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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 SUPPLEMENTAL
BRIEF IN SUPPORT OF *EX PARTE*
APPLICATION FOR ORDER
CONFIRMING SALE OF JAMUL
VALLEY PROPERTY (DKT.
NO. 1191)**

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"), its
3 subsidiaries and the General Partnerships listed on Schedule 1 to the Preliminary
4 Injunction Order entered on March 13, 2013 ("Receivership Entities"), submits this
5 supplemental brief in support of his *Ex Parte* Application for Order Confirming Sale
6 of the Jamul Valley Property (Dkt. No. 1191) ("Application").

7 I. INTRODUCTION

8 Mr. Aguirre and Mr. Dillon have now filed 16 pleadings and declarations
9 seeking reconsideration of the Court's June 17, 2015 order authorizing the sale of
10 the Jamul Valley property or otherwise challenging the sale. In particular, they
11 argue the sale cannot be confirmed because of the requirements of 28 U.S.C. § 2001.
12 However, Section 2001 is waivable by the parties, none of whom objected to the
13 sale. If the parties believed additional procedures or appraisals were necessary, they
14 could have responded to the Receiver's recommendation, which was filed on
15 March 20, 2015. Dkt. No. 1020. There was no response and the Court approved the
16 recommendation almost three months later on June 17, 2015 ("Sale Authorization
17 Order"). Dkt. No. 1088.

18 The lack of response from the parties is clear indication they did not see any
19 need for additional procedures or appraisals and therefore waived the requirements
20 under Section 2001. The sale would have closed in January 2016 if the title
21 insurance company had not required an order confirming the identity of the buyer,
22 the legal description of the property, and the purchase price.

23 Mr. Aguirre and Mr. Dillon present no new law or new evidence that warrant
24 reconsideration almost 10 months after the Sale Authorization Order was entered.
25 Instead, they simply argue sales that do not strictly comply with 28 U.S.C. § 2001
26 are automatically void. To the contrary, the parties can and did waive Section 2001.
27 The parties' failure to respond to the Receiver's recommendation is clear indication
28 they did not believe further procedural steps (like those contained in Section 2001)

1 were necessary or would benefit the receivership estate. Therefore, they waived
2 Section 2001, and for good reason - the statute imposes burdensome costs and
3 delays on the sale process with no benefit to investors.

4 If, however, the Court determines the parties did not waive Section 2001, the
5 Receiver recommends conducting a public auction pursuant to Section 2001(a),
6 which would be less costly and result in less delay than a private sale under
7 Section 2001(b). The recommended steps of such a public auction, if the Court
8 determines one is necessary, are discussed below.

9 II. BACKGROUND FACTS

10 On February 16, 2015, the Receiver received a letter of intent from The
11 Nature Conservancy ("TNC") to purchase the Jamul Valley property, which is
12 owned by multiple GPs: Jamul Meadows, Lyons Valley and Hidden Hills. On
13 February 17, 2015, the Receiver notified the Court of the letter of intent. The Court
14 instructed the Receiver to file a recommendation for addressing the letter of intent
15 by February 20, 2015, and to file such recommendation under seal so as not to
16 publicly disclose the amounts offered in the letters of intent. Dkt. No. 1020.

17 On February 19, 2015, the Receiver filed his recommendation for addressing
18 the letter of intent, which was filed under seal per the Court's direction
19 ("Recommendation"). On February 20, 2015, the Court issued an order adopting the
20 Receiver's recommendation, directing the Receiver to send out the proposed ballots
21 to investors, and further directing the Receiver to file an "update as to the status of
22 the balloting as well as the Receiver's recommendation regarding what further action
23 should be taken in light of the balloting results." Dkt. No. 992. Accordingly, the
24 Receiver promptly sent ballots to the investors of Jamul Meadows, Lyons Valley
25 and Hidden Hills with the information about the TNC letter of intent, the Jamul
26 Valley property, and the financial status of their GP, as stated in the
27 Recommendation.

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1 On March 20, 2015, pursuant to the Court's instructions, the Receiver filed his
2 Update as to Status of Balloting Regarding Letter of Intent for Jamul Valley
3 Property and Recommendation for Further Action ("Further Recommendation").
4 The Further Recommendation provided the results of the balloting and the
5 Receiver's recommendation to move forward with specific steps to negotiate terms
6 with TNC, list the property for sale on LoopNet and the MLS, consummate the sale
7 to TNC or the highest and best offer obtained, and to file a notice with the Court and
8 e-mail such notice to the investors of Jamul Meadows, Lyons Valley, and Hidden
9 Hills once the sale closed. The Further Recommendation was based in large part on
10 the distressed financial state of the Jamul Meadows, Lyons Valley, and Hidden Hills
11 partnerships, their inability to raise funds from their investors to pay their basic
12 operating expenses, and the outstanding unpaid property taxes. There was no
13 response to the Further Recommendation, which was adopted by the Court on
14 June 17, 2015. Dkt. No. 1088.

15 The Receiver then proceeded with the Court-approved steps of negotiating
16 terms with TNC and listing the property on LoopNet and the MLS. LoopNet and
17 the MLS are the two most widely used listing services for selling real property.
18 Brokers and others looking to purchase undeveloped land in the Jamul Valley area
19 could easily have found the listing and gotten in touch with the Receiver. Yet, other
20 than a neighboring landowner who saw the MLS listing but did not make an offer,
21 no inquiries regarding the Jamul Valley property were received.

22 The Receiver then agreed on the terms of sale to TNC with a purchase price
23 of \$520,000, subject to TNC completing its due diligence and removing
24 contingencies. The \$520,000 purchase price is consistent with all estimates of value
25 of the property and does not require any broker commissions be paid (a savings of
26 \$30,000 to \$50,000 based on standard broker commissions for sales of undeveloped
27 land). The sale will stop the accrual of unpaid property taxes and penalties and
28 generate a substantial recovery for the receivership estate.

1 In September 2015, the Receiver received notice of a fire code violation that
2 required brush near the border of the Jamul Valley property be cleared to protect
3 nearby houses. The Receiver has been in touch with county officials regarding the
4 violation and has informed them the entities that own the property (Jamul Meadows,
5 Lyons Valley, and Hidden Hills) do not have funds available to pay to clear the
6 brush. Therefore, a further benefit of the sale is it will put the burden of addressing
7 the fire code violation on TNC (unless the delay causes the county to act first and
8 place a lien on the property for the cost of clearing the brush). Therefore, the
9 benefits of the sale to the receivership estate are very clear.

10 Despite having now filed 16 pleadings and declarations addressing the Jamul
11 Valley sale, Mr. Aguirre and Mr. Dillon have not presented any evidence suggesting
12 the \$520,000 purchase price (with no broker commissions) is not a reasonable and
13 fair price for the property. Instead, Mr. Aguirre and Mr. Dillon have concluded the
14 Court, Securities and Exchange Commission ("Commission"), and Receiver are
15 incapable of preserving, protecting, and maximizing the value of receivership estate
16 assets, and therefore everything must stop until Mr. Aguirre and Mr. Dillon fully
17 scrutinize and approve three and a half years of activity in the case. The cumulative
18 effect of their actions and proposals would be to impose enormous unnecessary
19 costs - in the hundreds of thousands of dollars - on all investors. To begin with, they
20 have filed 32 pleadings and declarations with the Court since February 18, 2016,
21 have made over 40 informal requests for documents and information from the
22 Receiver, and have sent over 110 emails and letters to the Receiver and his counsel.
23 Additionally, they now argue the receivership estate should bear the costs of *three*
24 additional appraisals for each and every GP property, publication of notices of sales
25 in newspapers, and Court hearings on each and every future sale motion. The
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1 enormous costs of all of this on investors does not seem to even be a consideration.¹
2 As long as Mr. Aguirre and Mr. Dillon succeed in imposing additional burdensome
3 steps on the sale process, the harm done to investors apparently does not matter.

4 It is truly unfortunate that the investors, who are already facing devastating
5 losses from their GP investments and have been waiting years for this case to be
6 resolved while Mr. Schooler fought unsuccessfully with the Commission, are now
7 being victimized again by opportunistic attorneys with no regard for the costs they
8 impose on investors.

9 III. ANTICIPATED EXPERT REPORT

10 Mr. Aguirre and Mr. Dillon have stated they intend to present an expert's
11 opinion as to how to best position GP properties for sale, including the possibility of
12 obtaining entitlements for certain properties. Of course, no one is saying they
13 cannot present such a report and have it considered by the Receiver and the Court.
14 But Mr. Aguirre and Mr. Dillon refuse to accept that. Instead, they repeatedly
15 mischaracterize the relief sought in the Motion, arguing the Motion "ties the Court's
16 hands" and eliminates the opportunity for their expert report to be considered. This
17 is complete nonsense. Nothing in the Motion limits the ability of the Receiver or the
18 Court to consider the expert report and take appropriate actions in response thereto.

19 On May 12, 2015, the Court put in place a process for issuing capital calls to
20 GPs that had insufficient cash to meet their projected operating expenses for 2016
21 ("2016 Expenses"). Dkt. No. 1069. If the GPs that own a property failed to raise
22 sufficient funds to meet their 2016 Expenses, the Court ordered that they be moved
23 to the orderly sale process. *Id.* After an 11-month process of providing information
24 packets and issuing capital calls to investors, each and every GP that went through
25 the Court-ordered capital call process (*i.e.*, GPs that own 15 out of the 23 properties)

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¹ Mr. Aguirre even characterizes the Court-approved orderly sale procedures as "extremely expensive" while simultaneously seeking to add burdensome extra steps to the process. Dkt. No. 1217, Page 4:3.

1 failed to raise sufficient funds from investors to meet its 2016 Expenses. Therefore,
2 all 15 GP properties to which the capital calls pertained have been moved to the
3 orderly sale process.

4 Pursuant to the terms of the May 12, 2015 Order, including the Court-
5 approved steps of the orderly sale process, the Receiver recommended and the Court
6 approved broker engagements for the first five GP properties to complete the capital
7 call process. Dkt. Nos. 1166, 1168. The Receiver then recommended broker
8 engagements for three additional GP properties, which recommendation is pending
9 and has been opposed by Mr. Aguirre and Mr. Dillon. Dkt. No. 1203. With respect
10 to the remaining seven GP properties with failed capital calls, the Receiver is
11 currently contacting brokers about potential listing agreements for six of them
12 before making a recommendation to the Court. The final GP property with a failed
13 capital call is Jamul Valley.

14 For these 15 properties, there is no viable option for preserving their value
15 except selling them through the customary channels for marketing and selling real
16 property. The GPs that own these properties cannot meet even the basic carrying
17 costs of the properties. Most of them already have unpaid property taxes,
18 administrator fees, tax return preparation fees, and other delinquent obligations.
19 Entitlement work, which is expensive and takes many months (and often years) to
20 complete, is simply not feasible.

21 The other eight GP properties are owned by GPs that have sufficient cash to
22 meet their 2016 Expenses (*i.e.*, no capital call was necessary). The Receiver's
23 Motion (Dkt. No. 1181), seeks authorization to move these eight properties to the
24 Court-approved orderly sale process. The orderly sale process has several steps
25 which will take time to complete, including two separate Court approvals - a
26 recommendation for a broker engagement and a noticed motion to approve a sale -
27 and therefore two opportunities for investors to respond and state their positions.
28 The time necessary to interview brokers, obtain proposed listing agreements, obtain

1 Court approval of a particular listing agreement, and market a property (without
2 even getting to the point of evaluating offers, making counter-offers, and negotiating
3 sale terms) is likely to be 60-90 days. Accordingly, granting the Motion on or after
4 the hearing date (May 6, 2016) and authorizing the Receiver to move the other eight
5 GP properties to the orderly sale process does not tie anyone's hands, foreclose any
6 options, or determine any specific outcome for any GP property.

7 Although the Receiver is skeptical the significant costs, delays, and risks
8 associated with work to obtain entitlements for GP properties would be in the best
9 interests of the receivership estate, the Receiver has made it clear he is ready and
10 willing to review the expert report provided by Mr. Aguirre and Mr. Dillon and
11 consider whether it is feasible, worth the risk, and there would be a net benefit from
12 entitlement work. Mr. Aguirre and Mr. Dillon have stated the report will be
13 obtained soon and prior to the May 6, 2016 hearing. As discussed above, there will
14 be plenty of time after the hearing to fully and fairly consider the expert report.

15 The feasibility factor with respect to entitlement work will be affected to a
16 large degree by the Court's ruling on the proposed Distribution Plan. Specifically,
17 as noted above, if the Court approves the proposed One Pot Approach, the resulting
18 pooling of receivership assets would make obtaining entitlements more feasible
19 from a cost standpoint as the costs would be borne by the estate as a whole as
20 opposed to only the GPs that own the property.² Accordingly, it makes more sense
21 to have the Motion resolved before the expert report is considered rather than
22 considering possible entitlement work without knowing how the costs of such work
23 would be shared among investors (*i.e.*, One Pot or Two Tier Approach).

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28 ² Of course, even if the One Pot Approach is approved, there are still the critical
factors of delay, risk, and net benefit to the receivership estate of any entitlement
work.

IV. WAIVER OF SECTION 2001

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2 Mr. Aguirre and Mr. Dillon have touted 28 U.S.C. § 2001 repeatedly as
3 though it is the holy grail in their quest to unwind everything accomplished to date
4 in the receivership. The reality is that courts routinely approve receiver sales of real
5 property without requiring receivership estates to bear the burdensome and
6 unnecessary costs and delays associated with Section 2001, including having the
7 Court appoint three disinterested appraisers, obtaining three appraisals for each
8 property, publishing notices of the sale in a newspaper, and holding a hearing.³ The
9 requirements of Section 2001, which was enacted in 1893 and has not been amended
10 since 1949, are outdated and out of touch with how property is sold in today's
11 market. Today, prospective purchasers have electronic access to property data and
12 ownership records, properties are listed for sale on electronic listing services, and
13 data on comparable sales in the geographic area is readily available. These open
14 and accessible sources of data make it substantially easier and faster to publicize
15 opportunities to buy property, make contact with potential buyers, and determine
16 current market conditions for similar properties. Therefore, in today's market, the
17 substantial costs and delays associated with appointing disinterested appraisers,
18 obtaining three appraisals, publishing notices in newspapers, and holding a hearing
19 generally produce no economic benefit to receivership estates.

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22 ³ See Derek F. Meek & Ellen C. Rains, *Deviations from Statutory Scheme in Sale*
23 *of Receivership Property*, 33-4 Am. Bankr. Inst. J. 58 (2014) ("the requirements
24 that [Section 2001] imposes can be costly and time-consuming for receivers to
25 comply with its provisions, especially when strict compliance serves little or no
26 purpose."); *Pennant Mgmt. v. First Farmers Fin., LLC*, 2015 U.S. Dist. LEXIS
27 118222, at *24-25 (N.D. Ill. 2015) (granting approval of an alternative public
28 auction process, recognizing that in doing so, receivers "obtained a better result
than if the Receivers would have only followed the requirements contained in
sections 2001 and 2002," because given the technological tools available today,
"solely following the archaic procedures in these statutes would have hampered
the sales."). It is also worth noting that the title insurance company that required
an order confirming the sale price and purchaser of the Jamul Valley property
(the sole reason the *Ex Parte* Application was filed) did not request a waiver of
Section 2001 in the confirming order before issuing the title insurance policy.

1 Therefore, parties in receivership cases regularly waive Section 2001 and
2 courts have recognized these waivers as valid. *See Huntington Nat'l Bank v. Big Sky*
3 *Dev. Flint, LLC*, 2010 U.S. Dist. LEXIS 96832, at *19-21 (E.D. Mich. 2010)
4 (holding that 28 U.S.C. § 2001 was waived by a stipulated order appointing a
5 receiver, as the order granted the receiver “‘the fullest powers and duties of a
6 receiver permitted under applicable law and equity,’ including the power to
7 ‘negotiate and execute sale.’”); *see also Huntington Nat'l Bank v. Najero, Inc.*,
8 2014 U.S. Dist. LEXIS 152474, at *4-6 (E.D. Mich. 2014) (acknowledging that “the
9 requirements [of 28 U.S.C. § 2001] can be waived by the parties,” but finding that
10 an appointment order authorizing a receiver to sell property “consistent with the
11 provisions of 28 U.S.C. §2001(a)” narrowed the receiver’s authority and did not
12 constitute a waiver of the statutory requirements); *Camp Fire USA v. Camp Fire*
13 *USA N. Star Council*, 2015 U.S. Dist. LEXIS 28091, at *6-7 (W.D. Mo. 2015)
14 (finding no waiver because the appointment order stated, “[t]he Receiver is
15 authorized to sell the Assets, subject to the provisions of 28 U.S.C. §§ 2001, 2002
16 and 2004.”).

17 Here, the parties - the Commission, Louis Schooler, and Western - received
18 the Further Recommendation, which recommended the Receiver be given full
19 authorization to sell the Jamul Valley property and did not include any limitations
20 relating to Section 2001. The parties did not object to the proposed procedures for
21 the sale. In fact, the Commission recently asked the Court to deny Mr. Aguirre's
22 attempts to delay the sale. Dkt. No. 1214. As for Schooler and Western,
23 presumably they recognized that further appraisals and other procedural steps would
24 impose costs on investors with no benefit. Regardless, they did not object or
25 otherwise raise Section 2001 in response to the Further Recommendation. The
26 Court then entered the Sale Authorization Order, which directs the Receiver to sell
27 the property and does not impose any limitations regarding Section 2001.
28 Accordingly, the parties waived Section 2001.

1 There is good reason for the Court to uphold the parties' waiver. First, the
2 Receiver listed the Jamul Valley property on LoopNet and the MLS, the two most
3 widely used listing services for selling property, for approximately 4-5 months.
4 Anyone interested in purchasing the property could easily have found the listing and
5 contacted the Receiver. No one did.

6 Second, the purchase price is consistent with all estimates of the property's
7 value. The Receiver obtained an appraisal of the property in 2013. The appraiser
8 estimated the value to be \$395,000. The GPs that own the Jamul Valley property
9 did not have sufficient funds to pay for a 2015 appraisal, so the Receiver contacted
10 several brokers in the surrounding area, two of whom agreed to provide an opinion
11 of value. The two brokers estimated the value to be \$550,000 and \$490,760,
12 respectively.

13 Third, the proposed purchase price was negotiated at arm's length with an
14 unrelated third-party purchaser, TNC.

15 Fourth, the proposed sale saves approximately \$30,000-\$50,000 that would
16 otherwise be paid in broker commissions.

17 Fifth, as noted above, in their numerous filings with the Court over the last
18 seven weeks, neither Mr. Aguirre nor Mr. Dillon have presented any evidence
19 suggesting the \$520,000 purchase price (with no broker commissions) is not a fair
20 and reasonable price for the property.

21 Sixth, courts have recognized that the requirements of Section 2001 are
22 cumbersome, outdated, and produce no benefit to receivership estates. *See, e.g.,*
23 *SEC v. Billion Coupons, Inc.*, 2009 U.S. Dist. LEXIS 61214, at *9 (D. Haw. 2009)
24 (authorizing a Receiver's proposed plan for the sale of real property, although the
25 plan deviated from 28 U.S.C. § 2001 by using a private broker to advertise and sell
26 the property to the highest offeror instead of appointing three disinterested
27 appraisers, finding specifically that the Receiver's plan provided "sufficient
28 safeguards in order to solicit the highest price that a willing buyer in an arms-length

1 negotiation will offer while conducting the sales in a timely and cost-efficient
2 manner that will maximize the net sales proceeds.”); *Pennant Mgmt. v. First*
3 *Farmers Fin., LLC*, 2015 U.S. Dist. LEXIS 118222, at *24-25 (N.D. Ill. 2015)
4 (granting approval of an alternative public auction process, recognizing that in doing
5 so, receivers “obtained a better result than if the Receivers would have only
6 followed the requirements contained in sections 2001 and 2002,” because given the
7 technological tools available today, “solely following the archaic procedures in
8 these statutes would have hampered the sales.”).

9 Therefore, it is highly unlikely that spending further receivership estate
10 dollars on appraisals, publishing notices, sale hearings, and other procedural steps
11 will benefit investors. To the contrary, the net recovery from the sale would most
12 likely be diminished by the additional costs incurred.

13 V. ALTERNATE RECOMMENDATION

14 If, however, the Court determines the parties did not waive Section 2001, the
15 Receiver recommends proceeding with the steps of a public sale under
16 Section 2001(a). Section 2001 imposes specific requirements for public sales of real
17 property under subsection (a) and specific requirements for private sales of real
18 property under subsection (b). Although both involve unnecessary cost and delay,
19 the cost and delay of a public sale are significantly less than those for a private sale.
20 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013)
21 (“Section 2001 sets out two possible courses of action: (1) property may be sold in
22 public sale; or (2) property may be sold in a private sale, provided that three separate
23 appraisals have been conducted, the terms are published in a circulated newspaper
24 ten days prior to sale, and the sale price is no less than two-thirds of the valued
25 price.”). Therefore, by proceeding under Section 2001(a), the receivership estate
26 can avoid the significant costs and delay of (a) the Court having to appoint three
27 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.
28 Not only does the delay continue to erode the value of the Jamul Valley property,

1 but the GPs that own the property do not have funds available to pay for three
2 additional appraisals.

3 The requirements of a public sale under Section 2001(a) are that notice of the
4 sale be published as proscribed by Section 2002 and a public auction be held at the
5 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*
6 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015); *SEC v.*
7 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at *5 (M.D. Fla. 2007). In terms of
8 publication of notice, Section 2002 provides:

9 A public sale of realty or interest therein under any order,
10 judgment or decree of any court of the United States shall
11 not be made without notice published once a week for at
12 least four weeks prior to the sale in at least one newspaper
regularly issued and of general circulation in the county,
state, or judicial district of the United States wherein the
realty is situated.

13 If such realty is situated in more than one county, state,
14 district or circuit, such notice shall be published in one or
15 more of the counties, states, or districts wherein it is
16 situated, as the court directs. The notice shall be
17 substantially in such form and contain such description of
the property by reference or otherwise as the court
approves. The court may direct that the publication be
made in other newspapers.

18 This section shall not apply to sales and proceedings under
19 Title 11 or by receivers or conservators of banks appointed
by the Comptroller of the Currency.

20 The notice of sale is sufficient if it describes the property and the time, place,
21 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
22 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
23 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
24 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction
25 of the Receiver, that it has the current ability to consummate the purchase of the
26 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
27 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

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1 **Public Auction Procedures.** It is not workable to have unknown individuals
2 show up at the courthouse to bid without (a) knowing who they are, (b) making sure
3 they agree to the terms under which the property is being sold, and (c) determining
4 they have the financial capacity to close the sale. Accordingly, the Receiver
5 proposes that all interested parties be required to complete the following steps in
6 order to qualify themselves to bid at the public auction:

7 (1) Sign a purchase and sale agreement on the same terms and conditions as
8 the existing purchase and sale agreement signed by TNC, but with a purchase price
9 of \$530,000 (\$10,000 higher than the existing purchase price with TNC);

10 (2) Provide an earnest money deposit to the Receiver in the amount of
11 \$10,000, as TNC has already done; and

12 (3) Provide proof of funds necessary to close the sale transaction in the form
13 of a current bank statement, cashier's check delivered to the Receiver, or other
14 evidence deemed sufficient by the Receiver.

15 In order to conduct an orderly auction and provide sufficient time for the
16 publication of notices discussed below, the Receiver proposes that bidders be
17 required to complete the above steps by a specific date at least four weeks from the
18 date these procedures are approved ("Bid Qualification Deadline") and the live
19 public auction be conducted by the Receiver approximately five business days after
20 the Bid Qualification Deadline and immediately in front of the courthouse
21 (221 West Broadway, San Diego, California 92101 – same address in notice text
22 below). In the event one or more prospective purchasers qualify themselves to bid,
23 the auction will be conducted by the Receiver and bids will be allowed in
24 increments of \$5,000. The Receiver will then file a notice advising the Court of the
25 result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming the
26 sale. Earnest money deposits provided by bidders who are unsuccessful will be
27 promptly returned to them. In the event no prospective purchasers qualify
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1 themselves to bid by the Bid Qualification Deadline, the Receiver will notify the
2 Court and seek entry of an order confirming the sale to TNC.

3 **Publication of Notice.** Consistent with the proposed public auction
4 procedures described above and the requirements of Section 2002, the Receiver
5 proposes to publish the following notice in the San Diego Union-Tribune or
6 San Diego Business Journal on four occasions (once during each of the four weeks
7 leading up to the Bid Qualification Deadline):

8 In the action pending in U.S. District Court for the
9 Southern District of California, Case No. 12-CV-2164-
10 GPC-JMA, Securities and Exchange Commission v.
11 Louis V. Schooler et al., notice is hereby given that the
12 court-appointed receiver will conduct a public auction for
13 the undeveloped real property with APNs: 519-150-05-00
14 & 519-221-01-00, located near 3384 Peg Leg Mine Road,
15 Jamul, California. Sale is subject to Court confirmation
16 after the auction is held. Minimum bid price is \$530,000.
17 The auction will take place on May __, 2016 at 1:30 p.m.
18 in front of the entrance to the United States Courthouse,
19 221 W. Broadway, San Diego, California. To be allowed
20 to participate in the auction, prospective purchasers must
21 meet certain bid qualification requirements, including
22 submitting a signed purchase and sale agreement, an
23 earnest money deposit of \$10,000, and proof of funds. All
24 bidders must be qualified by 5:00 p.m. PST on May __,
25 2016 by submitting the required materials to the receiver
26 at 401 W. A Street, Suite 1830, San Diego, California,
27 92101. If interested in qualifying as a bidder, please
28 contact Geno Rodriguez at (619) 567-7223 or
grodriguez@ethreadvisors.com or Thomas C. Hebrank, at
thebrank@ethreadvisors.com.

20 This notice provides as much information about the property, the sale terms,
21 and the public auction as is reasonably practicable in a legal notice and directs
22 prospective purchasers to the Receiver's office for further information. Therefore,
23 the notice satisfies the requirements of Section 2002.

24 To be clear, the Receiver does not believe the steps of a public sale would
25 generate a different outcome than the proposed sale to TNC. This recommendation
26 is made solely to provide an alternate path forward if the Court determines the
27 parties did not waive Section 2001.

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VI. CONCLUSION

The sale of the Jamul Valley property was fully authorized by the Court on June 17, 2015. The Receiver made a recommendation with specific sale procedures, none of the parties objected, and the Court approved the recommendation. Accordingly, the parties waived Section 2001 and the Court should enter the requested order confirming the sale. If, however, the Court determines the parties did not waive Section 2001, the Receiver recommends the Court approve the public auction procedures and publication of notice described above.

Dated: April 6, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward 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 April 6, 2016, I served the within document(s) described as:

- **RECEIVER'S SUPPLEMENTAL BRIEF IN SUPPORT OF EX PARTE APPLICATION FOR ORDER CONFIRMING SALE OF 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 April 6, 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
- Timothy P. Dillon - tdillon@dghmalaw.com; cbeal@dghmalaw.com; smiller@dghmalaw.com; rabrera@dghmalaw.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; chattoop@sec.gov; irwinma@sec.gov
- David R. Zaro - dzaro@allenmatkins.com; mdiaz@allenmatkins.com

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

Executed on April 6, 2016, at San Diego, California.

Edward G. Fates
(Type or print name)

/s/ Edward Fates
(Signature of Declarant)