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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 REPLY TO
INVESTORS' OPPOSITION TO
MOTION FOR AUTHORITY TO
ENGAGE CBRE AS CONSULTANT**

Date: September 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 reply to the Aguirre Investors' opposition to
6 his Motion for Authority to Engage CBRE as Consultant ("Motion").

7 I. INTRODUCTION

8 Just about everyone involved in this case understands what the focus should
9 now be on – maximizing the value of properties held by the Receivership Entities
10 such that the sale process will provide investors with the greatest possible recovery.
11 The Court's orders clearly reflect that goal. The Receiver, the Commission, and
12 even the Dillon Investors recognize and are prepared to work toward that common
13 goal.

14 Unfortunately, the Aguirre Investors are determined to stop all progress
15 toward that goal by trying to change the focus to relitigating the Court's prior
16 decisions throughout the history of the case. Their references to expert witnesses,
17 depositions, and evidentiary objections show how completely out of touch they are
18 with the Court and all other interested parties. The idea that the Receiver's counsel
19 would conduct depositions of Alan Nevin and Neal Singer simply to gather
20 information necessary to evaluate the Xpera recommendations is simply ludicrous.
21 Instead of returning money to investors, the Aguirre Investors would rather spend
22 that money on litigation.

23 The fact that the Aguirre Investors are now opposing the engagement of
24 CBRE is also ludicrous. It was the Aguirre Investors who insisted that marketing
25 and selling properties without evaluating potential entitlement work would result in
26 the receivership estate losing millions of dollars in potential sale proceeds. The
27 Receiver now proposes to engage a consultant to evaluate the entitlement work
28 recommended by the Aguirre Investors' own expert. Yet, the Aguirre Investors

1 oppose the Motion. This highlights the Aguirre Investors' intent to litigate and
2 relitigate every issue and prevent the Court, the Receiver, the Commission, and the
3 other investors (95% of the investors) from making progress toward the common
4 goal. The Receiver's decision not to engage in counter-productive litigation with
5 Mr. Aguirre and his clients is entirely justified.

6 It is time to put the Aguirre Investors' nonsense and repetitive arguments
7 aside and move forward with maximizing the value of properties and getting as
8 much money as possible back to investors. The relief requested in the Motion will
9 assist the Receiver and the Court in doing so, and therefore should be granted.

10 II. DISCUSSION

11 The vast majority of the opposition is simply repetition of arguments made in
12 prior motions. Rather than reiterate responses to those arguments here, the Receiver
13 simply incorporates by reference his prior responses to the Aguirre Investors' prior
14 motions.

15 The Aguirre Investors make a couple new points, which are addressed as
16 follows:

- 17 • The Aguirre Investors argue the Court's order allowing them to intervene
18 for the limited purpose of opposing the Distribution Plan Motion (Dkt.
19 No. 1181) also allows them to intervene for the purpose of opposing any
20 other motion that flows from the Court's 32-page decision (Dkt. No. 1304).
21 The Court's order, however, is very clear that the scope of allowed
22 intervention was limited to opposing the Distribution Plan Motion and
23 nothing more. Dkt. No. 1296. Accordingly, this argument has no merit
24 and the Aguirre Investors (and six New Aguirre Investors who join the
25 opposition) have not been permitted to intervene to oppose this Motion.
- 26 • The Aguirre Investors contend that the proposed CBRE budget of \$40,000
27 is not justified because there are only three properties where Xpera's
28 recommendations differ significantly from the Receiver's recommendation

1 to market and sell the properties in their current condition. Opposition,
 2 p. 7. This misstates the facts. Although zoning changes, subdivision map
 3 approvals, and dividing properties into smaller parcels may be relatively
 4 minor changes overall, in order to properly evaluate the likely costs and
 5 benefits of such actions, significant information must be gathered and
 6 analyzed. Therefore, as stated in the Motion, Xpera's recommendations
 7 regarding 11 properties need to be properly evaluated through the report to
 8 be prepared by CBRE. This breaks down to \$3,600 per property, which is
 9 very reasonable.

10 The remainder of the opposition is repetition (nearly verbatim) of arguments
 11 the Aguirre Investors and New Aguirre Investors have made in prior motions. The
 12 Aguirre Investors present no basis for denying the Motion.

13 **III. CONCLUSION**

14 The proposed engagement of CBRE will assist the Receiver and the Court in
 15 properly evaluating the Xpera recommendations as to the 11 applicable properties.
 16 Accordingly, the Motion should be granted.

17
 18 Dated: August 18, 2016

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

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 20 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 August 18, 2016, I served the within document(s) described as:

- **RECEIVER'S REPLY TO INVESTORS' OPPOSITION TO MOTION FOR AUTHORITY TO ENGAGE CBRE AS CONSULTANT**

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 August 18, 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 August 18, 2016, at San Diego, California.

Edward G. Fates

(Type or print name)

/s/ Edward Fates

(Signature of Declarant)