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6 Attorneys for 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
16 FINANCIAL PLANNING
CORPORATION,

17 Defendants.
18

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

**RECEIVER'S RESPONSE TO
DEFENDANTS' MOTION FOR STAY
OF ORDER PENDING APPEAL
[Fed. R. Civ. P. 62(c), Fed. R.
App. P. 8(a)(1)]**

Date: November 15, 2013
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

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

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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"), its
3 subsidiaries and other specifically listed entities (collectively, "Receivership
4 Entities"), submits this response to Defendants' Motion for Stay of Order Pending
5 Appeal ("Motion").

6 The Receiver submits the Motion should be denied for the following reasons:

- 7 • There is no due process issue here. Western is not being deprived of
8 property or ordered to disgorge assets. Nor is its property being taken
9 without just compensation. The portion of the order Defendants object
10 to simply converts Western's equity interests to cash. There is no
11 evidence the equity interests are worth anything remotely close to
12 \$11 million. The best evidence of value is the appraisals obtained by
13 the Receiver, which is what the Court has instructed be used to
14 determine the amounts Western receives for its interests. Converting
15 an asset to its fair market value in cash does not constitute deprivation
16 of property or disgorgement.
- 17 • Courts supervising equity receiverships unquestionably have authority
18 to authorize the sale/liquidation of receivership assets. With the Court's
19 permission, the Receiver has sold automobiles, gold coins, office
20 furniture, and equipment owned by Western. Converting Western's
21 equity interests in the GPs to cash is no different.
- 22 • Imposing a stay and leaving Western's assets in GPs over which the
23 Court and the Receiver have no control would harm the receivership
24 estate and those with claims to recover from it. The GPs' ability to
25 raise necessary funds from their investors to pay their operating
26 expenses and avoid defaults and foreclosures is highly speculative.
27 Many of the GPs have had little or no cash in their accounts since prior
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1 to the receivership. Western's remaining assets should not be
2 consumed by covering investor shortfalls in order to avoid land
3 interests being impaired or lost. In its order denying partial
4 reconsideration, the Court noted that Defendants had set forth nothing
5 but a conclusory assertion that Western would bear no responsibility
6 for liabilities incurred by the GPs. The Motion ignores this issue and
7 fails to provide any support for the argument that Western will not
8 incur any liability or loss if the GPs fail to satisfy their financial
9 obligations. As the Court pointed out, this assertion runs contrary to
10 the law regarding general partnerships.

- 11 • The most important public interest at issue here is in preserving and
12 protecting Western's assets for the benefit of those with claims to
13 recover from the estate. Those assets should not be put at risk simply
14 to preserve Defendants' fantasy that they are worth anything remotely
15 close to \$11 million.
- 16 • The real reason Defendants sought partial reconsideration, filed the
17 appeal, and brought this motion for stay is not to save hopelessly
18 underwater investments. Since the Court rejected his attempt to have
19 Western removed from the receivership last November, Mr. Schooler
20 (with his team of lawyers and substantial personal resources) has
21 systematically done everything in his power to ensure, regardless of the
22 Court's orders on fee applications, there are no funds available to pay
23 the Receiver and his counsel. This end run around the fee application
24 process is designed to impede the Receiver's performance of his duties
25 and undermine the Court's orders. Mr. Schooler is determined to
26 prevent Western's equity interests from being converted to cash
27 because such conversion will generate cash for Western that would be
28 available to pay Court-approved fees and costs. The Court should see

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this for what it is – a tactic to impede the receivership – and reject this further attempt to circumvent the Court's orders and prevent the Court from being able to compensate the Receiver for his work.

For these reasons, the Receiver submits the Motion should be denied.

Dated: November 1, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK

PROOF OF SERVICE

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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 November 1, 2013, I served the within document(s) described as:

- **RECEIVER'S RESPONSE TO DEFENDANTS' MOTION FOR STAY OF ORDER PENDING APPEAL [Fed. R. Civ. P. 62(c), Fed. R. App. P. 8(a)(1)]**

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 November 1, 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; jbatiste@allenmatkins.com
- Eric Hougen - eric@hougenlaw.com
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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 November 1, 2013, at San Diego, California.

Janine L. Batiste

(Type or print name)

Janine Batiste

(Signature of Declarant)