

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
865 South Figueroa Street, Suite 2800
3 Los Angeles, California 90017-2543
Phone: (213) 622-5555
4 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com

5 EDWARD G. FATES (BAR NO. 227809)
One America Plaza
600 West Broadway, 27th Floor
7 San Diego, California 92101-0903
Phone: (619) 233-1155
8 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

9 Attorneys for Receiver
10 THOMAS C. HEBRANK

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

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 v.

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

21 Defendants.

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

**RECEIVER'S NOTICE OF MOTION
AND MOTION FOR ORDER
DIRECTING GLEN OAKS ESCROW
TO RELEASE DEPOSIT FROM
CANCELLED SALE OF
FREETRADE PROPERTY TO
RECEIVER**

Date: May 19, 2017

Time: 1:30 p.m.

Ctrm.: 2D

Judge: Hon. Gonzalo P. Curiel

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on May 19, 2017, at 1:30 p.m. in
 3 Courtroom 2D of the United States District Court, Southern District of California,
 4 located at 221 West Broadway, San Diego, California 92101, Thomas C. Hebrank
 5 ("Receiver"), the Court-appointed receiver for First Financial Planning Corporation
 6 d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the
 7 General Partnerships listed in Schedule 1 to the Preliminary Injunction Order
 8 entered on March 13, 2013 (collectively, "Receivership Entities"), will, and hereby
 9 does, move this Court for an order directing Glen Oaks Escrow to release deposit
 10 from cancelled sale of Freetrade Property to Receiver ("Motion").

11 This Motion is based upon this notice, the accompanying Memorandum of
 12 Points and Authorities and Declaration of Thomas C. Hebrank, all pleadings and
 13 papers on file in this action, and upon such other matters as may be presented to the
 14 Court at the time of hearing.

15 **Procedural Requirements:** If you oppose the Motion, you are required to
 16 file your written opposition with the Office of the Clerk, United States District
 17 Court, Southern District of California, 333 West Broadway, Suite 420, San Diego,
 18 California 92101, and serve the same on the undersigned no later than 14 calendar
 19 days prior to the hearing date. An opposing party's failure to file an opposition to
 20 any motion may be construed as consent to the granting of the motion pursuant to
 21 Civil Local Rule 7.1(f)(3)(c).

22
 23 Dated: April 6, 2017

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
 Attorneys for Receiver
 THOMAS C. HEBRANK

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
865 South Figueroa Street, Suite 2800
3 Los Angeles, California 90017-2543
Phone: (213) 622-5555
4 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com

5 EDWARD G. FATES (BAR NO. 227809)
One America Plaza
6 600 West Broadway, 27th Floor
7 San Diego, California 92101-0903
Phone: (619) 233-1155
8 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

9 Attorneys for Receiver
10 THOMAS C. HEBRANK

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.
21

Case No. 3:12-cv-2164-GPC-JMA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER DIRECTING
GLEN OAKS ESCROW TO
RELEASE DEPOSIT FROM
CANCELLED SALE OF
FREETRADE PROPERTY TO
RECEIVER**

Date: May 19, 2017
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 Thomas C. Hebrank ("Receiver"), the Court-appointed receiver for First
 2 Financial Planning Corporation d/b/a Western Financial Planning Corporation
 3 ("Western"), its subsidiaries and the General Partnerships listed in Schedule 1 to the
 4 Preliminary Injunction Order entered on March 13, 2013 (collectively,
 5 "Receivership Entities"), submits this motion for an order directing Glen Oaks
 6 Escrow to release the \$5,000 earnest money deposit from the cancelled sale of the
 7 property owned by Freetrade/Suntec/Via 188 to the Receiver ("Motion").

8 **I. BACKGROUND FACTS**

9 In January 2017, Gerardo Aceves ("Aceves") made an offer to purchase the
 10 property located in the Tecate area of San Diego County owned by Freetrade
 11 Partners, Suntec Partners, and Via 188 Partners ("Property"). Dkt. No. 1446-2,
 12 Exhibit A. The Receiver and Mr. Aceves negotiated terms and signed a Vacant
 13 Land Purchase Agreement and Joint Escrow Instructions, including an Addendum to
 14 Land Purchase Agreement and Seller Counter Offer #1 ("Purchase Agreement"). *Id.*
 15 As required by the Purchase Agreement, Aceves deposited \$5,000 into escrow.
 16 Declaration of Thomas Hebrank filed herewith ("Hebrank Decl."), ¶ 2.

17 On March 3, 2017, Aceves removed all contingencies associated with the
 18 sale. Hebrank Decl., ¶ 3, Exh. A. In doing so, Aceves surrendered his right to
 19 recover his deposit unless the Court did not approve the sale. *Id.* Accordingly, the
 20 Receiver incurred expenses to have his counsel prepare a motion seeking approval
 21 of the sale, which was filed on March 10, 2017. Dkt. No. 1446. The Receiver also
 22 paid to have the required notices published in the San Diego Union Tribune
 23 pursuant to 28 U.S.C. § 2001 and the Modified Orderly Sale Process. On March 17,
 24 2017, Aceves cancelled the sale for reasons unrelated to the property or Court
 25 approval of the sale. Hebrank Decl., ¶ 3.

26 Accordingly, pursuant to the Purchase Agreement, the Receiver is entitled to
 27 recover the deposit for the benefit of the receivership estate. The Receiver has
 28 requested that the escrow company, Glen Oaks Escrow ("Glen Oaks"), release the

1 \$5,000 earnest money deposit placed into escrow by Aceves. Glen Oaks has
 2 responded that it cannot do so unless Aceves consents to the release or the Court
 3 issues an order directing it to do so. Mr. Aceves has not consented to the release
 4 and is no longer responding to communications from the Receiver's office. Hebrank
 5 Decl., ¶ 4.

6 II. ARGUMENT

7 "The power of a district court to impose a receivership or grant other forms of
 8 ancillary relief does not in the first instance depend on a statutory grant of power
 9 from the securities laws. Rather, the authority derives from the inherent power of a
 10 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
 11 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
 12 and efficient administration of the estate by the district court for the benefit of
 13 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
 14 of a receiver is authorized by the broad equitable powers of the court, any
 15 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
 16 953 F.2d 1560, 1569 (11th Cir. 1992).

17 District courts have the broad power of a court of equity to determine the
 18 appropriate action in the administration and supervision of an equity receivership.
 19 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
 20 Circuit explained:

21 A district court's power to supervise an equity receivership and to
 22 determine the appropriate action to be taken in the administration of
 23 the receivership is extremely broad. The district court has broad
 24 powers and wide discretion to determine the appropriate relief in an
 25 equity receivership. The basis for this broad deference to the district
 court's supervisory role in equity receiverships arises out of the fact
 that most receiverships involve multiple parties and complex
 transactions. A district court's decision concerning the supervision
 of an equitable receivership is reviewed for abuse of discretion.

26 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
 27 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
 28 and 'we generally uphold reasonable procedures instituted by the district court that

1 serve th[e] purpose' of orderly and efficient administration of the receivership for
 2 the benefit of creditors."). Accordingly, the Court has broad discretion in approving
 3 procedures for the sale of receivership estate assets.

4 Here, Aceves removed all contingencies in connection with the sale on
 5 March 3, 2017, and, in doing so, surrendered his right to recover the deposit unless
 6 the Court did not approve the sale. Then, after the Receiver prepared and filed his
 7 motion for approval of the sale and paid for publication of the required newspaper
 8 notices (with the receivership estate incurring the costs associated therewith),
 9 Aceves cancelled the Purchase Agreement. Accordingly, pursuant to the Purchase
 10 Agreement, Aceves has surrendered his right to the deposit, which should be paid to
 11 the Receiver, and Glen Oaks should be directed to release the deposit to the
 12 Receiver, net of broker and escrow cancellation fees (which are estimated to be
 13 under \$1,000 combined).

14 **Notice to Aceves.** A copy of this motion has been mailed to Aceves at his
 15 home address (the only direct contact information for Aceves the Receiver has). A
 16 copy has also been mailed and emailed to Aceves' broker. Hebrank Decl., ¶ 5.

17 **Form of Order.** Glen Oaks has requested that the following language be
 18 included in the order: "Glen Oaks Escrow is to release the deposit held in file
 19 022912-BH back to the seller." Accordingly, the Receiver requests that the Court
 20 enter the proposed order submitted herewith, or alternatively, include the above
 21 language in its own form of order.

22 III. CONCLUSION

23 Based on the foregoing, the Receiver requests an order directing Glen Oaks to
 24 release the deposit to the Receiver.

25 Dated: April 6, 2017

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

26 By: /s/ Edward Fates

27 EDWARD G. FATES
 Attorneys for Receiver
 28 THOMAS C. HEBRANK

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
865 South Figueroa Street, Suite 2800
3 Los Angeles, California 90017-2543
Phone: (213) 622-5555
4 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com

5 EDWARD G. FATES (BAR NO. 227809)
One America Plaza
6 600 West Broadway, 27th Floor
7 San Diego, California 92101-0903
Phone: (619) 233-1155
8 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

9 Attorneys for Receiver
10 THOMAS C. HEBRANK

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.
21

Case No. 3:12-cv-2164-GPC-JMA

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF
MOTION FOR ORDER DIRECTING
GLEN OAKS ESCROW TO
RELEASE DEPOSIT FROM
CANCELLED SALE OF
FREETRADE PROPERTY TO
RECEIVER**

Date: May 19, 2017

Time: 1:30 p.m.

Ctrm.: 2D

Judge: Hon. Gonzalo P. Curiel

1 I, Thomas C. Hebrank, declare:

2 1. I am the Court-appointed receiver for First Financial Planning
3 Corporation d/b/a Western Financial Planning Corporation ("Western"), its
4 subsidiaries, and the General Partnerships listed on Schedule 1 to the Preliminary
5 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities").
6 I make this declaration in support of my Motion for Order Directing Glen Oaks
7 Escrow to Release Deposit from Cancelled Sale of FreeTrade Property to Receiver. I
8 have personal knowledge of the facts stated herein, and if called upon to do so, I
9 could and would personally and competently testify to them.

10 2. In January 2017, Gerardo Aceves ("Aceves") made an offer to purchase
11 the property located in the Tecate area of San Diego County owned by FreeTrade
12 Partners, Suntec Partners, and Via 188 Partners ("Property"). Mr. Aceves and I
13 negotiated terms and signed a Vacant Land Purchase Agreement and Joint Escrow
14 Instructions, including an Addendum to Land Purchase Agreement and Seller
15 Counter Offer #1 ("Purchase Agreement"). As required by the Purchase Agreement,
16 Aceves deposited \$5,000 into escrow.

17 3. On March 3, 2017, Aceves removed all contingencies associated with
18 the sale. A true and correct copy of his Contingency Removal is attached hereto as
19 Exhibit A. In doing so, Aceves surrendered his right to recover his deposit unless
20 the Court did not approve the sale. Accordingly, I had my counsel prepare a motion
21 seeking approval of the sale, which was filed on March 10, 2017. The receivership
22 estate also paid to have the required notices published in the San Diego Union
23 Tribune pursuant to 28 U.S.C. § 2001 and the Modified Orderly Sale Process. On
24 March 17, 2017, Aceves cancelled the sale for reasons unrelated to the property or
25 Court approval of the sale.

26 4. Accordingly, pursuant to the Purchase Agreement, I am entitled to
27 recover the deposit for the benefit of the receivership estate. I have requested the
28 escrow company, Glen Oaks Escrow ("Glen Oaks"), release the \$5,000 earnest

1 money deposit placed into escrow by Aceves. Glen Oaks has responded that it
2 cannot do so unless Aceves consents to the release or the Court issues an order
3 directing it to do so. Mr. Aceves has not consented to the release and is no longer
4 responding to communications from my office.

5 5. My counsel will mail a copy of this motion to Aceves at his home
6 address (the only direct contact information for Aceves that we have) and will also
7 send a copy to Aceves' broker by mail and email.

8
9 I declare under penalty of perjury under the laws of the United States that the
10 foregoing is true and correct.

11 Executed this 5th day of April 2017, at San Diego, California.

12 
13 THOMAS C. HEBRANK

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT INDEX

Exhibit A	Contingency Removal	5
-----------	---------------------	---

EXHIBIT A

EXHIBIT A



CALIFORNIA
ASSOCIATION
OF REALTORS®

CONTINGENCY REMOVAL No. One (1)

(C.A.R. Form CR, Revised, 6/16)

In accordance with the terms and conditions of the: ☐ Residential Purchase Agreement (C.A.R. Form RPA-CA), ☐ Request For Repair (C.A.R. Form RR), ☐ Response And Reply To Request For Repair (C.A.R. Form RRRR) or ☒ Other Vacant Land Purchase

Agreement (VLP) ("Agreement"),
dated 01/17/2017, on property known as APN's 652-110-06,09,10 & 11-00, Tecate, CA 91980 ("Property"),
between Gerardo Aceves ("Buyer")
and Thomas C. Hebrank, Receiver ("Seller").

I. BUYER REMOVAL OF BUYER CONTINGENCIES:

1. With respect to any contingency and cancellation right that Buyer removes, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations and review of reports and other applicable information and disclosures; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and, expense, **if any**, for Repairs, corrections, or for the inability to obtain financing. Waiver of statutory disclosures is prohibited by law.

2. Buyer removes those contingencies specified below.

A. ONLY the following individually checked Buyer contingencies are removed:

1. ☐ Loan (Paragraph 3J)
2. ☐ Appraisal (Paragraph 3I)
3. ☐ Buyer's Physical Inspection (Paragraph 12)
4. ☐ All Buyer Investigations other than a physical inspection (Paragraph 12)
5. ☐ Condominium/Planned Development (HOA or OA) Disclosures (Paragraph 10F)
6. ☐ Reports/Disclosures (Paragraphs 7 and 10)
7. ☐ Title: Preliminary Report (Paragraph 13)
8. ☐ Sale of Buyer's Property (Paragraph 4B)
9. ☐ Review of documentation for leased or lien items (Paragraph 8B(5))
10. ☐ Other: _____
11. ☐ Other: _____

OR B. ☐ ALL Buyer contingencies are removed, EXCEPT: ☐ Loan Contingency (Paragraph 3J); ☐ Appraisal Contingency (Paragraph 3I); ☐ Contingency for the Sale of Buyer's Property (Paragraph 4B); ☐ Condominium/Planned Development (HOA) Disclosures (Paragraph 10F); ☐ Other _____

OR C. ☒ BUYER HEREBY REMOVES ANY AND ALL BUYER CONTINGENCIES.

3. Once all contingencies are removed, whether or not Buyer has satisfied him/herself regarding all contingencies or received any information relating to those contingencies, Buyer may not be entitled to a return of Buyer's deposit if Buyer does not close escrow. This could happen even if, for example, Buyer does not approve of some aspect of the Property or lender does not approve Buyer's loan.

NOTE: Paragraph numbers refer to the California Residential Purchase Agreement (C.A.R. Form RPA-CA). Applicable paragraph numbers for each contingency or contractual action in other C.A.R. contracts are found in Contract Paragraph Matrix (C.A.R. Form CPM).

Buyer Gerardo Aceves Date _____

Buyer _____ Date _____

II. SELLER REMOVAL OF SELLER CONTINGENCIES: Seller hereby removes the following Seller contingencies:

- ☐ Finding of replacement property (C.A.R. Form SPRP); ☐ Closing on replacement property (C.A.R. Form SPRP)

Seller Thomas C. Hebrank, Receiver Date 3/7/17

Seller _____ Date _____

(_____/_____) (Initials) **CONFIRMATION OF RECEIPT:** A copy of this signed Contingency Removal was personally received by ☐ Buyer ☐ Seller or authorized agent on _____ (date), at _____ ☐ AM / ☐ PM.

© 2003-2016, California Association of REALTORS®, Inc.

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.



Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____



CR REVISED 6/16 (PAGE 1 OF 1)

CONTINGENCY REMOVAL (CR PAGE 1 OF 1)

Real Blue Properties, 2956 Roosevelt Street Suite 1 Carlsbad, CA 92008
Gerald Busch

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026

Phone: (619)292-1020

Fax:

www.zipLogix.com

Tecate - Freertrade