No. 16-56362

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. SECURITIES & EXCHANGE COMMISSION,

Plaintiff – Appellee,

v.

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

Defendants - Appellees,

JOSEPH M. ARDIZZONE, DAVID R. SCHWARZ, LOIS SCHWARZ,
DENNIS FRISMAN, ERIC GILBERT, AND RICK MOORE

Intervenors - Appellants,

THOMAS C. HEBRANK,

Receiver - Appellee.

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

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 six investors who made investments in the Receivership Entities ("Ardizzone Investors") and have challenged two orders of the District Court: (1) the District Court's order denying their motion to intervene in the case, and (2) the District Court's order denying their motion for a stay pending appeal. Yet, the Ardizzone Investors are not seeking a stay of these two orders; they are seeking to stay the entire receivership, *i.e.*, all sales of receivership properties and distributions to investors. Having failed to obtain the requested stay from the District Court, the Ardizzone Investors now seek the same relief from this Court. As the District Court properly ruled, there is no basis for a stay.

First, the Ardizzone Investors have no likelihood of success on the merits of this appeal. The primary order they challenge is the District Court's order denying their motion to intervene ("Intervention Denial Order"). District Court ("DC") Dkt. No. 1359. Their motion to intervene ("Intervention Motion") sought an order

allowing them to broadly intervene in the case, including to take discovery, challenge prior orders of the District Court, assert new claims for declaratory relief, and conduct an evidentiary hearing. DC Dkt. No. 1348. Essentially, the Ardizzone Investors sought to relitigate issues decided over the course of four years of the case. As it had when another group of investors (the "Graham Investors" who are also represented by attorney Gary Aguirre) sought to broadly intervene in the case, the District Court properly determined the Intervention Motion was untimely. DC Dkt. Nos. 1296, 1359.

In fact, the only argument the Ardizzone Investors raised in the Intervention Motion that had not already been raised by the Graham Investors was their claim they received no notice of the Receiver's motion for authority to sell certain properties, approval of a distribution plan, and approval of procedures for the administration of investor claims ("Distribution Plan Motion") (Dkt. No. 1181).

The District Court properly rejected this argument, noting that (a) due to the costs associated with copying and mailing notices to 3,370 investors, it had previously authorized the Receiver to provide notices to investors via the website established for the receivership, (b) the Receiver posted the Distribution Plan Motion on the receivership website when it was filed, (c) the Receiver sent email notice of the hearing on the Distribution Plan Motion to all available investor email

addresses, and (d) the Graham Investors were permitted to intervene and oppose the Distribution Plan Motion.

The procedures for providing notices to investors were established in early 2013 and investors were sent multiple letters advising them that notices would be provided via the receivership website and that they could receive notices by mail if they so requested in writing. The Ardizzone Investors did not object to the notice procedures, nor did they request notices by mail. Therefore, although the Distribution Plan Motion was not copied and mailed to all 3,370 investors, it was made readily available to them and the Ardizzone Investors chose either not to access the documents or not to respond.

Finally, the Ardizzone Investors failed to explain how their arguments in opposition to the Distribution Plan Motion would have materially differed from the Graham Investors' arguments. In fact, as the District Court noted, almost all of the Ardizzone Investors' arguments were repetition of arguments previously made by the Graham Investors. DC Dkt. No. 1359. Accordingly, the District Court properly denied the Intervention Motion as untimely.

Second, the Ardizzone 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 order approving the Distribution Plan Motion ("Distribution Plan Order") does not authorize the sale of any properties or

distribution of any funds without further orders. DC Dkt. No. 1304. Moreover, the approved process 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 distributions. Therefore, the Ardizzone Investors cannot show they will be irreparably 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 more than four years, through extensive litigation between Defendant Louis Schooler ("Schooler") and the Securities and Exchange Commission ("Commission"). The Ardizzone Investors, through their failed motions in the District Court and appeals to this Court, have significantly increased receivership expenses to the detriment of all investors. The District Court has considered the Ardizzone Investors' arguments 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 Ardizzone 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.

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. 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. Appeal No. 16 55167.

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 motions to remove the GPs from the receivership. The District Court

initially decided the GPs could be released from the receivership on certain terms and conditions. DC Dkt. No. 470. Defendants appealed the ruling, challenging the terms and conditions of release. DC Dkt. No. 499. While the appeal was pending, as noted above, the Court determined the GP units were unregistered securities. DC Dkt. No. 583. As a result, it *sua sponte* reconsidered whether to release GPs from the receivership. *Id.* Before finally deciding the issue, the District Court had the Receiver mail notice to all investors, invited them to confer with the other investors in their GPs and file a brief on behalf of their GP, and set a hearing at which investors could present their arguments. DC Dkt. Nos. 629, 790.

Unfortunately, rather than let this process run as intended, a group of investors (many of whom are now represented by Mr. Aguirre) dubbed themselves the "ad hoc committee," obtained lists of investor email addresses without the Receiver's knowledge, and began an email campaign attacking the Receiver, the Commission, and the District Court in an effort to influence and sway investor views. They also prepared and circulated a form brief, which was then filed on behalf of the majority of the GPs with little or no changes. Investors whose opinions differed were taken off email distribution lists and excluded from participating in preparing briefs. DC Dkt. No. 783.

Despite the fact the District Court's intended process for allowing investors to voice their views had been thwarted by the "ad hoc committee," the District

Court nevertheless held a lengthy hearing and allowed investors who wished to present arguments to do so. DC Dkt. No. 790. The District Court also directed the Receiver to submit a report and recommendation as to which GPs, if any, could potentially be released from the receivership. DC Dkt. Nos. 808, 852.

After considering the numerous investor briefs, investor arguments at the hearing, the Receiver's report and recommendation, and numerous investor responses to the report and recommendation, on March 4, 2015, the District Court entered an Order Keeping GPs Under Receivership. DC Dkt. No. 1003. Among other things, the District Court (a) determined the GPs would remain in the receivership until the conclusion of the case, (b) instructed the Receiver to file a proposed "Information Packet" regarding the financial condition of each GP to be disseminated to investors, and (c) 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 GP properties with failed capital calls.

D. The Distribution Plan Motion

On February 4, 2016, with the Final Judgment having been entered, the Receiver filed the 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.*, properties held by GPs with sufficient funds, 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 One Pot Approach was expressly supported by the Commission and the Dillon Investors (defined below). DC 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. Investor Opposition to Distribution Plan Motion

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 were then known as the Aguirre Investors and Dillon Investors. Together they represented approximately 10% of the total approximately 3,370 investors. When Mr. Aguirre was engaged by a second group of six investors, the Aguirre Investors became known as the Graham Investors and Appellants became known as the Ardizzone 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 and Dillon 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.

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 have been appealed by the Graham Investors. Appeal No. 16-55850, 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 Graham Investors appealed the Distribution Plan Order. Appeal No. 16-55850, Dkt. No. 11.

F. Steps to Implement Distribution Plan Order and Opposition by Graham and Ardizzone Investors

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 Graham Investors opposed the sale motion. Dkt. No. 1326.

On June 21, 2016, the Graham Investors filed a motion for stay pending appeal. DC Dkt. No. 1316. The Receiver and the Commission opposed the motion. 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 Xpera Report recommendations. DC Dkt. No. 1341. The Graham Investors opposed the motion. DC Dkt. No. 1351. On August 9, 2016, as noted above, the Ardizzone Investors filed the Intervention Motion. 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 Intervention Motion. DC Dkt. No. 1359. The District Court also

granted the Receiver's motions to approve the sale of the Jamul Valley property ("Jamul Valley Sale Order"). DC Dkt. No. 1361.

The Graham 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 to their appeal and withdraw the appeal as to other non-appealable orders. Appeal No. 16-55850, Dkt. Nos. 7, 11. On September 13, 2016, the Ardizzone Investors appealed the Intervention Denial Order and a second District Court order, commencing this appeal. DC Dkt. No. 1367. On the same day, the Ardizzone Investors filed a motion for stay pending appeal ("Ardizzone Stay Motion"). DC Dkt. No. 1368.

On September 20, 2016, the Ardizzone Investors filed an Amended Notice of Appeal, removing the second order from the appeal. Dkt. No. 2-1. On November 29, 2016, the District Court denied the Ardizzone Stay Motion ("Ardizzone Stay Denial Order"). DC Dkt. No. 1409. The Ardizzone Investors then filed a Second Amended Notice of Appeal, adding the Ardizzone Stay Denial Order to this appeal. Dkt. No. 10-1.

G. Pending Motions in the Appeals

On June 28, 2016, the Receiver filed a motion to dismiss the Graham Investors' appeal as to the Distribution Plan Order. Appeal No. 16-55850, Dkt. No. 3. On September 28, 2016, the Commission filed a motion to consolidate this

appeal and the Graham Investors' appeal. Dkt. No. 004. On September 29, 2016, the Graham Investors filed an urgent motion for stay pending appeal. Appeal No. 16-55850, Dkt. No. 12. On November 30, 2016, the Receiver filed a motion to expedite the Graham Investors' appeal as to the Jamul Valley Sale Order. Appeal No. 16-55850, Dkt. No. 21-1. On December 19, 2016, the Graham Investors filed an unopposed motion to expedite the appeals (assuming they are consolidated). Appeal No. 16-55850, Dkt. No. 28. On December 21, 2016, the Ardizzone Investors filed this Motion. Dkt. No. 11. All of these motions remain pending.

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: "(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 Ardizzone Investors contend the District Court erred in denying their Intervention Motion. The Ardizzone Investors cannot meet their burden of showing they are entitled to a stay of the entire receivership.

A. The Ardizzone Investors Cannot Show a Likelihood of Success

1. The District Court Properly Denied the Intervention Motion

The Ardizzone Investors sought to broadly intervene in the case to (a) vacate prior orders of the District Court, (b) take discovery from the Receiver, (c) relitigate arguments raised by the Graham Investors in opposition to the Distribution Plan Motion, including whether investors should be balloted as to their views on the Distribution Plan, and whether an evidentiary hearing should be held, (d) seek declaratory relief, and (e) challenge three years' worth of quarterly interim reports filed by the Receiver. DC Dkt. No. 1348, pp. 2-3.

The District Court's determination that a motion to intervene is untimely is reviewed for abuse of discretion. *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 814 (9th Cir. 2001). Here, the District Court acted well within its discretion in determining the Intervention Motion was untimely. The Ardizzone Investors' primary argument as to why the Intervention Motion was timely was that the notices provided to them during the receivership were insufficient. The District Court and Receiver, however, have made extensive efforts throughout the case to efficiently provide notices to investors and allow their views to be considered.

The District Court had the Receiver send multiple letters to all investors during the first six months of the case advising them of the receivership, that the receivership website would be used to provide further notices, and that they could

receive notices by mail if they so requested in writing. The Receiver set up the receivership website at the outset of the case and frequently updated it with pleadings, reports, orders, case updates, and answers to frequently asked questions. Investors were reminded throughout the case to provide the Receiver with their current contact information and to update their contact information with the Receiver when it changed. Additional letters and notices were sent to investors at various key points in the case, including when the District Court was considering whether to keep the GPs in the receivership and when the District Court-approved Information Packet was prepared for each GP. K-1 tax statements were mailed to investors each year with a cover letter that provided the Receiver's contact information. The District Court allowed investors to file briefs on behalf of their GPs and to present arguments at a lengthy hearing before it finally decided to keep the GPs in the receivership. DC Dkt. Nos. 629, 790.

Additionally, throughout the case, the District Court has allowed investors to file letters on any topic relating to the case or the receivership. Investor have filed hundreds of such letters. The District Court has carefully considered these numerous letters, often citing them and directly addressing them in its orders.

As to the six Ardizzone Investors, the Receiver's opposition to the Intervention Motion laid out the various ways in which they have had direct contact with the Receiver and the District Court, fully refuting their claim they

received no notice of the receivership proceedings, were not aware of the receivership website, did not receive emails from the Receiver, and did not have ready access to documents posted to the receivership website, including the Distribution Plan Motion. Dkt No. 1355, pp. 9-13.

Accordingly, there is no credible claim the Ardizzone Investors were denied due process in connection with the Distribution Plan Order or any other orders of the District Court. Their contention the Intervention Motion was timely because they received insufficient notice has no merit. Moreover, their extrapolations and misrepresentations about how many investors received email notices from the Receiver have been shown to be wildly inaccurate and were rejected by the District Court. Dkt. No. 1383, pp. 5-6.

Finally, the District Court properly denied the Ardizzone Investors' attempt to relitigate issues and vacate prior orders. The receivership estate is a very limited fund. Preserving and maximizing the value of that fund for distribution to investors, who stand to recover a fraction of their losses, is of paramount importance. Therefore, the need for efficiency is heightened and the harm caused by delay is magnified. Relitigation of issues, challenges to orders entered years ago, and attempts to unwind the administration of the receivership impose real harm in the form of administrative expenses that erode the receivership estate and further delay investor recoveries. The Ardizzone Investors are six investors out of

a total of approximately 3,370 investors who have been waiting more than four years for a recovery. Therefore, the District Court properly exercised its discretion in determining the Ardizzone Investors' Intervention Motion was untimely.

B. The Ardizzone Investors Cannot Show Irreparable Harm

The Ardizzone Investors argue they will be irreparably harmed absent a stay because properties will be sold. However, the approved procedures 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 sale proceeds cannot be distributed until the claims process has been completed and the District Court has specifically authorized 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 Ardizzone 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 95% of investors not represented by Mr. Aguirre. 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 Ardizzone Investors, through their failed motions in the District Court and appeals to this Court, have significantly increased receivership expenses to the detriment of all investors. The District Court has

considered the Ardizzone Investors' arguments and rejected them. The equities now weigh sharply in favor of allowing the receivership to move forward.

D. The Public Interest Weighs Against a Stay

There is a strong public interest in maintaining the integrity of securities markets and promptly remedying securities laws violations. The Ardizzone Investors efforts to frustrate and delay the receivership, including through this Motion, run counter to the public interest. Investor recoveries would be delayed by a stay and diminished by the increased administrative expenses of the receivership. Accordingly, the public interest weighs against a stay.

II. CONCLUSION

For the foregoing reasons, the Motion should be denied and the receivership should be allowed to proceed under the supervision of the District Court.

Dated: January 6, 2016

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

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

CERTIFICATE OF COMPLIANCE

The foregoing Receiver's Unopposed Motion to Extend Time of Appellee Thomas C. Hebrank complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because:

This brief contains 4,605 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: January 6 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 January 6, 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: January 6, 2016

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

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