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8 Attorney for Investors Susan Graham et al.

9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12

13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 v.

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

22 Defendants.

CASE NO.: 3:12-CV-02164-GPC-JMA

**INVESTORS' NOTICE OF MOTION  
AND MOTION FOR ORDER  
VACATING PRIOR ORDERS  
APPROVING RECOMMENDATIONS  
OF RECEIVER TO SELL GP  
PROPERTIES**

Date: April 29, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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

**NOTICE IS HEREBY GIVEN** that on April 29, 2016, at 1:30 p.m. in Courtroom 2D of the United States District Court, Southern District of California, located at 221 W. Broadway, San Diego, CA 92101, Investors<sup>1</sup> will, and hereby do, move this Court for an order vacating the following orders:

<sup>1</sup> Susan Graham, Terry Adkinson, Lawrence Berkel, Lawrence Berkel, IRA, Darla Berkel, Mathew Berta, Allert Boersma, Charles Bojarski, Diane Bojarski, Jason Bruce, Trisha Bruce, Daniel Burns, Susan Burns, Henrik Jonson, Carol Jonson, Henrik Jonson, IRA, Curt & Janean Johnson Family Trust, Curt & Janean Johnson, jointly, Curt Johnson, Curt Johnson, Roth IRA, Curt Johnson, Roth IRA, Stephen Dankworth, David and Sandra Jones Trust, Debra Askeland, Dennis Gilman IRA, William R. Diehl, Marilyn L. Duncan, Regis T. Duncan, Regis T. Duncan, IRA, Elizabeth Lamb, Judy Froning, George Klinke, IRA, Mary Grant, Roderick C. Grant, Gary Hardenburg, Gary Hardenburg, Roth IRA, Henrik Jonson, IRA, Stephen Hogan, Val Indihar, John Jenkins, Mary J. Jenkins, IRA, Trustee, IRA, Trustee, Mary J. Jenkins, Trustee, John Lukens, John Lukens, IRA, Karen J. Coyne IRA, Craig Lamb, Lea Leccese, Paul Leccese, Lloyd Logan and Ida Logan, jointly, Lloyd Logan, IRA, William Loeber, Loretta J. Diehl, Daryl R. Mabley, Elizabeth Q. Mabley, D & E Macy Family Revocable Living Trust, Janice Marshall, Janice Marshall, IRA, Marc McBride, Marcia McRae, Mealey Family Trust, Mildred Mealey, beneficiary of Duane Mealey IRA, Jeffrey Merder, Jeffrey Merder, IRA, Rebecca Merder, Minner Trust, Jim Minner, Monique Minner, Reeta Mohleji, Roger Moucheron, Shirley Moucheron, William R. Nighswonger, Eric W. Norling, Eric W. Norling, IRA, Renee Norling, Chris Nowacki, IRA, Tamara and Chris Nowacki, jointly, Tamara Nowacki, IRA, John R. Oberman, Neil Ormonde, IRA, Nevada Ormonde, IRA, Thomas H. Panzer, Roth IRA, Thomas Herman Panzer Trust, Thomas H Panzer, Trustee, Ronald Parkinen, Deidre Parkinen, Alfred L. Pipkin, Alfred L. Pipkin, IRA, Prentiss Family Trust, Kenneth and Gail Prentiss Trustees, Robert Indihar, Nick Ruddick, Salli Sue Sammut, IRA, Salli Sammut Trust, Salli Sue Sammut Trustee, Paul R. Sarraffe, IRA, Ronald Scott, Ronald Scott, IRA, William L. Summers, IRA, Carol D. Summers, William L. Summers, Robert Tuohy, Gwen Tuohy, Jeffrey J. Walz, Steve P. White, IRA, Steve P. White, SEP IRA, W.C. Wilhoite, Karen Wilhoite, W.C. Wilhoite, Roth IRA, Gerald Zevin, IRA, Judith Glickman Zevin, Gerald Zevin, Judith Glickman Zevin, IRA, Robert Churchill IRA, Robert Churchill Family Trust, Mark Clifton, Linda Clifton, Dennis and Diane Gilman, John and Mary Jenkins Trustees, the Ormonde Family Trust, Ronald Askeland, Douglas Sahlin IRA, Edith Sahlin IRA, George and Joan Trezek, Karen Coyne, James J. Coyne Jr. Trust, David Fife IRA, Leo and Cindy Dufresne, Leo T. Dufresne Jr. IRA, Darla Berkel IRA, William Nighswonger

- 1 1. The June, 17, 2015, order (Dkt. No. 1085) approving the sale of the Jamul  
2 Valley property;
- 3 2. The May 12, 2015, order (Dkt. No. 1069) setting the “orderly sale” process;
- 4 3. The January 14, 2016, order (Dkt. No. 1168) to the extent it granted the  
5 Receiver’s recommendations to (1) sell any property and (2) enter into any  
6 broker agreements to sell any property.

7 This Motion is brought on the grounds that said orders do not comply with the  
8 mandatory language of 28 USC § 2001. It is based upon this Notice, the accompanying  
9 Memorandum of Points and Authorities, all pleadings and papers on file in this action,  
10 and upon such other matters as may be presented to the Court at the time of the hearing.

11 DATED: April 1, 2016

Respectfully submitted,

12  
13 By:           /s/ Gary J. Aguirre            
14 GARY J. AGUIRRE  
15 Aguirre Law, A.P.C.  
[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)  
16 Attorney for Investors

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18  
19 IRA, Juanita Bass, William V. and Carol J. Dascomb Trust, Robert Indihar IRA, Linda  
20 Baldwin IRA, Baldwin Family Survivors’ Trust, Juanita Bass IRA, Matthew and Jennifer  
21 Berta, Randall S. Ingermanson IRA, Kimberly Dankworth, IDAC Family Group LLC,  
22 Robert S. Weschler, Karie J. Wright, D.F. Macy IRA, Stephen and Polly Yue, David  
23 Karp IRA, Iris Bernstein IRA, John and Mary Jenkins Trust, Lisa A. Walz, Ralph  
24 Brenner, David Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional IRA, Kirsh  
25 Family Trust UTD, The Knowledge Team Profit Sharing Plan, Joy A. de Beyer, Roth  
26 IRA, Joy A. de Beyer, Traditional IRA, Joy de Beyer, Michael R. Wertz, Michael R.  
27 Wertz, IRA, Catherine E. Wertz, Catherine E. Wertz IRA, Jeffrey Larsen, Gene Fantano,  
28 Gwenmarie Hilleary, Arthur V. Rocco, Kristie L. Rocco, Arthur V. and Kristie L. Rocco  
Living Trust; Bruce R. Hart IRA for Bruce R. Hart and Dixie L. Hart, Lynda Igawa,  
Bruce A. Morey; Bruce A. Morey IRA, William c. Phillips; David Haack; David Haack  
IRA, Cynthia J. Clarke, Douglas G. Clarke, Eben B. Rosenberger, Roger Hort, Daniel  
Knapp, Judy Knapp, Edward Takacs and Monica Takacs

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8 Attorney for Investors Susan Graham *et al.*

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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
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13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 v.

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

22 Defendants.

CASE NO.: 3:12-CV-02164-GPC-JMA

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPORT OF  
INVESTORS' MOTION FOR  
ORDER VACATING PRIOR  
ORDERS APPROVING  
RECOMMENDATIONS OF  
RECEIVER TO SELL GP  
PROPERTIES**

Date: April 29, 2016

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1 **I. Introduction**

2 With this motion, Investors<sup>1</sup> seek an order vacating three prior orders of the Court  
3 approving or adopting sealed and unsealed recommendations or motions by the Receiver

4 \_\_\_\_\_  
5 <sup>1</sup> Susan Graham, Terry Adkinson, Lawrence Berkel, Lawrence Berkel, IRA, Darla  
6 Berkel, Mathew Berta, Allert Boersma, Charles Bojarski, Diane Bojarski, Jason Bruce,  
7 Trisha Bruce, Daniel Burns, Susan Burns, Henrik Jonson, Carol Jonson, Henrik Jonson,  
8 IRA, Curt & Janean Johnson Family Trust, Curt & Janean Johnson, jointly, Curt Johnson,  
9 Curt Johnson, Roth IRA, Curt Johnson, Roth IRA, Stephen Dankworth, David and  
10 Sandra Jones Trust, Debra Askeland, Dennis Gilman IRA, William R. Diehl, Marilyn L.  
11 Duncan, Regis T. Duncan, Regis T. Duncan, IRA, Elizabeth Lamb, Judy Froning,  
12 George Klinke, IRA, Mary Grant, Roderick C. Grant, Gary Hardenburg, Gary  
13 Hardenburg, Roth IRA, Henrik Jonson, IRA, Stephen Hogan, Val Indihar, John Jenkins,  
14 Mary J. Jenkins, IRA, Trustee, IRA, Trustee, Mary J. Jenkins, Trustee, John Lukens,  
15 John Lukens, IRA, Karen J. Coyne IRA, Craig Lamb, Lea Leccese, Paul Leccese, Lloyd  
16 Logan and Ida Logan, jointly, Lloyd Logan, IRA, William Loeber, Loretta J. Diehl,  
17 Daryl R. Mabley, Elizabeth Q. Mabley, D & E Macy Family Revocable Living Trust,  
18 Janice Marshall, Janice Marshall, IRA, Marc McBride, Marcia McRae, Mealey Family  
19 Trust, Mildred Mealey, beneficiary of Duane Mealey IRA, Jeffrey Merder, Jeffrey  
20 Merder, IRA, Rebecca Merder, Minner Trust, Jim Minner, Monique Minner, Reeta  
21 Mohleji, Roger Moucheron, Shirley Moucheron, William R. Nighswonger, Eric W.  
22 Norling, Eric W. Norling, IRA, Renee Norling, Chris Nowacki, IRA, Tamara and Chris  
23 Nowacki, jointly, Tamara Nowacki, IRA, John R. Oberman, Neil Ormonde, IRA,  
24 Nevada Ormonde, IRA, Thomas H. Panzer, Roth IRA, Thomas Herman Panzer Trust,  
25 Thomas H Panzer, Trustee, Ronald Parkinen, Deidre Parkinen, Alfred L. Pipkin, Alfred  
26 L. Pipkin, IRA, Prentiss Family Trust, Kenneth and Gail Prentiss Trustees, Robert  
27 Indihar, Nick Ruddick, Salli Sue Sammut, IRA, Salli Sammut Trust, Salli Sue Sammut  
28 Trustee, Paul R. Sarraffe, IRA, Ronald Scott, Ronald Scott, IRA, William L. Summers,  
IRA, Carol D. Summers, William L. Summers, Robert Tuohy, Gwen Tuohy, Jeffrey J.  
Walz, Steve P. White, IRA, Steve P. White, SEP IRA, W.C. Wilhoite, Karen Wilhoite,  
W.C. Wilhoite, Roth IRA, Gerald Zevin, IRA, Judith Glickman Zevin, Gerald Zevin,  
Judith Glickman Zevin, IRA, Robert Churchill IRA, Robert Churchill Family Trust,  
Mark Clifton, Linda Clifton, Dennis and Diane Gilman, John and Mary Jenkins Trustees,  
the Ormonde Family Trust, Ronald Askeland, Douglas Sahlin IRA, Edith Sahlin IRA,  
George and Joan Trezek, Karen Coyne, James J. Coyne Jr. Trust, David Fife IRA, Leo  
and Cindy Dufresne, Leo T. Dufresne Jr. IRA, Darla Berkel IRA, William Nighswonger  
IRA, Juanita Bass, William V. and Carol J. Dascomb Trust, Robert Indihar IRA, Linda  
Baldwin IRA, Baldwin Family Survivors' Trust, Juanita Bass IRA, Matthew and Jennifer  
Berta, Randall S. Ingermanson IRA, Kimberly Dankworth, IDAC Family Group LLC,  
Robert S. Weschler, Karie J. Wright, D.F. Macy IRA, Stephen and Polly Yue, David

1 to sell GP properties or to enter into agreements with brokers to sell GP properties.  
2 Investors believe each of these orders must be vacated, because they fail to comply with  
3 the clear and explicit mandates of 28 USC § 2001. All of these orders were granted upon  
4 the motion of the Receiver and without objection from the U.S. Securities and Exchange  
5 Commission (“SEC”).

6 In its current form, 28 USC § 2001(b) applies to both court-ordered public sales  
7 (2001(a)) and private sales (2001(b)) of realty. Regarding private sales, 28 USC §  
8 2001(b) reads:

9 After a hearing, of which notice to all interested parties shall be given by  
10 publication or otherwise as the court directs, the court may order the sale of  
11 such realty or interest or any part thereof at private sale for cash or other  
12 consideration and upon such terms and conditions as the court approves, if it  
13 finds that the best interests of the estate will be conserved thereby. Before  
14 confirmation of any private sale, the court shall appoint three disinterested  
15 persons to appraise such property or different groups of three appraisers each  
16 to appraise properties of different classes or situated in different localities.  
17 No private sale shall be confirmed at a price less than two-thirds of the  
18 appraised value. Before confirmation of any private sale, the terms thereof  
19 shall be published in such newspaper or newspapers of general circulation as  
the court directs at least ten days before confirmation. The private sale shall  
not be confirmed if a bona fide offer is made, under conditions prescribed by  
the court, which guarantees at least a 10 per centum increase over the price  
offered in the private sale.

20 Investors move to vacate the following orders on the grounds they do not comply  
21 with the mandatory language of 28 USC § 2001:

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22 Karp IRA, Iris Bernstein IRA, John and Mary Jenkins Trust, Lisa A. Walz, Ralph  
23 Brenner, David Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional IRA, Kirsh  
24 Family Trust UTD, The Knowledge Team Profit Sharing Plan, Joy A. de Beyer, Roth  
25 IRA, Joy A. de Beyer, Traditional IRA, Joy de Beyer, Michael R. Wertz, Michael R.  
26 Wertz, IRA, Catherine E. Wertz, Catherine E. Wertz IRA, Jeffrey Larsen, Gene Fantano,  
27 Gwenmarie Hilleary, Arthur V. Rocco, Kristie L. Rocco, Arthur V. and Kristie L. Rocco  
28 Living Trust; Bruce R. Hart IRA for Bruce R. Hart and Dixie L. Hart, Lynda Igawa,  
Bruce A. Morey; Bruce A. Morey IRA, William c. Phillips; David Haack; David Haack  
IRA, Cynthia J. Clarke, Douglas G. Clarke, Eben B. Rosenberger, Roger Hort, Daniel  
Knapp, Judy Knapp, Edward Takacs and Monica Takacs.

- 1 1. The June, 17, 2015, order (Dkt. No. 1085) approving the sale of the Jamul  
2 Valley property;
- 3 2. The May 12, 2015, order (Dkt. No. 1069) setting the “orderly sale” process;
- 4 3. The January 14, 2016, order (Dkt. No. 1168) to the extent it granted the  
5 Receiver’s recommendations to (1) sell any property and (2) enter into any  
6 broker agreements to sell any property.

7 **II. The Redacted Order of June 17, 2015 (Dkt. No. 1085) Approving the Sale**  
8 **of the Jamul Valley Property Must Be Vacated**

9 This order clearly approved a private sale and thus must comply with 28 USC §  
10 2001(b). Before approving the sale of the Jamul Valley property, the statute requires the  
11 Court to order:

- 12 1. the appointment of three disinterested persons to appraise the property;
- 13 2. the publishing of notice in a newspaper ten days before the sale;
- 14 3. a sales price at least two-thirds of the appraised value;
- 15 4. the opportunity for other bidders to make overbids 10% higher than the  
16 proposed price; and finally,
- 17 5. a hearing before the court.

18 None of these steps occurred before the Court issued its June 17, 2015, order (Dkt.  
19 No. 1085) approving the sale of the Jamul Valley property. Orders issued in violation of  
20 28 USC § 2001 are void. *SEC v. Kirkland*, 2007 U.S. Dist. LEXIS 45353 (M.D. Fla.  
21 2007)(Referring to 28 U.S.C. § 2001, “A sale made without compliance to these  
22 requirements is ‘void.’”). See also: *Acadia Land Co. v. Horuff*, 110 F.2d 354, 355 (5th  
23 Cir. La. 1940)(“This sale was void because the court was lacking in jurisdiction to  
24 confirm it”). Accordingly, we respectfully submit the order must be vacated.

25 As the SEC well knows, its receivers must also comply with 28 USC § 2001 when  
26 they propose the sale of realty. *SEC v. American Capital Invs.*, 98 F.3d 1133, 1137 (9th  
27 Cir. Cal. 1996)(“The court then turned to the two-step process mandated by 28 U.S.C. §  
28 2001 for approving the sale of receivership property—the appointment of appraisers to

1 appraise the properties, followed by a sale confirmation hearing.”). *United States v.*  
2 *Brewer*, 2009 U.S. Dist. LEXIS 52186 (M.D. Fla. 2009); *SEC v. Capital Cove Bancorp*  
3 *LLC*, 2015 U.S. Dist. LEXIS 174856 (C.D. Cal. 2015). (“Pursuant to the provisions of 28  
4 U.S.C. § 2001, this Court may authorize the Receiver to sell acquired assets by public  
5 sale.”). The last case cited, *Capital Cove*, was prosecuted by the SEC’s Los Angeles  
6 Regional Office, the same office that is prosecuting this case.

7 In *SEC v. T-Bar Resources* 2008 WL 4790987 (N.D. Tex. Oct. 28, 2008), the court  
8 compared and contrasted the language of 28 USC § 2001(b), applicable to realty, with 28  
9 USC § 2004, applicable to personalty. The court first acknowledged the language in  
10 2001(b) was mandatory:

11 “[B]efore” courts may confirm such a sale, they “shall” order three  
12 appraisals. Id. Section 2001(b) then instructs that a proposed price lower  
13 than two thirds of the appraisal value may not be confirmed, id., thereby  
14 deeming such a low number as counter to the best interests of the estate.  
15 Congress thus, through the plain text of § 2001(b), exercised its judgment of  
16 what satisfies the best interests standard in consideration of the appraisal  
values. Courts, therefore, shall similarly not pass judgment on the best  
interests standard absent the benefit of the mandated appraisals.

17 The court then compared the strict language of 2001(b) with the more flexible language  
18 of 2004:<sup>2</sup>

19 Reading § 2001(b) in context with its surrounding counterparts provides  
20 further proof of the mandatory nature of the three appraisals. For example, in  
21 allowing courts to order the private sale of personal property, 28 U.S.C. §  
22 2004 informs that courts are to follow the same procedures outlined in §  
23 2001(b), “unless the court orders otherwise.” n4 Id. Congress thus  
24 considered deviating from the rigors of § 2001(b)’s procedures in relaxing  
the process for the sale of personalty. The absence of any such authorization

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25 <sup>2</sup> The court was applying a well-recognized rule of statutory construction which was  
26 articulated as follows in *Colorado Public Interest Research Group, Inc. v. Train*, 507  
27 F.2d 743 (10th Cir. Colo. 1974) (“[W]here a statute contains express exceptions, the  
28 courts should be exceedingly slow in implying unexpressed exceptions, lest the courts  
thereby thwart the legislative intent”).



1 in the sale of realty suggests that Congress intended the more stringent  
2 procedures to be the rule when ordering the sale of real property.

3 The path taken by the Receiver in obtaining the June 17, 2015, order (Dkt. No.  
4 1085) failed to comply with any of the mandates of 28 USC § 2001(b). He did not move  
5 the Court for an order appointing three appraisers, publishing notice, requiring the sales  
6 price be at least two-thirds of the appraised value, allowing bidders to make overbids, and  
7 setting a hearing before the Court. Consequently, the order is void. *Kirkland*, 2007  
8 LEXIS 45353; *Acadia*, 110 F.2d 354, 355; *T-Bar Resources* 2008 WL 4790987. Investors  
9 find no clue in any of the Receiver's moving papers, which were approved by the SEC,<sup>3</sup>  
10 that either the Receiver or the SEC informed the Court that court-ordered sales of realty  
11 are subject to the mandates of 28 USC § 2001.

12 **III. The Court Order of May 12, 2015, (Dkt. No. 1069) Must Be Vacated**  
13 **Because It Fails to Comply with 28 USC 2001.**

14 The Receiver contends the Court's May 12, 2015, order (Dkt. No. 1069) approved  
15 the sales of any of the 23 properties if a GP failed to contribute the necessary capital to  
16 pay the operating expenses (Dkt. No. 1203, p. 2, ll. 8-18). He also contends that the same  
17 order would allow him to sell the interest of a GP that was a co-tenant in the same  
18 property, even if the co-tenant GP was not in default.

19 The "orderly sale process" was described in the Receiver's Report and  
20 Recommendation Regarding Course of Action for General Partnerships of April 17, 2015  
21 (Dkt. No. 1056). It was approved by the Court's order of May 12, 2015, order (Dkt. No.  
22 1069). Investors submit that all of the terms of the "orderly sale process" contemplate a

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24 The Receiver is ordered to refrain from seeking input on his briefs from a single  
25 party. If he wishes to seek input on his briefs, he must seek input from both the  
26 SEC and Defendants. The Receiver is of course still free to not seek input from  
27 any party if he believes that to be the appropriate course of action  
28 Order Denying Defendants' Motion for Modification of Preliminary Injunction Order to  
Remove Thomas C. Hebrank as Court-Appointed Receiver, p. 12, ll. 16-20 (Dkt.  
No.1004).

1 private sale, including the following terms: the retention of a real estate broker, the  
2 submission of a specific offer to the Court, the negotiations with a specific purchaser, and  
3 the agreement on price with a specific purchaser. And, most conclusively, there is no  
4 reference to a public auction. (Dkt. No. 1056 Section III, p. 6, l. 23, p. 8, l. 2).

5 Again, the path taken by the Receiver in obtaining the May 12, 2015, order (Dkt.  
6 No. 1069) failed to comply with any of the five steps required by the strict language of 28  
7 USC § 2001(b). He did not move the Court for an order appointing three appraisers,  
8 publishing notice, requiring the sales price be at least two-thirds of the appraised value,  
9 allowing bidders to make overbids, and setting a hearing before the Court. Consequently,  
10 the order is void. *Kirkland*, 2007 LEXIS 45353; *Acadia*, 110 F.2d 354, 355; *T-Bar*  
11 *Resources* 2008 WL 4790987. We find no clue in any of the Receiver's moving papers  
12 filed in connection with this motion that the Receiver informed the Court that court-  
13 ordered sales of realty are subject to the mandates of 28 USC § 2001.

14 Further, the "orderly sale process" does not meet the threshold requirement of  
15 2001(a), because it rules out a public sale. *Bovay v. Townsend*, 78 F.2d 343, 347 (8th Cir.  
16 Ark. 1935)("The purpose of the statute which requires the sale of real estate at public  
17 auction is to give all persons interested an opportunity to bid, to the end that the property  
18 may be sold to the best advantage.")

19 **IV. The Court's Order of January 14, 2016, (Dkt. No. 1168) Confirming**  
20 **Agreements with Brokers to Sell GP Properties Must Be Vacated Because**  
21 **It Fails to Comply 28 USC § 2001.**

22 The approval of the broker agreements by the Court's January 14, 2016, order  
23 (Dkt. No. 1168) has the same flaw as the May 12, 2015, order (Dkt. No. 1069) discussed  
24 in Section III above. The approval of the broker agreements is the first step in the  
25 Receiver's "orderly sale process" which we discussed in the last section (Dkt. No. 1056,  
26 p. 7, ll. 1-3). In his January 8, 2016, memorandum seeking the approval of these  
27 agreements, the Receiver argued: "If investors did not contribute the necessary capital,  
28

1 the properties would be moved to an orderly sale process.” (Dkt. No. 1166, p. 1, ll, 14-  
2 16).

3 Again, the path taken by the Receiver in obtaining the January 14, 2016, order  
4 (Dkt. No. 1168) failed to comply with any of the five steps required by the strict language  
5 of 28 USC § 2001(b). He did not move the Court for an order appointing three  
6 appraisers, publishing notice, requiring the sales price be at least two-thirds of the  
7 appraised value, allowing bidders to make overbids, and setting a hearing before the  
8 court. Consequently, the order is void. *Kirkland*, 2007 LEXIS 45353; *Acadia*, 110 F.2d  
9 354, 355; *T-Bar Resources* 2008 WL 4790987. We find no clue in any of the Receiver’s  
10 moving papers filed in connection with this motion that the Receiver informed the Court  
11 that court-ordered sales of realty are subject to the mandates of 28 USC § 2001.

12 **V. The Court’s Order of January 14, 2016, (Dkt. No. 1168) Must Be Vacated**  
13 **to the Extent It Approved the Sales of Three Properties.**

14 The operative effect of the Court’s January 14, 2016, order (Dkt. No. 1168)  
15 was to approve the sale of three properties. Investors cannot identify those  
16 properties, because they are only identified in the Receiver’s sealed  
17 recommendation (Dkt. No. 1159). For the same reason, Investors’ argument is  
18 limited on this issue, because the terms of the recommendation remain sealed.  
19 Accordingly, Investors can only state our conclusion and refer the Court to our  
20 analysis above. On that basis, Investors contend the proposed sales fail to comply  
21 with 28 USCS § 2001 and thus must be vacated. In this regard, we again cite law  
22 related to public sales and the case law related to private sales: *Bovay*, 78 F.2d 343,  
23 347; *Kirkland*, 2007 LEXIS 45353; *Acadia*, 110 F.2d 354, 355; *T-Bar Resources*  
24 2008 WL 4790987.

25 DATED: April 1, 2016

Respectfully submitted,

27 By:           /s/ Gary J. Aguirre            
28 GARY J. AGUIRRE

Aguirre Law, A.P.C.  
[gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)

Attorney for Movants

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