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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
MOTION FOR ORDER VACATING
PRIOR ORDERS APPROVING
RECOMMENDATIONS OF
RECEIVER TO SELL GP
PROPERTIES**

Date: June 10, 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, "Receivership
5 Entities"), submits this opposition to the Investors' Motion for Order Vacating Prior
6 Orders Approving Recommendations of Receiver to Sell GP Properties ("Motion").

7 The Aguirre Investors seek reconsideration of orders regarding procedures for
8 selling GP properties which go back almost a year. Yet, they do not present any new
9 law or new evidence warranting reconsideration. Instead, the Aguirre Investors
10 simply claim the orders violate 28 U.S.C. § 2001. This argument has no merit.
11 Section 2001 applies to actual sales of real property. No real properties had been
12 sold at the times the orders were entered, so no violation of Section 2001 could
13 possibly have occurred. The Motion should be denied on this basis alone.

14 Moreover, the steps of the orderly sale process, which the Court approved in
15 its May 12, 2015 order, specifically provide for an auction in the event there are
16 multiple bidders for a GP property, which is consistent with the public sale
17 requirements under Section 2001(a). Dkt. No. 1056, pp. 7-8. The parties did not
18 object to the proposed orderly sale process, which did not include any limitations
19 relating to Section 2001, and it was approved by the Court almost a year ago. Dkt.
20 No. 1069. The parties, therefore, waived Section 2001 and the burdensome
21 procedural steps for sales contained therein. *See Huntington Nat'l Bank v. Big Sky*
22 *Dev. Flint, LLC*, 2010 U.S. Dist. LEXIS 96832, at *19-21 (E.D. Mich. 2010)
23 (holding that 28 U.S.C. § 2001 was waived by a stipulated order appointing a
24 receiver, as the order granted the receiver "'the fullest powers and duties of a receiver
25 permitted under applicable law and equity,' including the power to 'negotiate and
26 execute sale.'"); *see also Huntington Nat'l Bank v. Najero, Inc.*, 2014 U.S. Dist.
27 LEXIS 152474, at *4-6 (E.D. Mich. 2014) (acknowledging that "the requirements [of
28 28 U.S.C. § 2001] can be waived by the parties," but finding that an appointment

1 order authorizing a receiver to sell property "consistent with the provisions of
 2 28 U.S.C. §2001(a)" narrowed the receiver's authority and did not constitute a waiver
 3 of the statutory requirements); *Camp Fire USA v. Camp Fire USA N. Star Council*,
 4 2015 U.S. Dist. LEXIS 28091, at *6-7 (W.D. Mo. 2015) (finding no waiver because
 5 the appointment order stated, "[t]he Receiver is authorized to sell the Assets, subject
 6 to the provisions of 28 U.S.C. §§ 2001, 2002 and 2004.").

7 Finally, to the extent the Court determines the parties did not waive
 8 Section 2001, then in connection with the noticed sale motions provided in the
 9 orderly sale process, the Receiver will publish notices as required by Section 2002
 10 and hold public auctions for qualified bidders pursuant to Section 2001(a). The
 11 Receiver has already proposed such public auction procedures in connection with the
 12 proposed Jamul Valley sale and the proposed sale of the Reno Vista and Reno View
 13 properties. Dkt. Nos. 1225, 1285. Accordingly, there are no grounds to vacate the
 14 Court's orders approving the orderly sale process, authorizing the sale of the Jamul
 15 Valley property, or approving the engagement of brokers for GP properties pursuant
 16 to the orderly sale process.

17 **Intervention.** For the reasons stated in his oppositions to the motions to
 18 intervene filed by the Aguirre Investors and Dillon Investors, the Receiver opposes
 19 the Aguirre Investors' request to intervene in the Motion. Dkt. Nos. 1259, 1260. The
 20 Receiver incorporates herein by reference his oppositions to the pending intervention
 21 motions.

22 As usual, the Aguirre Investors seek to undo what has been accomplished to
 23 date in the receivership and impose unnecessary costs on investors without any
 24 benefit whatsoever. The Court should reject these efforts and deny the Motion.

25 Dated: May 13, 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 May 13, 2016, I served the within document(s) described as:

- **RECEIVER'S OPPOSITION TO MOTION FOR ORDER VACATING PRIOR ORDERS APPROVING RECOMMENDATIONS OF RECEIVER TO SELL GP PROPERTIES**

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 May 13, 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 May 13, 2016, at San Diego, California.

Edward G. Fates
(Type or print name)

/s/ Edward Fates
(Signature of Declarant)