1 2 3 4 5 6 7 8 9	ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP DAVID R. ZARO (BAR NO. 124334) 515 South Figueroa Street, Ninth Floor Los Angeles, California 90071-3309 Phone: (213) 622-5555 Fax: (213) 620-8816 E-Mail: dzaro@allenmatkins.com EDWARD G. FATES (BAR NO. 227809) 501 West Broadway, 15th Floor San Diego, California 92101-3541 Phone: (619) 233-1155 Fax: (619) 233-1158 E-Mail: tfates@allenmatkins.com Attorneys for Receiver THOMAS C. HEBRANK		
11	UNITED STATES D	OISTRIC'I	COURT
12	SOUTHERN DISTRIC	CT OF CA	LIFORNIA
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14	SECURITIES AND EXCHANGE	Case No	. 3:12-cv-02164-GPC-JMA
15	COMMISSION,		VER'S REPLY TO
16	Plaintiff,		RE INVESTORS' ITION TO MOTION FOR
17	v.	APPRO	VAL OF SALE OF JAMUL Y PROPERTY
	LOUIS V. SCHOOLER and FIRST		
18	FINANCIAL PLANNING CORPORATION d/b/a WESTERN	Date: Time:	July 15, 2016 1:30 p.m.
19	FINANCIAL PLANNING CORPORATION,	Ctrm.: Judge:	2D Hon. Gonzalo P. Curiel
20	Defendants.		
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LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

Thomas C. Hebrank ("Receiver"), the Court-appointed receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the General Partnerships listed in Schedule 1 to the Preliminary Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"), hereby replies to the Aguirre Investors' opposition ("Opposition") to the Motion for Approval of Sale of Jamul Valley Property ("Sale Motion"). I. INTRODUCTION In filing the Opposition, the Aguirre Investors have ignored the Court's orders in multiple ways. The Court instructed the Aguirre Investors to first seek to intervene before filing further motions and oppositions in the case. They ignored that instruction and filed the Opposition without first seeking to intervene. Next, the Court set a specific briefing schedule for the Sale Motion, which provided that responses were due on June 17, 2016. The Aguirre Investors ignored that order as well and filed the Opposition on July 1, 2016. Finally, the Opposition simply reiterates procedural due process arguments Defendant Louis Schooler and the Aguirre Investors have already made and the Court has already considered and rejected. For these reasons, the Opposition should be rejected. II. PROCEDURAL BACKGROUND On February 4, 2016, the Receiver filed his 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 ("Distribution Plan Motion"). Dkt. No. 1181. On February 26, 2016, the Receiver filed his Ex Parte Application for Order Confirming Sale of Jamul Valley Property ("Jamul Valley Ex Parte"). Dkt. No. 1191. Between late February and early April 2016, the Aguirre Investors filed a

series of motions, ex parte applications, and objections to relief requested by the

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Receiver. See e.g. Dkt. Nos. 1184, 1194, 1200, 1204, 1212, 1221, 1223. On
April 6, 2016, the Court denied the Aguirre Investors' motions without prejudice and
instructed them to first file motions to intervene to the extent they wished to refile
any of their motions. Dkt. No. 1224. On April 8, 2016, the Aguirre Investors filed a
motion to intervene. Dkt. No. 1229. On May 18, 2016, the Court entered a lengthy
order carefully considering and denying the Aguirre Investors' request to intervene,
other than for the limited purpose of opposing the Distribution Plan Motion. Dkt.
No. 1296.
On May 25, 2016, the Court entered an order granting in part and denying in
part the Distribution Plan Motion ("Distribution Plan Order"). Dkt. No. 1304. On
the same day, the Court entered an order approving certain recommendations
regarding letters of intent and the engagement of brokers, but denying the Jamul
Valley <i>Ex Parte</i> . Dkt. No. 1305. The order denying the Jamul Valley <i>Ex Parte</i>

As directed, the Receiver filed the Sale Motion within 14 days of the order, on June 8, 2016. Dkt. No. 1310. The Aguirre Investors did not file their Opposition to the Sale Motion until July 1, 2016. Dkt. No. 1326.

incorporating the 28 U.S.C. § 2001(a) public auction procedures. *Id.* The order also

stated that responses to the Sale Motion were due on June 17, 2016, and replies were

directed the Receiver to refile the request within 14 days as a noticed motion,

III. DISCUSSION

The Opposition should be rejected for several reasons. First, the Court specifically denied the Aguirre Investor's request to intervene, other than for the limited purpose of opposing the Distribution Plan Motion. The Aguirre Investors have not obtained permission from the Court to intervene for the purpose of opposing the Sale Motion. Accordingly, the Opposition should be rejected.

Second, the Opposition was filed two weeks late. The Court set a specific briefing schedule for the Sale Motion and the Aguirre Investors ignored it. If

due on July 1, 2016. *Id*.

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1	briefing schedules can be ignored without consequence, they become meaningless.		
2	The Aguirre Investors have not even acknowledged their late filing, let alone		
3	provide any basis for excusing it. Again, the Opposition should be stricken.		
4	Third, the Opposition simply reasserts the same procedural due process		
5	arguments Schooler and the Aguirre Investors have previously made and the Court		
6	has rejected in prior orders, including in the Distribution Plan Order. Finally, in		
7	opposing the Sale Motion, the Aguirre Investors have contradicted their own expert,		
8	Xpera Group, which has endorsed the proposed sale. For these reasons, the		
9	Opposition should be rejected.		
10	IV. CONCLUSION		
11	For these reasons, the Receiver requests that the Opposition be rejected and		
12	the proposed order granting the Motion be signed and entered.		
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14	Dated: July 8, 2016 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP		
15	By: /s/ Edward Fates		
16	EDWARD G. FATES Attorneys for Receiver		
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PROOF OF SERVICE 1 I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541. 2 3 On July 8, 2016, I served the within document(s) described as: 4 RECEIVER'S REPLY TO AGUIRRE INVESTORS' OPPOSITION 5 TO MOTION FOR APPROVAL OF SALE OF JAMUL VALLEY **PROPERTY** 6 on interested parties in this action by: 7 **■ BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"): the** 8 foregoing document(s) will be served by the court via NEF and hyperlink to the document. On July 8, 2016, I checked the CM/ECF docket for this bankruptcy 9 case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email 10 addressed indicated below: 11 Gary J. Aguirre - gary@aguirrelawapc.com; maria@aguirrelawapc.com 12 John Willis Berry - berryj@sec.gov; LAROFiling@sec.gov Lynn M. Dean - deanl@sec.gov; larofiling@sec.gov; berryj@sec.gov; irwinma@sec.gov; cavallones@sec.gov 13 14 Timothy P. Dillon - tdillon@dghmalaw.com; cbeal@dghmalaw.com; kramirez@dghmalaw.com; smiller@dghmalaw.com; 15 sahuja@dghmalaw.com Philip H. Dyson - phildysonlaw@gmail.com; jldossegger2@yahoo.com; 16 phdtravel@yahoo.com 17 Edward G. Fates - tfates@allenmatkins.com; bcrfilings@allenmatkins.com; jholman@allenmatkins.com 18 Susan Graham - gary@aguirrelawapc.com 19 Eric Hougen - eric@hougenlaw.com Sara D. Kalin - kalins@sec.gov; chattoop@sec.gov; irwinma@sec.gov 20 David R. Zaro - dzaro@allenmatkins.com; mdiaz@allenmatkins.com 21 I declare under penalty of perjury under the laws of the United States that the 22 foregoing is true and correct. 23 Executed on July 8, 2016, at San Diego, California. 24 Edward G. Fates /s/ Edward Fates 25 (Signature of Declarant) (Type or print name) 26 27 28

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