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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 LOUIS V. SCHOOLER and FIRST  
 22 FINANCIAL PLANNING  
 23 CORPORATION d/b/a WESTERN  
 24 FINANCIAL PLANNING  
 25 CORPORATION,

26 Defendants.

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

**RECEIVER'S RESPONSE TO  
 MOTION FOR MODIFICATION OF  
 THE PRELIMINARY INJUNCTION  
 ORDER TO REMOVE THE REAL  
 ESTATE GENERAL  
 PARTNERSHIPS FROM THE  
 RECEIVERSHIP**

Date: July 26, 2013  
 Time: 1:30 p.m.  
 Ctrm.: 2D  
 Judge: Hon. Gonzalo P. Curiel

**NO ORAL ARGUMENT UNLESS  
 REQUESTED BY THE COURT**

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial  
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),  
3 and its subsidiaries and affiliates (collectively, "Receivership Entities"), submits this  
4 response to Defendants Louis V. Schooler and Western's Motion for Modification of  
5 the Preliminary Injunction Order to Remove the Real Estate General Partnerships  
6 from the Receivership ("Motion").

## 7 I. INTRODUCTION

8 Having tried unsuccessfully to have Western removed from the receivership,  
9 Defendants now seek to have the General Partnerships ("GPs") removed from the  
10 receivership. The Motion, which includes several factual misstatements, provides  
11 no basis to modify the Preliminary Injunction Order. Due to Western's inability to  
12 make payments on loans secured by GP properties, the receivership and  
13 accompanying litigation injunction provide much needed protection to the GPs.  
14 Rather than exposing the GPs to foreclosures and other potentially damaging actions  
15 by creditors, the GPs should remain in receivership while investor votes are taken  
16 and decisions are made as to the disposition of GP property interests.

## 17 II. ARGUMENT

18 At the outset, the Receiver notes that Mr. Schooler and Western, while  
19 purporting to seek relief on behalf of the GPs, simultaneously assert that (a) the GPs  
20 are wholly separate from Western and Western has no control over the GPs, and  
21 (b) the investors are sophisticated people who can make decisions for the GPs  
22 themselves. The Motion, in itself, contradicts these contentions. Moreover, the  
23 Court's orders put the GPs under the sole management and control of the Receiver,  
24 meaning whatever control or authority Western and/or Mr. Schooler had over the  
25 GPs and their properties no longer exists. Docket No. 174, Part III. Accordingly, it  
26 is not clear what authority Defendants currently have to seek relief on behalf of the  
27 GPs.

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1           **A. The Receivership Provides Critical Protection to the GPs**

2           Defendants argue that the receivership over the GPs is wholly unnecessary.  
3 To the contrary, Mr. Schooler's actions have made the receivership critical to  
4 protecting the GPs and their investors from foreclosures and further losses. As the  
5 Receiver has warned would occur, Western has run out of cash and is no longer able  
6 to keep all loans secured by GP properties current. Western's persistent cash crisis  
7 is caused by Mr. Schooler draining the company of cash prior to the receivership,  
8 refusing to put cash back into the company, and failing to repay loans Western made  
9 to entities he controls.

10           As discussed in the Receiver's Forensic Accounting Report: Part One,  
11 Western obtained approximately \$80 million from investors in the 46 GPs that  
12 purchased interests in Western's final 13 land transactions. Nevertheless, Western  
13 had virtually no cash when the Receiver was appointed. Mr. Schooler had  
14 completely drained Western of cash. Part Two of the Receiver's Forensic  
15 Accounting will detail what was done with the approximately \$80 million, but we  
16 already know large sums were paid to Mr. Schooler and more than \$1.26 million  
17 was loaned to LinMar entities he controls.

18           Its cash having been completely drained, Western was almost entirely  
19 dependent on funds Mr. Schooler put back into the company and new money from  
20 investors. In the eight months prior to the Receiver's appointment, Mr. Schooler put  
21 more than \$1 million back into Western. Without these funds, Western would not  
22 have been able to make mortgage payments and pay its operating expenses.

23           When the Receiver was appointed, all sales of GP ownership units  
24 immediately ceased. Then in December 2012, after the Court denied his attempt to  
25 have Western removed from the receivership (Docket No. 59), Mr. Schooler stopped  
26 putting money back into the company. Moreover, the LinMar entities have failed to  
27 repay any portion of the more than \$1.26 million Western loaned them. Instead, the  
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1 Receiver has been forced to seek Court authority to file lawsuits to collect on the  
2 loans. Docket No. 192.

3 By cutting operating expenses and selling certain Western assets (cars and  
4 gold coins) with Court approval, the Receiver has been able to generate sufficient  
5 funds to make mortgage payments. But the effects of Mr. Schooler depriving  
6 Western of cash are now unavoidable - Western is no longer able to keep all  
7 mortgages current. Without the protection of the receivership, these mortgage  
8 defaults would expose GPs to the risk of losing properties via foreclosure and other  
9 adverse actions by creditors.

10 In addition, Western has historically played a significant role in the operations  
11 and financing of the GPs. Among other things, it (a) financed investor purchases of  
12 ownership units and collected note payments on behalf of the GPs, (b) made  
13 payments on loans secured by GP properties, (c) made loans to the GPs to cover  
14 shortfalls when bills were sent to investors to cover GP operating expenses, and  
15 (d) repurchased ownership units from investors who demanded their capital back.  
16 Moreover, at the time of the Receiver's appointment, Western was in the process of  
17 selling ownership units in F-86 Partners. More than \$780,000 was raised from F-86  
18 investors, but the entity never received its contemplated property interest. At the  
19 time of the Receiver's appointment, F-86 had only \$66,066.00 in its bank account.  
20 Docket No. 80, p. 11. Western continues to hold the property interest intended for  
21 F-86.

22 Although the GPs may be able to hire someone to perform some of the  
23 functions performed by Western (and possibly survive without others), investors  
24 should be permitted to vote as described in the Receiver's Report and  
25 Recommendations Regarding Valuation of Real Estate Assets [Docket No. 203]  
26 ("Real Estate Report") before any GPs separate from the receivership and terminate  
27 Western's role entirely.

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1 The Real Estate Report discusses the Receiver's detailed proposal to take  
2 investor votes regarding whether their GPs (a) stay in the receivership, sell their  
3 property interests, and retain the right to recover from the receivership estate, or  
4 (b) separate from the receivership estate, relinquish their claims against the  
5 receivership estate, and take sole responsibility for all mortgages and expenses  
6 associated with retaining their property interests. The litigation injunction included  
7 in the Preliminary Injunction Order currently protects the GPs from actions by  
8 creditors, but as discussed in the Real Estate Report, decisions should be made as  
9 soon as possible in order to preserve whatever equity exists in the properties for the  
10 benefit of investors. Removing the GPs from the receivership at this stage would  
11 expose the GPs and their investors to foreclosures and further losses.

12 Defendants argue that the GPs owe more to Western than Western owes on  
13 the mortgages and therefore an "automatic payment plan" could be set up to ensure  
14 that sufficient amounts are collected to make mortgage payments. This is not  
15 possible. Prior to the Receiver's appointment, Western was actively collecting note  
16 payments from investors and yet was unable to make mortgage payments and pay its  
17 operating expenses without constant infusions of cash from Mr. Schooler.  
18 Moreover, many investors now refuse to repay amounts they borrowed to purchase  
19 GP ownership units. Considering the serious allegations of fraud made by the  
20 Securities and Exchange Commission, this is not surprising. With respect to cash  
21 balances in GP accounts, some GP accounts were already at a zero balance when the  
22 Receiver was appointed. If remaining balances in other GP accounts are used to  
23 make loan payments, investors are directly harmed because funds that would  
24 otherwise be available to pay taxes, insurance and other GP expenses will be  
25 exhausted. Accordingly, with Western completely drained of cash and without any  
26 further assets that can quickly be turned into cash, there is no way to make mortgage  
27 payments without directly harming investors. The Motion should be denied and the  
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1 GPs should remain under the protection of the receivership while investor votes are  
2 taken and decisions are made as to the disposition of GP property interests.

3 **B. Receivership Fees and Costs**

4 Purporting to act on behalf of the GPs, Defendants complain about the  
5 financial burden of the receivership on the GPs. As discussed above, however, it is  
6 Mr. Schooler who has depleted and starved Western of cash. The need for GPs to  
7 help pay receivership fees and costs has been created entirely by Mr. Schooler. His  
8 actions have directly harmed investors and his complaints about the financial burden  
9 on GPs are disingenuous.

10 Moreover, to date, the total amount deducted from GP accounts by reducing  
11 Western's equity in GPs to cash is \$51,001. This amount was used to pay a portion  
12 of the fees and costs of the receivership from its inception on September 6, 2012  
13 through December 31, 2012. This works out to approximately \$150 per GP per  
14 month. In addition, Western's equity interests in the GPs have been reduced dollar-  
15 for-dollar so investors stand to receive a greater percentage of GP assets. The  
16 Receiver continues to make every effort to avoid having to reduce Western's equity  
17 in the GPs to pay receivership fees and costs.

18 **C. The Motion Misstates Facts**

19 Defendants state that the Receiver has proposed to dissolve the GPs. Motion,  
20 pp. 3-4. This is entirely fabricated; the Receiver has never suggested that the GPs  
21 be dissolved. His proposal for addressing the GP properties, including taking  
22 investor votes on selling or retaining properties, is contained in the Real Estate  
23 Report. Docket No. 203.

24 Defendants also state that the Receiver unilaterally decided to obtain  
25 appraisals for the GP properties. This is absolutely false. As with all actions the  
26 Receiver takes, the Receiver's action in obtaining appraisals was authorized by the  
27 Court. The Receiver made a recommendation to the Court that appraisals be  
28 obtained in his Second Report and Proposal ("Second Report"). Docket No. 49,

1 pp. 10-11. The Second Report was posted on the Receiver's website at the time it  
2 was filed, as were the responses filed by the Commission and the Defendants. The  
3 Court approved the Second Report and accepted the Receiver's recommendation.  
4 Docket No. 59.

5 Next, Defendants argue that the financial health of Western has no impact on  
6 the GPs and "there is nothing that needs to be done to maintain title to the  
7 property . . ." Motion, p. 14. This is also incorrect. Western is the borrower on  
8 loans secured by GP properties. If Western does not make loan payments, the loans  
9 go into default and the GPs are directly affected. Indeed, the GPs could lose title to  
10 their properties via foreclosure sales. The receivership and the litigation injunction  
11 prevent this from happening, at least for the time being while decisions on the  
12 disposition of GP properties are being made.

13 **D. The Real Estate Report and Proposed Investor Voting**

14 The Forensic Accounting Report: Part One and Real Estate Report contain  
15 information about the GP properties investors never had before, including the  
16 amounts Western originally paid for the properties and the appraised values of the  
17 properties. Docket Nos. 182 and 203. As detailed in the Real Estate Report, with  
18 this information, as well as projections of the costs of retaining the properties,  
19 investors should be permitted to vote to either (a) cut their losses as they are now  
20 and reserve the right to recover from the receivership estate (*i.e.*, all non-GP assets),  
21 or (b) retain the properties in full satisfaction of their claims and commit to funding  
22 their share of the costs necessary to do so. It is critical that GPs be protected from  
23 lender actions during the voting process and that there be an orderly and efficient  
24 process for tallying votes, reporting to the Court, and seeking Court approval to  
25 proceed depending on how investors vote, including the possibility that some GPs  
26 will collectively vote to retain properties, separate from the receivership, forfeit their  
27 claims against the receivership estate, and take sole responsibility for all mortgages,  
28 taxes and other expenses associated with their property interests.

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**III. CONCLUSION**

For the foregoing reasons, the Motion should be denied.

Dated: June 21, 2013

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Ted Fates

TED FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK



**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 June 21, 2013, I served the within document(s) described as:

- **RECEIVER'S REPORT AND RECOMMENDATIONS REGARDING VALUATION OF REAL ESTATE ASSETS OF RECEIVERSHIP ENTITIES**

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 June 21, 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:

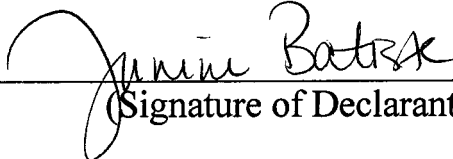
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- Edward P. Swan , Jr. - pswan@jonesday.com; dpippin@jonesday.com

**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.

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

Executed on June 21, 2013, at San Diego, California.

Janine L. Batiste  
(Type or print name)

  
(Signature of Declarant)