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THOMAS C. HEBRANK

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

14 Plaintiff,

15 v.

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

19 Defendants.

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

**RECEIVER'S OPPOSITION TO  
INVESTORS' *EX PARTE* MOTION  
FOR LEAVE TO FILE OPPOSITION  
TO RECEIVER'S COURT-  
ORDERED PROPOSAL  
REGARDING GENERAL  
PARTNERSHIPS AS  
SUPPLEMENTED AND PROPOSED  
ALTERNATIVE PLAN**

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"), hereby submits his opposition to the Investors' *Ex Parte*  
6 Motion for Leave to File Opposition to Receiver's Court-Ordered Proposal  
7 Regarding General Partnerships as Supplemented and Proposed Alternative Plan  
8 ("*Ex Parte Motion*") filed by the investors represented by attorney Gary Aguirre  
9 ("Aguirre Investors") (Dkt. No. 1293).

10 The Aguirre Investors' track record of misrepresenting the facts in every brief  
11 they file remains intact. True to form, they make numerous false and misleading  
12 statements to the Court. The *Ex Parte Motion*, which seeks permission to file their  
13 proposed "plan concept" more than a month after the deadline to do so, should be  
14 rejected. Moreover, the "plan concept" itself (or what little substance there is of it)  
15 makes no sense, completely ignores the last 12 months of the case, and proposes  
16 spending substantial receivership estate funds to simply duplicate prior work.  
17 Having now had more than three months to come up with a coherent plan, the  
18 Aguirre Investors still fail to do so.

19 ***Ex Parte Motion.*** The Aguirre Investors could have filed a plan for  
20 distributing receivership assets at any point during the case. They filed numerous  
21 letters with the Court, which the Court allowed to be filed and has made clear it  
22 reviews. The Receiver filed his Distribution Motion (Dkt. No. 1181) on February 4,  
23 2016. After the Court set a briefing schedule, the Aguirre Investors requested and  
24 were given more time - until April 15, 2016 - to oppose the Distribution Motion and  
25 present an alternative plan. Despite having over two months, they presented no plan  
26 with their opposition to the Distribution Motion. They now claim they will be  
27  
28

1 denied due process<sup>1</sup> if they are not allowed to present a plan more than a month past  
2 the deadline. This is complete nonsense.

3 The Court *sua sponte* continued the May 6, 2016 hearing to May 20, 2016. It  
4 did not permit further briefing. The Aguirre Investor's effort to do an end run  
5 around the Court's briefing schedule should be rejected.

6 **The Aguirre Investors' Plan Concept.** The Aguirre Investors submit that no  
7 "true plan" can be submitted because "there is a void of critical financial  
8 information." *Ex Parte* Motion, Exh. A, p. 1. This nonsense is simply repetition of  
9 the Aguirre Investors' motion for an accounting, which the Receiver has fully  
10 addressed. Dkt. Nos. 1258, 1292. To briefly summarize, there is a wealth of  
11 financial information about the Receivership Entities that is publicly available, as  
12 well as thousands of pages of financial reports, spreadsheets, and bank statements  
13 provided directly to the Aguirre Investors and Dillon Investors. Their claim that the  
14 accounting is insufficient has no merit whatsoever.

15 The Aguirre Investors next attack the Receiver for including estimates and  
16 projections in his Distribution Motion. If the Aguirre Investors have another way of  
17 presenting the likely outcomes for investors based on somehow knowing the exact  
18 sale price and closing date of sales of real property that have not yet occurred, GP  
19 expenses between now and future sale dates, and cash on hand at the end of the sale  
20 process, they should enlighten the rest of us. They appear not to, however, as their  
21 "plan concept" contains no financial information whatsoever, let alone projected  
22

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23 <sup>1</sup> The Aguirre Investors also argue this proceeding violates due process because  
24 every partner is a necessary party to an action for dissolution of a general  
25 partnership. No one has responded to this to date because it is ridiculous. This is  
26 not an action to dissolve a general partnership under California law. It is a  
27 securities enforcement action brought by the Securities and Exchange  
28 Commission, which involves a federal equity receivership. The Aguirre  
Investors cite no cases suggesting every harmed investor is a necessary party to a  
federal equity receivership and such a rule would make administration of such  
receiverships, most of which involve hundreds if not thousands of investors,  
unworkable. The due process and intervention issues are discussed fully in the  
Receiver's oppositions to the Aguirre Investors and Dillon Investors' intervention  
motions. Dkt. Nos. 1259, 1260.

1 outcomes. The Receiver can, of course, provide specific financial data once a sale  
2 closing has occurred. Until that information is known, estimates are the only way to  
3 project outcomes under a plan.

4 The "plan concept" purports to be based on full disclosure. What the Aguirre  
5 Investors ignore is that over the last year, the Court directed the Receiver to obtain  
6 updated appraisals and broker opinions of value for GP properties, prepare and file  
7 information packets for each GP, and mail notice of the packets to investors. Dkt.  
8 Nos. 1003, 1069. The Court instructed the Receiver to include specific background  
9 and financial information in the packets such that investors could make informed  
10 decisions about whether to contribute further funds to their GP. *Id.* In conjunction  
11 with the information packets, the Court had the Receiver issue capital calls to  
12 investors to raise funds necessary to pay GP operating expenses. *Id.* The  
13 information packets and capital calls made it clear that if investors decided not to  
14 pay, the GP properties would be moved to the orderly sale process. *See e.g.* Dkt.  
15 No. 1292-1, Exh. A, p. 13 (stating that if "sufficient capital is not raised, the  
16 LV Kade Property will be sold, subject to Court approval of the sale terms.").  
17 Dennis Gilman, one of the leaders of the Aguirre Investor group, was very active  
18 during the capital call process, sending emails to investors imploring and pressuring  
19 them to pay their bills so GP properties would not need to be sold. *See*  
20 *e.g.* Exhibit A (email from Dennis Gilman to investors stating "approximately a  
21 third of us have paid our Operational Bills" and there may be "legal problems" for  
22 investors who do not pay).

23 At the end of this lengthy process, in the aggregate, investors paid \$179,249  
24 out of \$1,170,661, or 18% of the amount needed for GPs to meet their 2016  
25 operating expenses. Dkt. No. 1264, Exh. A. Every single capital call failed by a  
26 large margin. Now, more than a year after the Court put in place the system of  
27 information packets, capital calls, and the orderly sale process (Dkt. No. 1069), the  
28 Aguirre Investors basically say "we don't like the outcome, so you need to do it all

1 over again." There is absolutely no basis to spend further receivership estate funds  
2 on further information packets and further capital calls. Not only do the capital calls  
3 issued over the last year show it would be a waste of time and money, but the  
4 history of operational bills over the last few years confirms it. *See* Dkt. No. 852,  
5 Exh. C (showing an aggregate collection rate of 30% for GP operational bills since  
6 November 2013). Investors were provided with detailed financial information about  
7 their GPs so they could make an informed decision as to whether to put more money  
8 into their GPs to support ongoing operations, knowing the properties would very  
9 likely be sold if they did not. They decided overwhelmingly not to do so.

10 **The Gilman/Karp Poll.** The unauthorized investor poll taken by Dennis  
11 Gilman and David Karp ("Gilman/Karp Poll") should be given no weight for the  
12 following reasons:

- 13 • The emails sent to investors include numerous misrepresentations and  
14 mischaracterizations designed to engineer the outcome. Specifically,  
15 the questions assume certain falsehoods to be true, including (a) the  
16 Receiver decides when to sell properties on his own (*i.e.*, no investor  
17 notice or input and no Court review or approval), (b) the Receiver has  
18 not provided an accounting, and (c) the Aguirre Investors' proposed  
19 accounting would cost \$20 dollars per investor.
- 20 • Mr. Gilman's "explanation" of the questions is just as misleading,  
21 stating the Receiver will sell GP properties "as quickly as possible"  
22 three times and asserting the Receiver will not take the possibility of  
23 future appreciation into consideration. Both of these statements are  
24 false. Mr. Gilman then makes his case for further accounting work  
25 without any mention of the contrary arguments.
- 26 • Investors who Mr. Gilman and Mr. Karp knew would vote "No" were  
27 excluded or were sent the poll separately so their responses would not  
28 be seen by the larger distribution list.

1 Despite the fact the poll was engineered to get as many "Yes" votes as  
2 possible, only about 33% of investors voted, meaning the results came well short of  
3 a *quorum* and about 67% of investors did not participate. This confirms that GP  
4 self-governance is not feasible. It also strongly indicates the large majority of  
5 investors, even in the face of a biased poll designed to prompt an emotional  
6 response, are not interested in prolonging their investments or participating in their  
7 GPs further.

8 **I. CONCLUSION**

9 For these reasons, the *Ex Parte* Motion should be denied and the Aguirre  
10 Investors' "plan concept" should be rejected.

11  
12 Dated: May 16, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

13  
14 By: /s/ Edward Fates

15 EDWARD G. FATES  
16 Attorneys for Receiver  
17 THOMAS C. HEBRANK  
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# EXHIBIT A

# EXHIBIT A



**From:** Dennis Gilman <DPGilman@clindm-llc.com>

**Date:** Friday, December 11, 2015 at 3:49 PM

**To:** "rabmpb@msn.com" <rabmpb@msn.com>, "pecharlton@cox.net" <pecharlton@cox.net>, "ecjr56@cox.net" <ecjr56@cox.net>, "amblou1120@aol.com" <amblou1120@aol.com>, "jfavrou1@san.rr.com" <jfavrou1@san.rr.com>, "entomologyservices@yahoo.com" <entomologyservices@yahoo.com>, "gauvin@prodigy.net" <gauvin@prodigy.net>, "lifeversion1@gmail.com" <lifeversion1@gmail.com>, "hoaggmm@gmail.com" <hoaggmm@gmail.com>, "hollowayfam97@gmail.com" <hollowayfam97@gmail.com>, "dennis\_hudson@usa.net" <dennis\_hudson@usa.net>, "alice@wcas.sdcoxmail.com" <alice@wcas.sdcoxmail.com>, "jack@mkireps.com" <jack@mkireps.com>, "dmahon@yahoo.com" <dmahon@yahoo.com>, "ramnglicmot@san.rr.com" <ramnglicmot@san.rr.com>, "gmarkhart@gmail.com" <gmarkhart@gmail.com>, "kmarkhart@gmail.com" <kmarkhart@gmail.com>, "rmattingly@driveralliant.com" <rmattingly@driveralliant.com>, "cmcquillan@earthlink.net" <cmcquillan@earthlink.net>, "debora.mcquillan@gmail.com" <debora.mcquillan@gmail.com>, "pmilne@qti.qualcomm.com" <pmilne@qti.qualcomm.com>, "dj paul\_1@mac.com" <dj paul\_1@mac.com>, "breid@lbbslaw.com" <breid@lbbslaw.com>, "artrocco@cox.net" <artrocco@cox.net>, "ebenbrooks@ebenbrooks.com" <ebenbrooks@ebenbrooks.com>, "James.Saeger@att.net" <James.Saeger@att.net>, "cdschmottlach@yahoo.com" <cdschmottlach@yahoo.com>, "louisschooler@gmail.com" <louisschooler@gmail.com>, "steve@alltubes.com" <steve@alltubes.com>, "skshuey@mac.com" <skshuey@mac.com>, "gvargowiz@sbcglobal.net" <gvargowiz@sbcglobal.net>, "verma@salk.edu" <verma@salk.edu>, "joanrupp@gmail.com" <joanrupp@gmail.com>, "louisschooler@gmail.com" <louisschooler@gmail.com>, "wolfe\_karen@msn.com" <wolfe\_karen@msn.com>, "himilady54@netscape.net" <himilady54@netscape.net>, "nancy\_noble@usa.net" <nancy\_noble@usa.net>, "johann@mkireps.com" <johann@mkireps.com>, "kmarkhart1@gmail.com" <kmarkhart1@gmail.com>, "sureid@verizon.net" <sureid@verizon.net>, "markholloway1126@gmail.com" <markholloway1126@gmail.com>, "saeger@gat.com" <saeger@gat.com>, "'kmarkhart@gmail.com'" <'kmarkhart@gmail.com'>  
**Cc:** Thomas Hebrank <thebrank@ethreadvisors.com>, Geno <grodriguez@ethreadvisors.com>  
**Subject:** RE: Jamul Meadows Partners

Dear Investors,

Below you will find an email written by a fellow Jamul Property Investor (**Jamul Properties, Lyons Valley and Hidden Hills**). His email was sent to me for distribution but he asked not to be identified. I strongly suggest you read the email carefully – if true, it signals the end of our partnerships. You'll note the first paragraph states the sale of the property is moving forward because "the operating capital for the three partnerships is supposedly insufficient to handle the property expenses." If you go to the Receiver's website at <http://bit.ly/Y6uHa7> and click on Jamul Valley Properties located under Investor Information Packets you'll find the Receiver shows the percentage of Operational Bills paid since 2013 averages 28% for all three partnerships.

Now I understand the times have been rough economically, and I have received many emails saying a spouse has died and the surviving spouse was depending on their partnership investment to give them some relief in their later years; nevertheless, approximately a third of us have paid our Operational Bills – the rest of you have not. This may result in legal problems for the latter as I have explained in previous emails.

Of course, the above does not excuse the Receiver from selling our land without our approval – if that is what he is doing - and without telling us. This behavior is criminal, in my opinion, and I plan to visit the Receiver the next time I'm in Southern California, and I can assure he will not be happy with my visit. I will not go to the Judge first and ask permission.

Please note I have cc'd the Receiver on this email.

Dennis Gilman

Partner: Lyons Valley, VIA188, Honey Springs and Checkered Flag.

Dear Jamul Investors,

Your property was recently placed in escrow for an unknown price, with an unknown buyer, and is set to close on an unknown date in January. This is happening in spite of the fact that you and other investors voted earlier in the year to reject an offer from the Nature Conservancy for a price of \$410,000. The receiver got permission from the judge to sell the property without even notifying you because the operating capital for the three partnerships is supposedly insufficient to handle the property expenses. It is completely logical that such a high percentage of investors would quit making their capital contributions since the receiver has been telling you all along that your investment is almost worthless.

This recent offer to purchase your property was deliberately submitted to the judge "under seal" for his approval. That means it was submitted so that there was no way that any of the investors could have visibility to any of the particulars of the offer such as: price, closing dates, who the buyer is, etc. If the offer is similar to the nature conservancy offer then you are getting your property sold out from under you at \$3,333 per acre. The recent valuation that the receiver posted on his website are based on two broker's opinions because he said there was no money in the operating capital account for a full blown appraisal. The recent broker opinions are \$497,000 to \$550,000. If he sold it for \$500,000 then that would be an underwhelming \$4,065 per acre. Aren't you curious to see the comparable sales that were used to come up with this unknown price you are getting?

When the receiver placed value on the property in 2013 he got an appraisal and you can look at it on his website. On this appraisal the comps that were used were 5.64, 7.99, and 4.39 miles away from your property. The thing that makes the

use of those comps so problematic is the properties he used, according to the SD County 20/20 General Plan, are destined to be one house built per 40 acres. The three comps are all located in the very sparsely populated eastern part of Jamul whereas our property could be developed with up to 50 units on it. Not only are the comp properties farther from San Diego and Jamul Proper but the homes are much less grand than the Skyline Ranch Development that borders our property on the eastern edge. Sure seems like we are comparing apples to oranges.

The idea was that we were going to sell our property to a developer who would want to build 50 homes on it. This would be the highest and best use for the land and would get us the greatest profit. If we look at parcels on streets in the immediate neighborhood such as Jamul Vista and Sleep Willow Ln. they currently have an average listing price of \$244,000 per 1.5 ac average parcel. Granted they have pads already graded and utilities, but if you go on line and locate raw land for sale in the immediate neighborhood you will see that they are listed for way more than \$4,000 per ac. According to Zillow three different home listings in the immediate neighborhood average \$815,000 but yet the receiver is saying our property next to an upscale subdivision with intermingled custom homes with views to the ocean is worth only \$4,000 an acre. I doubt there is any land in Southern California with those characteristics that would only sell for that price.

You might wonder why the receiver keeps coming in with incredibly low valuations of Western Financial properties. As much as he has not been transparent in so many ways with us investors, his motives are glaringly transparent. He was recommended by the SEC to fulfill the position of receiver over the partnerships and is therefore beholden to the SEC. If he wants future receivership referrals, he will continue to look out for their best interests and not ours. Supporting the SEC in this case entails providing the lowest valuations and eventually selling our properties at the lowest prices. Thus the accusations that Louis Schooler overcharged the investors can be validated by the low sales price that the property commanded. I don't see that this supports the SEC's case if he is selling the properties grossly under the true market valuations. What the receiver will never talk about to you the investor or the judge is that Louis Schooler's company had 63 partnerships that he put together go full cycle and create excellent profits for the investor. The original pricing of your Jamul property that you bought was priced with the same metrics as the 63 partnerships that produced such favorable rates of return. The price we paid for the property is not the problem, the price the receiver wants us to get from sale is. It is readily apparent that the SEC and the receiver will do whatever it takes to win their case against Louis Schooler. What about the receiver's fiduciary responsibility to us?

**I would write the receiver and copy the judge as soon as possible and ask the receiver these questions:**

What is the price offered by the latest buyer?

Did you counter offer?

What price is it in escrow for?

When is it supposed to close?

Who is the buyer?

Did you offer the property on the MLS listing? If not, then why?

Is there a preexisting relationship between you or any of your employees and the buyer?

Why is there no transparency for the investors about this transaction when we signed contracts that said we had voting rights and were general partners?

Why was there no transparency about the progress in collection of funds for the operating capital accounts and why was it not made available for any of the three Jamul partnerships to cure each others deficiency in order to protect individual interests?

Why did the receiver in the case of the 2013 appraisal accept the comps that are in no way analogous to our property?

Why be in a rush to sell the property in an appreciating real estate market when the foreclosure process for nonpayment of taxes is a 5 year process and the property has no mortgages against it?

We as general partners in our property have the right to know what is happening with our property. I would go on the record by telling the receiver that you oppose this sale and you are certain he is not honoring his fiduciary responsibility to us by selling this property at well below a realistic market price.



## 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 16, 2016, I served the within document(s) described as:

- **RECEIVER'S OPPOSITION TO INVESTORS' EX PARTE MOTION FOR LEAVE TO FILE OPPOSITION TO RECEIVER'S COURT-ORDERED PROPOSAL REGARDING GENERAL PARTNERSHIPS AS SUPPLEMENTED AND PROPOSED ALTERNATIVE PLAN**

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 May 16, 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 May 16, 2016, at San Diego, California.

\_\_\_\_\_  
Edward G. Fates  
(Type or print name)

\_\_\_\_\_  
/s/ Edward Fates  
(Signature of Declarant)