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

**RECEIVER'S RESPONSE TO
MOVANTS' *EX PARTE* MOTION
FOR ORDER:**

**(A) SETTING A HEARING ON
RECEIVER'S RECOMMENDATION
REGARDING ENGAGEMENT OF
REAL ESTATE BROKERS FOR
LAS VEGAS 1, LAS VEGAS 2, AND
TECATE PROPERTIES, AND**

**(B) STAYING ANY FURTHER
EX PARTE MOTIONS RELATING
TO THE SALE OF ANY PROPERTY
SUBJECT TO THE RECEIVERSHIP
IN THE ABSENCE OF GOOD
CAUSE**

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

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, the "Receivership Entities"), hereby
4 submits this Response ("Response") to Movants' *Ex Parte* Motion for Order:

5 (A) Setting a Hearing on Receiver's Recommendation Regarding Engagement of
6 Real Estate Brokers for Las Vegas 1, Las Vegas 2, and Tecate Properties, and
7 (B) Staying Any Further *Ex Parte* Motions Relating to the Sale of Any Property
8 Subject to the Receivership in the Absence of Good Cause ("*Ex Parte* Motion").

9 Once again, Mr. Aguirre has filed an *Ex Parte* Motion designed to mislead the
10 Court. Specifically, Mr. Aguirre sent two emails to the Receiver's counsel within an
11 hour and a half of each other on Wednesday, March 9, 2016. Both emails directly
12 addressed the Receiver's Recommendation Regarding Engagement of Brokers for
13 Las Vegas 1, Las Vegas 2, and Tecate Properties ("Recommendation"). Mr. Aguirre
14 attached one of the emails to his declaration. Dkt. No. 1204-1, Exhibit 1.
15 Mr. Aguirre then stated in his declaration, under penalty of perjury, that "Receiver's
16 counsel has not responded." This is misleading at best.

17 The other email from Mr. Aguirre to the Receiver's counsel, along with the
18 response from the Receiver's counsel, which specifically addresses many of the
19 points raised in the *Ex Parte* Motion, is attached hereto as Exhibit A. It is appalling
20 that Mr. Aguirre would file a declaration under penalty of perjury that not only fails
21 to disclose that he has had specific communications on the exact subject matter of
22 the *Ex Parte* Motion with the Receiver's counsel, but affirmatively represents that
23 the Receiver's counsel has not responded. This is sufficient grounds, in itself, to
24 deny the *Ex Parte* Motion.

25 Furthermore, the *Ex Parte* Motion should be denied on its merits. As the
26 Receiver's counsel explained in his response to Mr. Aguirre, this case has been
27 pending for three and half years. There are 3,300 investors, most of whom would
28 like to see the case resolved as soon as possible, recover as much as they can, and

1 put the matter behind them. Approximately 10 months ago, the Court instructed the
2 Receiver to publish an information packet for each GP and issue capital calls to
3 investors. Dkt. No. 1069. The Court also approved a specific set of procedures for
4 the orderly sale of GP properties where the applicable GPs have failed to raise the
5 required amounts via capital calls. *Id.*

6 Since that time, the Receiver has followed the Court's instructions, published
7 the information packets (and sent corresponding notices to investors), issued the
8 required capital calls (explaining that if GPs failed to raise the required funds from
9 their investors, the properties would be moved to the orderly sale process), and
10 tracked amounts received from investors. Investors have effectively voted with their
11 checkbooks and, as the Recommendation explains, the vast majority have elected
12 not to contribute further funds to their GPs. By default then, these investors have
13 decided they would rather have GP properties sold, recover what they can, and put
14 the case behind them.

15 Mr. Aguirre's clients ("Movants") now want to stop the entire process. By
16 objecting to every step in the Court-approved process, they seek to delay resolution
17 of the case, impose significant administrative expenses on all investors, and rehash
18 whether GP properties should be sold. The Receiver submits that while Movants
19 should have time to respond to the Receiver's Motion for (A) Authority to Conduct
20 Sales of GP Properties, (B) Approval of Plan of Distributing Receivership Assets;
21 and (C) Approval of Procedures for the Administration of Investor Claims
22 ("Distribution Motion"), it is not reasonable or fair to the other approximately
23 3,130 investors to stay the entire Court-approved process for listing and marketing
24 GP properties.

25 Furthermore, the Recommendation does not prejudice Movants. The
26 Recommendation simply seeks authority to list the Las Vegas 1, Las Vegas 2, and
27 Tecate properties with licensed brokers. If the properties have values in excess of
28

1 the proposed list prices, as Mr. Aguirre asserts,¹ then the listings will generate offers
2 from multiple prospective purchasers and a competitive bidding process will ensue.
3 As the orderly sale process provides, investors in the applicable GPs will receive
4 notice of the offers. Once the highest and best price is determined, the Receiver will
5 negotiate a purchase and sale agreement with the prospective purchaser, will wait
6 for the prospective purchaser to remove all contingencies, and will file a noticed
7 motion for approval of the sale. Investors in the applicable GPs will receive notice
8 of the sale motion. Movants can then object to the sale motion if they believe the
9 proposed purchase price is too low.

10 Moreover, the sale will be subject to overbid, so other prospective purchasers
11 can participate in the overbid process. If overbids are received, the Receiver will
12 advise the Court and request that an auction be held for qualified overbidders. The
13 timeline from listing properties to the hearing on a sale motion is likely to take, at a
14 minimum, 90-120 days, and likely quite a bit longer. It is unlikely a motion for
15 approval of a sale of the any of the Las Vegas 1, Las Vegas 2, or Tecate properties
16 would be filed before the hearing on the Distribution Motion (April 29, 2016), and
17 virtually impossible such a motion would be heard before that date.

18 It should be noted that when the Receiver proposed to list properties owned
19 by Western for sale, Defendants objected on due process grounds and argued the
20 Receiver's estimated values were too low. Dkt. No. 560. The Court rejected the
21 argument, stating that Defendants could object to the subsequent noticed sale
22 motions. Dkt. No. 595. The same should apply here. There is no need to stay the
23 entire process of concluding GP capital calls and listing GP properties with licensed
24 brokers. If Movants believe purchase prices of GP properties are too low, they can
25 object to the noticed sale motions when they are filed.

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27 ¹ In his response to Mr. Aguirre's email, the Receiver's counsel asked Mr. Aguirre
28 to provide any "information indicating the appraisers and brokers that have
examined the Las Vegas 1 and Las Vegas 2 properties are wrong about the value
of those properties" See Exhibit A. Mr. Aguirre did not respond.

1 Movants try to conflate the Recommendation with the Distribution Motion
2 and argue the Receiver is attempting to "piecemeal" the Distribution Motion. This
3 is completely wrong. As noted above, the Court-approved process for capital calls
4 and the orderly sale of GP properties has been in place for 10 months. The
5 engagement of licensed brokers is one of the steps in the approved process. The
6 Distribution Motion does not propose to change the approved process. Rather, the
7 Distribution Motion simply proposes that all GP properties, including those whose
8 GPs have sufficient cash on hand to meet their ongoing operating expenses, be
9 moved to the orderly sale process. As the Recommendation makes clear, the GPs
10 that own the Las Vegas 1, Las Vegas 2, and Tecate properties do not have sufficient
11 cash to meet their ongoing operating expenses due to the very low response to their
12 capital calls (approximately 8.4% of necessary funds raised). Therefore, they have
13 already been moved to the orderly sale process pursuant to the Court's prior orders.
14 Accordingly, the relief requested in the Recommendation is consistent with the
15 Court's prior orders and entirely separate from the relief requested in the
16 Distribution Motion.

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Dated: March 11, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates
TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
Exhibit A	Email Correspondence Dated March 9, 2016	6

EXHIBIT A

EXHIBIT A

Fates, Ted

From: Fates, Ted
Sent: Wednesday, March 9, 2016 2:03 PM
To: 'Gary Aguirre'
Cc: Thomas C. Hebrank (thebrank@ethreadvisors.com)
Subject: RE: SEC v. Schooler

Mr. Aguirre,

This case has been pending for three and half years and there are approximately 3,300 investors, most of whom would like to see the case resolved as soon as possible, recover as much as they can, and put the matter behind them. As you know, the Court has issued orders putting procedures in place for investor capital calls and the orderly sale of GP properties. The Receiver is simply following these approved procedures. The Receiver does not believe it is reasonable or fair to the investors as a whole to stay the entire receivership for two months, which is effectively what you are proposing.

If you have information indicating the appraisers and brokers that have examined the Las Vegas 1 and Las Vegas 2 properties are wrong about the values of those properties, please provide it and the Receiver will consider it. The recommendation filed this week, however, simply requests authority to engage brokers for the properties. If and when credible offers are received, investors will receive notice and all sales will be subject to Court approval via noticed motions, so the recommendation does not prejudice your clients in any way. They can object in the future when noticed sale motions are filed.

Further, it is unlikely a motion to approve a sale of Las Vegas 1 or Las Vegas 2 would be filed before April 29, 2015, and even less likely such a motion would be heard before that date. The Receiver and a prospective purchaser would have to sign a purchase and sale agreement and the prospective purchaser would have to remove all contingencies (other than Court approval) before a noticed sale motion would be filed.

Regards,

Ted Fates Esq.

Partner
Allen Matkins Leck Gamble Mallory & Natsis LLP
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(619) 233-1158 (fax)

Allen Matkins
CHALLENGE. OPPORTUNITY. SUCCESS.

From: Gary Aguirre [mailto:gary@aguirrelawapc.com]
Sent: Wednesday, March 9, 2016 11:35 AM
To: Fates, Ted <tfates@allenmatkins.com>
Cc: Thomas C. Hebrank (thebrank@ethreadvisors.com) <thebrank@ethreadvisors.com>
Subject: SEC v. Schooler

Mr. Fates:

I want to bring to your attention information that has very recently come to my attention and which I am in the process of verifying. If I understand correctly, you are listing Las Vegas 1 for sale for a total of \$6,150,000 and Las Vegas 2 for a total of \$1,500,000. Information I am reviewing indicates those valuations are extremely low. Further, as you may be aware, there are vulture investors that could scoop up the property. I am therefore requesting that you withdraw your motion or set it for hearing on April 29.

Further, you are again asking the Court to make decisions that will lock in highly adverse returns to investors with knowledge that (1) I have had insufficient time to obtain valuations and (2) 100 or more other investors are in the process of retaining counsel.

Nor is there any urgency that this matter be resolved before April 29.

Sincerely,

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

www.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 11, 2016, I served the within document(s) described as:

- **RECEIVER'S RESPONSE TO MOVANTS' EX PARTE MOTION FOR ORDER: (A) SETTING A HEARING ON RECEIVER'S RECOMMENDATION REGARDING ENGAGEMENT OF REAL ESTATE BROKERS FOR LAS VEGAS 1, LAS VEGAS 2, AND TECATE PROPERTIES, AND (B) STAYING ANY FURTHER EX PARTE MOTIONS RELATING TO THE SALE OF ANY PROPERTY SUBJECT TO THE RECEIVERSHIP IN THE ABSENCE OF GOOD CAUSE**

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 March 11, 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
- Timothy P. Dillon - tdillon@dillongerardi.com; smiller@dillongerardi.com; rabrera@dillongerardi.com; CBeal@dillongerardi.com
- 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 11, 2016, at San Diego, California.

Ted Fates

(Type or print name)

/s/ Ted Fates

(Signature of Declarant)