

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

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

10 SECURITIES AND EXCHANGE  
11 COMMISSION,

12 Plaintiff,

13 v.

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

18 Defendants.

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

**REPLY BRIEF IN SUPPORT OF  
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**

Hearing:

Date: May 6, 2016

Time: 1:30 p.m.

Dept.: 2D

Judge: Hon. Gonzalo P. Curiel

1 In its opposition to the instant motion, the Receiver falsely claims the “sealed documents  
2 have all been provided to Mr. Dillon”. See Doc. #1261, pg. 3, ln. 6. This is untrue. Timothy P.  
3 Dillon (“Dillon”) has not been provided the sealed documents despite his repeated requests.  
4 Neither Dillon nor his clients have had the opportunity to review any of the sealed documents.  
5 As such, the Investor Group has no knowledge of the redacted recommendations, offers or any  
6 other information contained therein. Regardless, even the Receiver agrees that Dillon and the  
7 Investor Group should be given access to the sealed documents by the Receiver. The Court  
8 should, at a minimum, order the Receiver to provide copies of the redacted documents to Dillon  
9 and allow Dillon to share said documents with the Investor Group and their representatives.

10 Additionally, the Receiver’s opposition does not adequately address that the sealing of the  
11 documents undermines the transparency requirements of 28 U.S.C. §2001. The requirements of  
12 28 U.S.C. §2001 are mandatory. *Cumberland Lumber Co. v. Tunis Lumber Co.*, 171 F.352 (1909  
13 4th Cir.) (Court held purpose of Congress enacting predecessor of 28 USC §2001 was  
14 mandatory); *see also Read v. Elliott*, 94 F.2d 55 (4th Cir. 1938). 28 U.S.C. §2001 mandates the  
15 following regarding a private sale of realty:

- 16 1) A hearing regarding the sale of the property, with notice being provided via  
17 publication to all interested parties;
- 18 2) A court appointment of three disinterested persons to appraise the property;
- 19 3) No private sale shall be confirmed at a price less than 2/3 of the appraised value;
- 20 4) Prior to confirmation of a sale, the terms thereof are to be published in newspapers  
21 of general circulation 10 days prior to confirmation; and
- 22 5) A private sale shall not be approved by the court if a bona fide offer is made for  
23 10% greater than the price offered in the private sale.

24 Without complete transparency over the court-approved sales process, it is impossible for  
25 the requirements of 28 U.S.C. §2001 to be complied with. There is no way for a meaningful  
26 public hearing regarding the sale of the partnership properties if key information is kept hidden.  
27 There is no way for a meaningful publication of sale terms if the letters of intent are kept under  
28 seal. There is also no way for an investor to determine if there have been any offers exceeding

1 10% of the sales price if offers and bids are kept hidden. The concept of a secret bidding process  
2 (presumptively, as an attempt to increase the offer prices) is not applicable when a receiver  
3 attempts to sell realty encompassed within his receivership.

4 Finally, even if the denial of access is warranted, “the denial must be no greater than  
5 necessary to protect the interest justifying it.” *Phoenix Newspapers v. United States Dist. Court*,  
6 156 F.3d 940, 946 (9th Cir. 1998). The Receiver’s only concern appears to be the disclosure of  
7 offers, however, the docket reveals that entire recommendations have been sealed. Even if the  
8 sealing of offers is warranted (which the Investor Group rejects), it is inappropriate for the  
9 Receiver to request that the entirety of any document containing an offer be sealed. Rather it  
10 would be more appropriate to only redact portions of the recommendation containing the offers  
11 and publicly disclose the remainder of the document.

12 Additionally, even if there were reasons to keep portions of the record sealed, upon request  
13 the Court should review those prior orders to determine if those compelling reasons continue to  
14 exist. Here, even if one were to assume proper reasons existed for sealing and/or redacting the  
15 records at the time of the order, those reasons may no longer exist. The Investor Group is  
16 hamstrung to make these arguments without the benefit of reviewing the sealed records. The  
17 Receiver, with full knowledge of what has been kept from public view, has failed in his  
18 opposition to justify any ongoing concerns that support keeping these records sealed.

19 WHEREFORE, the Investor Group requests the Court grant the instant motion in its  
20 entirety.

21  
22 Dated: April 29, 2016

Respectfully submitted,  
DILLON GERARDI HERSHBERGER  
MILLER & AHUJA, LLP

24 s/ Timothy P. Dillon  
25 Timothy P. Dillon, Esq.  
26 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 April 29, 2016, I caused to be served the following documents described as:

- **REPLY BRIEF IN SUPPORT OF 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**

**(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](mailto:gary@aguirrelawapc.com), [maria@aguirrelawapc.com](mailto:maria@aguirrelawapc.com)

**Lynn M. Dean**  
[deanl@sec.gov](mailto:deanl@sec.gov), [larofiling@sec.gov](mailto:larofiling@sec.gov), [berryj@sec.gov](mailto:berryj@sec.gov), [irwinma@sec.gov](mailto:irwinma@sec.gov), [cavallones@sec.gov](mailto:cavallones@sec.gov)

**Philip H Dyson**  
[phildysonlaw@gmail.com](mailto:phildysonlaw@gmail.com), [jldossegger2@yahoo.com](mailto:jldossegger2@yahoo.com), [phdtravel@yahoo.com](mailto:phdtravel@yahoo.com)

**Edward G Fates**  
[tfates@allenmatkins.com](mailto:tfates@allenmatkins.com), [bcrfilings@allenmatkins.com](mailto:bcrfilings@allenmatkins.com), [jholman@allenmatkins.com](mailto:jholman@allenmatkins.com)

**Susan Graham**  
[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)

**Eric Hougen**  
[eric@hougenlaw.com](mailto:eric@hougenlaw.com)

**Sara D. Kalin**  
[kalins@sec.gov](mailto:kalins@sec.gov), [irwinma@sec.gov](mailto:irwinma@sec.gov)

Dated: April 29, 2016

*s/ Ronnielyn Abrera*  
Ronnielyn Abrera