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9 Attorneys for Receiver
THOMAS C. HEBRANK

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

13
14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

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

20 Defendants.
21

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

RECEIVER'S *EX PARTE*
APPLICATION FOR LEAVE TO
FILE SUPPLEMENT TO COURT-
ORDERED PROPOSAL
REGARDING GENERAL
PARTNERSHIPS

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Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),
3 and its subsidiaries and the General Partnerships listed on Schedule 1 to the
4 Preliminary Injunction Order entered on March 13, 2013 (collectively,
5 "Receivership Entities"), submits this *Ex Parte* Application for Leave to File
6 Supplement to Court-Ordered Proposal Regarding General Partnerships
7 ("Application").

8 The Receiver had limited time to prepare the following six filings: (1) two
9 reply briefs (and accompanying exhibits) to the two oppositions filed by the Aguirre
10 Investors and the Dillon Investors to his Motion for (A) Authority to Conduct
11 Orderly Sale of General Partnership Properties, (B) Approval of Plan of Distributing
12 Receivership Assets, and (C) Approval of Procedures for the Administration of
13 Investor Claims ("Motion"); (2) two oppositions to two motions to intervene filed by
14 the Aguirre Investors and Dillon Investors, (3) an opposition to the Dillon Investors'
15 motion to unseal documents; and (4) the Court-ordered proposal and accompanying
16 exhibits ("Proposal") pursuant to the order entered on April 6, 2016. Dkt. No. 1224.
17 During this time, the Receiver also had a five-day prepaid vacation and Geno
18 Rodriguez of his staff got married and went on his honeymoon to Europe.
19 Nevertheless, all six above documents (and accompanying exhibits) were filed on
20 April 22, 2016. Dkt. Nos. 1259-1264.

21 Having since had time to reflect on the data requested by the Court in the
22 Proposal, analyze the potential outcomes for investors in the GPs that own the five
23 "fiscally viable" properties (*see* Proposal, Exhibit B), and review the Xpera Group's
24 recommendations regarding those five properties, the Receiver believes it is
25 important to consider the likely outcomes for investors in the GPs that own the five
26 properties, including comparing the projected outcome under the One Pot Approach
27 to the projected outcome if the applicable GPs were to exit the receivership and
28 implement Xpera's recommendations regarding their properties.

1 Accordingly, the Receiver has prepared and requests leave to file the
2 Supplement to the Proposal attached hereto as Exhibit A ("Supplement"). The
3 Supplement discusses the projected amounts available to distribute to investors in
4 the GPs that own the five "fiscally viable" properties under the different approaches
5 and scenarios before the Court. The projected amounts available to distribute are
6 reflected on Exhibit 1 to the Supplement and explained further in the Supplement
7 itself.

8 **Ex Parte Notice.** On May 2, 2016, the Receiver informed the Securities and
9 Exchange Commission ("Commission"), Defendants, Aguirre Investors, and Dillon
10 Investors, through their respective counsel, that he intended to seek leave to file the
11 Supplement. Counsel for the Commission responded that the Commission does not
12 oppose the application. Mr. Aguirre stated that his clients "will oppose the motion
13 on the merits, but not the filing." Mr. Dillon stated that his clients "don't oppose the
14 concept of filing, but we oppose the substance of the anticipated filing." Their
15 responses are attached hereto as Exhibit B. Counsel for Defendants had not
16 responded as of the time of filing.

17 Based on the foregoing, the Receiver requests permission to file the
18 Supplement to the Proposal.

19
20 Dated: May 3, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

21
22 By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS C. HEBRANK

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EXHIBIT INDEX

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EXHIBIT A

EXHIBIT A

1 ALLEN MATKINS LECK GAMBLE
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14 SECURITIES AND EXCHANGE
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15 Plaintiff,

16 v.

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

20 Defendants.
21

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

**RECEIVER'S SUPPLEMENT TO
COURT-ORDERED PROPOSAL
REGARDING GENERAL
PARTNERSHIPS**

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

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),
3 and its subsidiaries and the General Partnerships listed on Schedule 1 to the
4 Preliminary Injunction Order entered on March 13, 2013 (collectively,
5 "Receivership Entities"), hereby submits this Supplement to Court-Ordered Proposal
6 Regarding General Partnerships ("Proposal").

7 In the Court-Ordered Proposal filed on April 22, 2015 ("Proposal"), the
8 Receiver identified five GP properties owned by GPs that have sufficient funds to
9 pay off their debts to Western and cover their 2016 basic operating expenses.
10 Docket No. 1264, Exhibit B. The Receiver believes it is important to consider the
11 likely outcomes for investors in these "fiscally viable" GPs under the different
12 approaches and scenarios before the Court, including the possibility that these GPs
13 exit the receivership, and therefore felt it was best to provide the following
14 information prior to the May 6, 2016 hearing:

15 **I. COMPARISON OF PROJECTED DISTRIBUTIONS**

16 Exhibit 1 hereto provides a comparison of the projected distributions under
17 the following four approaches and scenarios:

- 18 • The One Pot Approach proposed in the Motion with a hypothetical sale
19 date of December 31, 2016 at the 2015 appraised values of the
20 properties. As discussed in his reply to the Aguirre Investors and
21 Dillon Investors' oppositions to the Motion, approving the One Pot
22 Approach will allow for consideration and implementation of the Xpera
23 recommendations and valuations in appropriate circumstances.
24 However, the 2015 appraised values were used in Exhibit D to the
25 Motion and therefore have been used herein again simply for purposes
26 of consistency.
- 27 • Alternate Two Tier Approach discussed in the Motion with a
28 hypothetical sale date of December 31, 2016 at the 2015 appraised

1 value. Again, the 2015 appraised value is used simply for purposes of
2 consistency.

- 3 • The third scenario involves the GPs that own the five properties exiting
4 the receivership on the terms described in the Proposal and selling the
5 properties on the hypothetical sale date of December 31, 2016 at the
6 2015 appraised value. Again, the 2015 appraised value is used simply
7 for purposes of consistency and comparison.
- 8 • The fourth scenario involves the GPs that own the properties exiting the
9 receivership on the terms provided in the Proposal and selling the
10 properties pursuant to Xpera's recommendations, which are
11 summarized on Exhibit 1. For purposes of this rough calculation, the
12 purchase price used is the mid-point between Xpera's low and high
13 values for the five properties.

14 As Exhibit 1 shows, the projected amount available for distribution to
15 investors in the GPs that own the five properties is *less* if they exit the receivership
16 than if they if they stay in the receivership and the One Pot Approach is approved.
17 This is true whether they sell on the hypothetical sale date of December 31, 2016
18 and at the 2015 appraised value or they sell pursuant to Xpera's recommendation at
19 the mid-point of Xpera's valuation range.

20 The projected amounts to be distributed under the One Pot Approach, Two
21 Tier Approach, and "exit receivership/2015 appraisal" scenario are based on
22 hypothetical sales of the five properties as of December 31, 2016 at their 2015
23 appraised values. The projections for the One Pot Approach and Two Tier
24 Approach are those stated in the Motion. Dkt. No. 1181-1, Exhibit D. The
25 projections for the "exit receivership/2015 appraisal" scenario are consistent with
26 the projections in the Proposal. Dkt. No. 1264, Exhibit B (see two last columns on
27 right). The projected amount to be distributed under the Xpera section represent a
28 rough calculation of what would be available to distribute to investors if the GPs

1 were to exit the receivership pursuant to the Proposal and sell their properties in
2 accordance with Xpera's recommendations at a price that is the average between
3 Xpera's low and high valuations. Xpera's low and high valuations are shown on
4 Dkt. No. 1262, Exhibit A.

5 To be clear, the Receiver is not recommending the five properties be sold by
6 December 31, 2016, nor does he expect the properties will actually sell on that date.
7 As stated in the Motion, GP properties will likely sell both before and after that date
8 and for the price determined by the market after a full marketing effort (as outlined
9 in the orderly sale process). However, a hypothetical sale date must be used for
10 purposes of projecting outcomes. December 31, 2016 was the hypothetical sale date
11 used in the Motion, so that date has been used again simply for purposes of
12 consistency.

13 The projected amounts available for distribution for the GPs that own the five
14 properties are significantly higher under the One Pot Approach than under the "exit
15 receivership/2015 appraisal" scenario and the Xpera "exit receivership" scenario.
16 Note, it is not possible to project the *percentage recoveries* based on Xpera's
17 estimated values without completely re-running the entire distribution projection,
18 including projected dates of sales for the 36 GP properties based on Xpera's
19 recommendations (including waiting times), projected receipts and disbursements
20 for all 86 GPs between now and the projected sale dates, projecting costs of
21 recommended entitlement work, and other factors. Therefore, the projected
22 amounts available for distribution has been used for this comparison instead of
23 projected percentage recoveries.

24 Comparing the projected amounts available for distribution under the One Pot
25 Approach (which are based on 2015 appraised values) to those under the Xpera "exit
26 receivership" scenario (which are based on 2016 Xpera values) is necessarily an
27 apples to oranges comparison. However, it is an apples to oranges comparison that
28

1 makes the Xpera "exit receivership" scenario appear better than it is really is for the
2 following reasons:

- 3 • If the five properties are sold at prices consistent with mid-point of
4 Xpera's low/high valuation range, which are higher than the 2015
5 Appraisals (*see* Dkt. No. 1262, Exhibit A), than the "Amount
6 Distributed" would increase under the One Pot Approach,¹ although the
7 increase would be smaller because it would be spread among all
8 investors in all GPs. However, the "Amount Distributed" numbers
9 under the One Pot Approach on Exhibit 1 are based on the 2015
10 appraisals (not the Xpera values) meaning they are artificially low
11 when comparing them to the projected amount available to distribute
12 under the Xpera "exit receivership" scenario.
- 13 • For properties where Xpera's values are based on zoning changes,
14 dividing the property up into smaller parcels, and/or waiting for nearby
15 development or development plans to be completed (*i.e.* Dayton III,
16 Silver Springs South, and ABL/Mex-Tec), carrying costs and
17 entitlement costs would be incurred by the GPs during the waiting
18 period, consuming cash on hand in their accounts. These costs have
19 not been deducted from GP cash balances in the rough calculation on
20 Exhibit 1, meaning the projected amount to be distributed under the
21 Xpera "exit receivership" scenario is artificially high when comparing
22 it to the projected amount to be distributed under the One Pot
23 Approach.

24 There is only one of the five properties where the projected amount to be
25 distributed under the One Pot Approach and Xpera "exit receivership" scenario are
26

27 _____
28 ¹ As noted above, the projected distributions under the One Pot Approach shown
on Exhibit 1 are based on the 2015 appraised value and a hypothetical sale date
of December 31, 2016.

1 even close – the Silver Springs South property. Xpera believes the value of the
2 Silver Springs South property in 12 months will be between \$1,032,900 and
3 \$1,377,200. Dkt. No. 1234-2, p. 89 of 172. The high end of that range is more than
4 three times the 2015 appraised value. The Xpera valuation is based on waiting
5 12 months for the completion of a nearby highway. The high end of the range is
6 also based on breaking the property up into smaller parcels and selling it in multiple
7 parcels. *Id.* Therefore, the carrying costs and entitlement costs would be significant
8 and would make the difference between the two projected distributions greater.

9 As discussed above, it is important to consider the likely outcomes for
10 investors under the different approaches and scenarios before the Court. The
11 projections indicate investors in the GPs that own the five "fiscally viable"
12 properties will recover more of their investments under the One Pot Approach than
13 if they were to exit the receivership and implement Xpera's recommendations.

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Dated: May 3, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS C. HEBRANK

EXHIBIT 1

EXHIBIT 1

Projected Distributions for "Fiscally Viable" GPs

	One Pot Distribution	Two Tier Distribution	Exit Receivership/ Sell at 2015 Appraised Value			Exit Receivership/ Sell Per Xpera Recommendation	
	Projected Amount Available for Distribution	Projected Amount Available for Distribution	Projected Cash Available Upon Exit of Receivership	Estimated Net Sale Proceeds from Property	Projected Amount Available for Distribution	Projected Amount Available for Distribution	Xpera Recommendation
Dayton Valley I							
Dayton View Partners	219,156	119,783	25,176	83,700	108,876		
Fairway Partners	225,717	125,744	30,142	83,700	113,842		
Green View Partners	232,500	130,331	34,781	83,700	118,481		
Par Four Partners	239,472	128,432	32,030	83,700	115,730		
Total	916,844	504,289	122,129	334,800	456,929	581,968	Sell now "as is"
Dayton Valley III							
Gold Ridge Partners	332,713	186,735	158,426	13,950	172,376		
Grand View Partners	352,900	206,241	203,330	13,950	217,280		
Rolling Hills Partners	363,508	215,078	176,623	13,950	190,573		
Sky View Partners	342,680	232,570	180,158	13,950	194,108		
Total	1,391,801	840,624	718,537	55,800	774,337	773,872	Sell after zoning change
Silver Springs South							
Lahontan Partners	403,825	192,843	78,565	102,300	180,865		
Rail Road Partners	369,501	200,288	80,773	102,300	183,073		
Spruce Heights Partners	380,465	203,008	27,876	102,300	130,176		
Vista Del Sur Partners	392,058	159,396	61,139	102,300	163,439		
Total	1,545,848	755,536	248,353	409,200	657,553	1,369,050	Wait 12 months, subdivide into smaller parcels, and sell as multiple parcels
Tecate							
ABL Partners	204,720	100,515	7,754	83,700	91,454		
Mex-Tec Partners	222,390	117,831	24,649	83,700	108,349		
Total	427,110	218,345	32,403	167,400	199,803	273,797	Hold for indefinite period until County decides on area development plan
Washoe IV							
Galena Ranch Partners	250,549	200,727	29,805	81,375	111,180		
Redfield Heights Partners	257,927	162,794	54,311	81,375	135,686		
Rose Vista Partners	236,129	126,588	102,417	81,375	183,792		
Steamboat Partners	243,246	158,964	67,300	81,375	148,675		
Total	987,851	649,074	253,833	325,500	579,333	822,302	Sell now "as is"
	5,269,455	2,967,868	1,375,255	1,292,700	2,667,955	3,820,988	

EXHIBIT B

EXHIBIT B

Fates, Ted

From: Kalin, Sara <KALINS@SEC.GOV>
Sent: Tuesday, May 3, 2016 5:50 AM
To: Fates, Ted; phildysonlaw@gmail.com; 'Philip H. Dyson'; Dean, Lynn M.; Gary Aguirre; Tim Dillon
Cc: Thomas Hebrank
Subject: RE: SEC v. Schooler

The SEC will not oppose the application for leave to file.

From: Fates, Ted [mailto:tfates@allenmatkins.com]
Sent: Monday, May 02, 2016 5:00 PM
To: phildysonlaw@gmail.com; 'Philip H. Dyson'; Kalin, Sara; Dean, Lynn M.; Gary Aguirre; Tim Dillon
Cc: Thomas Hebrank
Subject: SEC v. Schooler

Counsel,

The Receiver plans to file an ex parte application tomorrow seeking leave to file a supplement to the Court-ordered proposal filed on April 22, 2016 (Dkt. No. 1264). The supplement and accompanying exhibit are attached hereto. Please let us know if your respective clients will oppose the application for leave to file.

Thank you,

Ted Fates Esq.

Partner
Allen Matkins Leck Gamble Mallory & Natsis LLP
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Fates, Ted

From: Gary Aguirre <gary@aguirrelawapc.com>
Sent: Tuesday, May 3, 2016 5:48 AM
To: Fates, Ted; phildysonlaw@gmail.com; 'Philip H. Dyson'; Kalin, Sara; Dean, Lynn M.; Tim Dillon
Cc: Thomas Hebrank
Subject: RE: SEC v. Schooler

Mr. Fates:

We will oppose the motion on the merits, but not the filing.

Sincerely,

Gary J. Aguirre
Aguirre Law, APC
501 W. Broadway, Suite 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072

www.aguirrelawapc.com

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Thank you,

Ted Fates Esq.

Partner
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Fates, Ted

From: Tim Dillon <tdillon@dghmalaw.com>
Sent: Tuesday, May 3, 2016 9:23 AM
To: Kalin, Sara; Fates, Ted; phildysonlaw@gmail.com; 'Philip H. Dyson'; Dean, Lynn M.; Gary Aguirre
Cc: Thomas Hebrank
Subject: RE: SEC v. Schooler

We don't oppose the concept of filing, but we oppose the substance of the anticipated filing.

Tim Dillon

From: Kalin, Sara [mailto:KALINS@SEC.GOV]
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To: Fates, Ted <tfates@allenmatkins.com>; phildysonlaw@gmail.com; 'Philip H. Dyson' <phil@phildysonlaw.com>; Dean, Lynn M. <DeanL@sec.gov>; Gary Aguirre <gary@aguirrelawapc.com>; Tim Dillon <tdillon@dghmalaw.com>
Cc: Thomas Hebrank <thebrank@ethreadvisors.com>
Subject: RE: SEC v. Schooler

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