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

10 SECURITIES AND EXCHANGE  
11 COMMISSION,

12 Plaintiff,

13 vs.

14 LOUIS V. SCHOOLER and FIRST  
FINANCIAL PLANNING  
15 CORPORATION d/b/a WESTERN  
FINANCIAL PLANNING  
16 CORPORATION,

17 Defendants.

Case No. 12 CV 2164 GPC JMA

**PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANTS' 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.  
Ctrm.: 2D  
Judge: Hon. Gonzalo P. Curiel**

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

1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission (“SEC”) opposes defendants’  
3 Motion for Modification of the Preliminary Injunction Order to Remove the Real  
4 Estate General Partnerships from the Receivership (Dkt. No. 195-1). In their  
5 motion, defendants offer no new arguments, choosing instead to repackage prior  
6 arguments to challenge the receivership over the general partnerships at issue here  
7 (“GPs”). Not only did the Court decide this issue several months ago, defendants  
8 themselves consented to the receivership. *See* Dkt No. 44, p. 25 (PI order  
9 acknowledging defendants’ stipulation). In any event, the receivership remains  
10 necessary because the GPs have depended on, and continue to depend on, Western  
11 to manage the GPs, including the payment of mortgages and property taxes.

12 Moreover, defendants’ complaints about purported due process violations  
13 suffered by the GPs and their investors ring hollow. The GPs are on notice of this  
14 action, of the receivership, and have been participating in this action. And it is  
15 remarkable that defendants even make this argument about due process now. It  
16 was defendants who fought the efforts of the SEC to provide investors with notice  
17 of and an opportunity to be heard at the September 2012 preliminary injunction  
18 hearing, placing defendants’ own interests ahead of the investors. *See* Dkt. No 14,  
19 p. 16 (“[a]lerting all Western investors and partners . . . would likely permanently  
20 damage, and likely end, Defendants’ business”).

21 For the reasons discussed below and in the Receiver’s response to the  
22 defendants’ motion (“Receiver’s Response”), which the SEC agrees with and joins,  
23 the SEC respectfully requests that the Court deny defendants’ motion and keep the  
24 receivership intact, consistent with the Court’s prior order and defendants’ consent.

25 **II. ARGUMENT**

26 **A. Defendants Stipulated To A Receiver Over The GPs**

27 The Court has already ordered, and defendants have already consented to,  
28 the receivership over the GPs that they now complain about. In the Court’s

1 October 5, 2012 preliminary injunction order (“PI Order”), the Court stated that  
2 “Defendants are willing to stipulate to a continued freeze of the assets of the  
3 general partnership, overseen by the appointed receiver.” Dkt No. 44, p. 25. In the  
4 subsequent eight months, defendants have not challenged the Court’s appointment  
5 of a receiver over the GPs. Defendants reaffirmed their agreement to a receiver  
6 over the GPs in their response to the Receiver’s second report when they urged the  
7 Court to enter an order “*that conforms to this Court’s [PI] Order.*” See Dkt. No.  
8 51, p. 3 (emphasis in original). Indeed, their response expressly acknowledged that  
9 the Court-appointed Receiver, Mr. Hebrank, would serve as receiver over the GPs.  
10 See, e.g., Dkt. No. 51, p. 6 (“the Receiver’s understanding of basic obligations of  
11 the very GPs for which he is supposed to be serving as Receiver”). Moreover,  
12 defendants, in objecting to the SEC’s proposed preliminary injunction order, did  
13 not seek to remove the receivership over the GPs. See Dkt. No. 70. In fact,  
14 defendants’ competing order agreed that Mr. Hebrank would be appointed receiver  
15 over the GPs. See Dkt No. 70-2, p. 3.

16 Indeed, defendants’ motion is really just a motion for reconsideration.  
17 Defendants seek reconsideration of several prior rulings by Court—its PI Order  
18 (Dkt. No. 44), issued over eight months ago; its order on the Receiver’s second  
19 report (Dkt. No. 59), issued nearly seven months ago; and its order appointing Mr.  
20 Hebrank as Receiver over Western and the GPs (Dkt. No. 174), entered two and a  
21 half months ago. Also, defendants’ motion seeks to reargue, in large part, the  
22 SEC’s arguments in its TRO application, filed over nine months ago. See, e.g.,  
23 Dkt. No. 195-1, pp. 12-13, 16 (citing Dkt. No. 3-1). Under the Local Rules any  
24 motion for reconsideration must be filed within twenty-eight days after entry of the  
25 ruling, order, or judgment sought to be reconsidered, and must set forth (1) when  
26 and to what judge the prior application was made, (2) the ruling or order that was  
27 made, and (3) the new or different circumstances that are claimed to exist which  
28 did not exist, or were not shown, in the prior application. See S.D. Cal. L.R. 7-1(i).

1 Defendants have failed to satisfy these requirements. Their motion is both  
2 untimely and not permitted.

3 **B. A Receivership Over The GPs Is Necessary Because The GPs**  
4 **Depend On Western**

5 Defendants argue that the receivership over the GPs is unnecessary because  
6 “the GPs do nothing more than hold raw land.” Dkt. No. 195-1, p. 6. They also  
7 claim that the GPs are “wholly independent, free-standing, self-operating entities  
8 with all of the control, power, and authority given to any group of individuals  
9 choosing to operate in the form of a general partnership.” *Id.*, p. 5. Defendants  
10 further argue that the receivership is unnecessary because the receiver has found  
11 the GPs’ accounting records accurate and reliable and there is not a single claim of  
12 operational or financial malfeasance on the part of the GPs. *See id.* These  
13 arguments, however, ignore the fact that the GPs, which act as limited  
14 partnerships, cannot function on their own and depend on Western as their  
15 manager, justifying the need for a receiver over the GPs. Indeed, the SEC initially  
16 sought appointment of a receiver over the GPs largely for the purpose of managing  
17 them. *See* Dkt. No. 3, p. 23 (SEC TRO brief). As discussed below and in the  
18 Receiver’s Response, a receivership over the GPs is necessary to provide critical  
19 protection to the GPs from foreclosures and further losses.

20 **1. Before The Receiver’s Appointment, Western Managed The**  
21 **GPs**

22 Prior to the Receivership, Western, under the control of Schooler, effectively  
23 functioned as the GPs’ manager. Schooler ensured that the mortgage fees on the  
24 properties owned by the GPs were paid by Western every month. His employees  
25 conducted administrative tasks and acted as contact points for investors seeking  
26 information regarding their particular GPs. And Schooler was expected to  
27 ultimately find purchasers for the GPs’ land and negotiate the terms of the sale.  
28 Indeed, one of the Western investors who wrote to this Court summarized the GPs’

1 complete dependence on Schooler as follows:

2 I ask, could you actually believe that the best interests of  
3 the partners are being served by removing the only  
4 individual who had such a lifetime of experience and  
5 expertise and replacing them with a 'court appointed  
6 receiver', who has undoubtedly nowhere near the same  
7 level of expertise in working with these types of  
8 investments? Outside of whether the charges are valid or  
9 not, how does taking Louis Schooler away from the  
10 management of the partnerships during the interim of the  
11 trial help the partners?

12 I urge the court to restore full access to Louis Schooler in  
13 the management and all operations regarding all  
14 partnerships. He is clearly the best suited individual for  
15 this task as we investors had decided originally."

16 Dkt. No. 162 (Letter to Court from Mr. Loguidice).

17 In addition to managing the GPs, Western used investor funds to pay its own  
18 expenses for months, and sometimes years, prior to deeding any land to the GPs.

19 *See* Dkt. No. 4, Ex. 1 (Schooler Test. pp. 126:1-13, 127:18-128:3, 145:10-23,  
20 154:12-21) and Ex. 3 (Schuler Test. pp. 33:19-35:5). Defendants claim that the  
21 GPs are not defendants' alter egos, and state that "[t]here is no allegation that  
22 corporate forms have been disregarded," and that "there is no overlap in  
23 management or control between Western and the GPs . . . ." Dkt. No. 195-1, p. 16.

24 These statements are not true. The SEC did, in fact, allege in its Complaint that  
25 corporate forms were disregarded:

26 ...the GPs held no interest in the land until the end of  
27 each GP offering, which was months, and sometimes  
28 years, after the first investment. Defendants did not  
disclose that during this interim period and before the  
properties were transferred to the GPs, Western used  
investor funds to pay its general operating expenses,  
including mortgages on properties held by older GPs,  
Schooler's salary, and large tax penalties. Also, during  
the interim, Western had no mechanism in place to  
ensure the safety of investor funds in the event they  
needed to be returned.

29 Dkt. No. 1, ¶¶ 5, 20. The Receiver's Initial and Second Reports also prove these  
30 allegations correct. *See* Dkt. No. 27, pp. 7-8 and Ex. C; Dkt. No. 49, p. 2. In fact,  
31 the investors in F-86 Partners, the GP offering ongoing when the SEC filed its

1 TRO, have been left with next to nothing as a result of the practice described  
2 above. They have lost the majority of the funds they invested because Western  
3 used them for its general operating expenses and they were never given the interest  
4 in land Western had promised them. *See* Dkt. No. 49, pp. 2-3. This is a clear  
5 example of Western's disregard for corporate formalities as it saw fit. Despite  
6 defendants' desperate attempts to paint the GPs as wholly independent entities that  
7 were not controlled or managed by Western, the facts clearly show otherwise.  
8 Indeed, defendants' motion provides strong evidence of the GP's inability to  
9 function on their own. If the GPs were truly "self-operating entities," then they  
10 would not need defendants to file this motion on their behalf.

## 11 **2. The GPs Continue To Rely On Western Since The** 12 **Receiver's Appointment**

13 Following the appointment of the Receiver, the GPs have relied on Western,  
14 under the control of the Receiver, to manage their affairs. The Receiver has  
15 overseen administrative tasks on behalf of the GPs, such as the filing of their taxes,  
16 and has acted as a point of contact for investors seeking information regarding their  
17 investments.<sup>1</sup> *See* Dkt. No. 197, pp. 2, 5.

18 In addition, the Receiver has made the mortgage payments owed by Western  
19 in order to protect the GPs' main assets – the land they hold. Defendants imply  
20 that this responsibility is not necessary. They claim that Western's default on these  
21 notes would not create a foreclosure risk for the GPs. *See* Dkt. 195-1, p. 15. They  
22 further contend that "for every dollar Western owes on an underlying note, more  
23 than a dollar is owed to Western by the GPs . . . ." *Id.* But the Receiver's Forensic  
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25 <sup>1</sup> The Court, in ordering Western into receivership, recognized that "additional  
26 clarification is needed with regard to Western's business structure, including its  
27 relationship with the general partnerships," which is "especially true given the  
28 nearly one hundred general partnerships and other entities with some relationship  
to Western." Dkt. No. 59, p. 10 (Order on receiver's second report). As reflected  
in his periodic reports to the Court, the Receiver's work to clarify the structure and  
relationship to the GPs relationship is ongoing and not yet complete. *See* Dkt. Nos.  
27, 49, 80, 182, 184, and 203.

1 Accounting Report: Part One plainly illustrates that these statements are false. It  
2 shows that Western took out \$14.2 million in loans to purchase the properties, and  
3 the GP investors took out only \$12.5M million in loans from Western. *See* Dkt.  
4 No. 182-1, Ex. 1, p. 19. As a result, Western would never have been able to pay  
5 off the mortgages it owed with funds the GPs owed Western. In addition, as stated  
6 more fully in the Receiver's Response, Western does not currently receive enough  
7 from the GPs to make the necessary mortgage payments. *See* Dkt. No. 206, p. 3.

8 Finally, as described in the Receiver's Report and Recommendations  
9 Regarding Valuation of Real Estate Assets of Receivership Entities, the Receiver  
10 proposes to conduct and oversee the massive voting process necessary to determine  
11 how the GPs will deal with their land going forward. *See* Dkt. No. 203, pp. 9-13.  
12 If the GPs do not vote to hold their land, the Receiver will make recommendations  
13 and seek the Court's approval for disposing the land. *See id.*, p.13.

### 14 **C. Investors' Due Process Rights Have Not Been Violated**

15 Defendants also argue that the due process rights of the GPs and their  
16 investors have been violated because the GPs have not had an opportunity to be  
17 heard regarding the receivership, an argument defendants previously made in  
18 opposing the Receiver's second interim fee application. *See* Dkt. Nos. 195-1, p. 17  
19 and 183, p. 5. This argument fails for two reasons.

20 First, the GPs are on notice of this action and the receivership. Indeed, they  
21 have actively participated in these proceedings. The Court has acknowledged and  
22 considered the numerous objections submitted to the Court by investors and made  
23 part of the record. In its order granting the Receiver's first fee application, the  
24 Court summarized in great detail the sixty-five objections that it received from  
25 investors. *See* Dkt. No. 169, pp. 3-5. Moreover, the Court previously rejected  
26 defendants' due process argument outright because the court permitted the  
27 investors to file objections and considered those objections in its order on the  
28 Receiver's second fee application. *See* Dkt. No. 190, p. 10 n. 4.

1 Second, the defendants' due process argument should be taken for what it  
2 is—a disingenuous and opportunistic reversal of its stance earlier in this case. At  
3 the outset of this action, defendants prevented the SEC and the Receiver from  
4 providing investors with notice and opportunity to be heard. As part of its TRO  
5 application, the SEC asked the Court to “order the temporary receiver to give the  
6 GPs notice of the Order to Show Cause Regarding Preliminary Injunction and  
7 Appointment of a Permanent Receiver.” Dkt. No. 3-1, p. 23. This would have  
8 allowed the GPs to “then have notice and an opportunity to be heard before any of  
9 their assets are placed under the control of a permanent receiver.” *Id.*

10 However, as part of their motion to dissolve the TRO, defendants opposed  
11 the SEC's request, arguing that “[a]lerting all Western investors and partners to the  
12 Commission's inaccurate and unsupported allegations would likely permanently  
13 damage and likely end, defendants' business – an unfair result, particularly since  
14 all of this will have happened without defendants ever having had an opportunity  
15 for the Court to hear a single word from them.” Dkt. No. 14, p. 16. The Court  
16 stayed the portion of the TRO that required the Receiver to provide investors with  
17 notice of the TRO while the parties briefed the motion to dissolve. *See* Dkt. No.  
18 17, p. 2. The SEC renewed its request to provide notice of the TRO to investors in  
19 its opposition to the motion to dissolve. *See* Dkt. No. 18, p. 6. Nonetheless, the  
20 Court ultimately left the stay in place despite its skepticism of defendants' position  
21 “that their investors should not be notified of a public proceeding and public  
22 documents that are a part of that proceeding.” Dkt No. 22, p. 6. After blocking the  
23 SEC's efforts to provide investors with notice and an opportunity to be heard, it is  
24 disingenuous for defendants to now argue that the GPs have been harmed because  
25 their due process rights have been violated.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the SEC respectfully requests that the Court deny  
3 defendants' Motion for Modification of the Preliminary Injunction Order to  
4 Remove The Real Estate General Partnerships from the Receivership.

5  
6 DATED: June 21, 2013

Respectfully submitted,

7  
8 /s/ Sam S. Puathasnanon  
9 Sam S. Puathasnanon  
10 Sara Kalin  
11 Attorneys for Plaintiff  
12 Securities and Exchange Commission  
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**PROOF OF SERVICE**

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On June 21, 2013, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION FOR MODIFICATION OF THE PRELIMINARY INJUNCTION ORDER TO REMOVE THE REAL ESTATE GENERAL PARTNERSHIPS FROM THE RECEIVERSHIP** on all the parties to this action addressed as stated on the attached service list:

**OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

**PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

**EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

**HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

**UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

**ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

**E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

**FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 21, 2013

/s/ Sam S. Puathasnanon  
Sam S. Puathasnanon

