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9 Attorneys for Receiver  
10 THOMAS C. HEBRANK

11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**  
13

14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 v.

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

21 Defendants.

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

**RECEIVER'S NOTICE OF MOTION  
AND MOTION FOR AUTHORITY  
TO PURSUE CLAIMS TO QUIET  
TITLE TO SANTA FE PROPERTY**

Date: May 5, 2017  
Time: 1:30 p.m.  
Ctrm.: 2D  
Judge: Hon. Gonzalo P. Curiel

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

2 **NOTICE IS HEREBY GIVEN** that on May 5, 2017, at 1:30 p.m. in  
3 Courtroom 2D of the United States District Court, Southern District of California,  
4 located at 221 West Broadway, San Diego, California 92101, Thomas C. Hebrank  
5 ("Receiver"), the Court-appointed receiver for First Financial Planning Corporation  
6 d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the  
7 General Partnerships listed in Schedule 1 to the Preliminary Injunction Order  
8 entered on March 13, 2013 (collectively, "Receivership Entities"), will, and hereby  
9 does, move this Court for an order authorizing the Receiver to pursue claims to quiet  
10 title to the Santa Fe Property (as defined in the Motion) ("Motion").

11 This Motion is based upon this notice, the accompanying Memorandum of  
12 Points and Authorities and Declaration of Thomas C. Hebrank, all pleadings and  
13 papers on file in this action, and upon such other matters as may be presented to the  
14 Court at the time of hearing.

15 **Procedural Requirements:** If you oppose the Motion, you are required to  
16 file your written opposition with the Office of the Clerk, United States District  
17 Court, Southern District of California, 333 West Broadway, Suite 420, San Diego,  
18 California 92101, and serve the same on the undersigned no later than 14 calendar  
19 days prior to the hearing date. An opposing party's failure to file an opposition to  
20 any motion may be construed as consent to the granting of the motion pursuant to  
21 Civil Local Rule 7.1(f)(3)(c).

22  
23 Dated: April 4, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

24  
25 By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

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9 Attorneys for Receiver  
10 THOMAS C. HEBRANK

11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**  
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14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 v.

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

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR AUTHORITY TO  
PURSUE CLAIMS TO QUIET TITLE  
TO SANTA FE PROPERTY**

Date: May 5, 2017  
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"), its  
3 subsidiaries, and the General Partnerships listed on Schedule 1 to the Preliminary  
4 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"),  
5 submits this Motion for Authority to Pursue Claims to Quiet Title to Santa Fe  
6 Property ("Motion").

7 **I. INTRODUCTION**

8 The receivership estate includes three parcels of property located near  
9 Cerrillos, New Mexico known as the Santa Fe Property ("Santa Fe Property").  
10 There is one mortgage on each parcel (three mortgages total) all in favor of  
11 Tower 98, LLC ("Tower 98"). The Receiver and his staff have been in contact with  
12 Tower 98 regarding the mortgages since early in the case. Starting in 2013, the GPs  
13 that own the Santa Fe Property were unable to make some of the mortgage  
14 payments. This is because the GPs had exhausted the original reserve balances in  
15 their accounts and did not collect enough from their investors each month on their  
16 notes to cover the mortgage payments. The Receiver raised this issue specifically  
17 with the Court and received permission to make partial payments from whatever  
18 cash was available in the accounts of the applicable GPs.

19 Once the Receiver's orderly sale/distribution plan motion was granted,  
20 including pooling of the funds of the Receivership Entities in one common fund, the  
21 Receiver was in a position to pay off the Tower 98 mortgages. The Receiver  
22 reached out to Tower 98 on multiple occasions in June and July 2016 to request a  
23 payoff demand and calculation of the loan balance. When no response was  
24 received, the Receiver had his counsel contact counsel for Tower 98 to make the  
25 same request. It was not until October 2016, however, that Tower 98 provided a  
26 calculation of the loan balance, which was substantially overstated. Although it  
27 acknowledged the mistake, it did not provide a revised calculation until  
28 December 2016. Again, the calculation was substantially overstated. The Receiver

1 provided Tower 98 with his own calculation of the loan on two occasions, but  
2 Tower 98 continued to dispute the total amount owed. Accordingly, on  
3 February 24, 2016, the Receiver mailed a check to Tower 98 for the full balance  
4 owed and provided Tower 98 with documents to release/reconvey the mortgages on  
5 the Santa Fe Property such that they would be removed from title to the property.  
6 Tower 98 has refused to execute and return the releases.

7 The Receiver has made extensive efforts to consensually resolve the payoff  
8 amount on the mortgages with Tower 98, but it continues to demand an amount  
9 more than \$60,000 higher than the full balance owed. Accordingly, the Receiver  
10 now seeks authority to bring a quiet title action to clear the mortgages from the  
11 property. Although the Preliminary Injunction Order authorizes the Receiver to  
12 pursue claims and causes of action on behalf of the Receivership Entities,  
13 commencing lawsuits involves considerable expense, especially if the claims are  
14 contested. Accordingly, in an abundance of caution, the Receiver seeks authority to  
15 proceed with an action in this Court to quiet title to the Santa Fe Property.

## 16 II. BACKGROUND FACTS

17 The Santa Fe Property was purchased in 2007 and is made up of three parcels  
18 known as Tract 2, Tract 3, and Tract 4. The property was purchased with seller  
19 financing in the form of a \$1.2 million loan with an interest rate of 8% and a 10-year  
20 term. The loan is secured by a mortgage on each of the three parcels. The seller  
21 subsequently assigned the promissory note and mortgages to one of its affiliates,  
22 Tower 98. Declaration of Thomas Hebrank filed herewith ("Hebrank Decl."), ¶ 2.

23 Pecos Partners, Pueblo Partners, and Santa Fe View Partners were formed in  
24 2008, 2009, and 2011, respectively. These three GPs took title to the property (each  
25 through its own LLC holding company) as co-tenants, each with an undivided  
26 33.33% interest in the property. The GPs did not collect enough in note payments  
27 from their investors each month to cover the monthly mortgage payment  
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1 (\$14,559.31). Accordingly, the shortfall had to be made up from the reserve funds  
2 in their accounts, which steadily depleted those funds. Hebrank Decl., ¶ 3.

3 Moreover, the investor note payments schedule did not tie to the payment  
4 requirements of the underlying mortgage. The investors in Pecos Partners and  
5 Pueblo Partners owed less in notes than the investors in Santa Fe Partners. This  
6 disparity led to a situation where the investors in Pecos Partners and Pueblo Partners  
7 had paid off their notes and the only note payments coming in were from the  
8 investors in Santa Fe Partners. As noted above, these payments were insufficient to  
9 cover the monthly mortgage payment. With permission from the Court, the  
10 Receiver made partial mortgage payments with the funds available. The Receiver  
11 was in communication with Tower 98 during this time regarding the payment  
12 defaults and timing of future payments. Hebrank Decl., ¶ 4.

13 In 2015 the Receiver sent operational bills to the investors in the three GPs  
14 per the Court's instructions, but the amounts collected did not cover the shortfall.  
15 The Receiver also had to contact Tower 98 on multiple occasions because checks  
16 that had been mailed to Tower 98 remained uncashed for long periods of time.  
17 Hebrank Decl., ¶ 5

18 In April 2016 the Receiver learned that Tower 98 had recorded a *lis pendens*  
19 against the Santa Fe Property. The Receiver's counsel contacted Tower 98's counsel  
20 and reminded Tower 98 that the Santa Fe Property is in receivership and that there is  
21 a stay prohibiting all legal actions by creditors against the Receivership Entities.  
22 Although it took considerable time, Tower 98 eventually provided documents  
23 showing the action it had filed in New Mexico had been dismissed and the  
24 *lis pendens* on the property released. Hebrank Decl., ¶ 6.

25 On May 25, 2016, the Court approved the majority of the Receiver's orderly  
26 sale/distribution plan motion (Dkt. No. 1181), including the pooling of funds in the  
27 receivership estate for distribution and the payment of expenses associated with the  
28 GP properties from the common fund moving forward. Dkt. No. 1304. As a result,

1 the Receiver was in the position to pay off the Tower 98 mortgages for the first  
2 time. Accordingly, his office promptly contacted Tower 98 to request a payoff  
3 demand and calculation of the loan balance. No payoff demand or calculation was  
4 provided, however, although there were some communications with Tower 98's  
5 counsel regarding the New Mexico action and this Court's jurisdiction over the  
6 Santa Fe Property. Hebrank Decl., ¶ 7.

7 In August and September 2016, the Receiver's counsel continued to contact  
8 counsel for Tower 98 to again request a payoff demand and calculation of the loan  
9 balance. Tower 98's counsel stated he had contacted his client and that a calculation  
10 of the loan balance would soon be provided. It was not until October 13, 2016,  
11 however, that a calculation was provided. Moreover, the calculation was grossly  
12 overstated due to improper recapitalization of interest and charging of legal fees.  
13 Hebrank Decl., ¶ 8.

14 The Receiver's counsel advised counsel for Tower 98 about the deficiencies in  
15 the calculation, but it was not until December 15, 2016, that a revised calculation  
16 was provided. The revised calculation was again substantially overstated and  
17 improperly included legal fees. Moreover, the calculation continued to charge  
18 monthly interest despite the fact the Receiver had been asking for a properly  
19 calculated payoff demand for approximately six months. Hebrank Decl., ¶ 9.

20 The Receiver's counsel contacted Tower 98's counsel on February 7, 2017,  
21 with a proposal to settle the matter. Tower 98 did not accept the settlement  
22 proposal. Accordingly, on February 24, 2017, the Receiver mailed a check to  
23 Tower 98 for the full balance owed and provided Tower 98 with documents to  
24 release/reconvey the mortgages on the Santa Fe Property such that they would be  
25 removed from title to the property.<sup>1</sup> Tower 98 has refused to execute and return the  
26 release documents. Hebrank Decl., ¶ 10.

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<sup>1</sup> As of April 4, 2017, the check had not been cashed.



### III. ARGUMENT

#### A. Broad Equitable Powers of the Court

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

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

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

*Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors.").



1 Accordingly, the Court has broad equitable powers and discretion in the  
2 administration of the receivership estate and disposition of receivership assets.

3 Here, the Receiver seeks authority to pursue claims to quiet title to the  
4 Santa Fe Property. This Court has territorial jurisdiction over the property pursuant  
5 to its jurisdiction over the GPs that own the property, which are included in the  
6 receivership, and the Receiver's filing of the Complaint and Preliminary Injunction  
7 Order in the United States District Court for the District of New Mexico pursuant to  
8 28 U.S.C. § 754.

9 The Receiver has tendered full payment of the loan obligation to Tower 98,  
10 but Tower 98 has refused to execute and return the releases of the mortgages on the  
11 property. The Receiver intends to pursue causes of action to quiet title to the  
12 property and for declaratory relief that the loan has been fully repaid. Hebrank  
13 Declaration, ¶ 11.

14 As discussed above, the Receiver has made extensive efforts to resolve the  
15 dispute with Tower 98, but Tower 98 continues to demand an amount more than  
16 \$60,000 higher than what is owed. Although pursuing a quiet title action involves  
17 some expense, the Receiver does not believe spending further time attempting to  
18 resolve the dispute with Tower 98 will be productive. As they do with all matters,  
19 the Receiver and Allen Matkins will make every effort to minimize administrative  
20 expenses associated with the action. Hebrank Declaration, ¶ 12.

21 **Notice of Related Case.** The Receiver intends to file a Notice of Related  
22 Case along with his complaint and asks that the Court accept the quiet title action as  
23 related to this action. The quiet title action is being brought by the Receiver  
24 appointed in this action, involves assets of the receivership estate established in this  
25 action, and this Court is familiar with the background facts due to its supervision of  
26 the receivership over the last four and half years. For these reasons, the Court  
27 previously accepted the Receiver's actions to collect loans made to the LinMar  
28 entities as related cases.

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**IV. CONCLUSION**

WHEREFORE, the Receiver requests an order authorizing him to pursue claims to quiet title to the Santa Fe Property.

Dated: April 4, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates            
EDWARD G. FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

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14 SECURITIES AND EXCHANGE  
15 COMMISSION,

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

21 Defendants.

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

**DECLARATION OF THOMAS C.  
HEBRANK IN SUPPORT OF  
MOTION FOR AUTHORITY TO  
PURSUE CLAIMS TO QUIET TITLE  
TO SANTA FE PROPERTY**

Date: May 5, 2017  
Time: 1:30 p.m.  
Ctrm.: 2D  
Judge: Hon. Gonzalo P. Curiel

1 I, Thomas C. Hebrank, declare:

2 1. I am the Court-appointed receiver for First Financial Planning  
3 Corporation d/b/a Western Financial Planning Corporation ("Western"), its  
4 subsidiaries, and the General Partnerships listed on Schedule 1 to the Preliminary  
5 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities").  
6 I make this declaration in support of my Motion for Authority to Pursue Claims to  
7 Quiet Title to Santa Fe Property. I have personal knowledge of the facts stated  
8 herein, and if called upon to do so, I could and would personally and competently  
9 testify to them.

10 2. The Santa Fe Property was purchased in 2007 and is made up of three  
11 parcels known as Tract 2, Tract 3, and Tract 4. The property was purchased with  
12 seller financing in the form of a \$1.2 million loan with an interest rate of 8% and a  
13 10-year term. The loan is secured by a mortgage on each of the three parcels. The  
14 seller subsequently assigned the promissory note and mortgages to one of its  
15 affiliates, Tower 98.

16 3. Pecos Partners, Pueblo Partners, and Santa Fe View Partners were  
17 formed in 2008, 2009, and 2011, respectively. These three GPs took title to the  
18 property (each through its own LLC holding company) as co-tenants, each with an  
19 undivided 33.33% interest in the property. The GPs did not collect enough in note  
20 payments from their investors each month to cover the monthly mortgage payment  
21 (\$14,559.31). Accordingly, the shortfall had to be made up from the reserve funds  
22 in their accounts, which steadily depleted those funds.

23 4. Moreover, the investor note payments schedule did not tie to the  
24 payment requirements of the underlying mortgage. The investors in Pecos Partners  
25 and Pueblo Partners owed less in notes than the investors in Santa Fe Partners.  
26 This disparity led to a situation where the investors in Pecos Partners and Pueblo  
27 Partners had paid off their notes and the only note payments coming in were from  
28 the investors in Santa Fe Partners. As noted above, these payments were

1 insufficient to cover the monthly mortgage payment. With permission from the  
2 Court, I made partial mortgage payments with the funds available. My office was  
3 in communication with Tower 98 during this time regarding the payment defaults  
4 and timing of future payments.

5       5. In 2015 my office sent operational bills to the investors in the three  
6 GPs per the Court's instructions, but the amounts collected did not cover the  
7 shortfall. My office also had to contact Tower 98 on multiple occasions because  
8 checks that had been mailed to Tower 98 remained uncashed for long periods of  
9 time.

10       6. In April 2016 I learned that Tower 98 had recorded a *lis pendens*  
11 against the Santa Fe Property. My counsel contacted Tower 98's counsel and  
12 reminded Tower 98 that the Santa Fe Property is in receivership and that there is a  
13 stay prohibiting all legal actions by creditors against the Receivership Entities.  
14 Although it took considerable time, Tower 98 eventually provided documents  
15 showing the action it had filed in New Mexico had been dismissed and the  
16 *lis pendens* on the property released.

17       7. As a result of this Court's approval of the majority of my  
18 sale/distribution plan motion on May 25, 2016, including the pooling of funds in  
19 the receivership estate for distribution and the payment of expenses associated with  
20 the GP properties from the common fund moving forward, I was in the position to  
21 pay off the Tower 98 mortgages for the first time. Accordingly, my office  
22 promptly contacted Tower 98 to request a payoff demand and calculation of the  
23 loan balance. No payoff demand or calculation was provided, however, although  
24 there were some communications with Tower 98's counsel regarding the  
25 New Mexico action and this Court's jurisdiction over the Santa Fe Property.

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1           8.     In August and September 2016, my counsel continued to contact  
2 counsel for Tower 98 to again request a payoff demand and calculation of the loan  
3 balance. Tower 98's counsel stated he had contacted his client and that a  
4 calculation of the loan balance would soon be provided. It was not until  
5 October 13, 2016, however, that a calculation was provided. Moreover, the  
6 calculation was grossly overstated due to improper recapitalization of interest and  
7 charging of legal fees.

8           9.     My counsel advised counsel for Tower 98 about the deficiencies in the  
9 calculation, but it was not until December 15, 2016, that a revised calculation was  
10 provided. The revised calculation was again substantially overstated and  
11 improperly included legal fees. Moreover, the calculation continued to charge  
12 monthly interest despite the fact we had been asking for a properly calculated  
13 payoff demand for approximately six months.

14          10.    My counsel contacted Tower 98's counsel on February 7, 2017, with a  
15 proposal to settle the matter. Tower 98 did not accept the settlement proposal.  
16 Accordingly, on February 24, 2016, my counsel mailed a check to Tower 98 for the  
17 full balance owed and provided Tower 98 with documents to release/reconvey the  
18 mortgages on the Santa Fe Property such that they would be removed from title to  
19 the property. Tower 98 has refused to execute and return the release documents.

20          11.    I have tendered full payment of the loan obligation to Tower 98, but  
21 Tower 98 has refused to execute and return the releases of the mortgages on the  
22 property. Therefore, I am requesting authority to pursue causes of action to quiet  
23 title to the property and for declaratory relief that the loan has been fully repaid.

24          12.    I have made extensive efforts to resolve the dispute with Tower 98, but  
25 Tower 98 continues to demand an amount more than \$60,000 higher than what is  
26 owed. Although pursuing a quiet title action involves some expense, I do not  
27 believe spending further time attempting to resolve the dispute with Tower 98 will  
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1 be productive. As we do with all matters, my counsel and I will make every effort  
2 to minimize administrative expenses associated with the action.

3 I declare under penalty of perjury under the laws of the State of California  
4 that the foregoing is true and correct.

5 Executed this 4<sup>th</sup> day of April, 2017, at San Diego, California.

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7 THOMAS C. HEBRANK

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