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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13
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
GRAHAM INVESTORS' MOTION
TO INTERVENE TO OPPOSE,
OBJECT TO AND REQUEST
CLARIFICATION OF THE
(1) SECOND REVISED
14TH INTERIM REPORT,
(2) REVISED 15TH INTERIM
REPORT AND (3) REVISED
16TH INTERIM REPORT**

Date: November 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,
5 "Receivership Entities"), submits this opposition to the Graham Investors' Motion to
6 Intervene to Oppose, Object to and Request Clarification of the (1) Second Revised
7 14th Interim Report, (2) Revised 15th Interim Report and (3) Revised 16th Interim
8 Report ("Motion").

9 This is the fifth motion to intervene filed by investors represented by Gary
10 Aguirre. The Court properly denied the first four motions, with the exception of
11 allowing the Aguirre Investors to oppose the Receiver's orderly sale/distribution
12 plan motion. Dkt. Nos. 1296, 1303, 1359. The Aguirre Investors now seek to
13 intervene to challenge the Standardized Fund Accounting Reports ("SFARs") filed
14 by the Receiver with his Second Amended Fourteenth Interim Report, Amended
15 Fifteenth Interim Report, and Amended Sixteenth Interim Report. Dkt. Nos. 1376-
16 1378. The Motion should be denied.

17 The Aguirre Investors contend the SFARs filed by the Receiver must identify
18 every payor of every payment received by the Receivership Entities. This
19 contention has no merit and would change the SFAR, which is intended to provide a
20 summary report of financial activity for the Receivership Entities, into a general
21 ledger listing each and every receipt from each and every source. If, for example,
22 the receivership estate included a golf course, the Aguirre Investors contend the
23 SFAR would need to list every payment from every patron who played golf or
24 purchased golf balls in the pro shop. This goes well beyond the intended scope of
25 the SFAR.

26 Not only would including the date and amount of every payment
27 unnecessarily increase the time and expense of generating SFARs, but there is no
28 need to publicly report the date and amount of each payment made by individual

1 investors and GPs. Doing so could subject investors to unwanted solicitation or
2 harassment from other investors for not making payments, and could create or stoke
3 disputes between and among investor groups with differing viewpoints. Moreover,
4 the Aguirre Investors fail to show that publicly reporting the date and amount each
5 investor and GP payment will benefit investors or the receivership estate.

6 With respect to what Line 8 of the SFAR includes, it includes all payments
7 made by investors to GPs (the GP-by-GP totals of which are reported on Exhibit A
8 to the interim reports) and all payments made by investors and GPs to Western (the
9 totals of which are reported on Exhibit B to the interim reports). Note, these
10 payments are no longer being made due to the pooling of funds. As the Receiver
11 has explained several times, Western's legacy system of collecting payments
12 includes payments from investors to their GPs and payments from GPs to Western.
13 In this sense, the payments are counted twice for purposes of the SFAR (once when
14 they are received by the GPs and once when they are received by Western),¹ but the
15 actual amounts received by each GP and by Western are reflected on Exhibits A
16 and B to the interim reports.

17 Finally, with regard to attorney fees incurred in the litigation against the
18 LinMar entities, those amounts are stated in the quarterly fee applications filed by
19 the Receiver's counsel under the category "Third Party Recoveries." *See e.g.* Dkt.
20 No. 1127, pp. 1, 5-6. To the extent further fees and costs are incurred in connection
21 with the LinMar litigation, the Receiver will separate those fees and costs from other
22 professional fees listed on Line 10a of the SFAR and list them on Line 10e moving
23 forward.

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27 ¹ In addition, as the Receiver has explained in the past, the Western legacy system
28 involves in/out pass-through transactions for the WSCC LLC and Western –
Business accounts, which transactions have been excluded from the SFAR to
avoid confusion. Dkt. No. 1292, pp. 10-12.

1 As usual, the Aguirre Investors' challenges to the accounting information
2 contained in the SFARs have no merit and provide no basis for intervention.
3 Accordingly, the Motion should be denied.

4
5 Dated: October 20, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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7 By: /s/ Edward Fates

8 EDWARD G. FATES
9 Attorneys for Receiver
10 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 October 20, 2016, I served the within document(s) described as:

- **RECEIVER'S OPPOSITION TO GRAHAM INVESTORS' MOTION TO INTERVENE TO OPPOSE, OBJECT TO AND REQUEST CLARIFICATION OF THE (1) SECOND REVISED 14TH INTERIM REPORT, (2) REVISED 15TH INTERIM REPORT AND (3) REVISED 16TH INTERIM REPORT**

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 October 20, 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; kramirez@dghmalaw.com; sahuja@dghmalaw.com
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- 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 October 20, 2016, at San Diego, California.

Edward G. Fates

(Type or print name)

/s/ Edward Fates

(Signature of Declarant)