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9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **SECURITIES AND EXCHANGE**  
**COMMISSION,**

13 Plaintiff,

14 vs.

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

18 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**  
**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

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

1 The Court should deny defendants' Louis V. Schooler and First Financial  
2 Planning Corporation dba Western Financial Planning Corporation ("Western")  
3 motion for partial reconsideration of paragraphs 1 and 2 of the Court's February  
4 25, 2014 Order Approving the Receiver's Seventh Interim Report ("Order")  
5 because defendants have misinterpreted the Order and because defendants have not  
6 set forth "the new or different circumstances that are claimed to exist which did not  
7 exist, or were not shown, in the prior application" as required by Local Rule 7-1(i).

8 In paragraph 1, the Court authorized the Receiver to list for sale the land  
9 parcels identified in Exhibit D to the Receiver's Seventh Interim Report (Dkt. No.  
10 547). Dkt. No. 549, p. 1. In the event that reasonable offers are made on the  
11 parcels, the Court also ordered the Receiver "to seek approval of such sales via  
12 noticed motion." *Id.* Defendants have characterized this paragraph as constituting  
13 "a pre-judging and finding of liability on the part of Western" and "mandating  
14 permanent and total liquidation of Western's land holdings in excess of  
15 jurisdiction." Dkt No. 560-1, p. 4. But the Order merely authorized the listing, not  
16 the sale, of the parcels. As noted in the Order, if reasonable offers are made, the  
17 Court directed the Receiver to file a noticed motion to obtain approval for any  
18 sales. When that occurs, defendants, will then have the opportunity, if they  
19 choose, to oppose or raise objections to any proposed sales.

20 Nonetheless, as the Court has recognized, at the appropriate time, it has the  
21 inherent power to determine the appropriate action in the administration and  
22 supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397  
23 F.3d 733, 738 (9th Cir. 2005); *see also Commodities Futures Trading Comm'n. v.*  
24 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords  
25 'broad deference' to the court's supervisory role, and 'we generally uphold  
26 reasonable procedures instituted by the district court that serve th[e] purpose' of  
27 orderly and efficient administration of the receivership for the benefit of  
28 creditors.""). As a result of this inherent authority, a court of equity having custody

1 and control of property can order a sale in its discretion. *See, e.g., SEC v. Elliott*,  
2 953 F.2d 1560, 1566 (11th Cir. 1992). “The power of sale necessarily follows the  
3 power to take possession and control of and to preserve property.” *SEC v.*  
4 *American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996), *cert. denied*  
5 520 U.S. 1185 (decision abrogated on other grounds). Despite defendants’  
6 protestations otherwise, the power to sell assets is not contingent on a finding of  
7 liability. Indeed, the Court has previously authorized the Receiver to sell certain of  
8 Western’s assets. *See* Dkt. No. 180; Dkt. No. 465.

9 Defendants also apparently misunderstand the scope of paragraph 2 of the  
10 Order to constitute “an unconstitutional prior restraint and gag order on Schooler’s  
11 rights of free speech and association.” Dkt. No. 560-1, p. 7. In denying  
12 defendants’ *ex parte* request for an order to shorten time, the Court recently made  
13 clear that it did not “order Schooler to cease communications with investors or  
14 even to refrain from criticizing the Receiver.” Dkt No. 562, p. 2. The Court  
15 merely intended to “remind” Schooler of his obligations under the Court’s March  
16 13, 2013 Preliminary Injunction. *See id.* In light of the Court’s clarifying  
17 comments, reconsideration of paragraph 2 of the Order is not necessary because  
18 the Order does not affect Schooler’s rights of free speech and association.

19 For the foregoing reasons, the SEC respectfully requests that the Court deny  
20 defendants’ Motion for Partial Reconsideration of the Order Approving the  
21 Receiver’s Seventh Interim Report.

22  
23 DATED: April 18, 2014

Respectfully submitted,

24 /s/ Sam S. Puathasnanon

Sam S. Puathasnanon

Lynn M. Dean

Sara Kalin

Attorneys for Plaintiff

Securities and Exchange Commission

**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 April 18, 2014, 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 PARTIAL RECONSIDERATION OF THE ORDER APPROVING RECEIVER'S SEVENTH INTERIM REPORT** 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: April 18, 2014

/s/ Sam S. Puathasnanon  
Sam S. Puathasnanon

