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8 Attorney for Movants

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

**MOVANTS' EX PARTE MOTION  
FOR ORDER:**

**(A) SETTING A HEARING ON  
RECEIVER'S RECOMMENDATION  
REGARDING ENGAGEMENT OF  
REAL ESTATE BROKERS FOR LAS  
VEGAS 1, LAS VEGAS 2, AND  
TECATE PROPERTIES, AND  
(B) STAYING ANY FURTHER EX  
PARTE MOTIONS RELATING TO  
THE SALE OF ANY PROPERTY  
SUBJECT TO THE RECEIVERSHIP  
IN THE ABSENCE OF GOOD  
CAUSE**

Ctrlm: 2D

Judge: Hon. Gonzalo P. Curiel

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1 By this ex parte application, Movants Terry Adkinson, Lawrence Berkel, Lawrence  
2 Berkel, IRA, Darla Berkel, Mathew Berta, Allert Boersma, Charles Bojarski, Diane  
3 Bojarski, Jason Bruce, Trisha Bruce, Daniel Burns, Susan Burns, Henrik Jonson, Carol  
4 Jonson, Henrik Jonson, IRA, Curt & Janean Johnson Family Trust, Curt & Janean  
5 Johnson, jointly, Curt Johnson, Curt Johnson, Roth IRA, Curt Johnson, Roth IRA,  
6 Stephen Dankworth, David and Sandra Jones Trust, Debra Askeland, Dennis Gilman  
7 IRA, William R. Diehl, Marilyn L. Duncan, Regis T. Duncan, Regis T. Duncan, IRA,  
8 Elizabeth Lamb, Judy Froning, George Klinke, IRA, Mary Grant, Roderick C. Grant,  
9 Gary Hardenburg, Gary Hardenburg, Roth IRA, Henrik Jonson, IRA, Stephen Hogan,  
10 Val Indihar, John Jenkins, Mary J. Jenkins, IRA, Trustee, IRA, Trustee, Mary J.  
11 Jenkins, Trustee, John Lukens, John Lukens, IRA, Karen J. Coyne IRA, Craig Lamb,  
12 Lea Leccese, Paul Leccese, Lloyd Logan and Ida Logan, jointly, Lloyd Logan, IRA,  
13 William Loeber, Loretta J. Diehl, Daryl R. Mabley, Elizabeth Q. Mabley, D & E Macy  
14 Family Revocable Living Trust, Janice Marshall, Janice Marshall, IRA, Marc McBride,  
15 Marcia McRae, Mealey Family Trust, Mildred Mealey, beneficiary of Duane Mealey  
16 IRA, Jeffrey Merder, Jeffrey Merder, IRA, Rebecca Merder, Minner Trust, Jim Minner,  
17 Monique Minner, Reeta Mohleji, Roger Moucheron, Shirley Moucheron, William R.  
18 Nighswonger, Eric W. Norling, Eric W. Norling, IRA, Renee Norling, Chris Nowacki,  
19 IRA, Tamara and Chris Nowacki, jointly, Tamara Nowacki, IRA, John R. Oberman Neil  
20 Ormonde, IRA, Nevada Ormonde, IRA, Thomas H. Panzer, Roth IRA, Thomas  
21 Herman Panzer Trust, Thomas H Panzer, Trustee, Ronald Parkinen, Deidre Parkinen,  
22 Alfred L. Pipkin, Alfred L. Pipkin, IRA, Prentiss Family Trust, Kenneth and Gail Prentiss  
23 Trustees, Robert Indihar, Nick Ruddick, Salli Sue Sammut, IRA, Salli Sammut Trust,  
24 Salli Sue Sammut Trustee, Paul R. Sarraffe, IRA, Ronald Scott, Ronald Scott, IRA,  
25 William L. Summers, IRA, Carol D. Summers, William L. Summers, Robert Tuohy,  
26 Gwen Tuohy, Jeffrey J. Walz, Steve P. White, IRA, Steve P. White, SEP IRA, W.C.  
27 Wilhoite, Karen Wilhoite, W.C. Wilhoite, Roth IRA, Gerald Zevin, IRA, Judith  
28 Glickman Zevin, Gerald Zevin, Judith Glickman Zevin, IRA, Susan Graham, Robert

1 Churchill IRA, Robert Churchill Family Trust, Mark and Linda Clifton, Dennis and  
2 Diane Gilman, John and Mary Jenkins Trustees, the Ormonde Family Trust, Ronald  
3 Askeland, Douglas Sahlin IRA, Edith Sahlin IRA, George and Joan Trezek, Karen  
4 Coyne, James J. Coyne Jr. Trust, David Fife IRA, Leo and Cindy Dufresne, Leo T.  
5 Dufresne Jr. IRA, Darla Berkel IRA, William Nighswonger IRA, Juanita Bass, William  
6 V. and Carol J. Dascomb Trust, Robert Indihar IRA, Linda Baldwin IRA, Baldwin  
7 Family Survivors' Trust, Juanita Bass IRA, Matthew and Jennifer Berta, Randall S.  
8 Ingermanson IRA, Kimberly Dankworth, IDAC Family Group LLC, Robert S. Weschler,  
9 Karie J. Wright, D.F. Macy IRA, Stephen and Polly Yue, David Karp IRA, Iris Bernstein  
10 IRA, John and Mary Jenkins Trust, Lisa A. Walz, Ralph Brenner, David Kirsh, David  
11 Kirsh, Roth IRA, David Kirsh, Traditional IRA, Kirsh Family Trust UTD, The  
12 Knowledge Team Profit Sharing Plan, Joy A. de Beyer, Roth IRA, Joy A. de Beyer,  
13 Traditional IRA, Joy de Beyer, Michael R. Wertz, Michael R. Wertz, IRA, Catherine E.  
14 Wertz, Catherine E. Wertz IRA, Jeffrey Larsen, Gene Fantano, Gwenmarie Hilleary,  
15 Arthur V. Rocco, Kristie L. Rocco, and Arthur V. and Kristie L. Rocco Living Trust seek  
16 an order (A) setting a hearing on April 29, 2016, on the Receiver's Recommendation  
17 Regarding Engagement of Real Estate Brokers for Las Vegas 1, Las Vegas 2, and Tecate  
18 Properties ("Receiver's Recommendation Motion") so it is heard simultaneously with  
19 Receiver's Motion for (A) Authority to Conduct Orderly Sale of General Partnership  
20 Properties; (B) Approval of Plan of Distributing Receivership Assets; And (C) Approval  
21 of Procedures for the Administration of Investor Claims (Docket No. 1181)("Receiver's  
22 Liquidation Motion") and (B) staying any further *ex parte* motions relating to the sale of  
23 any property subject to the receivership in the absence of good cause.

24 Movants seek this relief based on the following grounds:

25 1. The remedies sought, factual assertions, and legal contentions in the  
26 Receiver's Recommendation Motion substantially overlap with remedies sought, factual  
27 assertions, and legal contentions in the Receiver's Liquidation Motion now set for  
28 hearing on April 29, 2016. In particular, the Receiver's Recommendation Motion would

1 start the process for selling the Las Vegas 1, Las Vegas 2 and Tecate properties by  
2 seeking an order allowing the Receiver to contract with brokers to sell those properties  
3 while the Receiver's Liquidation Motion seeks authority to proceed with the sales of all  
4 23 properties, including the La Vegas 1, Las Vegas 2 and Tecate properties. See  
5 Declaration of Gary J. Aguirre in Support of Movants' Ex Parte Motion For Order (A)  
6 Setting a Hearing on Receiver's Recommendation Regarding Engagement of Real Estate  
7 Brokers for Las Vegas 1, Las Vegas 2, and Tecate Properties, and (B) Staying Any  
8 Further *Ex Parte* Motions Relating to the Sale of Any Property Subject to the  
9 Receivership in the Absence of Good Cause ("Aguirre Declaration"), paragraphs 4 and 5.

10 2. On February 19, 2016, the Court granted the motion of Movant Graham and  
11 continued the hearing date on the Receiver's Liquidation Motion from April 22 to April  
12 29, 2016, and the filing date for Movants' opposition to April 8, 2016 (Dkt. No. 1188).  
13 Movant Graham sought this extension so she and other investors could retain counsel and  
14 so said counsel had the opportunity to study the case, research the applicable authorities  
15 and present the facts and legal principles concisely to the Court. See Aguirre Declaration,  
16 paragraph 6.

17 3. The Receiver's Recommendation Motion seeks a piecemeal and *ex parte*  
18 resolution of the subject of the Receiver's Liquidation Motion rather than a hearing  
19 allowing Movants to brief the issues. This piecemeal resolution of the same issues would  
20 appear inconsistent with the Court's order of February 19, 2016, (Dkt. No. 1188) and  
21 would be highly prejudicial to Movants. See Aguirre Declaration, paragraphs 6 and 7.

22 4. The piecemeal resolution of the subject of the Receiver's Liquidation  
23 Motion by *ex parte* applications would disserve the principle of judicial economy and  
24 efficiency by calling upon the Court to decide issues by *ex parte* process when the same  
25 issues are scheduled for hearing on April 29, 2016. See Aguirre Declaration, paragraph 7.

26 5. The Receiver makes no contention, much less an evidentiary showing, that  
27 he, the receivership estate or any party would suffer any prejudice by the setting of this  
28 matter for hearing on April 29, 2016. See Aguirre Declaration, paragraph 8, Exhibit 1.

1           6.     The granting of the Receiver’s Recommendation Motion would authorize  
2 the Receiver to enter into contracts with brokers to sell the Las Vegas 1 and Las Vegas 2  
3 properties at values \$4,750,000 below the proper listing price for these properties, which  
4 would potentially and severely harm investors in those partnerships, because preliminary  
5 information available to Movants indicates the listing prices at least on Las Vegas 1 and  
6 Las Vegas 2 properties are \$4.75 million below their proper list price. See Aguirre  
7 Declaration, paragraph 9;

8           7.     The granting of this motion would authorize the Receiver to enter into  
9 contracts with brokers to sell the Las Vegas 1, Las Vegas 2 properties at prices below the  
10 proper listing price according to preliminary information available to Movants counsel.  
11 This would be severely detrimental to Movants and other investors since Movants’  
12 counsel has not yet been able to obtain reliable valuations on the Tecate property and the  
13 setting of this matter on April 29, 2016, was, as Movants understand, for that purpose.  
14 See Aguirre Declaration, paragraph 10;

15           8.     Movants request the Court order a stay of any further motions by the  
16 Receiver seeking the sale of properties already the subject of the Receiver’s Liquidation  
17 Motion scheduled for hearing on April 29, 2016.

18 DATED: March 10, 2016

Respectfully submitted,

19  
20 By:           /s/ Gary J. Aguirre            
21       GARY J. AGUIRRE  
22       Aguirre Law, A.P.C.  
23       [gary@aguirrelawapc.com](mailto:gary@aguirrelawapc.com)  
24       Attorney for Movants  
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28

1 Gary J. Aguirre (SBN 38927)  
2 Aguirre Law, APC  
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4 San Diego, CA 92101  
5 Tel: 619-400-4960  
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7 Email: [Gary@aguirrelawfirm.com](mailto:Gary@aguirrelawfirm.com)

8 Attorney for Movants

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

11  
12 **SECURITIES AND EXCHANGE**  
13 **COMMISSION,**

14 Plaintiff,

15 v.

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

21 Defendants.

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

**DECLARATION OF GARY J.**  
**AGUIRRE IN SUPPORT OF**  
**MOVANTS' *EX PARTE* MOTION**  
**FOR ORDER:**

**(1) SETTING A HEARING ON**  
**RECEIVER'S RECOMMENDATION**  
**REGARDING ENGAGEMENT OF**  
**REAL ESTATE BROKERS FOR LAS**  
**VEGAS 1, LAS VEGAS 2, AND**  
**TECATE PROPERTIES, AND**

**(2) STAYING ANY FURTHER *EX***  
***PARTE* MOTIONS RELATING TO**  
**THE SALE OF ANY PROPERTY**  
**SUBJECT TO THE RECEIVERSHIP**  
**IN THE ABSENCE OF GOOD**  
**CAUSE**

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24 Ctrm: 2D

25 Judge: Hon. Gonzalo P. Curiel

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1 I, Gary J. Aguirre, declare as follows:

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

4 2. I am the attorney for approximately 170 investors (Movants) who bring this  
5 motion. They have collectively invested in one or more partnerships that have ownership  
6 interest in each of the properties that are the subject of the receivership in this matter.

7 3. I have also reviewed the Receiver's Motion for (A) Authority to Conduct  
8 Orderly Sale of General Partnership Properties; (B) Approval of Plan of Distributing  
9 Receivership Assets; And (C) Approval of Procedures for the Administration of Investor  
10 Claims (Docket No. 1181)("Receiver's Liquidation Motion") in which the Receiver  
11 describes the purpose of that motion as follows:

12 The Receiver proposes all GP properties go through the orderly sale process  
13 and that each GP property go through the sale process independently of  
14 other GP properties. The Receiver believes a sale of GP properties on a one-  
15 by-one basis will yield a greater net recovery than packaging properties  
together and trying to sell them in bulk.

16 Memorandum of Points and Authorities in Support of Receiver's Liquidation Motion  
17 (Dkt. No. 1181-1), p. 9, lines 7-11.

18 4. I have reviewed the Receiver's Recommendation Regarding Engagement of  
19 Real Estate Brokers for Las Vegas 1, Las Vegas 2, and Tecate Properties (Dkt. No. 1203)  
20 ("Receiver's Recommendation Motion") in which the Receiver describes the purpose of  
21 that motion as follows:

22 As laid out in the Report and Recommendation, the first step of the orderly  
23 sale process is for the Receiver to solicit proposed listing agreements from  
24 multiple qualified, licensed real estate brokers in the local area surrounding  
25 each GP property. Dkt. No. 1056, p. 7. The Receiver has done that for each  
26 of the Properties, as described below. The next step is for the Receiver to  
27 make a recommendation to the Court regarding the engagement of a  
28 particular broker, which the Receiver does herein for each of the Properties.  
If the Court approves the Recommendation, the Receiver will engage the  
applicable brokers and move forward with steps to market the Properties.

1 Receiver's Recommendation Motion, p. 2 line 20 to p. 3 line 3.

2 5. The remedies, factual contentions, and legal contentions asserted in the  
3 Receiver's Liquidation Motion, as stated in Paragraph 3 above, appear to include all of  
4 the remedies, factual contentions, and legal contentions, asserted in the Receiver's  
5 Liquidation Motion, as described in paragraph 4 herein.

6 6. Through the Receiver's Recommendation Motion and his February 26,  
7 2016, Ex Parte Application for Order Confirming Sale of Jamul Valley Property (Dkt.  
8 No. 1191), the Receiver appears to be using piecemeal *ex parte* motions to obtain orders  
9 advancing the sales of properties, which proposed sales are currently the subject of a  
10 motion scheduled for hearing on April 29, 2016. This piecemeal *ex parte* process would  
11 appear to conflict with the purpose of the Court's order of February, 19, 2016, granting  
12 Movant Graham's motion to continue the hearing date to April 29 and postponing the  
13 filing dates to April 8. These continuances were sought to allow Movant Graham's  
14 counsel a minimum amount of time to review the 46 appraisals on 23 properties, consult  
15 with brokers and appraisers in five different metropolitan areas in the Southwest  
16 regarding the values of those properties, and consider and prepare a response to the other  
17 factual and legal contentions in the Receiver's Liquidation Motion. This piecemeal *ex*  
18 *parte* process therefore inflicts substantial prejudice on the Movants. It would also inflict  
19 substantial prejudice on approximately 100 other investors who are currently retaining  
20 counsel to appear on their behalf in this case.

21 7. The piecemeal resolution of the sales of the properties owned by the  
22 partnership would disserve the principle of judicial economy and efficiency by calling  
23 upon the Court to issue a series of orders advancing or consummating the sale of the  
24 properties without the benefit of the orderly filing of opposition briefs and a hearing on  
25 these motions.

26 8. As with his earlier motions, the Receiver's Recommendation Motion does  
27 not contend, much less make an evidentiary showing, that there would be any prejudice  
28 to the receivership assets or to any party by a rescheduling on his latest *ex parte* motion



1 for hearing on April 29. Prior to the filing of this motion, on March 9, 2016, Movants'  
2 counsel sent email to the Receiver's counsel asking this question:

3  
4 I would appreciate your providing me with any information regarding any  
5 prejudice that would be experienced by the receivership in relation to the  
6 Las Vegas 1, Las Vegas 2 and the Tecate properties by continuing the  
7 hearing until April 29, e.g., scheduling of foreclosure sales, fire hazards on  
8 the site or any other class of prejudice you believe exists. To the extent you  
9 contend there is any prejudice, would you kindly provide me with the related  
10 documents as before, e.g., the notice of trustee's sale, etc.  
11 Please be very specific regarding any prejudice you assert that could be  
12 experienced by the receivership and the supporting records that you believe  
13 evidence that prejudice.

14 A true and correct copy this email is attached hereto and incorporated by reference as  
15 Exhibit 1. Receiver's counsel has not responded.

16 9. The granting of the Receiver's Recommendation Motion would authorize  
17 the Receiver to enter into contracts with brokers to sell the Las Vegas 1 property for the  
18 sum of \$6,150,000 and the Las Vegas 2 property for the sum of \$1,500,000. Based on  
19 conversations I have had with expert consultants who appear to be far more credible than  
20 those retained by the Receiver, I expect to offer credible evidence that the proper list  
21 price for the Las Vegas 1 property would be \$10,200,000 and for the Las Vegas 2  
22 property \$2,200,000. Consequently, the Receiver's entry into contracts to list the  
23 properties at values \$4,750,000 beneath their reasonable listing price would severely  
24 harm investors in these partnerships.

25 10. The granting of this motion would authorize the Receiver to enter into  
26 contracts with brokers to sell the Las Vegas 1 and Las Vegas 2 properties at prices below  
27 the proper listing price according to preliminary information available to Movants'  
28 counsel. This would be severely detrimental to Movants and other investors since  
Movants' counsel has not yet been able to obtain reliable valuations on the Tecate

1 property and the setting of this matter on April 29, 2016, was, as Movants understand, for  
2 that purpose.

3 11. On March 19, the Court set an ambitious schedule for Movants' counsel to  
4 meet to prepare and file a response to the Receiver's Liquidation Motion. Since then, the  
5 Receiver has filed two *ex parte* motions to sell properties which are the subject of the  
6 April 29, 2016, hearing. These motions distract me from working on the response which  
7 will address all of the issues both on the merits and procedural deficiencies. The Receiver  
8 has made no credible argument in either motion why he is filing piecemeal *ex parte*  
9 motions seeking the same relief as his motion scheduled for April 29, 2016. See  
10 Movants' *ex parte* motion, paragraph 3.

11 Executed this 10<sup>th</sup> day of March 2016, at San Diego, California.

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

14 /s/ Gary J. Aguirre  
15 GARY J. AGUIRRE  
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**Exhibits Table of Contents**

Exhibit 1..... 7

# Exhibit 1

**From:** Gary Aguirre  
**To:** [Ted Fates \(tfates@allenmatkins.com\)](mailto:tfates@allenmatkins.com)  
**Cc:** [Thomas C. Hebrank \(thebrank@ethreadvisors.com\)](mailto:thebrank@ethreadvisors.com)  
**Subject:** SEC v. Schooler  
**Date:** Wednesday, March 09, 2016 12:58:00 PM

---

Dear Mr. Fates:

While you are considering my request to withdraw your motion or reset it for April 29, I would appreciate your providing me with any information regarding any prejudice that would be experienced by the receivership in relation to the Las Vegas 1, Las Vegas 2 and the Tecate properties by continuing the hearing until April 29, e.g., scheduling of foreclosure sales, fire hazards on the site or any other class of prejudice you believe exists. To the extent you contend there is any prejudice, would you kindly provide me with the related documents as before, e.g., the notice of trustee's sale, etc.

Please be very specific regarding any prejudice you assert that could be experienced by the receivership and the supporting records that you believe evidence that prejudice.

Sincerely,

Gary J. Aguirre  
Aguirre Law, APC  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
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