

1 Eric J. Hougen (SBN 258968)
2 Law Offices of Eric J. Hougen
3 624 Broadway, Suite 303
4 San Diego, CA 92101
5 Telephone: (619) 702-1000
6 Facsimile: (619) 702-1005

7 Philip H. Dyson, Esq. (SBN 097528)
8 Law Office of Philip H. Dyson
9 8461 La Mesa Boulevard
10 La Mesa, CA 91942
11 (619) 462-3311

12 Edward Patrick Swan, Jr., Esq. (SBN 089429)
13 Jones Day
14 12265 El Camino Real, Suite 200
15 San Diego, CA 92130
16 Telephone: (858) 703-3132
17 Facsimile: (858) 314-1150

18 Attorneys for Defendants LOUIS V. SCHOOLER
19 and FIRST FINANCIAL PLANNING CORPORATION

20 **UNITED STATES DISTRICT COURT**
21 **SOUTHERN DISTRICT OF CALIFORNIA**

22 SECURITIES AND EXCHANGE)
23 COMMISSION,)

24 Plaintiff,)

25 v.)

26 LOUIS V. SCHOOLER and)
27 FIRST FINANCIAL PLANNING)
28 CORPORATION d/b/a)
WESTERN FINANCIAL)
PLANNING CORPORATION,)

Defendants.)

Case No. 12 CV 2164 GPC JMA

**NOTICE OF MOTION AND
MOTION FOR MODIFICATION OF
THE PRELIMINARY INJUNCTION
ORDER TO REMOVE THE REAL
ESTATE GENERAL
PARTNERSHIPS FROM THE
RECEIVERSHIP**

Date: July 26, 2013

Time: 1:30 p.m.

Courtroom: 2D

Judge: Hon. Gonzalo P. Curiel

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

1 TO PLAINTIFF SECURITIES AND EXCHANGE COMMISSION, RECEIVER
2 THOMAS E. HEBRANK, AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on **July 26, 2013, at 1:30 p.m.**, or as soon
4 thereafter as the matter may be heard in the above-entitled court, located at 221
5 West Broadway, San Diego, California, in Courtroom 2D, Defendants LOUIS V.
6 SCHOOLER (“Schooler”) and FIRST FINANCIAL PLANNING CORPORATION
7 d/b/a WESTERN FINANCIAL PLANNING CORPORATION (“Western”)
8 (collectively “Defendants”) will move for modification of the preliminary injunction
9 issued by this Court on October 5, 2012 with final order issued on March 13, 2013,
10 to wit, to remove the real estate general partnerships from the receivership.

11 This motion is brought on the grounds that federal courts have broad
12 discretion “to supervise an equity receivership and to determine the appropriate
13 action to be taken in the administration of the receivership.” *S.E.C. v. Hardy*, 803
14 F.2d 1034, 1037 (9th Cir. 1986); *see also S.E.C. v. Lincoln Thrift Ass’n*, 577 F.2d
15 600 (9th Cir. 1978). However, “[a] receivership is only a means to reach some
16 legitimate end sought through the exercise of the court of equity. It is not an end in
17 itself.” *Kelleam v. Maryland Cas. Co.*, 312 U.S. 377, 381 (1941) (emphasis added)
18 (quoting *Gordon v. Washington*, 295 U.S. 30, 37 (1935)). “Consequently, a
19 receivership must be monitored to ensure it is still serving the function for which it
20 was created.” *S.E.C. v. Madison Real Estate Group, LLC*, 647 F. Supp. 2d 1271,
21 1275 (D. Utah 2009) (citing *Gordon*, 295 U.S. at 37).

22 The receivership in this matter should be modified to exclude the GPs. The
23 GPs are independent entities, completely separate from the Defendants in this
24 litigation, and there is no basis to continue to stretch the Receiver’s control beyond
25 Western and over the GPs as well. That is particularly true here, where the
26 Commission has yet to prove its allegations concerning Western at trial, and where
27 the GPs have not been granted their due process right to a hearing about whether
28 their assets should be part of the receivership estate in the first place.

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The motion will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, and the pleadings and papers filed herein.

DATE: May 29, 2013

Respectfully submitted,

_____/s/Eric J. Hougen_____

Eric J. Hougen
Law Offices of Eric J. Hougen
624 Broadway, Suite 303
San Diego, CA 92101

Counsel for Defendants

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CERTIFICATION

I hereby certify that on the 29th day of May 2013, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following counsels of record:

Sam S. Puathasnanon, Esq.
Sara D. Kalin, Esq.
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036

Ted Fates, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, CA 92101

____/s/Eric J. Hougen_____
Eric J. Hougen

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