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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
MOVANTS' *EX PARTE* MOTION
FOR ORDER ALLOWING TIME TO
RESPOND TO RECEIVER'S
EX PARTE APPLICATION FOR
ORDER CONFIRMING THE SALE
OF THE JAMUL VALLEY
PROPERTY (DKT. NO. 1191)**

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 the General Partnerships listed on Schedule 1 to the
4 Preliminary Injunction Order entered on March 13, 2013 (collectively,
5 "Receivership Entities"), submits this response to Movants' *Ex Parte* Motion for
6 Order Allowing Time to Respond to Receiver's *Ex Parte* Application for Order
7 Confirming the Sale of the Jamul Valley Property (Dkt. No. 1191) ("*Ex Parte*
8 Motion").

9 The Receiver responds primarily to address the numerous misrepresentations
10 and mischaracterizations in the *Ex Parte* Motion. Through the e-mail
11 correspondence attached to the Declaration of Gary Aguirre in support of the
12 *Ex Parte* Motion, the Court is aware of the harm and concerns posed by delaying the
13 sale of the Jamul Valley property. The Court is also aware that on June 17, 2015, it
14 authorized the Receiver to take all steps necessary to complete the Jamul Valley sale
15 and that, as far as the prior Court order is concerned, the sale could have closed
16 months ago. The sole reason the sale has not already closed is that the title
17 insurance company has required certain specific provisions be in the order.

18 Accordingly, the Court can balance the interests of the receivership estate as a
19 whole and the approximately 3,264 other investors that have a stake in maximizing
20 the net recovery from the Jamul Valley property with the interests of the
21 36 investors whom Mr. Aguirre represents ("Movants"). Movants include only
22 seven of the 205 investors in the GPs that own the Jamul Valley property (or about
23 3.4%).

24 The misrepresentations and mischaracterizations in the *Ex Parte* Motion
25 include the following:

- 26 • Movants assert that the Receiver failed to pay property taxes and abate
27 the fire code issue. This is false. The GPs that own the Jamul Valley
28 property are responsible for paying property taxes and paying to abate

1 fire code risks. If the GPs had sufficient funds to make these payments
2 or were able to raise sufficient funds from their investors, the payments
3 would have been made. Unfortunately, the GPs have not had sufficient
4 funds, as the Receiver's counsel explained to Mr. Aguirre in multiple
5 emails. In the capital calls that were issued to the GPs in the last year
6 pursuant to the Court's May 12, 2015 Order, the three GPs needed to
7 raise \$120,200 to cover their operating expenses through 2016. They
8 raised only \$16,405.19, which amounts will be refunded to the
9 investors from whom they came due to the failure of the capital call.

- 10 • Movants assert the Receiver has "doggedly" opposed the requested
11 extension of time. This is false. In fact, as the correspondence reflects,
12 the Receiver has promptly responded to requests for information
13 regarding the Jamul Valley property and the sale and simply asked
14 Mr. Aguirre to explain the reason for the lengthy delay. Movants had
15 previously requested until March 4, 2016, and the Receiver had agreed
16 to that request. The correspondence reflecting this agreement, which
17 Movants decided not to share with the Court, is attached hereto as
18 Exhibit A.
- 19 • Movants suggest the timing of the Receiver's *Ex Parte* Motion for
20 Order Confirming the Sale of Jamul Valley Property ("Jamul Valley
21 *Ex Parte*") was somehow related to Movants retention of Mr. Aguirre.
22 This is pure paranoia. The truth is the Receiver has been working
23 toward a sale of the Jamul Valley property for months (as his Interim
24 Reports reflect), he learned of the title insurance issue in
25 February 2016, promptly contacted other title companies to determine
26 if they would have the same requirements, and proceeded to file the
27 Jamul Valley *Ex Parte* once it was clear a confirming order was
28 necessary.

- 1 • Movants actually state that "[t]he Court has not granted the Receiver
2 authority to sell the Property." This is completely false. It is alarming
3 that such an unequivocally false statement is made in a pleading filed
4 with the Court. The Court may consider warning Movants and their
5 counsel about making misrepresentations to the Court.
- 6 • Movants state that there is no support for the value of the Jamul Valley
7 property anywhere in the record. To the contrary, a summary of the
8 2013 appraisal (\$395,000) was provided to the Court, as Movant's
9 acknowledge in footnote 6 to the *Ex Parte* Motion. The full appraisal
10 was also provided to Mr. Aguirre. The GPs that own Jamul Valley did
11 not have sufficient funds to pay for a 2015 appraisal, so the Receiver
12 contacted several brokers in the surrounding area, two of whom agreed
13 to provide an opinion of value. The opinions of value, which were
14 provided to Mr. Aguirre, estimated the value to be \$550,000 and
15 \$490,760, respectively. The property was also listed on the Multiple
16 Listing Service (MLS) and LoopNet for approximately 4-5 months
17 with a list price of \$520,000.¹ Only one inquiry was received, which
18 was from a neighbor who did not make an offer. The proposed
19 purchase price was negotiated at arm's length and is right between the
20 two 2015 opinions of value. The proposed sale also saves
21 approximately \$30,000-\$50,000 because no broker commissions will
22 be paid.
- 23 • Movants assert the Receiver and his colleagues have been paid
24 \$2.24 million. Again, this is completely false. To date, the Receiver
25 and Allen Matkins combined have been paid \$1,097,734.66, or
26 approximately 42% of amounts approved by the Court. All amounts
27

28 ¹ Geno Rodriguez from the Receiver's office has a California real estate broker's license and therefore can list real property on these widely used listing services.

1 paid have been expressly approved by the Court and have been paid
2 from the assets of Western.

3 The Receiver simply requests the Court consider the interests of all investors,
4 not only the 36 investors Mr. Aguirre represents, in determining whether to delay
5 the Jamul Valley sale, for how long, and whether rehashing the issue of whether the
6 property should be sold is a fair and equitable use of receivership estate resources.

7
8 Dated: March 2, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

9
10 By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK

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EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
Exhibit A	Email Correspondence Dated February 29, 2016	7

EXHIBIT A

EXHIBIT A

Fates, Ted

From: Fates, Ted
Sent: Monday, February 29, 2016 10:50 AM
To: 'Gary Aguirre'; KALINS@SEC.GOV; DeanL@sec.gov; phildysonlaw@gmail.com
Cc: Thomas C. Hebrank (thebrank@ethreadvisors.com)
Subject: RE: SEC v. Schooler

Mr. Aguirre,

The Receiver will not oppose, provided he has at least two business days to file his reply.

Thank you,

Ted Fates Esq.

Partner
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
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(619) 886-4466 (mobile)
(619) 233-1158 (fax)

Allen Matkins
CHALLENGE. OPPORTUNITY. SUCCESS.

From: Gary Aguirre [mailto:gary@aguirrelawapc.com]
Sent: Monday, February 29, 2016 10:02 AM
To: Fates, Ted <tfates@allenmatkins.com>; KALINS@SEC.GOV; DeanL@sec.gov; phildysonlaw@gmail.com
Cc: Thomas C. Hebrank (thebrank@ethreadvisors.com) <thebrank@ethreadvisors.com>
Subject: SEC v. Schooler

Good morning:

Would you kindly advise me before noon today whether you have any objection to the court allowing me until Friday, March 4, to file a response to the Receiver's ex parte application for an order confirming his sale of the Jamul property?

I look forward to hearing from you.

Gary J. Aguirre
Aguirre Law, APC
501 W. Broadway, Suite 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072

www.aguirrelawapc.com

This E-Mail is intended only for the use of the individuals to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. If you have received this communication in error, please do not distribute it and notify us immediately by email to maria@aguirrelawapc.com.

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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 March 2, 2016, I served the within document(s) described as:

- **RECEIVER'S RESPONSE TO MOVANTS' EX PARTE MOTION FOR ORDER ALLOWING TIME TO RESPOND TO RECEIVER'S EX PARTE APPLICATION FOR ORDER CONFIRMING THE SALE OF THE JAMUL VALLEY PROPERTY (DKT. NO. 1191)**

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 March 2, 2016, 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:

- Gary J. Aguirre - gary@aguirrelawapc.com; maria@aguirrelawapc.com
- 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; jholman@allenmatkins.com
- Susan Graham - gary@aguirrelawapc.com
- Eric Hougen - eric@hougenlaw.com
- Sara D. Kalin - kalins@sec.gov; irwinma@sec.gov

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

Executed on March 2, 2016, at San Diego, California.

Ted Fates

(Type or print name)

/s/ Ted Fates

(Signature of Declarant)