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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

**RECEIVER'S NOTICE OF  
MOTION AND MOTION FOR  
AUTHORITY TO MAKE INTERIM  
DISTRIBUTIONS TO HOLDERS  
OF ALLOWED CLAIMS**

Date: May 4, 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 May 4, 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 order authorizing him to make interim distributions to  
10 holders of allowed claims ("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: March 9, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

24  
25 By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

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13 **SOUTHERN DISTRICT OF CALIFORNIA**

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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 AUTHORITY TO  
MAKE INTERIM DISTRIBUTIONS  
TO HOLDERS OF ALLOWED  
CLAIMS**

Date: May 4, 2018  
Time: 1:30 p.m.  
Ctrm.: 2D  
Judge: Hon. Gonzalo P. Curiel

1 **I. INTRODUCTION**

2 The Receiver has been able to sell a significant number of properties pursuant  
3 to the Modified Orderly Sale Process and has accumulated approximately  
4 \$16.4 million in cash in the receivership estate. The Court has previously approved a  
5 Distribution Plan and has recently approved the allowed amounts of all investor  
6 claims. Accordingly, the Receiver seeks authority to make interim distributions  
7 totaling \$13 million to the holders of allowed claims pursuant to the approved  
8 Distribution Plan, *i.e.*, all investors with allowed claims will receive a *pro rata*  
9 distribution based on their allowed claim amounts. The remaining cash will be held  
10 in reserve while the Receiver continues efforts to maximize the value of the  
11 remaining properties through the Modified Orderly Sale Process.

12 Investors have been waiting over five years to receive a recovery on their  
13 losses, including over three years of litigation/appeals between the Securities and  
14 Exchange Commission and Louis Schooler and approximately one year of  
15 litigation/appeals brought by the investors represented by Gary Aguirre ("Aguirre  
16 Investors"). With those matters now resolved<sup>1</sup> and a significant amount of cash now  
17 available to be distributed, the Receiver believes interim distributions should be  
18 made at this time and therefore requests authorization to do so.

19 **II. BACKGROUND FACTS**

20 On February 23, 2016, the Court entered Final Judgment against Defendant  
21 Louis Schooler. Dkt. No. 1190. On May 25, 2016, the Court approved the  
22 Receiver's proposed Distribution Plan, including the One Pot Approach, *i.e.*, investor  
23 claims would be based on their net losses from their investments in all General  
24 Partnerships, all assets of the receivership estate would be pooled together, and all  
25

26 <sup>1</sup> The appeal of the Final Judgment brought by Louis Schooler, which is now being  
27 pursued by Andrew Schooler on behalf of his estate, remains pending with the  
28 Ninth Circuit Court of Appeals, but only pertains to Louis Schooler's personal  
liability under the Final Judgment (Dkt. No. 1190) and does not affect the  
distribution of receivership estate assets to investors with allowed claims.

1 investors with allowed claims would receive *pro rata* distributions from the pooled  
 2 assets based on their allowed claim amounts. Dkt. No. 1304. On August 30, 2016,  
 3 the Court approved the Modified Orderly Sale Process for selling properties included  
 4 in the receivership estate. Dkt. No. 1359. On March 24, 2017, the Aguirre Investors  
 5 voluntarily dismissed their appeals of several of the Court's orders, including the  
 6 Court's May 25, 2016 Order. On February 20, 2018, the Court approved the  
 7 Receiver's proposed allowed amounts of all investor claims. Dkt. No. 1591.

8 As a result of these orders, the Receiver's efforts to maximize the value of  
 9 receivership properties, and the Court's orders approving each proposed sale, the  
 10 Receiver has been able to sell 13 properties (including one property owned by  
 11 Western) for a total of \$17,492,013 in net sale proceeds. As of March 7, 2018, the  
 12 Receiver was holding \$16,408,357 in cash in receivership accounts. Declaration of  
 13 Thomas Hebrank filed herewith ("Hebrank Declaration"), ¶ 2.

### 14 III. PROPOSED INTERIM DISTRIBUTIONS

15 The Receiver proposes to distribute a total of \$13 million at this time, which is  
 16 the vast majority of cash in the receivership estate. The remaining approximately  
 17 \$3.4 million will be held in reserve to cover operating expenses (including property  
 18 taxes and property insurance premiums),<sup>2</sup> administrative expenses (such as fees and  
 19 costs of the Receiver and his professionals, including amounts held back from prior  
 20 interim fee applications),<sup>3</sup> as well as a reasonable contingency reserve. The  
 21 Receiver's projections that form the basis of the proposed \$13 million distribution are  
 22 reflected on Exhibit A to the Hebrank Declaration. These are *projections only* – the  
 23

24 \_\_\_\_\_  
 25 <sup>2</sup> Although 13 properties have been sold, the receivership estate still holds  
 26 25 properties (including those previously held by Western), meaning there are  
 still substantial property taxes and insurance premiums that must be paid until  
 these properties are sold.

27 <sup>3</sup> At this time, the interim fee applications of the Receiver and his counsel, Allen  
 28 Matkins, have been approved and paid on an interim basis through September 30,  
 2017. The holdbacks from these interim fee applications currently total \$398,537  
 for the Receiver and \$324,560 for Allen Matkins.

1 actual operating expenses and administrative expenses that are incurred may vary  
2 considerably depending on a multitude of factors. Hebrank Declaration, ¶ 3.

3 The Receiver continues to generate sale proceeds from the sales of properties  
4 and is hopeful that the full reserve amount will not be necessary to cover operating  
5 expenses and administrative expenses, and therefore expects that a significant  
6 amount will be available for distribution at a later date. However, it is important to  
7 maintain a reasonable contingency reserve in the event unanticipated expenses arise.  
8 Hebrank Declaration, ¶ 4.

9 The Receiver will use an outside vendor to print and mail the approximately  
10 3,318 checks to investors with allowed claims. Checks will be mailed approximately  
11 45 days after entry of the order. Pursuant to the approved Distribution Plan (Dkt.  
12 No. 1181-1, Exhibit E), the Receiver will conduct a reasonable investigation into  
13 distribution checks that remain uncashed 90 days after they were issued for the  
14 purpose of identifying correct addresses for the applicable claimants, including  
15 contacting the applicable investors or any known family members by telephone or  
16 email (if available) and searching available online databases for possible current  
17 addresses. If a correct address can be identified, the check will be reissued as soon  
18 as practicable. If a correct address cannot be identified, the claimant's claim will be  
19 automatically and permanently extinguished and the uncashed distribution amount  
20 will go back into the reserve for future distribution. Hebrank Declaration, ¶ 5.

21 The Receiver has reminded investors throughout the case of the importance of  
22 informing the Receiver of any change to their contact information. Accordingly,  
23 other investors with allowed claims should not have to bear the expense of extensive  
24 searches (beyond that described above) and attempts to locate investors who do not  
25 receive or cash their distribution checks. A reasonable investigation, as outlined  
26 above and provided for in the approved Distribution Plan, is sufficient under the  
27 circumstances. Hebrank Declaration, ¶ 6.

28

#### IV. ARGUMENT

1  
2 "The power of a district court to impose a receivership or grant other forms of  
3 ancillary relief does not in the first instance depend on a statutory grant of power  
4 from the securities laws. Rather, the authority derives from the inherent power of a  
5 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
6 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
7 and efficient administration of the estate by the district court for the benefit of  
8 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
9 of a receiver is authorized by the broad equitable powers of the court, any  
10 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
11 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

27 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
28 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
and 'we generally uphold reasonable procedures instituted by the district court that  
serve th[e] purpose' of orderly and efficient administration of the receivership for the  
benefit of creditors."). Accordingly, the Court has broad discretion in approving  
procedures for the sale of receivership estate assets.

1 Here, all of the necessary steps prior to making an interim distribution have  
2 been completed – the Court has approved a Distribution Plan, the Court has approved  
3 the allowed amounts of all claims, and there is a substantial amount of cash available  
4 in the receivership estate to be distributed. Accordingly, the Receiver should be  
5 authorized to distribute a total of \$13 million to investors with allowed claims  
6 pursuant to the Distribution Plan, with the remaining cash in the receivership held in  
7 reserve pending further orders of the Court. The Receiver will continue his work to  
8 sell receivership properties through the Modified Orderly Sale Process and will seek  
9 authorization to make further distributions when a substantial sum of cash is  
10 available for distribution.

11 **V. CONCLUSION**

12 Based on the foregoing, the Receiver requests an order authorizing him to  
13 make interim distributions totaling \$13 million to holders of allowed claims.

14  
15 Dated: March 9, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

16  
17 By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

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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 AUTHORITY TO  
MAKE INTERIM DISTRIBUTIONS  
TO HOLDERS OF ALLOWED  
CLAIMS**

Date: May 4, 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 on Schedule 1 to the Preliminary  
5 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"). I  
6 make this declaration in support of my Motion for Authority to Make Interim  
7 Distributions to Holders of Allowed Claims ("Motion"). I have personal knowledge  
8 of the facts stated herein, and if called upon to do so, I could and would personally  
9 and competently testify to them.

10 2. Pursuant to the Modified Orderly Sale Process and the Court's orders  
11 approving each proposed sale, I have been able to sell 13 properties (including one  
12 property owned by Western) for a total of \$17,492,013 in net sale proceeds. As of  
13 March 7, 2018, I was holding \$16,408,357 in cash in receivership accounts.

14 3. I propose to distribute a total of \$13 million at this time, which is the  
15 vast majority of cash in the receivership estate. The remaining approximately  
16 \$3.4 million will be held in reserve to cover operating expenses (including property  
17 taxes and property insurance premiums),<sup>1</sup> administrative expenses (such as fees and  
18 costs of me and my professionals, including amounts held back from prior interim  
19 fee applications),<sup>2</sup> as well as a reasonable contingency reserve. My projections that  
20 form the basis of the proposed \$13 million distribution are reflected on Exhibit A  
21 attached hereto. These are *projections only* – the actual operating expenses and  
22  
23

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24 <sup>1</sup> Although 13 properties have been sold, the receivership estate still holds  
25 25 properties (including those previously held by Western), meaning there are  
26 still substantial property taxes and insurance premiums that must be paid until  
these properties are sold.

27 <sup>2</sup> At this time, the interim fee applications of the Receiver and his counsel, Allen  
28 Matkins, have been approved and paid on an interim basis through September 30,  
2017. The holdbacks from these interim fee applications currently total \$398,537  
for the Receiver and \$324,560 for Allen Matkins.

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2 multitude of factors.

3 4. I continue to generate sale proceeds from the sales of properties and am  
4 hopeful that the full reserve amount will not be necessary to cover operating  
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6 will be available for distribution at a later date. However, it is important to maintain  
7 a reasonable contingency reserve in the event unanticipated expenses arise.

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14 applicable investors or any known family members by telephone or email (if  
15 available) and searching available online databases for possible current addresses. If  
16 a correct address can be identified, the check will be reissued as soon as practicable.  
17 If a correct address cannot be identified, the claimant's claim will be automatically  
18 and permanently extinguished and the uncashed distribution amount will go back  
19 into the reserve for future distribution.

20 6. I have reminded investors throughout the case of the importance of  
21 informing me of any change to their contact information. Accordingly, other  
22 investors with allowed claims should not have to bear the expense of extensive  
23 searches (beyond that described above) and attempts to locate investors who do not  
24 receive or cash their distribution checks. A reasonable investigation, as outlined  
25 above and provided for in the approved Distribution Plan, is sufficient under the  
26 circumstances.

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1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct.

3 Executed this 9<sup>TH</sup> day of March, 2018, at San Diego, California.

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5 THOMAS C. HEBRANK

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**EXHIBIT INDEX**

Exhibit A	Receiver's Basis of the Proposed \$13 Million Distribution	6
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# EXHIBIT A

# EXHIBIT A

**WFP - Investor Distribution #1****March 2018**

Cash on Hand 3-7-18		\$ 16,408,357
<u>Est Operating Expenses</u>		
2018	\$ (250,000)	
2019	\$ (200,000)	
2020	\$ (175,000)	
		\$ (625,000)
<u>Professional Fees</u>		
Receiver		
2018	\$ (300,000)	
2019	\$ (250,000)	
2020	\$ (200,000)	
		\$ (750,000)
Allen Matkins		
2018	\$ (275,000)	
2019	\$ (225,000)	
2020	\$ (175,000)	
		\$ (675,000)
Duffy		
2018	\$ (230,000)	
2019	\$ (30,000)	
2020	\$ (30,000)	
		\$ (290,000)
<u>Prof Fee Holdbacks</u>		
Receiver	\$ (398,537)	
Allen Matkins	\$ (324,560)	
Duffy	\$ -	
		\$ (723,097)
2% Contingency		\$ (328,167)
Amt Available for Distribution		<u>\$ 13,017,093</u>