

No. 16-55850

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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U.S. SECURITIES & EXCHANGE COMMISSION,  
Plaintiff – Appellee,

v.

LOUIS V. SCHOOLER; FIRST FINANCIAL PLANNING CORPORATION,  
DBA Western Financial Planning Corporation,  
Defendants - Appellees,

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SUSAN GRAHAM, ET AL.

Intervenors - Appellants,

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THOMAS C. HEBRANK,

Receiver - Appellee.

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On Appeal from the United States District Court  
for the Southern District of California, Case No. 3:12-cv-02164-GPC-JMA

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**RECEIVER'S OPPOSITION TO APPELLANTS' URGENT  
MOTION UNDER CIRCUIT RULE 27-3(b) FOR  
STAY PENDING APPEAL**

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Appellee Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the General Partnerships listed on Schedule 1 to the Preliminary Injunction Order entered by the District Court on March 13, 2013 ("GPs" and collectively, "Receivership Entities"), submits this opposition to Appellants' urgent motion for stay pending appeal ("Motion").

## **I. INTRODUCTION**

Appellants are investors represented by attorney Gary Aguirre who made investments in the Receivership Entities and have challenged certain orders of the District Court in its administration of the receivership estate ("Aguirre Investors"). As the District Court properly ruled, there is no basis for a stay pending appeal.

First, the Aguirre Investors have no likelihood of success. The primary order they challenge is the District Court's order approving a methodology for distributing receivership assets (referred to as the "One Pot Approach"), approving a Distribution Plan based thereon, and approving procedures for the administration of investor claims ("Distribution Plan Order"). Ninth Circuit case law is clear the Distribution Plan Order is not appealable. Accordingly, the Receiver has moved to dismiss the appeal as to the Distribution Plan Order, which motion is pending. Dkt. No. 3. Even if the Distribution Plan Order was appealable, the District Court

has extremely broad discretion in the administration of equity receiverships and the Aguirre Investors cannot show it abused that discretion.

Second, the Aguirre Investors cannot show irreparable harm. They claim they will be harmed because receivership properties will be sold and sale proceeds will be distributed. However, the Distribution Plan Order does not authorize the sale of any properties or distribution of any funds. Moreover, the process approved by the District Court for selling properties provides notice to investors of each sale and ensures the best price is obtained. Sale proceeds cannot be distributed until the investor claims process is completed and the District Court has authorized the Receiver to make distributions. Therefore, the Aguirre Investors cannot show they will be irreparable harmed at this interim stage in the receivership proceedings.

Third, the balance of equities tips sharply in favor of the other 95% of investors Mr. Aguirre does not represent. These investors have been waiting for a recovery for four years, through extensive litigation between Defendant Louis Schooler ("Schooler") and the Securities and Exchange Commission ("Commission"). The Aguirre Investors, through their repeated failed motions in the District Court and appeals to this Court,<sup>1</sup> have significantly increased

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<sup>1</sup> Another group of investors represented by Mr. Aguirre recently filed another appeal that involves the same issues as this appeal. Case No. 16-56362. The Commission recently filed a motion to consolidate the appeals, which the Receiver supports. Dkt. No. 10.

receivership expenses and delayed the process of selling properties and making distributions, to the detriment of all investors. The District Court has considered the Aguirre Investors' arguments on numerous occasions and rejected them. The equities now weigh sharply in favor of allowing the receivership to move forward so the Receiver can return as much money as possible to investors.

Finally, there is a strong public interest in maintaining the integrity of securities markets and in remedying violations of securities laws. This case was filed and the Receiver's appointment was sought by the Commission to remedy violations of securities laws by Defendants and provide prompt recoveries to investors. The Aguirre Investors efforts to frustrate and delay the receivership, including through this Motion, run counter to the public interest in providing a prompt recovery to investors. Therefore, the public interest weighs against a stay.

All four factors weigh against imposing a stay of the ongoing receivership proceedings, so the Motion should be denied. With regard to the request to treat this as an urgent motion, the Receiver does not object to the motion being decided on an expedited basis. The Receiver notes, however, that the Aguirre Investors waited 30 days from the District Court's August 30, 2016 denial of their motion for stay to file this Motion. Finally, the Aguirre Investors violated Ninth Circuit Rule 27(d)(2) by exceeding the 20-page limit for motions.

## II. FACTUAL AND PROCEDURAL BACKGROUND

On September 4, 2012, the Commission filed a Complaint for Violations of the Federal Securities Laws against Schooler and Western. District Court ("DC") Dkt. No. 1. On September 6, 2012, the District Court entered a Temporary Restraining Order, including the appointment of the Receiver on a temporary basis. DC Dkt. No. 10. On March 13, 2013, the Court entered a Preliminary Injunction Order, appointing the Receiver on a permanent basis. DC Dkt. No. 174.

### A. Western and the GPs

The Receivership Entities include Western and a series of 86 GPs set up by Western. Prior to the case, Defendants purchased parcels of undeveloped land, set up GPs to purchase the properties, solicited investors to invest in the GPs, and then sold the properties to the GPs. The prices of the properties were marked up such that the GPs purchased them from Western at prices ranging from 109% to 1800% higher than what Western had paid. Defendants also encumbered some of the properties with mortgages, which remained on the properties when they were sold to the GPs. Investors were not aware of the mark ups or the mortgages.

Western made loans to the GPs so they could allow their investors to finance the investments. As a result, investors owed on promissory notes issued to their GPs and GPs owed on promissory notes issued to Western. Investors were not aware of promissory notes their GPs owed Western.

Of the funds the GPs raised from investors when they were formed, approximately 93% went to Western and approximately 7% remained in the GPs' bank accounts to cover expenses like property taxes, insurance premiums, and administrator fees. When GPs exhausted the balances in their accounts, bills would be sent to investors, but many investors would not pay. When GPs were unable to pay their bills, Western would loan the GPs money. In some cases, Western stopped collecting note payments from GPs that were unable to pay their bills. Investors were not aware of the loans Western made to the GPs or that it stopped collecting note payments from certain GPs.

**B. Final Judgment**

One of the main issues in the litigation was whether the GP "units" sold by Defendants to investors were securities. If the GPs operated as true general partnerships, with each investor being a general partner, then the units would not be considered securities. If, on the other hand, the GPs operated like limited partnerships, the units would be considered securities.

On April 25, 2014, the District Court granted summary judgment in favor of the Commission on this issue, finding the GP units were securities. DC Dkt. No. 583. On May 19, 2015, the Court granted the Commission's summary judgment motion on its claim for the sale of unregistered securities. DC Dkt. No. 1074. On June 3, 2015, the District Court granted in part and denied in part



the Commission's motion for summary judgment on its securities fraud claims, granting both causes of action as to all elements regarding the fair market value representation for the Stead property. DC Dkt. No. 1081.

On January 21, 2016, the District Court granted the Commission's motion for final judgment against Schooler, including (1) a permanent injunction restraining Schooler from violating federal securities laws; (2) disgorgement of \$136,654,250, with prejudgment interest of \$10,956,030; and (3) imposition of a civil penalty of \$1,050,000 ("Final Judgment"). DC Dkt. No. 1170. Schooler has appealed the Final Judgment. Case No. 16-55167.<sup>2</sup>

**C. Receivership Proceedings**

During the course of the litigation, the District Court addressed numerous challenges by Defendants and various investors to the scope of the receivership, including several motions to remove the GPs from the receivership. On March 4, 2015, the District Court entered an Order Keeping GPs Under Receivership. DC Dkt. No. 1003. Among other things, the District Court determined the GPs would remain in the receivership until the conclusion of the case, instructed the Receiver to file a proposed "Information Packet" regarding the financial condition

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<sup>2</sup> In the last few months, Schooler's counsel, Philip Dyson, advised that Schooler died. The Receiver then heard Schooler was sailing alone near remote pacific islands when his boat ran aground. His body was apparently not recovered. On October 11, 2016, Mr. Dyson filed a motion in the District Court seeking to be relieved as counsel due to Schooler's death. DC Dkt. No. 1384.

of each GP to be disseminated to investors, and instructed the Receiver to file a report and recommendation regarding the best course of action for the GPs. *Id.*

The Receiver filed the proposed Information Packet, which was approved by the District Court, and, to address the critical problem of GPs that were unable to pay their bills, filed a recommendation that capital calls be issued to investors in GPs with insufficient funds. DC Dkt. Nos. 1023, 1056. If the capital calls failed to raise sufficient funds, the properties held by these GPs would be sold. DC Dkt. No. 1056. The Receiver also laid out steps of a proposed "orderly sale process" for GP properties. *Id.* The Court approved the report and recommendation, with slight modifications, on May 12, 2015. DC Dkt. No. 1069.

The Receiver completed the Information Packet for each GP, notice of which was provided by mail to all investors, and issued capital calls to investors pursuant to the May 12, 2015 Order. None of the capital calls raised the funds required to pay GP bills. Accordingly, the Receiver proceeded with the steps of the orderly sale process for properties held by GPs with failed capital calls.

**D. The Distribution Plan Motion**

On February 4, 2016, with the Final Judgment having been entered, the Receiver filed his Motion for: (a) Authority to Conduct Orderly Sale of General Partnership Properties; (b) Approval of Plan of Distributing Receivership Assets; and (c) Approval of Procedures for the Administration of Investor Claims

("Distribution Plan Motion"). DC Dkt. No. 1181. The Distribution Plan Motion sought an order authorizing the Receiver to put the remaining GP properties through the orderly sale process, *i.e.*, those properties held by GPs with sufficient funds to pay their 2016 expenses, which therefore did not require a capital call. *Id.*

The Distribution Plan Motion also sought approval of a "One Pot" or "pooling" approach to distributing receivership assets (as opposed to distributions on a GP-by-GP basis) and approval of a Distribution Plan consistent with the One Pot Approach. *Id.* The Receiver noted (a) the District Court had already determined the sales of GP units was one "integrated offering" due to the numerous similarities in sales across GPs, (b) the misrepresentations made regarding the Stead property were very likely made in connection with all sales of GP units (especially considering the enormous mark ups when properties were sold to GPs), and (c) the majority of funds raised from investors went to Western and were used for many purposes unrelated to the particular GP units that were sold. *Id.*; Dkt. No. 1263. The Receiver also pointed out that because of the mortgages on the properties and loans the GPs owed Western, all of which were unknown to investors, the vastly different recoveries for investors under a GP-by-GP approach (ranging from 0.75% to 194%), would be based primarily on timing (when an investor happened to invest) and luck (how much unknown debt a GP happened to

have). *Id.* The One Pot Approach was expressly supported by the Commission and the Dillon Investors (defined below). Dkt. Nos. 1232, 1234.

The Distribution Plan, which was attached to the Distribution Plan Motion as Exhibit E, provided that distributions would be made only after the District Court has entered further orders "setting the allowed amount of all Claims, and authorizing the Receiver to make interim distributions ("Approval Orders")." DC Dkt. No. 1181-1, Exh. E, p. 3, l. 24 – p. 4, l. 1. Finally, the Distribution Plan Motion sought approval of procedures for administering investor claims against the receivership estate and resolving disputes regarding such claims. *Id.*

**E. The Aguirre Investors**

In early 2016, a group of approximately 192 investors engaged attorney Gary Aguirre to represent them. A separate group of approximately 149 investors engaged attorney Timothy Dillon. These two groups became known as the Aguirre Investors and Dillon Investors. Together they represent approximately 10% of the total approximately 3,300 investors.

After filing a series of motions in the District Court and having those motions rejected because they had not been permitted to intervene in the case, the Aguirre Investors and Dillon Investors filed motions to intervene, refiled their prior motions (including motions to vacate prior District Court orders and for additional accounting information), and filed oppositions to the Distribution Plan Motion

(although the Dillon Investors supported the One Pot Approach). DC Dkt. Nos. 1227, 1229, 1230, 1234, 1235, 1258. With respect to the Distribution Plan Motion, the Aguirre Investors argued the GP properties could not be sold without a vote of investors and that receivership assets should be distributed on a GP-by-GP basis. DC Dkt. No. 1235. The Aguirre Investors also filed a report analyzing the values and market conditions for the GP properties prepared by Xpera Group ("Xpera Report"). DC Dkt Nos. 1237, 1238.

On May 10, 2016, the Receiver filed a motion for approval of a sale of the GP properties known as Reno Vista and Reno View. DC Dkt. No. 1285. No opposition to the motion was filed.

**F. The Appeal**

The District Court denied the Aguirre Investors and Dillon Investors' motions to intervene generally, but allowed them to intervene for the limited purpose of opposing the Distribution Plan Motion ("Intervention Denial Orders"). DC Dkt. No. 1296, 1303. The Intervention Denial Orders are the first and second orders in the Second Amended Notice of Appeal. Dkt. No. 11.

The District Court held a hearing on the Distribution Plan Motion on May 20, 2016, at which Gary Aguirre and Timothy Dillon were permitted to present arguments. DC Dkt. No. 1298. On May 25, 2016, the District Court entered the Distribution Plan Order, which grants in part and denies in part the

Distribution Plan Motion. DC Dkt. No. 1304. Specifically, the Distribution Plan Order (a) approved the One Pot Approach, Distribution Plan, and investor claims procedures, (b) directed the Receiver to submit a "modified orderly sale process" that incorporates the public sale requirements of 28 U.S.C. § 2001, (c) directed the Receiver to file a report and recommendation evaluating the pros and cons of the recommendations in the Xpera Report, and (d) directed the Receiver to withdraw and resubmit his Fourteenth Interim Report and submit all future reports with a Standardized Fund Accounting Report. *Id.* The Distribution Plan Order is the third order listed in the Second Amended Notice of Appeal. Dkt. No. 11.

As directed, the Receiver filed his proposed "modified orderly sale process" on June 8, 2016. DC Dkt. No. 1309. On the same day, the Receiver filed a motion for approval of a sale of property known as the Jamul Valley property. DC Dkt. No. 1310. The Aguirre Investors opposed the sale motion, although their opposition was filed late. Dkt. No. 1326.

On June 21, 2016, the Aguirre Investors filed a motion for stay pending appeal. DC Dkt. No. 1316. The motion was opposed by the Receiver and the Commission. DC Dkt. Nos. 1321, 1325. On July 22, 2016, the Receiver filed a motion for authority to engage CB Richard Ellis ("CBRE") as consultant to assist in evaluating the recommendations in the Xpera Report. DC Dkt. No. 1341. The Aguirre Investors opposed the motion. Dkt. No. 1351.

On August 9, 2016, a new group of investors represented by Gary Aguirre ("New Aguirre Investors") filed a motion to intervene. DC Dkt. No. 1348. The Receiver and the Commission opposed the motion. DC Dkt. Nos. 1355, 1356.

On August 30, 2016, the District Court entered an order (a) approving the modified orderly sale process, (b) authorizing the Receiver to engage CBRE, (c) denying the Aguirre Investors' Stay Motion ("Stay Denial Order"), and (d) denying the New Aguirre Investors' motion to intervene. DC Dkt. No. 1359. The District Court also granted the Receiver's motions to approve the sales of the Jamul Valley property ("Jamul Valley Sale Order") and the Reno Vista and Reno View properties. DC Dkt. Nos. 1360, 1361.

The Aguirre Investors then filed an Amended Notice of Appeal and Second Amended Notice of Appeal, the effect of which was to add the Jamul Valley Sale Order and Stay Denial Order (the fourth and fifth orders in the Second Amended Notice of Appeal) and withdraw the appeal as to other orders. Dkt. Nos. 7, 11.

### **III. LEGAL STANDARD**

The party seeking a stay pending appeal bears the burden of showing its entitlement to a stay. *Latta v. Otter*, 771 F.3d 496, 498 (9th Cir. 2014). A court must consider four factors in determining whether to issue a stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a

stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.*; *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

#### IV. DISCUSSION

The harm the Aguirre Investors contend they will suffer - that properties will be sold and proceeds will be distributed - relates solely to the Distribution Plan Order and Jamul Valley Sale Order. The Aguirre Investors cannot meet their burden of showing they are entitled to a stay of these orders.

##### A. The Aguirre Investors Cannot Show a Likelihood of Success

###### 1. *This Court Lacks Jurisdiction*

For the reasons discussed in the Receiver's pending motion to dismiss, the Distribution Plan Order is not appealable. Dkt. No. 3; *see SEC v. Capital Consultants, LLC*, 453 F.3d 1166, 1171-72 (9th Cir. 2006). Therefore, the appeal should be dismissed as to the Distribution Plan Order.

The Jamul Valley Sale Order is also not an appealable order. *See SEC v. American Principals Holdings, Inc.*, 817 F.2d 1349, 1350 (9th Cir. 1987) (holding that an order authorizing a spinoff of certain partnerships in a receivership estate was not a final order when receivership proceedings are ongoing). Here, there are many properties to sell, claims to administer, distributions to be made, and much work to be done before the receivership can be concluded. Accordingly, the Jamul



Valley Sale Order, which approves the sale of only one of more than 36 receivership properties, is not appealable.

**2. *The District Court Properly Exercised Its Broad Discretion***

Even if the Distribution Plan Order and Jamul Valley Sale Order were appealable, the Aguirre Investors cannot show a likelihood of success. They try to attack the orders in several different ways, each of which was considered and properly rejected by the District Court.

(a) The District Court Has Subject Matter Jurisdiction

The Aguirre Investors argue the District Court lacks subject matter jurisdiction over the GPs because this is a proceeding to dissolve the GPs and therefore every investor must be named as a party. No one is talking about dissolving the GPs, however, except the Aguirre Investors. Nowhere in the Distribution Plan Motion or Distribution Plan Order did the Receiver request or the Court authorize the dissolution of any GPs. Therefore, this argument lacks merit.

Next, the Aguirre Investors argue the Court cannot order a sale of properties held by non-party general partnerships. The Aguirre Investors attempt to mislead the Court by quoting orders issued by the Court (Hon. Larry A. Burns) early in the case. The case was then transferred to the Hon. Gonzalo P. Curiel and, as noted above, the Court granted summary judgment in favor of the Commission on the issue of whether the GP units are securities. Dkt. No. 583. In doing so, the

District Court determined that Defendants exercised control over the GPs and investors depended on Defendants for a return on their investments, such that the GP units were investment contracts akin to limited partnership interests, and therefore securities. DC Dkt. Nos. 583, 629. Accordingly, the District Court properly held it has jurisdiction over the GP properties because such properties were under the possession and control of Defendants. *In re San Vicente Med. Partners Ltd.*, 962 F.2d 1402 (9th Cir. 1992).

Moreover, the Preliminary Injunction Order included the GPs in the receivership. Dkt. No. 174. The Receiver filed the notices required under 28 U.S.C. § 754, extending the District Court's territorial jurisdiction to GP properties located in other judicial districts. The GPs were given notice, allowed to file briefs addressing whether they should remain in the receivership, and investor representatives were allowed to present arguments on behalf of their GPs at a lengthy hearing. Dkt. Nos. 629, 790. All of this occurred before the Court decided to keep the GPs in the receivership and before any sale procedures for GP properties were approved. Dkt. No. 1003. Accordingly, the GPs were properly included in the receivership and the District Court has jurisdiction to approve sales of GP properties. *See SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1143-1144 (9th Cir. 1996).

(b) Investors Have Been Afforded Due Process

The Aguirre Investors strain to find ways in which the timing of hearings and notices to investors do not exactly correspond with the District Court's local rules. This argument has no merit. District Courts have discretion to determine the appropriate notices to investors in federal equity receiverships. *SEC v. TLC Invs. and Trade Co.*, 147 F. Supp. 2d 1031, 1034-35 (C.D. Cal. 2001) ("in keeping with the general rule that the process due varies according to the nature of the right and the type of proceedings, [citation], there are no specific standards or rules setting forth what rights investors in such proceedings have to participate. Instead, summary proceedings satisfy due process so long as there is adequate notice and opportunity to be heard.")

The District Court and the Receiver have made extensive efforts to efficiently provide notices to the numerous investors in the GPs, including mailing letters, sending mass emails, and setting up a receivership website where pleadings, reports, orders, and other documents are posted. Investors were mailed a letter in the first 60 days of the case (well before the Receiver was appointed on a permanent basis), again in March 2013, and again in 2015 to alert them when the Information Packet for their GPs were posted to the receivership website. Notice was also mailed to the address of record for each GP in July 2014. Dkt. No. 629. Hundreds of briefs and letters have been filed by investors throughout the case, all

of which have been reviewed and considered by the District Court. The District Court also held a lengthy hearing at which investors were permitted to present arguments as to whether the GPs should remain in the receivership. Dkt. No. 790.

With respect to the Distribution Plan Motion, the Aguirre Investors were permitted to intervene to oppose the motion and allowed to present arguments at the hearing held on May 20, 2016. Dkt. Nos. 1296, 1298. Accordingly, the Aguirre Investors cannot legitimately claim they were denied due process.

(c) The District Court Properly Approved the One Pot Approach

District Courts have "extremely broad" power in supervising the administration of an equity receivership in recognition "of the fact that most receiverships involve multiple parties and complex transactions." *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). Accordingly, District Courts have "wide discretion to determine the appropriate relief," and "broad deference" is given to their decisions. *Id.*

The record provides ample support for the District Court's approval of the One Pot Approach and Distribution Plan. Investors were all victims of the same scheme, Defendants' sale of GP units was determined to be one integrated offering, misrepresentations concerning the value of GP properties were very likely made to all investors, the vast majority of investor funds raised through sales of GP units (approximately 93%) went to Western and was used to prop up other GPs or for

other purposes entirely, investors had no knowledge of the purchase price mark ups, mortgages and other loans affecting GP properties, and the outcomes for investors under a GP-by-GP distribution would range from 0.75% to 194% based almost entirely on timing and luck. Under these facts and circumstances, it was well within the District Court's broad discretion to determine the One Pot Approach, which gives all investors a *pro rata* share of all receivership estate assets, is the more fair and equitable distribution methodology.

(d) The District Court Properly Rejected the Aguirre Investors' Accounting Arguments

The District Court considered the Aguirre Investors' oft-repeated false accusations and misrepresentations regarding the Receiver's interim reports and accounting schedules, including arguments made at the May 20, 2016 hearing. The District Court properly exercised its broad discretion in determining the Aguirre Investors' arguments have no merit.

**B. The Aguirre Investors Cannot Show Irreparable Harm Absent a Stay**

The Aguirre Investors argue they will be irreparably harmed absent a stay because properties will be sold and the appeal will become moot. However, the procedures approved by the District Court for selling properties provide notice to investors of each sale motion and ensure the best price is obtained. DC Dkt. Nos. 1309, 1359. Further, the net proceeds from sales cannot be distributed until the claims process has been completed and the District Court has specifically

authorized the Receiver to make distributions. DC Dkt. No. 1181-1, Exh. E, p. 3, l. 24 – p. 4, l. 1. Therefore, investors will have notice and the opportunity to be heard regarding sales and distributions, so the Aguirre Investors cannot show irreparable harm at this interim stage in the receivership proceedings.

**C. The Balance of Equities Tips Sharply Against a Stay**

The balance of equities tips sharply in favor of the other 95% of investors Mr. Aguirre does not represent. These investors, many of whom are elderly, have been waiting for a recovery for four years, through extensive litigation between Schooler and the Commission. The District Court has entered the Final Judgment, has approved procedures for the sale of properties, has approved the Distribution Plan, and has approved procedures for the administration of investor claims. Over the last nine months, the Aguirre Investors, through their repeated failed motions in the District Court and appeals to this Court, have significantly increased receivership expenses and delayed the process of selling properties and making distributions, to the detriment of all investors. The District Court has considered the Aguirre Investors' arguments on numerous occasions and rejected them. The equities now weigh sharply in favor of allowing the receivership to move forward so the Receiver can return as much money as possible to investors.



## CERTIFICATE OF COMPLIANCE

The foregoing Motion to Dismiss Appeal for Lack of Jurisdiction as to Third and Fourth Orders in Notice of Appeal of Appellee Thomas C. Hebrank complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because:

This brief contains 4,594 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word 2007, in font size 14, Times New Roman.

Dated: October 12, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates            
Edward G. Fates  
Attorneys for Receiver  
THOMAS C. HEBRANK



**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system on October 12, 2016. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 12, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates            
Edward G. Fates  
Attorneys for Receiver  
THOMAS C. HEBRANK