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THOMAS C. HEBRANK

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

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

20 Defendants.

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

**RECEIVER'S OPPOSITION TO THE
INVESTOR GROUP'S *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**

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 the General Partnerships listed on Schedule 1 to the
4 Preliminary Injunction Order entered on March 13, 2013 (collectively,
5 "Receivership Entities"), submits this opposition to the Investor Group's¹ *Ex Parte*
6 Application ("Application") for an Order Extending Time to File an Opposition to
7 the Receiver's April 29, 2016 Motion for Order Authorizing Sale of General
8 Partnership Assets [Doc. 1181] by a Period of 30 Days. The Application seeks to
9 further delay the Court's consideration of the Receiver's Motion for: (A) Authority
10 to Conduct Orderly Sale of General Partnership Properties; (B) Approval of Plan of
11 Distributing Receivership Assets; and (C) Approval of Procedures for the
12 Administration of Investor Claims ("Motion").

13 The Receiver opposes the Application, which is a spurious attempt to further
14 delay the inevitable sale of the receivership assets and will result in further losses to
15 the investors as a whole. Moreover, the Application is based on the entirely false
16 premise that the Receiver's Motion seeks approval of actual sales of GP properties.
17 In fact, the Motion simply proposes that the Receiver be given authority to proceed
18 with an orderly sale process for the properties, which process will eventually result
19 in the Receiver filing noticed motions seeking approval of the sale of GP properties.

20 Importantly, the requested delay is simply unnecessary. That is, the Investor
21 Group's proposed study and exploration of the development prospects for certain
22 properties have nothing whatsoever to do with the relief sought in the Receiver's
23 Motion. Again, based upon the relief sought by the Receiver in the Motion, the
24 Investor Group will have ample time to do their analysis and present it to the
25 Receiver and, if necessary, the Court.

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28 ¹ The totality of the members of the Investor Group are listed in the Application
(Dkt. No. 1211).

1 It should be noted that the frivolous nature of this request is found in the body
2 of the Application. That is, Investor Group's stated desire for a delay is based on the
3 purported need to explore development opportunities with regard to certain
4 properties. This need is belied by the fact that the Investor Group has pre-ordained
5 the outcome of the study. That is, before even engaging their expert, the Investor
6 Group anticipates the expert's conclusion: "*Xpera will not recommend the sale of*
7 *many of the general partnership properties . . .*" Application, p. 3, ln. 10. Having
8 already reached their conclusion in advance, it seems unnecessary to delay the
9 proceedings further.

10 The Court has already directed the Receiver to move GP properties that fail to
11 raise sufficient funds through the capital call process to the orderly sale process.
12 Dkt. No. 1069. The pending Motion simply requests that the remaining
13 GP properties, *i.e.*, those with GPs that have sufficient funds on hand to pay their
14 operating expenses through 2016 and therefore did not have a capital call, also be
15 moved to the orderly sale process. The steps of the orderly sale process were
16 approved by the Court more than 10 months ago. *Id.*

17 For the reasons discussed in the Motion, delaying the process of marketing
18 and locating prospective buyers for these GP properties would harm the
19 approximately 3,300 investors and reduce their ultimate recovery. The Investor
20 Group represents approximately 3% of investors. Their desires to unnecessarily
21 delay the Court's consideration of the Motion by presenting evidence that can be
22 considered at a later date and in connection with broker recommendations and
23 noticed sale motions should not be permitted to derail and harm the interests of the
24 other 97% of investors.

25 The first step of the orderly sale process is for the Receiver to recommend
26 brokers to list and market the GP properties for sale. This would not occur until
27 after the Court has granted the Motion. Therefore, the Investor Group's timetable
28 for obtaining expert opinions - one month from March 21 - means the expert

1 opinions would be received before the Receiver would be in a position to
2 recommend brokers, much less be in a position to list and sell the GP properties. As
3 such, the Investor Group will be able to present the expert opinions to the Receiver
4 and/or the Court in connection with such broker recommendations.

5 The Investor Group has not met their burden of demonstrating the existence
6 of good cause for a delay. Accordingly, the Application should be denied.

7
8 Dated: March 28, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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10 By: /s/ Edward G. Fates

EDWARD G. FATES
Attorneys for Receiver
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 March 28, 2016, I served the within document(s) described as:

- **NOTICE OF RECEIVER'S INTENT TO FILE OPPOSITION TO THE INVESTOR GROUP'S *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**

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 28, 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
- John Willis Berry - berryj@sec.gov; LAROFiling@sec.gov
- Lynn M. Dean - deanl@sec.gov; larofiling@sec.gov; berryj@sec.gov; irwinma@sec.gov; cavallones@sec.gov
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on March 28, 2016, at San Diego, California.

Edward G. Fates

(Type or print name)

/s/ Edward G. Fates

(Signature of Declarant)