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THOMAS C. HEBRANK

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

13
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.
21

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

**RECEIVER'S OPPOSITION TO
INVESTOR GROUP'S MOTION TO
UNSEAL AND/OR UNREDACT DKT.
NOS. 826/835, 876/925, 988/991,
1028/1040, 1062/1089, 1072/1090,
1020/1088, 1108/1122/1120, 1113/1124,
1132/1136, 1159**

Date: May 6, 2016
Time: 1:30 p.m.
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 ("Opposition") to the Investor
6 Group's Motion to Unseal and/or Unredact Dkt. Nos. 826/835, 876/925, 988/991,
7 1028/1040, 1062/1089, 1072/1090, 1020/1088, 1108/1122/1120, 1113/1124,
8 1132/1136, 1159 ("Motion").

9 I. INTRODUCTION

10 This Motion is one of several filed by investors represented by Timothy
11 Dillon ("Dillon Investors") and other investors represented by Gary Aguirre
12 ("Aguirre Investors") that seek to undo and unwind various actions taken by the
13 Court over the past three and half years of the case. The Dillon Investors and
14 Aguirre Investors provide no new law or new facts that warrant changing the Court's
15 numerous prior rulings.

16 The Receiver submits that this kind of retroactive, piecemeal review and
17 objection to the Court's numerous prior orders is not an appropriate use of judicial or
18 receivership estate resources, is not supported by the law, and undermines the
19 important policy of finality of court orders. Moreover, the Court and the Receiver
20 have made extensive efforts throughout the case to take the interests of all investors
21 into consideration. The Court has allowed investors to file hundreds of briefs and
22 letters in the case, and has carefully considered those briefs and letters, including
23 specifically discussing and addressing them in its orders. The Court even held a
24 hearing and listened to several hours of oral statements from numerous investors.

25 The Receiver has also reviewed investor letters and briefs filed with the
26 Court, as well as thousands of other emails and letters from investors not filed with
27 the Court. As best he can, keeping in mind the importance of conserving
28 receivership estate resources, the Receiver has responded to investor

1 communications, including filing certain direct responses to investor letters and
2 briefs with the Court.

3 The Court and the Receiver have also made concerted efforts to ensure
4 investors have ready access to information about the case. The receivership website
5 has been in place since the beginning of the case, which provides investors with
6 easy access to numerous reports, motions, orders, and other pleadings filed in the
7 case. The website also provides specific case updates and answers to frequently
8 asked questions. The Receiver files interim reports on a quarterly basis with
9 detailed updates on his activities and the financial condition of the Receivership
10 Entities. Those reports are posted to the receivership website. Moreover, the Court
11 instructed the Receiver to prepare a detailed information packet for each and every
12 GP, which packets are also posted to the website.

13 The Receiver has also filed and the Court has approved numerous
14 recommendations, which resulted in investor votes being taken on offers and letters
15 of intent for GP properties. The results of those votes were then reported to the
16 Court. The Receiver also proposed and the Court approved an orderly sale process
17 that specifically gives investors notice and the opportunity to provide feedback on
18 offers for GP properties and proposed sales. Dkt. Nos. 1056, 1069. The sale
19 procedures provide that the Receiver will include investor feedback in noticed sale
20 motions so the Court can consider investor views on proposed sales. Dkt. No. 1056,
21 pp. 6-8.

22 The Court has consistently issued orders that take into account investor
23 interests and endeavor to preserve and protect the value of receivership assets for
24 their benefit. The Dillon and Aguirre Investors, whose together represent about 8%
25 of investors, may not agree with the Court's decisions, but those decisions should
26 not be open to relitigation in the absence of a material change in the facts or law or
27 some manifest injustice. Such relitigation would impose substantial unnecessary
28 costs on the receivership estate and therefore all investors.

1 **II. MOTION TO UNSEAL**

2 In this Motion, the Dillon Investors seek to unseal recommendations made by
3 the Receiver regarding offers and letters of intent received for GP properties and
4 certain Court rulings regarding those offers and letters of intent. They claim
5 investors are harmed because the documents are not publicly available.

6 To begin with, the sealed documents have all been provided to Mr. Dillon and
7 Mr. Aguirre, so their clients could not possibly be harmed by the Court's sealing
8 orders. Moreover, investors in the applicable GPs received direct notice of all
9 reasonable offers and letters of intent through the investor votes conducted.
10 Therefore, these investors could not possibly be harmed. The only instances in
11 which investors were not given the opportunity to vote were where offers or letters
12 of intent were so low in relation to appraised values that a vote was determined not
13 to be worth the expenditure of receivership estate resources. How investors are
14 harmed by not receiving notice of such "low ball" offers is unclear. Regardless,
15 Mr. Dillon and Mr. Aguirre have received all sealed filings relating to GP
16 properties, so their clients are not harmed in any way.

17 The Court has repeatedly expressed its concerns regarding the potential
18 negative effect of publicly disclosing offers and letters of intent (and how investors
19 react to such offers and letters of intent) on eventual sale prices. These concerns are
20 well-founded. In real estate transactions, whether conducted in bankruptcy,
21 receivership, or outside of court, offers, letters of intent, and related negotiations that
22 do not result in a sale motion are never publicly disclosed. This is true for public
23 and private sales conducted pursuant to 28 U.S.C. § 2001. It is not until a proposed
24 sale agreement is actually reached with a prospective purchaser that a motion for
25 approval is filed, proposed sale terms are disclosed, notices are published, and, if
26 appropriate, an auction is held. Negotiations with prospective purchasers, which is
27 the substance of the recommendations (*i.e.*, how the GPs will initially react to an
28 offer), are never publicly disclosed.

1 The reason for this is that publicly disclosing prior negotiations could
2 negatively influence the amount of subsequent offers. If a subsequent buyer knows
3 the seller was prepared to accept a certain amount in a prior negotiation, that
4 subsequent buyer will not offer more than that amount, although it might have
5 offered more if it did not know about the prior negotiation. The Court recognized
6 this in deciding to seal recommendations regarding how to address offers and letters
7 of intent for GP properties. There is no reason to revisit each of those rulings. GP
8 properties have not been sold yet, so information about prior offers and negotiations
9 should remain confidential.

10 **III. CONCLUSION**

11 WHEREFORE, the Receiver requests the Court deny the Motion.

12
13 Dated: April 22, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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15 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 22, 2016, I served the within document(s) described as:

- **RECEIVER'S OPPOSITION TO INVESTOR GROUP'S MOTION TO UNSEAL AND/OR UNREDACT DKT. NOS. 826/835, 876/925, 988/991, 1028/1040, 1062/1089, 1072/1090, 1020/1088, 1108/1122/1120, 1113/1124, 1132/1136, 1159**

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 22, 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 22, 2016, at San Diego, California.

Edward G. Fates
(Type or print name)

/s/ Edward Fates
(Signature of Declarant)