

1 Timothy P. Dillon, Esq. (SBN 190839)
2 **DILLON GERARDI HERSHBERGER MILLER & AHUJA, LLP**
3 5872 Owens Avenue, Suite 200
4 Carlsbad, California 92008
5 Telephone: (858) 587-1800
6 Facsimile: (858) 587-2587
7 E-Mail: tdillon@dghmalaw.com

8 Attorneys for ALEX HAUA, et al.

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 LOUIS V. SCHOOLER and FIRST
16 FINANCIAL PLANNING CORPORATION
17 d/b/a WESTERN FINANCIAL PLANNING
18 CORPORATION,

19 Defendants.

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

**DECLARATION OF TIMOTHY P. DILLON
IN SUPPORT OF EX PARTE APPLICATION
FOR AN ORDER EXTENDING TIME TO
FILE AN OPPOSITION TO THE
RECEIVER'S APRIL 29, 2016 MOTION FOR
ORDER AUTHORIZING SALE OF GENERAL
PARTNERSHIP ASSETS [DOC. 1181] BY A
PERIOD OF 30 DAYS**

20
21
22
23
24
25
26
27
28
CASE No. 3:12-cv-02164

DECLARATION OF TIMOTHY P. DILLON IN SUPPORT OF EX PARTE APPLICATION FOR AN ORDER
EXTENDING TIME TO FILE AN OPPOSITION TO THE RECEIVER'S APRIL 29, 2016 MOTION FOR ORDER
AUTHORIZING SALE OF GENERAL PARTNERSHIP ASSETS [DOC. 1181] BY A PERIOD OF 30 DAYS

1 I, Timothy P. Dillon, declare as follows:

2 1. I have personal knowledge of the facts set forth herein in this Declaration and, if called as
3 a witness, could and would testify competently to such facts under oath.

4 2. I am the attorney for over 100 investors (the "Investor Group")¹.

5 3. Good cause exists for the instant ex parte request because the Investor Group requires
6 additional time to obtain results from their retained experts regarding the marketing and positioning of
7 the general partnership properties.

8
9
10
11 ¹ The Investor Group is comprised of over 100 individuals and entities who have invested in the various general partnerships
12 that are subject to the receivership. The Investor Group includes: Randall R. Alessi SEP IRA, Cheri A. Alguire, Cheri A.
13 Alguire IRA, Jodi Pickering, Dana Anenberg, Linda Armas IRA, Emily J. Averill, Kent & Susan Averill, jointly, Kevin B.
14 Bacon & Karin Bacon Co-Trustees of The Bacon Family Trust, Kathleen A. Becker Revocable Trust, Frank A. Bendrick,
15 Patricia A. Bendrick, Simon Bibeau SEP IRA, Ed & Irene Brabant, Edward H. Brabant SEP IRA, Thomas & Susan Brown
16 2001 Trust, Thomas & Susan Brown, Trustees, William & Linda Bruno, Patricia C. Buza IRA, Anita L. Byrum, Marc Camras
17 Roth IRA, Camras Family Trust, Patricia Carras, Patricia Carras Trust, Robert J. Chastanet IRA, Robert J. & Rachel I.
18 Chastanet, Takayuki & Tomoko Chubachi, Takayuki & Tomoko Chubachi Revocable Trust dated Feb. 26, 2008, Cynthia
19 Clarke, IRA, Douglas Clarke, Anthony M. Colangelo, Kimberly A. Croke, Brad & Carolyn Curtis, The Curtis Family Trust,
20 Brad & Carolyn Curtis, Trustees, Brad Curtis IRA, Brad Curtis, Christopher J. and Eileen L. Davis, Matthew DeLine 401k
21 Plan, Matthew DeLine IRA, Matthew DeLine, DeLine Family Trust, William J. Deline IRA, David DeMarais, Mary Doan,
22 Cynthia Dorney, Cynthia Dorney Roth IRA, Cynthia Dorney Trustee of the Ahumada Family Trust Dated 10/23/2000, Richard
23 & Cynthia Dorney, Richard Dorney IRA, Roger & Susan Engle, Roger Engle, Letitia Fleming, Steven Goldman, Green Family
24 Trust, Shawn T. Green, Timothy & Bessie Green, Michael Greenberg, Terry Hagen, Jensen Family Trust dated April 23,
25 1997, Credit Shelter Trust under the Jensen Family Trust, Traci Jensen Hagerman Beneficiary IRA of Deceased Gregory
26 Bullin-Jensen IRA, Susan E. Harrington, Mikale Associates, Inc., Alejandro & Terri Haua, Reyna M. Haua, James R.
27 Hettinger, Spirit At Work, Inc., Ho Trust Dated 10/10/2007, Tjung-Ling Ho, Roselynn Ho Trustees, Richard Howe, John
28 Huang, Priscilla Huang, Angelique Judd, Christopher & Angelique Judd, Della June, Ronald Karp, Roth IRA, Ruey Ken,
Punita Khanna IRA, Cheryl Layman, Taekyun Lee & Melina Stafford, Taekyun Lee, Gene Lin, Gene Lin & Ruey Ken, Kevin
T. & Karon C. Lingle, Karon C. Lingle IRA, Anita C. Lorr, IRA, Eric & Anita Lorr, Eric Lorr, IRA, Paul David & Nicole
Kathleen Losey, Charles J. Lozinger, Charles J. Lozinger & Tike K. Lozinger, Chris & Sue Lupo, Trustees, Chris & Sue Lupo,
Jamie Lupo (Sison), Chris Lupo, Sue Lupo, Bruce K. Marquez, Bruce K. Marquez & Rose Marquez, Tom W. & Rosita B.
McGowan, Elbert McLaren, IRA, Luzviminda T. McLaren, IRA, Elbert A. McLaren & Luzviminda T. McLaren, Trustees of
McLaren Family Trust dated 4/8/2008, Chris A. Mekata, Stephen A. Mitchell, Stephen N. Morrill & Maria T. Morrill, Stephen
N. Morrill, Kathleen E. Nagy, Michael G. Nichols, Salvador L. Paleo, Rosa I Paleo, Salvador L. Paleo & Rosa I Paleo,
Trustees of the Paleo Family Trust Dated 11/20/2001, Martel Pellerin, David R. Powell, JoAnne Powell, Gary A. Powell,
Gary A. Powell & Tonya J. Powell, Tonya J. Powell, Georjean Radford, Elizabeth L. Ray, Reed Family Trust, Robert E. &
Elaine H. Richardson, Daniel Richter, Daniel Richter, IRA, Ken Robinson, Evelyn A. Roquemore, General Partner of the
Evelyn A. Roquemore Limited Partnership, Joseph J. Rousseau, Richard & Jane Sanders, Jane Sanders IRA, Louis Serianni,
Steven R. Shuey & Kristine J. Shuey, Trustees of Shuey Family Trust dated Jan. 12, 2008, Dana P. Smith, Scott Snyder &
Mary Weickgeuant, Scott Snyder, IRA, Marc Sorgatz, Cathy C. Spatuzzi, Cathy C. Spatuzzi & Michael A. Spatuzzi, Trustees
of Spatuzzi Family Trust, Roland & Anne Staeb, Roland Staeb IRA, Anne L. Staeb IRA, The Staeb Family Trust dated
10/7/1999, Roland & Anne Staeb Trustees, Roland Staeb Roth IRA, Nelson Stephens, Gerald Stranak, IRA, Sylvester Family
Living Trust, Richard & Sharon Sylvester Trustees, Natalie Sylvester Pestrex, Anthony Sylvester, Richard Sylvester Roth
IRA, Sharon Sylvester Roth IRA, Michael Taetzsch, Patrick Teel, Cynthia A. Teply IRA, John & Cynthia A. Teply, Joe
Toledo, Kenny & Leslie Tung, Jenny Wang, Rachel Warren IRA, Alan & Gail Whetsine, Daryl & Debra White, Richard
Wodiske DDS Inc. Defined Contribution Plan, Richard Wodiske Trustee, Wodiske Family Trust, Richard & Laurie Wodiske
Trustees.

1 4. The law firm for the Investor Group has retained Alan Nevin and Neal Singer at Xpera
2 Group (“Xpera”). Alan Nevin has more than 25 years of experience in performing feasibility studies for
3 developers and investors, as well as forensic experts. Neal Singer is the COO of Xpera RE, Xpera’s full-
4 service commercial real estate repositioning division. Xpera is a comprehensive group of construction
5 consultants, real estate advisors and forensic experts. Counsel for the Investor Group has retained Xpera
6 to perform studies and market analyses on the each of the partnership properties with the intent of
7 maximizing value to the investors.

8 5. A substantial retainer is being paid to Xpera for the purpose of providing a plan, including
9 proposing recommendations for each of the 23 general partnership properties. Xpera’s report is intended
10 to go beyond a mere appraisal of the partnership properties. Instead, it will provide a strategy and plan
11 for optimizing property value and income potential. Xpera will conduct site visits, analyze past and
12 current entitlements for the properties, will assess whether the procurement of future entitlements would
13 reasonably be expected to increase the value of properties, communicate with applicable government
14 agencies, brokers and others regarding past, existing, and possible future entitlements and evaluate the
15 properties and the market surrounding the properties.

16 6. Xpera will issue a report recommending the best way each property can be positioned to
17 maximize investor return. Xpera will provide a presentation of all data obtained and research conducted,
18 will provide an analysis of each properties’ local market, will provide analysis on the quality of each
19 properties’ location in terms of future development on resale, will provide a report on the status of
20 development processing and opportunities for future mapping, will provide an estimated time for future
21 processing (if processing is deemed possible) and will report on potentials for optimizing value of the
22 properties.

23 7. It is anticipated that Xpera will not recommend the immediate sale of many of the general
24 partnership properties, but rather, would recommend a “repositioning” of the real estate (i.e. by the
25 obtaining of entitlements, zoning variances, marketing of entitlements already obtained, etc.) and a
26 change in the way the assets are marketed and valued.

1 8. On or about March 20, 2016, I requested Receiver's counsel agree to a 30 day extension
2 of time to allow for the completion of the op. My request was denied. Attached hereto as **Exhibit "A"**,
3 is a true and correct copy of the March 20-21, 2016 email chain between myself and receiver's counsel.

4 9. My office will provide notice of this ex parte by serving a copy of the ex parte paperwork
5 via email on all counsels of record in this matter.

6
7 Dated: March 22, 2016

Respectfully submitted,
DILLON GERARDI HERSHBERGER MILLER
& AHUJA, LLP

8
9
10 s/ Timothy P. Dillon
Attorney for ALEX HAUA, et al.

CERTIFICATE OF SERVICE

I am employed in the County of San Diego, State of California, am over the age of 18 and not a party to the within action. My business address is DILLON GERARDI HERSHBERGER MILLER & AHUJA, LLP, 5872 Owens Avenue, Suite 200, Carlsbad, CA 92008. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing.

On March 22, 2016, I caused to be served the following documents described as:

- **DECLARATION OF TIMOTHY P. DILLON IN SUPPORT OF EX PARTE APPLICATION FOR AN ORDER EXTENDING TIME TO FILE AN OPPOSITION TO THE RECEIVER'S APRIL 29, 2016 MOTION FOR ORDER AUTHORIZING SALE OF GENERAL PARTNERSHIP ASSETS [DOC. 1181] BY A PERIOD OF 30 DAYS**

(BY ELECTRONIC FILING) I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the Court. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. Under said practice, the following CM/ECF user(s) were served:

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

Dated: March 22, 2016

s/ Darlene Chaves

Darlene Chaves

EXHIBIT “A”

From: Fates, Ted [mailto:tfates@allenmatkins.com]
Sent: Tuesday, March 22, 2016 12:33 PM
To: Tim Dillon <tdillon@dghmalaw.com>
Cc: Sunjina Ahuja <sahuja@dghmalaw.com>; Thomas C. Hebrank <thebrank@ethreadvisors.com>; Berry, John W. <BerryJ@sec.gov>; DeanL@sec.gov; KALINS@SEC.GOV
Subject: RE: Continuation of April 29, 2016 hearing

Dear Mr. Dillon,

You raise the possibility that expert opinions you plan to obtain in the next 30 days may recommend entitlements be obtained before GP properties are sold. Any such opinions could be presented and considered, along with the likely costs and benefits of obtaining applicable entitlements, in connection with broker/listing recommendations after the Receiver's motion is heard. The possibility that one or more GP properties might yield a greater net recovery if entitlement work is done is not something that bears on *whether* GP properties should be sold, but rather *when* they should be sold and if some work should be done first. Accordingly, the possibility that experts recommend obtaining entitlements prior to sale is not cause to delay the April 29 hearing date – the costs and benefits of entitlement work can be considered and addressed after the motion is heard. The Court-approved orderly sale process has a number of steps, including recommendations for broker listings and noticed sale motions, so investors will have multiple opportunities to weigh in, including to request that entitlement work be done prior to properties being sold.

I am out of the office this week for vacation, but would be happy to discuss this further upon my

return next week.

Regards,

Ted Fates

From: Tim Dillon [<mailto:tdillon@dghmalaw.com>]
Sent: Monday, March 21, 2016 11:08 AM
To: Fates, Ted
Cc: Sunjina Ahuja; Thomas C. Hebrank; Berry, John W.; DeanL@sec.gov; KALINS@SEC.GOV
Subject: Re: Continuation of April 29, 2016 hearing

Mr. Fates:

I am out of my office this morning. I believe you misunderstand the point. An immediate sale of these properties may not be the best way to return value to the investors. Some of these properties have entitlements or could obtain entitlements that would greatly enhance their value. We are unaware that the receiver has undertaken any similar efforts to position the properties for a maximum return to the investors.

We believe the modest 30 day extension is warranted in light of the value that would be realized in having an outside opinion that ultimately leads to an increased return for these 3300 investors.

Sent from my iPhone

On Mar 21, 2016, at 10:20 AM, Fates, Ted <tfates@allenmatkins.com> wrote:

Dear Mr. Dillon,

Before addressing your request, it is necessary to clarify one point. The Court has already directed the Receiver to move GP properties that fail to raise sufficient funds through the capital call process to the orderly sale process. See Dkt. No. 1069. The pending motion (Dkt. No. 1181) simply requests that the remaining GP properties, i.e. those with GPs that have sufficient funds on hand to pay their operating expenses through 2016 and therefore did not have a capital call, also be moved to the orderly sale process.

For the reasons discussed in the motion, delaying the process of marketing and selling these GP properties would harm the approximately 3,300 investors and reduce their ultimate recovery. Accordingly, there needs to be good cause for delaying the April 29 hearing for 30 days. The basis for your request appears to be retaining experts to examine the values of the GP properties. Such expert opinions would bear only on the prices at which GP properties should be listed for sale and perhaps how they should be marketed. The motion, on the other hand, simply proposes that GP properties be moved to orderly sale process. The first step of the orderly sale process is for the

Receiver to recommend brokers to list and market the GP properties for sale, but this would not occur until after the Court has granted the motion. Therefore, your timetable for obtaining expert opinions – one month from tomorrow or April 21 – means you will have those opinions before the Receiver would be in a position to recommend brokers and will be able to present them to the Receiver and/or the Court in connection with such broker recommendations.

Accordingly, there does not appear to be cause to delay the April 29 hearing date. However, if we have misunderstood your request or you believe there is other good cause for the proposed delay, please let us know.

Regards,

Ted Fates Esq.

Partner

Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 233-1155 (main)
(619) 235-1527 (direct)
(619) 886-4466 (mobile)
(619) 233-1158 (fax)

[<image002.jpg>](#)

From: Tim Dillon [<mailto:tdillon@dghmalaw.com>]
Sent: Sunday, March 20, 2016 9:13 AM
To: Fates, Ted
Cc: Sunjina Ahuja
Subject: Continuation of April 29, 2016 hearing

Mr. Fates:

I represent a group of 87+ investors in the general partnerships which hold the majority ownership in and to the 23 properties at issue in the SEC v. Schooler matter. We understand your office represents the receiver, Mr. Hebrank and have reviewed the motion filed by your office (Docket 1181) to conduct a sale of substantially all of the partnership properties. I included you on an email earlier this morning with the SEC and hope that you and Mr. Hebrank can attend a meeting with my office and Gary Aguirre to discuss that motion as well and other matters related to the best interests of the investors.

The purpose of my email is to seek a voluntary 30 day extension for the hearing currently scheduled for April 29th. We have been aware of this matter for less than a month. In that time, we have reached out to numerous investors to coordinate their retention. The group of investors we represent is anticipated to grow to more than 100 over the next few days. Recently, we have spent time reviewing the very thick file on this matter – currently with over 1,200 docket entries and approximately 100

orders issued from the court. This process is taking a significant amount of time.

Our opposition to the receiver's plan would be due on or before April 8th. We simply do not have enough time to adequately oppose that motion in the best interests of the investors who seek return on their investments. We are in the process of retaining experts to review these properties and the receiver's current plan in order to provide a plan for the properties that will maximize investor returns. We expect to retain them tomorrow and they estimate that the time it will take to review each property, conduct a site inspection (where appropriate) and review related records will take no less than one month to prepare initial findings. These findings would be of significant value to the investors, the Court and to Mr. Hebrank (who is purportedly acting on the investors' behalf).

To avoid the necessity of asking the Court for additional time, we would request that we jointly stipulate to a one month extension to the current April 29th hearing date to allow us time to complete this work. In light of the current time limitations, we would appreciate hearing back from you on this matter by 4 PM tomorrow, March 21st. Thank you in advance for your anticipated cooperation.

Yours Very Truly,

Timothy P. Dillon
Dillon Gerardi Hershberger Miller & Ahuja, LLP
5872 Owens Avenue, Suite 200
Carlsbad, California 92008
Tel (858) 587-1800
tdillon@dghmalaw.com
<http://www.dghmalaw.com/>

<image003.jpg>

This email message originates from Dillon Gerardi Hershberger Miller & Ahuja, LLP and is intended only for named recipients, despite possible errors in email addresses or routing. This message, its contents and attachments contain information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. Any disclosure, use, dissemination, or reproduction of this message, its contents or attachments is strictly prohibited. If you have received this message in error, please notify us immediately by reply email or at the contact information listed above, and permanently delete the original message. Thank you, Dillon Gerardi Hershberger Miller & Ahuja, LLP.

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.