.1(a)(3). The purpose of a bond is
14 generally to protect those with interests in receivership estate assets from misconduct by a
15 receiver.

16 The cost to obtain a \$10 million bond would be approximately \$100,000, which would be a
17 cost of the receivership estate.¹ Mr. Schooler does not explain how this expense would be paid,
18 nor does he identify what collateral would be used to secure the bond. Even if such a bond could
19 be obtained, the substantial expense is unnecessary. Mr. Hebrank was proposed as receiver by the
20 Commission due to his skill and experience as an equity receiver and excellent track record. The
21 Court determines what authority the Receiver has and supervises his activities. The Receiver also
22 regularly communicates with counsel for the Commission and counsel for Mr. Schooler.
23 Considering the substantial losses investors are potentially facing, the substantial cost of the bond
24 to the receivership estate, and the Court's oversight of the Receiver's actions, the Receiver
25 recommends that the proposed bond not be required.

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28 ¹ The customary cost of a bond is generally about 1% of the amount of the bond per year the
bond is in effect.

1 **B. Filing Accounting Under Seal**

2 Mr. Schooler proposes that the proposed PI Order be modified to require that the
3 Receiver's accounting report be filed under seal. The Receiver recommends that investors be
4 permitted to review the accounting report. They each have a significant financial stake in the
5 receivership estate. Accordingly, they should be allowed to review the results of the Receiver's
6 accounting.

7 **C. Limitation on Receiver's Liability**

8 Mr. Schooler proposes that the limitation on the Receiver's liability in the proposed PI
9 Order be changed from gross negligence to negligence. However, as an agent of the Court, the
10 Receiver is entitled to quasi-judicial immunity when acting pursuant to Court orders. *See Mullis v.*
11 *United States Bankruptcy Court*, 828 F.2d 1385, 1390 (9th Cir. 1987); *Bradford Audio Corp. v.*
12 *Pious*, 392 F.2d 67, 72-73 (2d Cir. 1968). This immunity is important, because in an equity
13 receivership, there are almost always principals, employees, investors or other interested parties
14 who disagree with a receiver's recommendations and actions taken pursuant to the Court's orders.
15 This is especially true when the assets of the receivership estate are insufficient to pay investors in
16 full. The quasi-judicial immunity that protects receivers discourages frivolous lawsuits by those
17 who contend their recovery would have been greater if the receiver had made different
18 recommendations to the Court or taken action that otherwise favored them. Nothing in the PI
19 Order should modify or limit this immunity.

20 **D. Mr. Hougen as Counsel for Western**

21 Mr. Schooler proposes that his counsel, Mr. Hougen, be permitted to represent Western in
22 this matter. This runs contrary to the nature of an equity receivership in which a receiver is put in
23 complete control of an entity, including all of its assets and records. The receiver preserves and
24 protects the assets and conducts an investigation and accounting of the company's financial affairs.
25 The receiver's findings are then reported to the Court and the parties.

26 To have Mr. Schooler's counsel represent Western would create several major problems.
27 First, it would cause confusion, especially among investors, as to who is authorized to speak and
28 act for the company. It should be clear that the Receiver is the only person authorized to speak

1 and act for Western. Second, Western's limited financial resources should be preserved and
2 protected for investors, and not used for attorney fees and other litigation expenses. Third, the
3 Receiver's ability to conduct his investigation would be impaired if he does not have access to
4 communications between Western and its former counsel. For this reason, equity receivers control
5 the attorney-client privilege with regard to entities in receivership. *Commodity Futures Trading*
6 *Commission v. Weintraub*, 471 U.S. 343, 353-54 (1985); *United States v. Plache*, 913 F.2d 1375,
7 1381 (9th Cir. 1990). Finally, nothing prevents Mr. Schooler from continuing to assert that neither
8 he nor Western violated securities laws.

9 **II. CONCLUSION**

10 WHEREFORE, the Receiver recommends that the changes to the proposed PI Order
11 discussed above not be included in the form of PI Order that is entered by the Court.

12
13 Dated: January 7, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

14
15 By: _____ /s/ Ted Fates

16 TED FATES
17 Attorneys for Court-appointed Receiver
18 THOMAS C. HEBRANK
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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

On January 18, 2013, I served the within document(s) described as:

➤ **NOTICE OF FILING OF RECEIVER’S RESPONSE TO OBJECTIONS TO PROPOSED PRELIMINARY INJUNCTION ORDER**

on the interested parties in this action by:

BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"): the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On January 14, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

- Philip H. Dyson - phildysonlaw@gmail.com; jldossegger2@yahoo.com; phdtravel@yahoo.com
- Edward G. Fates - tfates@allenmatkins.com; bcrfilings@allenmatkins.com
- Eric Hougen - eric@hougenlaw.com
- Sara D. Kalin - kalins@sec.gov
- Sam S Puathasnanon - puathasnanons@sec.gov; irwinma@sec.gov
- Molly M. White - whitem@sec.gov

BY MAIL: I placed a true copy of the document in a sealed envelope or package addressed as indicated on the attached Service List on the above-mentioned date in San Diego, California for collection and mailing pursuant to the firm's ordinary business practice. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY OVERNIGHT DELIVERY: I deposited in a box or other facility regularly maintained by an overnight courier service, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated in the attached service list on the above-mentioned date, with fees for overnight delivery paid or provided for.

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

Executed on January 18, 2013, at San Diego, California.

Janine L. Batiste
(Type or print name)

Janine Batiste
(Signature of Declarant)