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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

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

**INVESTORS' OPPOSITION TO RECEIVER'S MOTION FOR**

**(A) AUTHORITY TO CONDUCT ORDERLY SALE OF GENERAL PARTNERSHIP PROPERTIES;**

**(B) APPROVAL OF PLAN OF DISTRIBUTING RECEIVERSHIP ASSETS; AND**

**(C) APPROVAL OF PROCEDURES FOR THE ADMINISTRATION OF INVESTOR CLAIMS**

Date: May 6, 2016
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

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## I. Introduction

The 191 investors (Investors)[1] filing this opposition are all partners in the 87 partnerships (GPs) which are subject to the receivership. They seek leave to file this opposition pursuant to their pending motion to file a complaint in intervention in this case (Dkt. No. 1229) and the Court's order of April 5, 2016, (Dkt. No. 1224).

They contend the Receiver's Motion for (A) Authority to Conduct Orderly Sale of General Partnership Properties; (B) Approval of Plan of Distributing Receivership Assets; and (C) Approval of Procedures for the Administration of Investor Claims ("Liquidation Motion") is fatally flawed and must be denied. They offer their own proposal for the Court to consider in the last section of this brief.

The case is now over, as it relates to these investors. The judgment against Western Financial Planning Corporation ("Western") is final. The Receiver predicts little if any recovery from Louis Schooler.[2] We agree. The Receiver concedes his receivership must be terminated, because cash will have fallen by $4.8 million dollars by the end of this year.[3] Again, we agree. Only one major issue remains for the Court to decide: what to do with the 87 GPs and Western assets in the receivership.

Investors believe each GP should decide its own destiny. But first the Court and investors must be informed of the true facts. The speculations and unsworn conclusions of the Receiver's attorney expressed in the Liquidation Motion are not facts. As a first step towards getting those facts, two investor groups have funded a study that provides the Court and investors with crucial information relating to the current values of the properties, their potentials for appreciation, and what options should be pursued. Investors understand the other investor group will address the joint study in their opposition to the liquidation motion. This opposition will therefore focus on the

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[1] The names of the investors filing this opposition are listed in Attachment 1 filed herewith.

[2] "Therefore, the primary sources of investor recoveries will likely be the assets of the Receivership entities (the GPs and Western)." Liquidation Motion, p. 8, ll. 11-13.

[3] *Id*, 1, ll. 19-21

deficiencies in the Liquidation Motion which, we respectfully submit, require the Court to deny that motion and consider other alternatives.

Investors contend the Receiver's Liquidation Motion should be denied for each of the following reasons:

(1) It is supported by no evidence,

(2) It is packed with factual conclusions and speculation that obfuscate rather than enlighten,

(3) It seeks to liquidate 87 GPs and none of the partners have been joined as required by California and federal law,

(4) The Receiver has failed to provide the Court and investors with an accounting of receivership assets and liabilities, *SEC v. Harris,* 2015 U.S. Dist. LEXIS 11975 (N.D. Tex. Feb. 2, 2015)(Denying receiver's distribution plan, because "Receiver has only provided a vague—and, at times, inconsistent—account of the Receivership's finances"),

(5) The Receiver keeps no journals, books or records, of his individual transactions of GP and Western funds, a sufficient ground for denying his motion, *Harris*, *supra*,

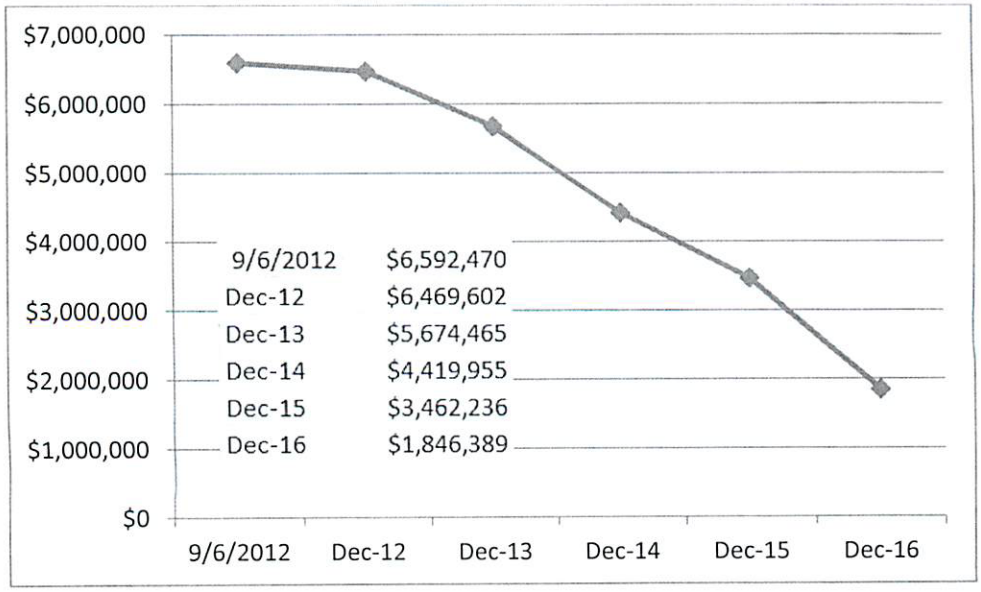
(6) The Receiver cites no authority supporting his proposed liquidation of the 87 GPs,

(7) His proposed liquidation would deny all investors Due Process of Law.

The Receiver concedes investors may receive nothing from the SEC's execution of its $149 million judgment against Louis Schooler or Western. It was a mirage. Investors project that keeping the 87 GPs in the receivership will cost them at least $4.8 million in cash; approximately $3.25 million will go to the Receiver and his team. The Receiver projects investors will receive $20.5 million in cash from the sales of the properties and whatever assets Western has left after the Receiver's team is paid, but hedges that with a lengthy disclaimer.[4] The total loss to investors and Western cannot be determined at this point, because the Receiver keeps those facts to himself.

[4] *Id*, p. 1, l. 27 to 2, l. 15.

As the centerpiece for his Liquidation Motion, the Receiver claims a cash crisis thrust itself upon him. We borrowed this graph from the Receiver, Exhibit B to the Liquidation Motion, to illustrate what he claims to be a cash crisis:




Investors submit the above chart shows no cash crisis at this moment. It is nearly a straight line graph. It displays the progressive cash drain from $6.6 million in September 2012 to approximately $2.9 million at this time[5] and a projected $1.8 million by year's end.[6] The charm of straight-line graphs is predictability. After the first few dots, a child could sketch the line and predict the result. Without a shadow of a doubt, this chart predicts insolvency. The only surprise is the delayed response by the Receiver. He proposed no comprehensive plan of any type until two months ago. Instead, he has watched investors lose almost $5 million in cash, most of which is going from investors' to the pockets of the Receiver, his attorneys, and his accountant. This like a locomotive

[5] Using the Receiver's numbers stated in Exhibit B to the Liquidation Motion that there would be $1,846,389 on Dec. 31, 2016, and given the burn rate of cash, there would be approximately $2,923,620 by the end of April.

[6] Liquidation Motion, Ex. B.

engineer delaying a track change in the face of an oncoming freight train until the passengers' only option is to leap from the train.

Fortunately, it is not yet time to leap. There remains $2.9 million in cash in the GPs. But a cash crisis, one bearing the Receiver's imprimatur, is rapidly approaching. Still, this Court has more than sufficient time to consider the facts, the law, and reasonable options. Unfortunately, critical facts are not yet before the Court and not yet known to investors. In the next section, we raise our objection to the inadmissible factual contentions in the Liquidation Motion. We then address the Receiver's flawed analysis for moving ahead with the property sales without considering other options. We then address each independent ground for denying the Receiver's motion. Finally, Investors propose a path for terminating the receivership we believe is fair and just for all investors.

## II. Investors Object to the Factual Representations in the Liquidation Motion o

Investors object to the factual statements in the Liquidation Motion on each of the following grounds:

1. The filing is an unsworn statement that is neither a declaration nor an affidavit and is am improper filing for offering evidence;

2. The statement includes descriptions of facts when there is no showing the proponent was a percipient witness in violation of Fed. R. Civ. P. 602;

3. The statement contains hearsay and double hearsay in violation of Fed. R. Civ. P. 802;

4. The statement contains numerous opinions in violation of Fed. R. Civ. P. 701;

5. The statement contains numerous statements of expert opinions in violation of Fed. R. Civ. P. 702, 703, and 704;

6. The statement purports to describe the contents of writings in violation of Fed. R. Civ. P. 801, *et seq*.

Simply put, there is no evidence before the Court upon which it could grant the Receiver's Liquidation Motion. Any effort to cure the evidentiary deficiencies through

the reply would be improper. *SPX Corp. v. Bartec USA, LLC*, 2008 U.S. Dist. LEXIS 29745 (E.D. Mich. Apr. 11, 2008)("it was improper to submit evidence only in reply").

## III. The Premises of the Liquidation Motion Are Deeply Flawed

Based on the nonexistent evidentiary record, the Receiver claims four factors require the Court to order the sale of the 23 properties: (1) investors have stopped paying the operational costs,[7] (2) the GPs cannot pay their bills, (3) the properties are not appreciating enough to offset the unpaid operational costs,[8] and (4) the GPs' values are therefore falling.[9] Consequently, the Receiver proposes the fire sale of properties below their actual value and the liquidation of the GPs. As discussed below, each prong of this argument is a half truth and thus the conclusion—all GPs must be liquidated—is a myth.

### A. The Receiver's Statements Regarding the Properties' Appreciation Are Untrue

The Receiver argues the 23 properties are not appreciating in value.[10] He creates this impression by choosing and mixing the facts, while ignoring the basic truth. For example, the Receiver argues the value of 14 properties fell approximately $400,000 between 2013 and 2015.[11] This is a half truth. Seven of the 14 properties identified by the receiver fell in value; the other seven had significant increases. More importantly, the Receiver ignores the fact the 23 properties appreciated $7.5 million between 2013 and

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[7] "In addition, due to the carrying costs of GP properties and very low rate of investor contributions to the GPs, the aggregate balance in GP accounts has steadily decreased." *Id*., p. 1, ll. 14-16.

[8] "Although some properties have appreciated in value and are discussed specifically below, most have not, and some have even lost value" *Id*, at 1, ll. 13-14.

[9] "In addition, due to the carrying costs of GP properties and very low rate of investor contributions to the GPs, the aggregate balance in GP accounts has steadily decreased." *Id*., p. 1, ll. 14-16.

[10] "Although some properties have appreciated in value and are discussed specifically below, most have not, and some have even lost value" *Id*, at 1, ll. 13-14.

[11] "The aggregate appraised value of these 14 GP properties in 2013 was $4,137,000." Liquidation Motion p. 2, ll. 23-24.

2015, an average appreciation of 46% during that two year period.[12] But the statement is also misleading in a second way: 14 of properties had significant increases in value between 2013 and 2015, according to the Receiver's appraisals: Bratton Valley (267.26%), Dayton I (80%), Dayton II (20%,), Dayton 3 (20%), Dayton IV (37.5%), Jamul Valley (31.74%), Las Vegas 1 (28.5%), Las Vegas 2 (45.5%), LV Kade (100.97%), Minden (80%),Santa Fe (30.16%), Silver Springs South (46.67), Washoe 3 (56.67%) and Washoe 5 (33.33%).[13]

**B. The Receiver's Statement that the Operational Costs of the Properties Exceed Their Appreciation Appears to Be Untrue.**

The Receiver also argues, "As things currently stand, cash is dissipating with no corresponding appreciation in value of the properties." (Dkt. No. 852, at 33.) This bald conclusion has no evidentiary basis in the record for this motion. For it to be true, the operational costs for 2013 and 2015 would have to exceed the $7.5 million in appreciation and 46% rate of increase over the two year period. We have seen no financial records hinting that operational costs would exceed 7.5 million in two years or are running at $3.75 million per year. However, given the scant and inconsistent financial records the Receiver has provided, that is a possibility and, if so, one not yet disclosed by the Receiver.

**C. The Receiver's Statement that the GPs Are Consequently Decreasing in Value Appears to Be Untrue**

Unless the operational costs are running $3.75 million a year, the Receiver's statement that the GPs have fallen in value must be false. According to the Receiver's Report filed on November 21, 2014, the projected disbursements would be $4.5 million for 2014 and 2015 (DKT 852 p. 33), roughly $3 million less than the rate of appreciation. Consequently, the GPs as a hold should have increased in value.

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[12] According to Ex. A to the Liquidation Motion, at 32, the total value of the properties in 2013 was $16,328,000 and in 2015 was $23,839,743, a 46% increase in value.

[13] Aguirre Decl. ¶ 3.

But, again, maybe the Receiver knows some facts ha has not disclosed to the Court or investors. And there is reason to be concerned. For example, the Receiver states that the four partnerships that own the LV Kade property "are projected to be $99,279 behind on their operating expenses by the end of 2016. Accordingly, if the property is not sold, property taxes will go unpaid and penalties and interest will accrue on the past due amounts."[14] This seems to imply that the penalties will arise in the future, rather than in the past. We checked this statement. The Receiver has not paid the taxes on this property since 2013.[15] The outstanding balance at this time is $102,196.28, including $23,295.36 for penalties and interest currently running at the 22%.[16] With a net equity of $8.26 million, the Receiver could easily have obtained loans at a lower interest rate if necessary to keep the taxes current. The Receiver's mismanagement runs deeper on the same property. Investors' counsel learned on April 8, 2016, that Clark County was going to deed the property in June.[17] That process was stopped when Investors' counsel sent a fax to Clark County informing them the property could not be deeded because of this Court's outstanding order.[18]

**D. The Receiver Has Primary Responsibility for Investors' Decision to Stop Paying Operational Costs and Note Payments**

Significantly, it was not investors who first decided they should not be paying fees. Rather, the Receiver made that decision for them.[19] In the Receiver's Report and Recommendations Regarding Valuation of Real Estate Assets of Receivership Entities on

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[14] Liquidation Motion, p. 5, ll. 19-25.
[15] Aguirre Declaration, ¶ 6.
[16] *Id*, ¶¶ 5-7, Exs. 2 and 3.
[17] *Id*, ¶ 4.
[18] *Id*, Exhibit 1.
[19] "[I]nvestor losses should not be exacerbated by continued billings." Receiver's Report and Recommendations Regarding Valuation of Real Estate Assets of Receivership Entities (Dkt. No. 203), p. 14, l. 16.

June 13, 2013, (Dkt. No. 203), the Receiver told the Court and investors[20] he was not going to bill investors in the future for operational costs or fees. In his words, he explained why:

> In light of the appraised values of the 23 properties and the bleak outlook for investors, the Receiver recently suspended sending these bills to investors. The unfortunate reality is that some investors stand to receive nothing and others stand to receive a fraction of what they invested.[21]

On note payments, the Receiver made a similar statement.[22] He did not begin billing investors until November 2013.[23]

Simply put, investors have lost confidence in the Receiver. First he told them to stop paying operational fees and note payments, because they were throwing good money after bad. Then he reversed himself after the Court instructed him to do so.[24] But many investors did forget his "bleak outlook" on their investments and his decision to stop billing them. This was of course an untrue statement for some investors, e.g., for those in GPs owning Las Vegas 1, which doubled in value since their investment.[25] In any case, investors had little reason to discard his advice that paying operational fees and note payments was essentially throwing good money after bad.

## IV. The Receiver's Numerous Accounting Irregularities Require the Liquidation Motion Be Denied

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[20] The Receiver placed a copy of his report and recommendations (Dkt. No. 203) on the case website: http://www.ethreeadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-planning-corp-dba-western-financial-planning-corp/.

[21] Dkt. No. 203, P. 14, ll. 8-16.

[22] *Id*, p. 14, ll. 17-24.

[23] "Immediately after the Court's November 5, 2013 Order was entered, the Receiver gave the partnership administrators notice of the order and the Court's instruction that operational bills go out to investors no later than November 22, 2013." Receiver's Sixth Interim Report, (Dkt. No. 517), p. 7, ll. 18-21.

[24] *Id*.

[25] See appraised value in 2013 and 2015 in Ex. A to Liquidation Motion, Dkt. No. 1181-1, p. 31.

This is the current list of the irregularities in the Receiver's financial statements and financial record keeping:

1. The conclusions in his Liquidation Motion concealing mismanagement and the running of penalties and interest at high rates (22%)[26] on the LV Kade property;
2. His failure to report anywhere the liabilities of the GPs, such as past due taxes or mortgage payments;
3. His failure to provide accounting information to the Court pursuant to SEC mandates for SEC recommended receivers;
4. His failure to provide any information to the Court relating to the receipts and disbursements for Western for any period since the second quarter of 2014;
5. His failure to provide any description or categories of receipts and disbursements for Western from the inception of his receivership to the present;
6. His failure to provide any description or categories of receipts and disbursements for the GPs from the inception of his receivership to the present;
7. His admission he does not record or maintain accounting records (such as journals, ledgers, books of account, or their computer equivalents) of individual transactions of GP and Western funds; and
8. His failure to report his receipts and disbursements of approximately $20 million since his appointment.

The Receiver's failure to provide the Court with an accurate and complete accounting is alone a ground to deny the Liquidation Motion. In *SEC v. Harris*, 2015 U.S. Dist. LEXIS 11975, 5-6 (N.D. Tex. 2015), the Court denied the receiver's motion for approval of his distribution plan due his failure to provide the court with complete financial records of his receivership. In language equally applicable here, the court observed:

[26] Aguirre Decl., ¶ 7, Ex. 3.

> Before the Court can approve the Receiver's proposed plan of distribution, it must satisfactorily determine that the Receiver has adequately fulfilled this fundamental duty that the Court imposed at the outset. At present, however, the Receiver has only provided a vague—and, at times, inconsistent—account of the Receivership's finances.
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> To illustrate, the Receiver's Motions include no itemized list of Receivership assets and liabilities, or any other "account [of] all monies, securities, and other properties which [have] come into her hands" during the course of her receivership.

There are accounting irregularities at every level of the Hebrank receivership. A good starting point is the Receiver's 14 interim reports to the Court and to investors by posting them on the E3 Advisors' website for the case.[27] Until the Ninth Interim Report, those reports stated only the gross amount of receipts and disbursements each month of the quarter being reported. This table restates the disbursements from the Ninth Interim Report for each of the Western (WFPC) entities for the second quarter of 2014:[28]

| **Bank Name** | **Disbursements** | | |
|---|---|---|---|
| **Account** | **April** | **May** | **June** |
| Fernley I, LLC | 2,800.00 | 3,459.00 | |
| P51 LLC | 4,403.33 | 4,284.64 | 148.10 |
| Santa Fe Venture | 60,492.85 | 15,022.28 | |
| SFV II, LLC | 3,296.68 | 478.80 | |
| WFPC - Corp | 131,462.07 | 155,898.58 | 70,157.92 |
| WFPC -Business | 113,846.03 | 113,846.03 | 113,846.03 |
| WFPC - FFP | 3,000.00 | 1,000.00 | |
| WSCC, LLC | 197,286.57 | 216,824.12 | 186,013.63 |
| **Total WFPC Bank Accounts** | 516,587.53 | 510,813.45 | 370,165.68 |

[27] http://www.ethreeadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-planning-corp-dba-western-financial-planning-corp/.

[28] Receiver's Ninth Interim Report, Dkt. No. 759, Exhibit A, at 13.

The Ninth Interim Report, like the prior five,[29] provided no information regarding any specific disbursement, e.g., to whom and for what. The Receiver could include a vacation to Hawaii, yet have truthfully reported the disbursement to the Court.

This is critical, because with proper accounting comes accountability. The Receiver could still take his vacation to Hawaii, but he commits a crime when he labels that expenditure a mortgage payment. Investors do not accuse the Receiver of using their funds for a trip to Hawaii. They can accuse him of nothing except grossly incomplete and irregular financial statements and accounting practices in relation to the estimated $20 to $25 million that went through his hands since his appointment.

Significantly, after his Ninth Report, with no explanation,[30] the Receiver stopped providing the Court and investors with even the gross amounts of his receipts and disbursements for the Western entities. His next five interim reports deleted the tables on the gross receipts and disbursements of the Western entities.[31] Apparently, the Receiver preferred investors and the Court unaware of how much cash he was receiving and spending, which had been a total of $1.39 million in receipts and $1.40 in disbursements according to the Ninth Interim Report.[32]

Not surprisingly, the SEC requires all receivers it recommends to the courts to report 34 separate categories of receipts and disbursements specified in the Standardized Fund Accounting Report ("SFAR").[33] For example, Line Item 10c (Personal Asset

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[29] Like the Ninth Interim Report, the third through the eighth interim reports only contain the total amounts of receipts and deposits on a monthly basis for Western entities.

[30] Both the Ninth and Tenth Interim Reports were silent on why the Receiver stopped providing the receipts and disbursements for the Western entities. Both contain this statement: "Attached hereto as Exhibit A is a summary of the receipts and disbursements for the Receivership Entities for the…quarter of 2014." The Ninth Interim Report had the receipts and disbursements for the Western entities, but the Tenth did not.

[31] *Id.*

[32] Receiver's Ninth Interim Report (Dkt. No. 759), Ex. A, p. 13.

[33] "The SEC's Standardized Fund Accounting Report ("SFAR") submitted by the Receiver for the most recent quarter shall be attached to any fee application as 'Exhibit A.'" Billing Instructions for Receivers in Civil Actions Commenced by the U.S.

Expenses) requires a receiver, such as Thomas Hebrank, to state separately: "Amounts paid from the Fund for the personal property assets' maintenance and operating expenses, taxes, professional fees, liquidation expenses, administrative services, appraisals and valuation costs, payment to participant, moving/ storage, office furniture and equipment, delivery services, resident agent, copying costs, asset protection costs, etc."[34]

We have looked, but cannot find any fee application where the Receiver even tried to comply with SFAR. Nor can we find that information anywhere else in the Receiver's reports to the Court, including his 14 interim reports. The only information provided for the Western entities is the gross amount of the receipts and disbursements. These statements give no clue where any of the money came from and or where the money went and why. Again, a first class Hawaiian vacation could have been included, yet the statement would be true.

The Receiver also included a "Statement of Revenue and Expenses" with each of his reports from the third to the fourteenth. The Ninth Interim Report included both the statement of receipts and disbursements[35] and the "Statement of Revenue and Expenses."[36] The difference in the amounts reported by the two statements merely illustrates that both were useless in providing accurate information what the Receiver was doing with investors' cash. The deposits and disbursements only told *how much money* was being deposited and disbursed, but nothing about the categories of the expenditures, much less about individual transactions. In any case, the Receiver stopped providing the Court and investors with WFPC's deposits and disbursements statements after the Ninth Interim Report.

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Securities and Exchange Commission, at 4, available at https://www.sec.gov/oiea/Article/billinginstructions.pdf and https://www.sec.gov/oiea/investor-alerts-bulletins/ib_receivers.html.

[34] *Id*.

[35] Receiver's Ninth Interim Report (Dkt. No. 759), Ex. A, pp. 11-13.

[36] *Id*, Ex. B, p. 15.

The "Statement of Revenues and Expenses" specified the categories of expenditures, but failed to include approximately $1 million passing through the Receiver's hands. A comparison of the two statements in the Ninth Interim Report illustrates this point. In rounded numbers, the difference between the deposits of $1.39 million and revenues of $360,000 was $1.03 million. Likewise, the difference between disbursements ($1.4 million) and expenses ($360,000) was $1.04 million.[37] The "Income and Revenue Statement" provided some indications of the sources of the funds and how they were spent, but only a small fraction of the funds going through WFPC's bank accounts. On the other hand, the receipts and disbursements statements told of the amounts being deposited and disbursed, but no information where they came from, what they were for, where they went or why. Neither was useful. Neither created any accountability for the Receiver. Both gave the impression the Receiver was providing meaningful information, when he was not. Perhaps, that was the point.

In a similar way, interim reports provided the gross receipts and disbursements on a month-to-month basis for each GP. Again, they provided the Court and investors with precious little information about the GPs, just the total amount of receipts and deposits. And again, they provided no information where the money came from, where it went, or why. Unlike interim reports three through nine, which provided largely useless revenue and expense statements, the interim reports contain no such revenue and expense statements for the GPs.

Since Investors filed their motion seeking an accounting on April 1, 2016, (Dkt. No. 1223), the Receiver produced some new accounting records kept by the current administrator, Lincoln Property Group from March 2015 to February 2016, except for the month of May 2015. Further, the Lincoln records only show its receipts and disbursements, not those of the Receiver's. Further, Lincoln's records of receipts and

[37] These calculations are based on the Receiver's information in his Ninth Interim Report (Dkt. No. 759), Ex. A, p. 13 and Ex. B, p. 15.

disbursements cannot be reconciled with the gross receipts and disbursements in the Receiver's interim reports.[38]

In sum, Lincoln's records provide information on only 11 of the 43 months for a portion of the expenditures of the GPs, and none of the expenditures for WFPC entities. It is comforting to see that Lincoln does have books and records of its expenditures for the past year. Those records stand in stark contrast to the Receiver's failure to maintain books and records for the last 43 months.

**A. The Receiver Kept No Books or Records**

Going one level deeper, the Receiver keeps no books. He contends that void is filled by bank statements. This is patently absurd. For several weeks, starting of February 25, 2016, Investors' counsel requested the Receiver to produce the following records:

> 1. All journals, ledgers, accounts, computer-generated records, which record or reflect revenues received or disbursements made by any of the 87 partnerships identified on Attachment A from September 2012 to the present.
> 2. All journals, ledgers, accounts, computer-generated records, which record or reflect revenues received or disbursements made by Western Financial from September 2012 to the present.[39]

On March 23, the Receiver's counsel responded with this statement: "Individual transaction information would be reflected only on the bank statements."[40]

A century of authority confirms the duty of receivers to keep accurate records of their transactions, Clark's Treatise on the Law and Practice of Receivers speaks clearly to this point:

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[38] Honey Springs shows an ending balance for Dec. 2015 of $8,365 in the Receiver's Fourteenth Interim Report (Dkt. No. 1189), Ex. A, p. 10, but the Lincoln records show $4,503.04. Likewise, Clearwater Bridge shows total disbursements for Dec. 2015 of $1,171 in Lincoln's records, but $4,048 in the Receiver's report. In the same vein, Lyons Valley shows Dec. 2015 disbursements of $1,576 in the Receiver's report, but only $118 in the Lincoln records. Further, the beginning balance for Lyons Valley in Dec. 2015 is different in each document. See Aguirre Decl. ¶ 11.

[39] *Id*, ¶ 9, Ex. 4.

[40] *Id*, ¶ 10, Ex. 5.

> It is a receiver's duty to keep accounts of receipts and expenditures in the shape of books and vouchers in such a manner as to furnish an intelligible and perspicuous account of his act and transactions in order that the bondholders, lien creditors and all creditors as well as the court may at any time as occasion requires, ascertain the true condition of affairs.[41]

And Clark goes on level deeper. On the duty of a receiver to keep vouchers, Clark again speaks clearly to the same point:

> Receiver's Duty to Preserve Vouchers. It is the receiver's duty to keep an accurate account of all money received and expended. Even in the absence of objections by an interested party, a court should closely scrutinize the accounts of a receiver before approving them. The correctness of the expenditures should be made to appear from something more than the statement made in the report itself. Vouchers should be demanded when any payments except petty payments are made and these vouchers preserved and filed with the receiver's report.[42]

A decision from the Delaware District, Court, *Hitner v. Diamond State Steel Co*., 207 F. 616, 622 (D. Del. 1913), a century ago speaks to the inadequate record keeping of the Receiver in this case:

> ….It goes without saying that the quarterly returns of merely receipts and disbursements were wholly inadequate to furnish the data requisite for the final settlement and adjustment of the affairs of the steel company, and could not be deemed a compliance with the obligation resting upon them as trustees to keep proper books of account and vouchers as above stated. The fact that the quarterly accounts of the receivers largely failed to specify with particularity the items or classes of items for which expenditures were made, and the items or classes of items for which moneys were received by them, rendered it all the more important that the books and vouchers, in contradistinction to the quarterly accounts, should be full, detailed and explicit.

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[41] Ralph Ewing Clark, Treatise on the Law and Practice of Receivers, 3d Revised Edition (1929), Section 544, at 614.

[42] *Id*.

And a century later, the courts continue to recognize the need for receivers to keep detailed accounting records of all deposits and expenditures. See also *Santa Barbara Channelkeeper v. Seror*, 2010 U.S. Dist. LEXIS 109978 (C.D. Cal. Oct. 14, 2010)("The Receiver shall keep detailed accounting records of all deposits to and all expenditures from the Receiver Trust Account, and shall maintain those accounting records until the expiration the receivership.") We expect to refile our motion seeking an accounting of the Receiver's financial transactions and will go into greater depth in that motion on how the Receiver's recordkeeping and financial statements are incomplete, inaccurate and irregular.

## V. This Case Must be Stayed Because the Receiver Failed to Join the Partners in the GPs as Necessary Parties

The Partners in the 87 GPs are necessary parties to this action under both federal and California law, since the Receiver proposes to liquidate those GPs. Partners in a general partnership are necessary parties in an action to dissolve the partnership. In *Delta Financial Corp. v. Paul D. Comanduras & Assoc.*, 973 F.2d 301, 306 (4th Cir. Va. 1992), the court held: "[I]n a suit between certain partners over partnership assets or obligations in which the effect, as here, will be a dissolution and liquidation of the partnership, all partners are necessary parties and must be joined if feasible. … [T]he necessity of joining all partners to such a suit is well established." The same rule exits in California. *Rudnick v. Delfino*, 140 Cal. App. 2d 260, 265 (1956) (Quoting from Corpus Juris Secundum, "Ordinarily, all the partners are not only proper, but are also necessary parties to an action for dissolution; . . . unless all are brought into the litigation, a decree cannot be made which will finally dispose of all questions involved. . . .")

## VI. Investors Propose a Plan that Would Allow Investors to Recoup Two to Three Times What the Plan Proposed by the Receiver

The Receiver is a liquidator. Hi expertise is accounting. The question before this Court boils down to this: what should be done with 23 properties owned by 87 GPs in

turn owned by 3,500 partners. For the reasons discussed above, we do not believe the Receiver has placed credible and admissible evidence before the Court on that issue.

For its part, Investors have retained two highly competent and experienced real estate experts, Alan Nevin ("Nevin") and Neal Singer ("Singer") of Xpera Group, to provide the Court, them, and the other investors with guidance on what to do with the properties. We understand the other investor group presented a detailed discussion of the reports produced by Nevin and Singer in their brief, so we will not duplicate that effort.

Nevin and Singer are not hired guns to make the strongest case in this courtroom. Investors are not looking for a judgment at the end of this case. Rather, Investors sought objective guidance from two highly respected professionals what should be done with the 23 properties. Being unduly optimistic or unduly pessimistic about the value of the properties and their potential for appreciation could lead to the wrong decision for the properties.

We do wish to present the table below that displays the differences in the valuations by Nevin and Singer in comparison with the Receiver's appraisals and brokers' opinions of value (BOVs).

| **Property Name** | **Partnerships** | **Receiver's Value (2015)** | **Xpera's Value & Recommendation** |
|---|---|---|---|
| Las Vegas 1 | Park Vegas Partners<br>Production Partners<br>Silver State Partners | $5,275,000 | $12,807,943 – $20,958,453 |
| Las Vegas 2 | Rainbow Partners<br>Horizon Partners | $1,375,000 | $1,609,978 – $2,012,472 |
| LV Kade | Hollywood Partners<br>BLA Partners<br>Checkered Flag Partners<br>Victory Lap Partners | $8,260,000 | $14,897,520 – $23,587,740 |
| **Total** | | **$14,910,000** | **$29,315,441 – $46,558,665** |

The table speaks for itself. Significantly, the Receiver never filed the full 2013 appraisals with the Court and never presented any of the 2015 appraisals or BOVs to the Court. Nor did he present them in support of his Liquidation Motion. In short, the Receiver has no valuations of the properties before the Court at this time.

We propose that the investors be allowed to make their own decisions with respect to the GPs in which they are invested. The recommendations of Nevin and Singer vary with respect to the individual properties. By way of example, and contrary to the suggestion of the Receiver, some of the properties are well located for future appreciation. For example, Nevin opines that the Speedway properties in Las Vegas (Las Vegas 2 and LV Kade) will enjoy significant appreciation over the next five to ten years, and thus investors in those GPs may want to hold them. On the other hand, there are other properties which do not hold that promise and, consequently, should be marketed, but with whatever entitlements are realistically available.

The key question is what to do from here. Investors suggest there are two steps. First, they propose that accurate financial data be obtained as soon as possible regarding the assets and liabilities of the GPs, their operational costs, outstanding tax liabilities, and outstanding debt on mortgages.

Investors then propose that their consultants' reports be made available to all investors so they can vote whether or not their GPs should be released from the receivership. We would propose a short interim period for the properties to remain in the receivership so each GP can vote how it wishes to proceed. We expect to provide the Court with a more detailed proposal how to proceeding at the hearing on May 6.

## VII. The Receiver's Proposed Pooling Relies upon Inapplicable Case Law and Irrelevant, Speculative, and Unsupported Factual Contentions

The SEC and the Receiver offer the SEC's one-size-fits-all remedy. Sell the properties, pool the assets, and distribute the proceeds pro rata to all. Investors can find no case where the SEC strayed from this formula. And the Receiver has thus far, with one exception, walked in lockstep with the SEC.

Investors do not fault the Receiver for trying to please the SEC. Displeasing its staff could cost the Receiver his cherished membership in an exclusive club that pays its members: the SEC receivers' club. An article in the American Bankruptcy Institute recognizes this as a real risk: "This result might even be prompted by the receiver's interest in future appointments from the SEC."[43] The SEC alone decides its membership and the SEC alone recommends the members to the courts. Membership has its rewards: seven-figure fees for most, as Thomas Hebrank expects in this case.[44]

The Receiver has his work cut out for him: getting the SEC's square peg (pooling) to fit a round hole. But he made a gallant try. First, he tried to make the law fit. He could find no case where a court had pooled the assets to be pooled in the absence of fraud or commingling. So, he cited eight cases that were off point, cases where the court found fraud or commingling, and usually both. *SEC v. American Capital Invs.*, 98 F.3d 1133, 1136 (9th Cir. Cal. 1996) (fraud and commingling); *U.S. v. 13328 & 13324 State Highway 75 N.*, 89 F.3d 551, 553 (9th Cir. Cal. 1996)(fraud and commingling); *SEC v. Forex Asset Mgmt. LLC,* 242 F.3d 325, 328, 331 (5th Cir. Tex. 2001)(fraud and commingling); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 667 (6th Cir. 2001)(Ponzi scheme fraud); *SEC v. Loewenson*, 290 F.3d 80, 82 and 84 (2d Cir. N.Y. 2002)(fraud and commingling); *SEC v. Elliott*, 953 F.2d 1560, 1565 (11th Cir. Fla. 1992) *SEC v. Elliott*, 953 F.2d 1560 (11th Cir. 1992) *grounds*, 998 F.2d 922 (fraud and commingling); and *CFTC v. Topworth Int'l, Ltd.,* 205 F.3d 1107, 1110 (9th Cir. Cal. 1999).

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[43] Marcus F. Salitore, *SEC Receivers vs. Bankruptcy Trustees Liquidation by Instinct or Rule*, American Bankruptcy Institute Journal, Oct. 2003, available at http://www.abi.org/abi-journal/sec-receivers-vs-bankruptcy-trustees-liquidation-by-instinct-or-rule.

[44] Through Dec. 7, 2015, the Receiver's team had applied for almost $2.2 million in fees. From that amount, $1 million are fees for the Receiver. See interim fee applications 1 through 13.

The Receiver also cites *SEC v. Capital Consultants, LLC*, 397 F.3d 733 (9th Cir. Or. 2005), which seems more supportive of the Investors' position. The receiver in *Credit Bancorp* made two types of distributions to investors. To the extent the assets could be traced to specific clients, he returned the funds to that client "The receiver returned the publicly held securities to each client on whose behalf CCL had purchased these securities," as well as $20 million in cash. Both the cash and the securities were "traced to individual clients." To the extent the assets that were held in the name of the company alone, the assets were pooled and distributed to all clients.

Finally, the Receiver claims to have found the one case where pooling was permitted where there is no finding of either commingling or fraud: *Torres v. Eastlick (In re North American Coin & Currency, Ltd.)*, 767 F.2d 1573 (9th Cir. 1985). *Torres* merely illustrates that the Receiver has no authority to support pooling in this case. *Torres* does not involve the SEC, a receiver, or pooling. Nor did *Torres* involve setting aside the separate existence of a partnership or corporation.

Instead, the case involved customers who had deposited funds with a precious metals broker who was going out of business. The plaintiffs claimed to be beneficiaries of a constructive trust, and not unsecured creditors, when they deposited funds with the broker as it was ceasing operations. The court rejected the constructive fraud theory and held the plaintiffs were simply unsecured creditors like other investors. We fail to see any relevance of the legal principles applied in *Torres* to this case.

In this case, the Court made no finding of commingling[45] and made only one finding of fraud in relation to one property based on one misrepresentation.[46]

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[45] The Court referred to "commingling in one of the hearings, but clarified the term:

> At oral argument, Defendants 1 objected to the Court's use of the term 'commingling.' (ECF No. 949, at 8:13–17.) While the Court recognizes that commingling can have various meanings, (*see, e.g.*, 34 C.F.R. § 303.123), the Court simply uses the term here to assess the extent to which Western's assets are intertwined with investor assets.

Order Keeping General Partnerships under Receivership (Dkt. No. 1003) p. 2, n. 1.

Likewise, the Receiver made no findings of fraud and no commingling. Indeed, per his First Forensic Accounting Report: Part One (Dkt. No. 182), the Receiver tested the accuracy of the accounting system (OPADS) used by Western. He concluded "at the conclusion of these tests, the Receiver determined that the data maintained in the OPADS Accounting System and the other data sources noted above is accurate and reliable, and therefore could be used in performing the forensic accounting." (Dkt. No. 182), p. 15, ll. 14-17.

In the absence of commingling or fraud, the Receiver invites the Court to take a step where no other court has gone. The Receiver argues that recognizing the existence of the partnerships would produce unfair results for the partners in Dayton II, III and IV, who would respectively receive 4.03%, 8.09%, and 2.9%. He claims this is unfair, because investors receiving the 8.09% were unlucky. This is a huge leap into the world of speculation: asking the Court to find that some investors were luckier than others and this relative good and bad luck may serve as a basis for discarding the existence of 87 GPs. And the Receiver proposes to conduct this debate in an evidentiary void. Investors decline to offer their own speculation as rebuttal.

The Receiver has also ignored recent case law which would require a receiver to prove good cause to obtain order directing assets be pooled. In *SEC v. Founding Partners Capital Mgmt.,* 2014 U.S. Dist. LEXIS 90864 (M.D. Fla. July 3, 2014), the Court articulated the good cause standard as follows: "Under the 'good cause' test for pooling, courts have examined a number of different factors, including whether: (1) a unified scheme to defraud existed among the receivership entities; (2) the investors across the various receivership entities are similarly situated; and (3) funds were commingled among the receivership entities." None are present here. There has been no finding of fraud except in relation to one property and, thus, no proof of a "unified scheme to

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[46] *SEC v. Schooler*, 2015 U.S. Dist. LEXIS 71956 at 20 (S.D. Cal. June 3, 2015)(that, "under current market conditions," the South Stead property would "be evaluated at approximately $2.50 per sq foot,"—was a material misrepresentation.)

defraud." Second, the investors across the receivership entities are not similarly situated. They are all in different properties—some properties have doubled in value and some have not. The GPs are invested in 23 different properties—some are mortgaged and others are not. Some are appreciating rapidly and some are not. The third factor is also absent. There has been no commingling. All cash is kept in separate accounts and all transactions recorded in the OPADS system which the Receiver believes is extremely "accurate and reliable"

The Special Master in *In re Real Prop. Located at [Redacted] Jupiter Drive*, 2007 U.S. Dist. LEXIS 65276 (D. Utah June 7, 2007), adopted b *In re Real Prop. Located at [Redacted] Jupiter Drive*, 2007 U.S. Dist. LEXIS 65275 (D. Utah Aug. 31, 2007), recognized a limit on the court's equitable powers when it comes to overwriting established contractual rights as the Receiver proposes here. On this point, the decision reads:

> The institution of a receivership does not stop the running of interest contracted for by a secured party any more than it interferes with the priority afforded such a party by state law. A general call on the "equitable" powers of the court is insufficient to override clear state law entitlements. See *Grubb*, 833 F.2d at 225; Clark on Receivers § 660 (noting that "appointment of a receiver cannot deprive a party to the suit or a claimant of his contractual rights").

Many courts have warned that the SEC-sponsored receiverships may create chaos. An article in the American Bankruptcy Institute cited earlier warns:

> The federal receiver, therefore, becomes a liquidator without the supporting structure of the Bankruptcy Code, Rules and precedent. The procedure for liquidation becomes ad hoc, employing "equity" as the only guideline. As we know, not all parties agree as to what constitutes equitable treatment. The creeping receivership and late liquidating decision cause unpredictable, disorganized and haphazard receivership liquidations with procedures constructed and developed only as needed at the potential expense of

> creditors or other parties. By contrast, the Bankruptcy Code provides a complete, coordinated and integrated mechanism for orderly liquidation.[47]

The same article notes that many cases have criticized liquidation effected through federal receivers. See *SEC v. S&P National Corp.*, 360 F.2d 741, 750-51 (2d Cir. 1966); *Lankenau v. Coggenshall & Hicks*, 350 F.2d 61, 63 (2d Cir. 1965); and *Esbitt v. Dutch-American Mercantile Corp.*, 335 F.2d 141, 142 (2d Cir. 1964).

The Second Circuit issued a similar warning regarding SEC-sponsored receiverships and went a step further. It directed SEC attorneys to inform other courts:

> We now state, however, that in actions of the present kind brought in the future by the SEC, we expect counsel for the agency, as an officer of the court and as part of his or her individual professional responsibility, to bring our views, as stated in this and other decisions, to the attention of the district court before the court embarks on a liquidation through an equity receivership.

*SEC v. American Bd. of Trade, Inc.*, 830 F.2d 431, 437-438 (2d Cir. N.Y. 1987). See also Megan Smith, *Comment, SEC Receivers and the Presumption of Innocence: The Problem with Parallel Proceedings in Securities Cases and the Ever Increasing Powers of the Receivers*, 11 HOUS. BUS. & TAX L.J. 1, 203-31 (2011).

DATED: April 15, 2016

Respectfully submitted,

By: /s/ Gary J. Aguirre
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[47] *Supra*, n. 43.

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Attorney for Investors Susan Graham *et al*.

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

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

**DECLARATION OF GARY J. AGUIRRE IN SUPPORT OF INVESTORS' OPPOSITION TO RECEIVER'S MOTION FOR (A) AUTHORITY TO CONDUCT ORDERLY SALE OF GENERAL PARTNERSHIP PROPERTIES; (B) APPROVAL OF PLAN OF DISTRIBUTING RECEIVERSHIP ASSETS; AND (C) APPROVAL OF PROCEDURES FOR THE ADMINISTRATION OF INVESTOR CLAIMS**

Date: May 6, 2016
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

I, Gary J. Aguirre, of San Diego, California, declare:

1. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I am the attorney for approximately 191 investors who file this opposition to Receiver's Motion for (A) Authority to Conduct Orderly Sale of General Partnership Properties; (B) Approval of Plan of Distributing Receivership Assets; and (C) Approval of Procedures for the Administration of Investor Claims ("Liquidation Motion"). To the best of my understanding they have collectively invested in one or more partnerships (GPs) that have ownership interest in each of the properties that are the subject of the receivership in this matter.

3. I have compared the valuations presented by the Receiver in Exhibit A to the Liquidation Motion, and have calculated, based on his representations of values, the appreciation for the following 14 properties between 2013 and 2015 as follows: Bratton Valley (267.26%), Dayton I (80%), Dayton II (20%,), Dayton 3 (20%), Dayton IV (37.5%), Jamul Valley (31.74%), Las Vegas 1 (28.5%), Las Vegas 2 (45.5%), LV Kade (100.97%), Minden (80%),Santa Fe (30.16%), Silver Springs South (46.67), Washoe 3 (56.67%) and Washoe 5 (33.33%)

4. On April 8, 2016, my assistant and I contacted the Clark County Treasurer's office to inquire about the tax payment status of the Las Vegas properties (Las Vegas 1, 2, and LV Kade). During that call we were informed the properties are delinquent in their tax payments and the county had scheduled at least one of them to be deeded in June. The Clark County staff person we spoke with, Jamie Burke, was not aware the properties are involved in litigation or that the Court had issued an injunction restraining the transfer of the property. I provided the Treasurer Office with a copy of the preliminary injunction via fax on April 8. A true and correct copy of said fax (without enclosures) is attached hereto and incorporated by reference as Exhibit 1.

5. On April 14, 1016, the Clark County Treasurer Office provided me with the Real Property and Special Tax Statement for Fiscal Year 2015-2016 for the three Las

Vegas properties subject to the receivership. A true and correct copy of said statements are attached hereto and incorporated by reference as Exhibit 2.

6. To the best of my knowledge, the Receiver, Thomas Hebrank, has not disclosed that the taxes on the LV Kade property have gone unpaid since 2013. According to Exhibit 2 hereto, the GPs owning the property owe $102,196.28 in taxes, of which $23,295.36 are for interest and penalties.

7. Attached hereto and incorporated by reference as Exhibit 3 is a true and correct copy of the email from the Clark County Treasurer's Office explaining how the penalties and interest are applied when taxes are not paid on real property. Accordingly, I read the information provided in this email to mean the annual interest for penalties runs at 22%.

8. On April 14, 2016, the Clark County Treasurer Office advised my office that, due to my fax of April 8 to the Treasurer's Office, the Las Vegas District Attorney had contacted Ted Fates, attorney for the Receiver, and had decided not to deed the properties and revisit the situation of the Las Vegas properties in a few months.

9. Beginning in late February 2016, I have requested the Receiver to produce the following records:

> 1. All journals, ledgers, accounts, computer-generated records, which record or reflect revenues received or disbursements made by any of the 87 partnerships identified on Attachment A from September 2012 to the present.
> 2. All journals, ledgers, accounts, computer-generated records, which record or reflect revenues received or disbursements made by Western Financial from September 2012 to the present.

A true and correct copy of one of those requests, my email of February 25, 2016, is attached hereto and incorporated by reference as Exhibit 4.

10. After repeatedly requesting the documents described in paragraph 9 above, the Receiver's attorney informed me by his email of March 15, 2016:

> The documentation that is not already available from the Receiver's website – i.e. the GP financial statements for 2012 and 2013 – were promptly

> provided to you despite your failure to respond to my 2/26 and 3/1 emails seeking clarification of your request.
> *You have now asked for individual transactions, which was not part of your prior request for "ledgers, journals, and other booking and accounting records". Individual transaction information would be reflected only on the bank statements.* … If you are now requesting the over 3,500 bank statements for all of the GPs since the inception of the receivership, please advise accordingly (Emphasis added).

A true and correct copy of Mr. Fates' email is attached hereto and incorporated by reference as Exhibit 5.

11. On April 6, 2016, the Receiver's counsel provided me with the records kept by the current GP administrator, Lincoln Property Group ("Lincoln"). The records go from March 2015 to February 2016, except for the month of May 2015. I found that the Lincoln records could not be reconciled with the Receiver's Fourteenth Interim Report (Receiver's 14th Report") and noted the following inconsistencies:

A. Clearwater Bridge Partners shows total disbursements for December 2015 of $1,171 in Lincoln's records, but $4,048 in the Receiver's 14th Report;

B. Lyons Valley Partners shows disbursements for December 2015 of $1,576 in the Receiver's 14th Report, but only $118 in the Lincoln records. Further, the beginning balance for Lyons Valley Partners in December 2015 is different in each document;

C. Honey Springs Partners shows an ending balance for December 2015 of $8,365 in the Receiver's 14th Report, but the Lincoln records show an ending balance of $4,503.04.

Executed this 15th day of April 2016, at San Diego, California.

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

Gary J. Aguirre

## Exhibits Table

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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

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

**NOTICE OF JOINDER** TO **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF INTERVENING INVESTORS' OPPOSITION TO RECEIVER'S MOTION TO: (A) CONDUCT ORDERLY SALE OF INVESTORS' PROPERTIES; (B) APPROVE PLAN OF DISTRIBUTING RECEIVERSHIP ASSETS; AND (C) APPROVAL OF PROCEDURES FOR THE ADMINISTRATION OF INVESTOR**

Date: May 6, 2016
Time: 1:30 p.m.
Dept.: 2D
Judge: Hon. Gonzalo P. Curiel

Investors Susan Graham, Alfred L. Pipkin, Alfred L. Pipkin, IRA, Allert Boersma, Arthur V. and Kristie L. Rocco Living Trust, Arthur V. Rocco, Baldwin Family Survivors' Trust, Barbara Humphreys, IRA, Beverly & Mark Bancroft, Beverly A. Bancroft, IRA, Bruce A. Morey IRA, Bruce A. Morey, Bruce R. Hart IRA for Bruce R. Hart and Dixie L. Hart, Carol D. Summers, Carol Jonson, Catherine E. Wertz IRA, Catherine E. Wertz, Cathy Totman, IRA, Charles Bojarski, Chris Nowacki, IRA, Cindy Dufresne, Craig Lamb, Curt & Janean Johnson Family Trust, Curt & Janean Johnson, jointly, Curt Johnson, Curt Johnson, Roth IRA, Cynthia J. Clarke, D & E Macy Family Revocable Living Trust, D.F. Macy IRA, Daniel Burns, Daniel Knapp, Darla Berkel IRA, Darla Berkel, Daryl Dick, Daryl R. Mabley, David and Sandra Jones Trust, David Fife IRA, David Haack IRA, David Haack; David Karp IRA, David Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional IRA, Debra Askeland, Deidre Parkinen, Dennis Gilman, Dennis Gilman IRA, Diane Bojarski, Diane Gilman, Donna M. and Richard A. Kopenski Family Trust, Donna M. Kopenski, IRA Roth, Douglas G. Clarke, Douglas Sahlin IRA, Eben B. Rosenberger, Edith Sahlin IRA, Edward Takacs, Elizabeth Lamb, Elizabeth Q. Mabley, Eric W. Norling, Eric W. Norling, IRA, Gary Hardenburg, Gary Hardenburg, Roth IRA, Gene Fantano, George Klinke, IRA, George Trezek, Gerald Zevin, Gerald Zevin, IRA, Gwen Tuohy, Gwenmarie Hilleary, Henrik Jonson, Henrik Jonson, IRA, IDAC Family Group LLC, Iris Bernstein IRA, James J. Coyne Jr. Trust, Janice Marshall, Janice Marshall, IRA, Jason Bruce, Jeffrey Merder, IRA, Jeffrey J. Walz, Jeffrey Larsen, Jeffrey Merder, Jennifer Berta, Jim Minner, Joan Trezek, John Jenkins, John and Mary Jenkins Trust, John and Mary Jenkins Trustees, John Lukens, John Lukens, IRA, John R. Oberman, Joy A. de Beyer, Roth IRA, Joy A. de Beyer, Traditional IRA, Joy de Beyer, Juanita Bass IRA, Juanita Bass, Judith Glickman Zevin, IRA, Judith Glickman Zevin, Judy Froning, Judy Knapp, Karen Coyne, Karen J. Coyne IRA, Karen Wilhoite, Karie J. Wright, Kimberly Dankworth, Kirsh Family Trust UTD, Kristie L. Rocco, Lawrence Berkel, Lawrence Berkel, IRA, Lea Leccese, Leo Dufresne,

Leo T. Dufresne Jr. IRA, Linda Baldwin IRA, Linda Clifton, Lisa A. Walz, Lloyd Logan and Ida Logan, jointly, Lloyd Logan, IRA, Loretta J. Diehl, Lynda Igawa, Marc McBride, Marcia McRae, Marilyn L. Duncan, Mark Clifton, Mary Grant, Mary J. Jenkins, IRA, Mathew Berta, Mealey Family Trust, Michael R. Wertz, Michael R. Wertz, IRA, Mildred Mealey, beneficiary of Duane Mealey IRA, Minner Trust, Monica Takacs, Monique Minner, Neil Ormonde, IRA, Nevada Ormonde, IRA, Nick Ruddick, Paul Leccese, Paul R. Sarraffe, IRA, Perryman Family Trust, Polly Yue, Prentiss Family Trust, Kenneth and Gail Prentiss Trustees, Ralph Brenner, Randall S. Ingermanson IRA, Rebecca Merder, Reeta Mohleji, Regis T. Duncan, IRA, Regis T. Duncan, Renee Norling, Richard A. Kopenski, IRA Roth, Robert Indihar, Robert Churchill Family Trust, Robert Churchill IRA, Robert H. Humphreys, Robert Indihar IRA, Robert S. Weschler, Robert Tuohy, Roderick C. Grant, Roger Hort, Roger Moucheron, Ronald Askeland, Ronald Parkinen, Ronald Scott, Ronald Scott, IRA, Salli Sammut Trust, Salli Sue Sammut Trustee, Salli Sue Sammut, IRA, Shirley Moucheron, Stephen Dankworth, Stephen Hogan, Stephen Yue, Steve P. White, IRA, Steve P. White, SEP IRA, Susan Burns, Tamara and Chris Nowacki, jointly, Tamara Nowacki, IRA, Terry Adkinson, The Knowledge Team Profit Sharing Plan, The Ormonde Family Trust, Thomas H. Panzer, Roth IRA, Thomas Herman Panzer Trust, Thomas H Panzer, Trustee, Trisha Bruce, Val Indihar, W.C. Wilhoite, W.C. Wilhoite, Roth IRA, William c. Phillips, William L. Summers, IRA, William L. Summers, William Loeber, William Nighswonger IRA, William R. Nighswonger, William R. Diehl, William R. Rattan Rev. Trust, and William V. and Carol J. Dascomb Trust, file this notice of joinder to and hereby join in the Intervening Investors' Opposition To Receiver's Motion To: (A) Conduct Orderly Sale Of Investors' Properties; (B) Approve Plan Of Distributing Receivership Assets; And (C) Approval Of Procedures For The Administration Of Investor (Dkt. No. 1234).

DATED: April 15, 2016

Respectfully submitted,

By: /s/ Gary J. Aguirre

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