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18 Attorneys for Defendants

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

21 SECURITIES AND EXCHANGE  
22 COMMISSION,

23 Plaintiff,

24 v.

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

Defendants.

Case No. 12 CV 2164 GPC JMA

**DEFENDANTS' EX PARTE  
APPLICATION FOR ORDER  
SHORTENING TIME FOR  
DEFENDANTS' MOTION FOR  
PARTIAL RECONSIDERATION OF  
THE ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION TO  
MODIFY PRELIMINARY  
INJUNCTION ORDER, AND FOR  
STAY PENDING RULING ON  
MOTION FOR  
RECONSIDERATION**

**Courtroom: 2D**

**Judge: Hon. Gonzalo P. Curiel**

1 Pursuant to Local Rule 7.1.e.5, Defendants LOUIS V. SCHOOLER  
2 (“Schooler”) and FIRST FINANCIAL PLANNING CORPORATION d/b/a  
3 WESTERN FINANCIAL PLANNING CORPORATION (“Western”) (collectively  
4 “Defendants”) submit this *ex parte* application for an Order Shortening Time on  
5 Defendants’ Motion for Partial Reconsideration of the Order Granting in Part and  
6 Denying in Part Defendants’ Motion to Modify Protective Order (“Motion”), and  
7 requesting a stay of that part of the order issued by this Court on August 16, 2013  
8 granting in part and denying in part Defendants’ motion to modify the preliminary  
9 injunction order, to wit, the portion of Section II.G.2 of the Court’s Order that all of  
10 Western’s equity interests in the real estate general partnerships that are the subject  
11 of this action (“GPs”) be liquidated prior to the release of the GPs from the  
12 receivership (Dkt. No. 470, 25:20-26:9).

13 The Motion is scheduled for hearing on November 8, 2013, but an *ex parte*  
14 application for order shortening time and stay of the Court’s order is necessary to  
15 protect Western from suffering irreparable harm through the summary liquidation of  
16 its property interests in the GPs.

17 I.

18 INTRODUCTION

19 Following extensive briefing and over an hour of oral argument on July 26,  
20 2013, the Court on August 16, 2013 issued its order regarding Defendants’ motion  
21 for modification of the preliminary injunction of March 13, 2013.

22 Although the Court granted Defendants’ motion to have the receivership  
23 released over the GPs, the Court’s order imposed several “equitable” conditions  
24 precedent on the removal of the receivership. The main condition, which is the  
25 subject of the Motion, is quoted in its entirety (Dkt. No. 470, 25:20-26:9):

26 First, the Court first orders a pro rata reduction of Western’s equity interests  
27 in the GPs according to the properties’ current fair market value as set forth in  
28 the appraisals obtained by the Receiver. To the extent a GP account has a  
zero balance or insufficient funds to meet an obligation due within ninety

1 days from the date of the reduction of Western's interests, such interests shall  
2 nonetheless be formally liquidated with no payment to Western. Before the  
3 GPs are released from the receivership, all of Western's equity interests in the  
4 GPs shall be liquidated to ensure that Western will have no future  
5 responsibility for any liability incurred by the GPs. Additionally, given the  
6 enormous disparity between the purchase prices of the GP properties and the  
7 funds Western raised from the GPs, the Court finds it equitable to preclude  
8 Western from receiving a share of any proceeds received from any future sale  
9 of the GP properties.

10 Under the Court's Order, Western would be permanently stripped of \$11  
11 million of assets before the underlying claims have been tried, and without any  
12 judgment of liability against Western having been entered first, if at all. If the  
13 Court's Order is not modified, Western will be deprived of the opportunity to  
14 present evidence to the trier of fact why it is entitled to retain its equity interests in  
15 the GPs, and it will have been deprived of due process.

## 16 II.

### 17 **THE COURT'S ORDER IMMEDIATELY JEOPARDIZES WESTERN'S 18 PROPERTY INTERESTS, AND THEREFORE A STAY AND EXPEDITED 19 FILING AND HEARING OF THE MOTION IS NECESSARY**

20 Defendants contend in the Motion for Partial Reconsideration that the Court's  
21 Order violates the due process rights of Western because it orders an immediate and  
22 permanent deprivation of Western's property without affording Western the trial on  
23 the merits to which it is entitled. There has been no trial on the merits, no finding of  
24 liability for fraud on the part of Western, and no entry of judgment against Western,  
25 yet the Court's order would result in a permanent deprivation of Western's property  
26 interests akin to a post-judgment order for the disgorgement of ill-gotten gains.

27 The Court's order does not specify a waiting period or a date for the Receiver  
28 to begin the liquidation of Western's equity interests. Thus, unless a stay is issued  
to stop the implementation of the Court's order until the Motion is heard and ruled  
upon at the earliest possible date, Western may be irreparably harmed because the

1 Receiver will have liquidated Western's interests.

2 **III.**

3 **CONCLUSION**

4 Because the Court's order directing the liquidation of Western's equity  
5 interests did not specify a starting date, an *ex parte* application for an order  
6 shortening time and interim relief by stay is necessary to protect Western's property  
7 interests from being irreparably harmed by summary liquidation by the Receiver  
8 before the Motion could be heard on November 8, 2013.

9 Therefore, Defendants respectfully request that the Court issue an order  
10 shortening time on the Motion for Reconsideration and propose that:

11 (a) The Motion be heard on September 16, 2013, with oral argument as  
12 requested by Defendants in the Request for Oral Argument attached to the Motion;

13 (b) The opposition be due by September 9, 2013; and

14 (c) The reply to the opposition be due by September 12, 2013.

15 Defendants also respectfully request that a stay be issued only with regard to  
16 implementation of that part of Section II.G.2 of the Court's order of August 16,  
17 2013 authorizing the Receiver to summarily liquidate all of Western's equity  
18 interests in the GPs, with such stay to remain in place until the Court rules on the  
19 Motion for Reconsideration. Defendants ask that the remainder of the Court's Order  
20 be implemented on the schedule set forth by the Court in its Order.

21 DATE: August 28, 2013

Respectfully submitted,

22 /s/Philip H. Dyson

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27 Counsel for Defendants

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**CERTIFICATION**

I hereby certify that on the 28th day of August 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:

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