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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

**NOTICE OF MOTION AND MOTION
FOR MODIFICATION OF
PRELIMINARY INJUNCTION
ORDER TO REMOVE WESTERN
FINANCIAL PLANNING
CORPORATION FROM
RECEIVERSHIP [Fed. R. Civ. P. 54(b)]**

Date: June 20, 2014

Time: 1:30 p.m.

Courtroom: 2D

Judge: Hon. Gonzalo P. Curiel

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

3 PLEASE TAKE NOTICE that on June 20, 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 Rule 54(b) of the Federal Rules
9 of Civil Procedure for modification of the preliminary injunction issued by this
10 Court on October 5, 2012 with final order issued on March 13, 2013, to wit, to
11 remove Western from the court-ordered receivership.

12 This motion is brought on the grounds that federal courts have broad
13 discretion “to supervise an equity receivership and to determine the appropriate
14 action to be taken in the administration of the receivership.” *S.E.C. v. Hardy*, 803
15 F.2d 1034, 1037 (9th Cir. 1986); *see also S.E.C. v. Lincoln Thrift Ass’n*, 577 F.2d
16 600 (9th Cir. 1978). However, “[a] receivership is only a means to reach some
17 legitimate end sought through the exercise of the court of equity. It is not an end in
18 itself.” *Kelleam v. Maryland Cas. Co.*, 312 U.S. 377, 381 (1941) (emphasis added)
19 (quoting *Gordon v. Washington*, 295 U.S. 30, 37 (1935)). “Consequently, a
20 receivership must be monitored to ensure it is still serving the function for which it
21 was created.” *S.E.C. v. Madison Real Estate Group, LLC*, 647 F. Supp. 2d 1271,
22 1275 (D. Utah 2009) (citing *Gordon*, 295 U.S. at 37).

23 Here, circumstances have changed so as to eliminate the need for continued
24 receivership. The Receiver has completed all necessary tasks, namely the
25 clarification of Western’s financial affairs for which this Court stated was the reason
26 for continuation of the receivership. *See* Dkt. No. 59. The operations of Western are
27 sufficiently restrained – and reduced in scope – by the terms of the preliminary
28 injunction so as to make a continued receivership unnecessary.

1 The motion will be based on this Notice of Motion and Motion, the
2 Memorandum of Points and Authorities filed herewith, and the pleadings and papers
3 filed herein.

4
5 DATE: April 24, 2014

Respectfully submitted,

6 /s/Philip H. Dyson

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10 Counsel for Defendants
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CERTIFICATION

I hereby certify that on the 24th day of April 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_____
Philip H. Dyson