

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

10 Attorneys for Receiver  
11 THOMAS C. HEBRANK

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

14  
15 SECURITIES AND EXCHANGE  
COMMISSION,

16 Plaintiff,

17 v.

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

21 Defendants.  
22

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

**NOTICE OF MOTION AND  
MOTION FOR AMENDED ORDER  
AUTHORIZING AND RATIFYING  
TRANSFERS OF GENERAL  
PARTNERSHIP PROPERTIES**

Date: February 9, 2018  
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 February 9, 2018, 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 amended order authorizing and ratifying the transfer of  
10 General Partnership properties ("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: January 5, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

24  
25 By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

26  
27  
28

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

10 Attorneys for Receiver  
11 THOMAS C. HEBRANK

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

14  
15 SECURITIES AND EXCHANGE  
COMMISSION,

16 Plaintiff,

17 v.

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

21 Defendants.  
22

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR AMENDED ORDER  
AUTHORIZING AND RATIFYING  
TRANSFERS OF GENERAL  
PARTNERSHIP PROPERTIES**

Date: February 9, 2018  
Time: 1:30 p.m.  
Ctrm.: 2D  
Judge: Hon. Gonzalo P. Curiel

1 I. INTRODUCTION

2 On December 11, 2017, the Court granted the Receiver's request for  
3 authority to transfer properties held by the General Partnerships included in the  
4 receivership ("GPs") to Western and to close the GPs ("Transfer Authorization  
5 Order"). Dkt. No. 1565. The Receiver and his counsel then proceeded to prepare  
6 and execute the documents necessary to effectuate the authorized property  
7 transfers prior to the end of the year. The Receiver was then advised by his tax  
8 accountants at Duffy Kruspodin & Company that with the transfer of the GP  
9 properties to Western and the closure of the GPs (with final tax returns being filed  
10 for the GPs), the properties would fall under the Qualified Settlement Fund  
11 ("QSF") tax return for the receivership<sup>1</sup> and, in order to ensure the properties are  
12 recognized as being within the QSF for federal and state tax reporting purposes,  
13 the best course of action was to set up a QSF trust to hold the properties and their  
14 sale proceeds consistent with the Court orders. Declaration of Thomas C.  
15 Hebrank filed herewith ("Hebrank Declaration"), ¶ 2.

16 Due to the importance of completing the transfers in 2017 (to avoid GP tax  
17 returns having to be prepared for 2018) and considering the shortness of time in  
18 which to do so, the Receiver promptly set up a QSF trust entitled the  
19 WFP Receivership QSF Trust ("QSF Trust"). The QSF Trust has its own  
20 employer identification number (or EIN) with the Internal Revenue Service and  
21 the required QSF tax return for the receivership estate will be filed under that  
22 number. Hebrank Declaration, ¶ 3.

23 Although there is no meaningful distinction between Western and the  
24 QSF Trust for the receivership estate and the distribution of receivership assets to  
25 the holders of allowed claims, and the QSF Trust is simply being formed for tax  
26

---

27 <sup>1</sup> A Qualified Settlement Fund or QSF is established under Internal Revenue  
28 Code section 468B and applicable regulations by operation of law when,  
among other things, a receivership is established over certain entities or assets  
to be distributed to those determined to have valid claims.

1 reporting purposes, the Receiver nevertheless seeks specific authorization and  
2 ratification of the transfers of GP properties to the QSF Trust for practical reasons  
3 relating to the future sale of properties transferred to the QSF Trust. Specifically,  
4 title companies are very particular about insuring title for sales of receivership  
5 properties and are already requiring that there be an order specifically authorizing  
6 (or ratifying) the transfer of GP properties to the QSF Trust (as opposed to  
7 Western). Without such an order, many, if not all, title companies would refuse  
8 to issue a title insurance policy to the buyer in connection with future sales. This  
9 would effectively prevent the Receiver from being able to sell the properties.  
10 Hebrank Declaration, ¶ 4.

11 One example of this has already arisen in connection with the pending sale  
12 of the Dayton IV property, which the Court approved on December 11, 2017, Dkt.  
13 No. 1566 ("Dayton IV Sale Order"). With title to the Dayton IV property having  
14 recently transferred to the QSF Trust, the title company is now requiring an order  
15 specifically authorizing the transfer of the property from the applicable GPs to the  
16 QSF Trust *and* specifically approving and authorizing the sale of the property  
17 from the QSF Trust to the buyer, KSA Advancements, LLC ("Buyer").<sup>2</sup>  
18 Therefore, in addition to seeking an order specifically authorizing/ratifying the  
19 transfers of the GP properties to the QSF Trust, the Receiver also requests an  
20 order confirming and authorizing the sale of the Dayton IV property – on the  
21 exact same terms previously approved – from the QSF Trust to Buyer. This will  
22 allow both Buyer to obtain a title insurance policy and the Court-approved sale to  
23 close. Hebrank Declaration, ¶ 5.

## 24 II. ARGUMENT

25 "The power of a district court to impose a receivership or grant other forms  
26 of ancillary relief does not in the first instance depend on a statutory grant of

---

27  
28 <sup>2</sup> The existing order approves the sale from the applicable GPs to Buyer as  
opposed to the QSF Trust to Buyer.

1 power from the securities laws. Rather, the authority derives from the inherent  
2 power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d  
3 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to  
4 promote orderly and efficient administration of the estate by the district court for  
5 the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As  
6 the appointment of a receiver is authorized by the broad equitable powers of the  
7 court, any distribution of assets must also be done equitably and fairly. *See SEC*  
8 *v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

20 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107,  
21 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's  
22 supervisory role, and 'we generally uphold reasonable procedures instituted by the  
23 district court that serve th[e] purpose' of orderly and efficient administration of  
24 the receivership for the benefit of creditors."). Accordingly, the Court has broad  
25 discretion in approving procedures for the sale of receivership estate assets.

26 Here, the Receiver seeks orders of an administrative nature that amend and  
27 supplement the Transfer Authorization Order and Dayton IV Sale Order. The  
28 requested orders will assist with pending and future sales of receivership

1 properties. The establishment of the QSF Trust was determined to be necessary  
2 for federal and state tax reporting purposes, but does not alter or have any  
3 meaningful impact on the receivership estate, which continues to hold all assets of  
4 the Receivership Entities, pursuant to the Court's orders, for the benefit of  
5 investors with allowed claims.

6 As discussed above, the requested orders will eliminate issues with title  
7 insurance companies and allow the Receiver to efficiently close sales that have  
8 been authorized and approved by the Court pursuant to the Modified Orderly Sale  
9 Process. This will reduce administrative expenses associated with sales and  
10 conserve receivership estate assets for distribution to investors with allowed  
11 claims.

### 12 III. CONCLUSION

13 Based on the foregoing, the Receiver requests an order amending and  
14 supplementing the Transfer Authorization Order and Dayton IV Sale Order as  
15 follows:

16 1. Authorizing and ratifying the transfers of title to all properties held  
17 by the GPs from the GPs to WFP Receivership QSF Trust, whether such transfers  
18 occur before or after entry of the order; and

19 2. Approving and authorizing the sale of the property known as  
20 Dayton IV, as described in the Declaration of Thomas C. Hebrank filed on  
21 November 9, 2017 and exhibits thereto (Dkt. No. 1550-2), from WFP  
22 Receivership QSF Trust to KSA Advancements, LLC, on the same terms and  
23 conditions provided in the previously filed sale motion (Dkt. No. 1550) and sale  
24 approval order (Dkt. No. 1566).

25 Dated: January 5, 2018

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

10 Attorneys for Receiver  
11 THOMAS C. HEBRANK

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

14  
15 SECURITIES AND EXCHANGE  
COMMISSION,

16 Plaintiff,

17 v.

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

21 Defendants.  
22

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

**DECLARATION OF THOMAS C.  
HEBRANK IN SUPPORT OF  
MOTION FOR AMENDED ORDER  
AUTHORIZING AND RATIFYING  
TRANSFERS OF GENERAL  
PARTNERSHIP PROPERTIES**

Date: February 9, 2018  
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 in 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 Amended Order Authorizing  
7 and Ratifying Transfers of General Partnership Properties ("Motion"). I have  
8 personal knowledge of the facts stated herein, and if called upon to do so, I could  
9 and would personally and competently testify to them.

10 2. After the Court granted my request to transfer properties held by the  
11 General Partnerships included in the receivership ("GPs") to Western and to close  
12 the GPs ("Transfer Authorization Order") on December 11, 2017 (Dkt. No. 1565),  
13 my counsel and I proceeded to prepare and execute the documents necessary to  
14 effectuate the authorized property transfers prior to the end of the year. I was then  
15 advised by my tax accountants at Duffy Kruspodin & Company that with the  
16 transfer of the GP properties to Western and the closure of the GPs (with final tax  
17 returns being filed for the GPs), the properties would fall under the Qualified  
18 Settlement Fund ("QSF") tax return for the receivership and, in order to ensure the  
19 properties are recognized as being within the QSF for federal and state tax reporting  
20 purposes, the best course of action was to set up a QSF trust to hold the properties  
21 and their sale proceeds consistent with the Court orders.

22 3. Due to the importance of completing the transfers in 2017 (to avoid GP  
23 tax returns having to be prepared for 2018) and considering the shortness of time in  
24 which to do so, I promptly set up a QSF trust entitled the WFP Receivership QSF  
25 Trust ("QSF Trust"). The QSF Trust has its own employer identification number (or  
26 EIN) with the Internal Revenue Service and the required QSF tax return for the  
27 receivership estate will be filed under that number.

28

1           4.     Although there is no meaningful distinction between Western and the  
2 QSF Trust for the receivership estate and the distribution of receivership assets to  
3 the holders of allowed claims, and the QSF Trust is simply being formed for tax  
4 reporting purposes, I nevertheless seek specific authorization and ratification of the  
5 transfers of GP properties to the QSF Trust for practical reasons relating to the  
6 future sale of properties transferred to the QSF Trust. Specifically, title companies  
7 are very particular about insuring title for sales of receivership properties and are  
8 already requiring that there be an order specifically authorizing (or ratifying) the  
9 transfer of GP properties to the QSF Trust (as opposed to Western). Without such  
10 an order, many, if not all, title companies would refuse to issue a title insurance  
11 policy to the buyer in connection with future sales. This would effectively prevent  
12 me from being able to sell the properties.

13           5.     One example of this has already arisen in connection with the pending  
14 sale of the Dayton IV property, which the Court approved on December 11, 2017  
15 (Dkt. No. 1566) ("Dayton IV Sale Order"). With title to the Dayton IV property  
16 having recently transferred to the QSF Trust, the title company is now requiring an  
17 order specifically authorizing the transfer of the property from the applicable GPs to  
18 the QSF Trust *and* specifically approving and authorizing the sale of the property  
19 from the QSF Trust to the buyer, KSA Advancements, LLC ("Buyer").<sup>1</sup> Therefore,  
20 in addition to seeking an order specifically authorizing/ratifying the transfers of the  
21 GP properties to the QSF Trust, I also request an order confirming and authorizing  
22 the sale of the Dayton IV property – on the exact same terms previously approved –  
23 from the QSF Trust to Buyer. This will allow both Buyer to obtain a title insurance  
24 policy and the Court-approved sale to close.

25

26

27

28

---

<sup>1</sup> The existing order approves the sale from the applicable GPs to Buyer as opposed to the QSF Trust to Buyer.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I declare under penalty of perjury under the laws of the State of California  
that the foregoing is true and correct.

Executed this 5 day of January 2018, at San Diego, California.



THOMAS C. HEBRANK