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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

**DEFENDANTS' REQUEST FOR
ORAL ARGUMENT**

Date: November 8, 2013

Time: 1:30 p.m.

Ctrlm: 2D

Judge: Hon. Gonzalo P. Curiel

1 Defendants LOUIS V. SCHOOLER (“Schooler”) and FIRST FINANCIAL
2 PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING
3 CORPORATION (“Western”) (collectively “Defendants”), by and through their
4 undersigned counsel, respectfully request oral argument for Defendants’ Motion for
5 Partial Reconsideration of the Order Granting in Part and Denying in Part
6 Defendants’ Motion to Modify Preliminary Injunction Order, which is scheduled for
7 hearing on November 8, 2013. Oral discussion of the facts and the applicable
8 precedent would benefit the parties and the Court as explained below.

9 I.

10 **THE DRASTIC NATURE OF THE COURT’S ORDER THAT IS AT ISSUE,**
11 **REGARDING THE COMPLETE DEPRIVATION OF WESTERN’S**
12 **PROPERTY INTERESTS IN THE GENERAL PARTNERSHIPS WITHOUT**
13 **NOTICE OR HEARING, MAKES ORAL ARGUMENT ESSENTIAL**

14 The motion at issue raises substantial questions of law and fact, warranting
15 oral argument: (1) Can Western, an entity under receivership, have all of its equity
16 interests in the real estate general partnerships (GPs) established through Western,
17 liquidated prior to a trial on the merits with regard to the allegations made to date in
18 this matter? (2) Can the GPs be forced to use their operating capital and to
19 participate in a forced liquidation of a member’s units when it has been confirmed
20 that the GPs due process rights have not been met? (3) Can the Court order a re-
21 writing of basic terms of the GPs’ governing documents and a restructuring of the
22 GP investments in the absence of the GPs’ due process rights being met?

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

1 While federal courts have broad discretion to supervise an equity
2 receivership, the courts' supervisory actions must still comply with due process.
3 *SEC v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).
4 As the Supreme Court has noted, in employing its broad equitable powers a federal
5 court must "exercise '*the least possible power adequate to the end proposed.*'"
6 *Spallone v. United States*, 493 U.S. 265, 280 (1990) (quoting *Anderson v. Dunn*, 19
7 U.S. (6 Wheat.) 204 (1821)) (emphasis added). "Courts of equity can no more
8 disregard statutory and constitutional requirements and provisions than can courts of
9 law." *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893).

10 The primary purpose of a preliminary injunction is to preserve the status quo
11 pending determination of the action on its merits. *Chalk v. United States Dist. Ct.*
12 *Cent. Dist. Of Calif.*, 840 F.2d 701, 704 (9th Cir. 1988); *Six Clinics Holding Corp. II*
13 *v. Cafcomp Systems Inc.*, 119 F.3d 393, 400 (6th Cir. 1997). In addition, mandatory
14 injunctions, requiring status quo altering actions, as opposed to prohibitory
15 injunctions preserving the status quo, are "subject to a heightened scrutiny" and are
16 not appropriate unless "extreme or very serious harm will result." *Dahl v. HEM*
17 *Pharm. Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993); *Marlyn Nutraceuticals, Inc. v.*
18 *Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009).

19 The forced liquidation of Western's property interests by no means preserves
20 the status quo and there is no extreme or very serious harm that will result if
21 Western continues to hold its units in the GPs until there is a trial on the merits in
22 this action. This is especially the case when less drastic measures are available to
23 accomplish the same ends.

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1 Because the motion scheduled for November 8, 2013 will involve a review of
2 significant constitutional issues involving the powers of a court and receivership,
3 and because of the limits on the length of written briefing, allowing oral argument is
4 essential for the parties.

5 DATE: August 28, 2013

Respectfully submitted,

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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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