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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 PARTIAL RECONSIDERATION  
OF THE ORDER APPROVING  
RECEIVER'S SEVENTH INTERIM  
REPORT [Fed. R. Civ. P. 59(e), 60(b)]**

**Date: June 13, 2014**

**Time: 1:30 p.m.**

**Courtroom: 2D**

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

**ORAL ARGUMENT REQUESTED**

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

3 PLEASE TAKE NOTICE that on June 13, 2014, 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 pursuant to Rules 59(e) and 60(b) of the  
9 Federal Rules of Civil Procedure for partial reconsideration of the order issued by  
10 this Court on February 25, 2014 approving the Receiver’s Seventh Interim Report,  
11 to wit, the striking of Paragraph 1 regarding the listing for sale of those parcels  
12 owned by Western that are not part of any general partnership established through  
13 Western (“GP”), and the striking of Paragraph 2 regarding this Court’s disapproval  
14 of Schooler’s sending informational letters to the GP investors to provide updates on  
15 the status of the case (Dkt. No. 549, 1:21-2:5).

16 This motion is brought on the grounds that:

17 1. Paragraph 1 of the Court’s order violates the due process rights of  
18 Western because it orders a permanent deprivation of Western’s property without  
19 having first provided a noticed hearing for Western to object to the concept of  
20 selling its property. If the Court’s Order is not modified, Western’s sole remedy  
21 will be to object to the sale price, not to the issue of whether to sell the property at  
22 all in a depressed real estate market.

23 2. Paragraph 2 of the Court’s order is an unconstitutional prior restraint on  
24 Schooler’s freedoms of speech and association under the First Amendment.  
25 Schooler, either in his own capacity or through Western, is an investor in the GPs.  
26 This Court’s own order of August 16, 2013, authorizing the release of the GPs from  
27 the receivership (albeit with conditions which are now the subject of Defendants’  
28 pending appeal before the Ninth Circuit) stated that “The Court further finds that

1 investors should be permitted to freely communicate with one another as soon as  
2 possible.” Dkt. No. 470, 24:22-23. Schooler, in his capacity as a litigant, an  
3 investor, and an American citizen, has as much right to communicate with the GP  
4 investors as anyone else, and has done so through a series of letters (of which the  
5 letter attached to the Receiver’s Seventh Report is the most recent) to provide  
6 information that the Receiver has not provided and to clarify things that the  
7 Receiver has misstated. Although Part VI of the Preliminary Injunction Order  
8 prohibits the direct or indirect interference with the Receiver’s performance of his  
9 duties, it is not a gag order, and courts frown on the use of gag orders in litigation  
10 unless narrowly tailored to meet a compelling governmental interest.

11 Therefore, Paragraphs 1 and 2 of the Court’s order constitute “any other  
12 reason that justifies relief” under Rule 60(b)(6), are also void as a violation of  
13 Western’s due process rights and Schooler’s rights to freedom of speech and  
14 association under Rule 60(b)(4), and are a committing of “clear error” producing an  
15 initial decision that “was manifestly unjust” under Rule 59(e), such that  
16 reconsideration is appropriate and necessary to avoid injustice.

17 The motion will be based on this Notice of Motion and Motion, the  
18 Memorandum of Points and Authorities filed herewith, the Declaration of Louis V.  
19 Schooler filed herewith, the pleadings and papers filed herein, and such oral  
20 argument as may be permitted and held.

21 DATE: March 24, 2014

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 24<sup>th</sup> day of March 2014, 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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/s/Philip H. Dyson  
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