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15 **UNITED STATES DISTRICT COURT**
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 SECURITIES AND EXCHANGE
 18 COMMISSION,

19 Plaintiff,

20 v.

21 LOUIS V. SCHOOLER and FIRST
 22 FINANCIAL PLANNING
 23 CORPORATION d/b/a WESTERN
 24 FINANCIAL PLANNING
 25 CORPORATION,

26 Defendants.

Case No. 3:12-cv-02164-GPC-JMA

**RECEIVER'S OPPOSITION TO
 DEFENDANTS' MOTION FOR
 PARTIAL RECONSIDERATION OF
 THE ORDER APPROVING
 RECEIVER'S SEVENTH INTERIM
 REPORT**

Date: June 13, 2014
 Time: 1:30 p.m.
 Ctrm.: 2D
 Judge: Hon. Gonzalo P. Curiel

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),
3 and its subsidiaries and affiliates (collectively, the "Receivership Entities"), submits
4 this Opposition to Defendants' Motion for Partial Reconsideration of the Order
5 Approving Receiver's Seventh Interim Report ("Opposition").

6 I. INTRODUCTION

7 Defendants argue the Order violates their constitutional rights in two ways.
8 First, they say the provision authorizing the Receiver to list real properties owned by
9 Western with a licensed broker constitutes a deprivation of property without due
10 process. Second, they say the provision reminding Mr. Schooler not to interfere
11 with the Receiver's performance of his duties constitutes a prior restraint on speech.
12 Both arguments fail. For the reasons noted by the Court in denying Defendants'
13 request for order shortening time, both arguments fail.

14 With respect to the first argument, authorizing property to be listed with a
15 broker is not a deprivation of property. The property is not being sold, simply listed.
16 Moreover, the order expressly requires the Receiver to seek approval of any
17 proposed sale "via a noticed motion." Defendants can object if and when a noticed
18 motion is filed. Therefore, the Order does not deprive Western or Mr. Schooler of
19 any property and affords them the opportunity to be heard before any sale is
20 approved.

21 Moreover, paragraph 2 of the Order, which Mr. Schooler characterizes as a
22 gag order, simply reminds Mr. Schooler not to interfere with the Receiver's
23 performance of his duties and expresses the Court's view that Mr. Schooler's letter
24 demonstrates an effort to influence investors. The Order does not prohibit speech or
25 association. It merely reminds Mr. Schooler of the Court's existing order not to
26 interfere with the receivership, an important directive for conserving limited
27 receivership estate resources.

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1 Had the Court approved a sale of Western's properties or prohibited
2 Mr. Schooler from communicating with investors, the Motion might raise points
3 worthy of consideration. As it is, however, the Order does neither of those things.
4 Nor does it violate Defendants' constitutional rights.

5 II. THE LISTING AUTHORIZATION

6 Defendants cite no authority for the proposition that authorizing a receiver to
7 list property with a broker constitutes a deprivation of property. Until such time as
8 an actual sale is proposed, which, per the Order, must be done by noticed motion, no
9 deprivation of property could possibly occur. Defendants will have the opportunity
10 to object if and when noticed sale motions are filed.

11 Moreover, the Court should not hesitate to approve sales of Western's real
12 properties if and when reasonable offers are received and noticed motions filed.
13 Defendants assert that the market for raw land is depressed and speculate it will
14 rebound soon. However, there is no evidence suggesting that holding these
15 properties indefinitely and paying property taxes and insurance premiums will
16 produce a better recovery than selling them at a fair market price now.

17 III. THE REMINDER NOT TO INTERFERE

18 Defendants cite no authority for the proposition that prohibiting Mr. Schooler
19 from interfering with the Receiver's performance of his duties (or reminding him of
20 that prohibition) constitutes a prior restraint on speech. The provision enjoining and
21 restraining persons from interfering with the Receiver's performance of his duties
22 was included in the Temporary Restraining Order entered on September 6, 2012,
23 and the Preliminary Injunction Order entered on March 13, 2013. Dkt. Nos. 174.
24 The provision serves the important purpose of conserving receivership estate
25 resources which could otherwise be consumed on legal actions to stop people who
26 harass or interfere with the receivership. Such an order is well within the Court's
27 broad discretion to order ancillary relief and administer equity receiverships. *See*
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PROOF OF SERVICE

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I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

On April 18, 2014, I served the within document(s) described as:

➤ **RECEIVER'S OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL RECONSIDERATION OF THE ORDER APPROVING RECEIVER'S SEVENTH INTERIM REPORT**

on the interested parties in this action by:

BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"): the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On April 18, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address indicated below:

- Lynn M. Dean - deanl@sec.gov; larofiling@sec.gov; berryj@sec.gov; irwinma@sec.gov; cavallones@sec.gov
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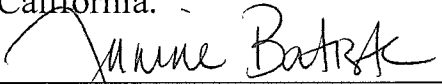
BY MAIL: I placed a true copy of the document in a sealed envelope or package addressed as indicated on the attached Service List on the above-mentioned date in San Diego, California for collection and mailing pursuant to the firm's ordinary business practice. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on April 18, 2014, at San Diego, California.

Janine L. Batiste

(Type or print name)



(Signature of Declarant)