

1 DAVID R. ZARO (BAR NO. 124334)
 2 TED FATES (BAR NO. 227809)
 3 KIM A. BUI (BAR NO. 274113)
 4 ALLEN MATKINS LECK GAMBLE
 5 MALLORY & NATSIS LLP
 6 501 West Broadway, 15th Floor
 7 San Diego, California 92101-3541
 8 Phone: (619) 233-1155
 9 Fax: (619) 233-1158
 10 E-Mail: dzaro@allenmatkins.com
 11 tfates@allenmatkins.com
 12 kbui@allenmatkins.com

13 Attorneys for Receiver
 14 THOMAS C. HEBRANK

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 BRIEF IN RESPONSE
 TO:**

**(A) DEFENDANTS' MOTION TO
 REMOVE WESTERN FINANCIAL
 PLANNING CORPORATION FROM
 RECEIVERSHIP**

**(B) THE COURT'S APRIL 25, 2014
 ORDER RECONSIDERING ITS
 AUGUST 16, 2013 ORDER**

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 the general partnerships set up by Western (collectively,
4 "Receivership Entities"), submits this brief in response to Defendants' Motion for
5 Modification of Preliminary Injunction Order to Remove Western Financial
6 Planning Corporation from Receivership ("Motion") and the Court's April 25, 2014
7 Order reconsidering its August 16, 2013 Order. The Receiver submits that there is
8 no basis to remove Western from the receivership and that good cause exists to
9 reconsider the August 16, 2013 Order.

10 I. DEFENDANTS' MOTION

11 Defendants ask the Court to remove Western from the receivership and put it
12 back under the control of Louis Schooler, the man who sold unregistered securities
13 to investors, marked up the land sold to the General Partnerships ("GPs") as much as
14 1,821%, drained more than \$80 million from Western (more than \$28 million of
15 which went to himself), made loans to his own companies which he refuses to repay,
16 and put investors in the position of either receiving pennies on the dollar or paying
17 operational bills for years to come in the hope of one day recovering some larger
18 percentage of their losses. There is no basis to return Western to Mr. Schooler's
19 control and doing so would likely result in Western's remaining assets being
20 transferred to Mr. Schooler or his entities.

21 The fact that Western's accounting records were for the most part accurate
22 and reliable does not absolve Mr. Schooler of responsibility for the devastating
23 losses facing investors. The receivership over Western should continue such that
24 Western's remaining assets are preserved and protected and are available for
25 distribution to investors if and when the Court so orders. In addition to managing
26 Western's day-to-day operations, the Receiver will continue efforts to (a) collect
27 loans Western made to the LinMar entities controlled by Mr. Schooler (which had
28 all matured with no collection efforts made prior to the receivership), (b) collect

1 loans made to the GPs to cover operational shortfalls (which likewise were never
2 collected prior to the receivership), (c) collect notes payable from the GPs to
3 Western (d) keep all mortgage payments, property taxes, and insurance premiums
4 current, (e) sell land parcels owned by Western, and (f) evaluate potential claims
5 against third parties, including professionals who represented Western prior to the
6 receivership. The Receiver has reduced Western's operating expenses to a fraction
7 of what they were under Mr. Schooler, so any claim the receivership over Western is
8 harming Western or investors has no merit.

9 II. RECONSIDERATION OF THE AUGUST 16, 2013 ORDER

10 The Receiver agrees with the Court that there is good cause to reconsider the
11 August 16, 2013 Order that the GPs will be released from the receivership. The
12 Court has now determined Defendants sold unregistered securities to investors in the
13 form of GP units. Moreover, over the past 20 months, it has become abundantly
14 clear the GPs are incapable of effectively running themselves. Releasing the GPs
15 from the receivership would harm investors for the following reasons:

16 **Lack of Corporate Management.** As discussed in the Receiver's Seventh
17 Interim Report, the terms of nine GPs expired and nothing was done by anyone to
18 terminate the GPs or extend their terms. Most investors did not even know the term
19 of their GP had expired.¹ Moreover, now that the Court has determined the GP units
20 sold by Defendants are unregistered securities, no investment or real estate
21 management company would agree to manage the GPs due to the potential liability
22 to regulators and investors associated with them.

23 **Lack of Financial Management.** There are numerous examples of the lack
24 of financial management of the GPs, including:

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26
27 ¹ The Receiver raised the issue with the Court and was authorized to take a vote of
28 each expired GP regarding whether to terminate the GP or extend its term. The
30 days for investors to send in their ballots has expired. The Receiver will
report on the results of the voting in his upcoming interim report.

- 1 • Several GPs had property taxes that were substantially past due as of
2 the time the Receiver was appointed.
- 3 • Many of the GPs were unable to collect enough from their investors to
4 cover their basic operating expenses and therefore had to borrow
5 money from Western. More than \$528,000 in loans the GPs owed
6 Western for shortfalls in operating bills was outstanding at the time of
7 the Receiver's appointment.
- 8 • Several GPs do not collect enough from investor note payments to
9 cover their share of the underlying mortgage payments on their
10 property. This had to be addressed in an ex parte application filed by
11 the Receiver seeking to collect additional amounts from these GPs,
12 which the Court approved on December 10, 2013. Dkt. No. 524.
- 13 • None of the GPs ever appealed their property tax assessments, meaning
14 that many GPs (including GPs formed in the 1980s and 1990s) paid
15 more in property taxes than they should have for many years. The
16 Receiver recently appealed the property tax assessments for certain of
17 the GPs and in a short period of time generated \$5,377 in collective
18 savings.

19 **Lack of Administrative Management.** The Receiver has consistently
20 encountered problems with the two Partnership Administrators, Alice Jacobson and
21 Beverly Schuler, who chose to office with Louis Schooler rather than at the Western
22 office space offered to them by the Receiver. The Partnership Administrators then
23 demanded the GPs reimburse their operating expenses such as rent and utilities to
24 share office space with Mr. Schooler. The Receiver recommended the request be
25 denied and the Court invited them to file documentation supporting their request.
26 Dkt. No. 549. No such documentation has been provided.

27 After the Court entered its August 16, 2013 Order, the Partnership
28 Administrators delayed sending operational bills to investors for almost two months

1 despite the Receiver's instruction to send them out right away. Moreover, the
2 Receiver has received numerous complaints from investors who have tried to
3 contact the Partnership Administrators with basic questions and have been ignored.
4 The Receiver has had to repeatedly remind the Partnership Administrators to
5 promptly respond to investor inquiries. The voicemail greeting for one of the
6 Partnership Administrators recently included an instruction that investors not leave
7 her a message.

8 **Lack of Property Management.** The Receiver recently learned that two
9 tenants are living on the Stead property rent-free. The Partnership Administrators
10 did not know what the tenants were doing on the property or why they were
11 permitted to live there without paying rent. The Partnership Administrators stated
12 that the arrangements with the tenants were made by Mr. Schooler. When the
13 Receiver contacted the tenants, one of them admitted he does little to no work at the
14 property and indicated he would be willing to start paying rent. The other tenant
15 only recently responded to the Receiver's numerous attempts to contact him and has
16 not responded to subsequent attempts. Although the lengthy Partner Representation
17 documents reference the tenants, the Receiver believes most investors in the relevant
18 GPs had no idea tenants were living on the property rent-free.

19 **Investor Defaults/Disinterest/Confusion.** There is a large and growing
20 number of investors who have stopped making note payments and/or operational bill
21 payments to their GPs, especially in the older GPs. For the nine GPs whose terms
22 expired, the average percentage of investors in default of their note or operational
23 bill obligations is 40.35%. Moreover, as directed by the Court, the Receiver issued
24 operational bills to investors in November 2013 (after the aforementioned two-
25 month delay by the Partnership Administrators). The aggregate amount billed to
26 investors was approximately \$1,225,000. To date, the total amount collected is
27 \$495,449, or only 38.66% of the aggregate amount billed. The non-paying investors
28 are effectively voting with their wallets to cut their losses. This puts a greater

1 financial burden on the paying investors and sets the stage for disputes among
2 investors over the proper allocation of net sale proceeds when property interests are
3 sold. Outside the receivership, these disputes could be very costly and tie the GPs
4 up in years of litigation. With the receivership over the GPs in place, these issues
5 can be fairly and efficiently addressed by the Court before any distributions to
6 investors are made. This will ensure investors are treated fairly and consistently
7 across all GPs.

8 Furthermore, many investors refuse to read Receiver reports and other
9 information available to them about their GP, the value of their property interests,
10 and their GP's operating expenses. The Receiver still receives communications
11 from investors who have not read any of the information available on the webpage
12 for the receivership (see the "SEC Case Docs" tab at www.ethreadvisors.com).
13 Moreover, many investors have been misled into believing, among other things, the
14 Receiver is charging the GPs large amounts in fees and costs, the independent
15 appraisals of the GP properties are not valid and were performed by cronies of the
16 Receiver, and the Receiver is attempting to sell the GP properties at deflated prices
17 so he can buy them himself. This pervasive confusion and paranoia would make it
18 extremely difficult for rational investors to steer their GPs to make sound business
19 decisions, even if enough investors were engaged to reach a voting majority (which
20 may well be difficult to obtain) and there were no disputes over which investors
21 were entitled to vote (which seems highly unlikely under the circumstances).

22 In summary, the GPs lack the corporate, financial, and administrative
23 management necessary to operate effectively and protect investors from further
24 losses. Moreover, a growing number of investors are not paying their notes and
25 operational bills, which complicates the financial and administrative management of
26 the GPs, and exposes investors to greater risks of losses. Although the Receiver
27 may not be able to cure all of these problems (especially the failure of investors to
28 pay their notes and operational bills), he can closely monitor the financial status of

1 each GP, promptly bring issues to the Court's attention, and propose solutions that
2 avoid or minimize harm to investors. Accordingly, there is good cause to reconsider
3 the August 16, 2013 Order indicating the GPs will be released from the receivership.

4 **Investor Notices.** To the extent the Court determines it is necessary and
5 appropriate to issue notices to investors regarding the Court's intention to reconsider
6 its August 16, 2013 Order, the Receiver will assist in whatever manner the Court
7 desires, including, if appropriate, preparing a proposed notice for the Court to
8 review and disseminating the approved notice to investors.

9 **III. CONCLUSION**

10 WHEREFORE, the Receiver requests entry of orders denying Defendants'
11 Motion and reconsidering the Court's August 16, 2013 Order that the GPs will be
12 released from the receivership.

13
14 Dated: May 9, 2014

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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16 By: /s/ Ted Fates

17 TED FATES
Attorneys for 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 May 9, 2014, I served the within document(s) described as:

➤ **RECEIVER’S BRIEF IN RESPONSE TO: (A) DEFENDANTS’ MOTION TO REMOVE WESTERN FINANCIAL PLANNING CORPORATION FROM RECEIVERSHIP; AND (B) THE COURT’S APRIL 25, 2014 ORDER RECONSIDERING ITS AUGUST 16, 2013 ORDER**

on interested parties in this action by:

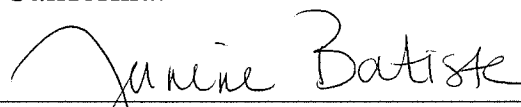
BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"): the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On May 9, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address indicated below:

- Lynn M. Dean - deanl@sec.gov; larofiling@sec.gov; berryj@sec.gov; irwinma@sec.gov; cavallones@sec.gov
- 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
- Sara D. Kalin - kalins@sec.gov; irwinma@sec.gov
- Sam S. Puathasnanon - puathasnanons@sec.gov; haackk@sec.gov; berryj@sec.gov; irwinma@sec.gov; cavallones@sec.gov
- Edward P. Swan, Jr. - pswan@jonesday.com; dpippin@jonesday.com

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

Executed on May 9, 2014, at San Diego, California.

Janine L. Batiste
(Type or print name)


(Signature of Declarant)