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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
 DEFENDANTS' OPPOSITION TO
 RECEIVER'S REPORT AND
 RECOMMENDATIONS
 REGARDING VALUATION OF
 REAL ESTATE ASSETS OF
 RECEIVERSHIP ENTITIES**

Ctrm.: 2D
 Judge: Hon. Gonzalo P. Curiel

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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 Opposition to the
5 Receiver's Report and Recommendations Regarding Valuation of Real Estate Assets
6 of Receivership Entities ("Report").

7 In their opposition, Defendants misstate certain facts and make certain
8 incorrect assumptions. The Receiver addresses these misstatements and incorrect
9 assumptions below in order to aid the Court's consideration of the Report and
10 recommendations therein.

11 I. ARGUMENT

12 A. Co-Tenancy Voting Requirements

13 Defendants state that the Co-Tenancy Agreements require only a majority
14 vote of co-tenant GPs to take action and attach an unsigned copy of the Co-Tenancy
15 Agreement for the Stead property to their Opposition. This is incorrect.

16 The Receiver located all Co-Tenancy Agreements on Western's servers,
17 which cover 17 of the 23 properties. All of these agreements require a unanimous
18 vote of the co-tenant GPs to take action. The Receiver will continue efforts to locate
19 the remaining Co-Tenancy Agreements and will promptly advise the Court if any of
20 them do not require unanimous consent. The Receiver's belief, however, is that they
21 all require unanimous consent. Declaration of Thomas Hebrank filed herewith
22 ("Hebrank Declaration"), ¶ 2.

23 The Co-Tenancy Agreement for the Stead property, which is the unsigned
24 agreement Defendants filed, is the exception. There is no signed Co-Tenancy
25 Agreement for the Stead property because only two of the four GPs that were set up
26 to acquire interests in the Stead property had done so at the time of the Receiver's
27 appointment (P-39 Aircobra Partners and P-40 Warhawk Partners). F-86 Partners
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1 and F-100 Partners had not closed and therefore had not signed the Co-Tenancy
2 Agreement. Hebrank Declaration, ¶ 3.

3 **B. Liquidating Western's Interest in Separating GPs with No Cash**

4 The Receiver's recommendations include that, for GPs that vote to retain their
5 properties and separate from the receivership ("Separating GPs"), Western receives
6 a percentage of the cash in GPs accounts according to Western's ownership interest.
7 This represents the final liquidation of Western's equity interests in Separating GPs.
8 Defendants incorrectly assume that this means GPs with no cash in their accounts
9 would have to raise cash from their investors to buy out Western's interest. To the
10 contrary, Western would receive nothing from GPs with no cash, but its interest in
11 those GPs would nevertheless be liquidated so that it is clear that Western has no
12 obligation to contribute to mortgages, taxes or other expenses associated with the
13 properties.

14 **C. Effect of Stopping Collections on Investor Notes**

15 The Receiver recommends that collections on investor notes be suspended
16 until such time as the ultimate disposition of each property has been determined.
17 Defendants incorrectly assume that investors would then not be allowed to vote
18 because they have not made their note payments. This is not part of the Receiver's
19 proposal. In fact, the Receiver proposes that failure to make note payments during
20 the receivership have no adverse affect on investor voting rights.

21 **D. Vote to Retain vs. Vote to Sell**

22 Defendants argue that the default position (*i.e.*, the outcome if insufficient
23 investor votes are received to take action) should be that the GPs retain their
24 property interests. The effect of this would be that the remaining cash in GP
25 accounts would quickly be depleted and investors would receive large bills for their
26 share of mortgage payments, property taxes, and other GP expenses. Unlike in the
27 past, Western would not be able to cover shortfalls when investors do not pay, and
28 GPs would potentially lose their property interests to foreclosure. Rather than

1 putting investors in the position of having to put more money in and potentially
2 losing everything, the Receiver recommends that the default position be to provide a
3 recovery for investors in the near term or at least to cut their losses as they currently
4 stand.

5 **E. Correction to Real Estate Valuation Report**

6 The table included on pages 3-8 of the Report includes a typographical error.
7 In the row for Grand Totals on page 8, the total amount for "Net Appraised Value"
8 should be 12,860,661 instead of 2,860,661. The 12,860,661 total amount is stated
9 directly below the table and is reflected on Exhibit A to the report under the Net
10 Value column under Land Value Analysis.

11 **II. CONCLUSION**

12 For the foregoing reasons, the Receiver recommends that the Report and the
13 recommendations included therein be approved.

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15 Dated: July 25, 2013

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17 By: /s/ Ted Fates

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THOMAS C. HEBRANK

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