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11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

14 **SECURITIES AND EXCHANGE**  
15 **COMMISSION,**

15 Plaintiff,

16 vs.

17 **LOUIS V. SCHOOLER and FIRST**  
18 **FINANCIAL PLANNING**  
19 **CORPORATION d/b/a WESTERN**  
20 **FINANCIAL PLANNING**  
21 **CORPORATION,**

20 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**  
**MODIFICATION OF PRELIMINARY**  
**INJUNCTION ORDER TO REMOVE**  
**WESTERN FINANCIAL PLANNING**  
**CORPORATION FROM**  
**RECEIVERSHIP**

Date: June 20, 2014  
Time: 1:30 p.m.  
Place: Courtroom 2D  
Judge: Hon. Gonzalo P. Curiel

1 **I. INTRODUCTION**

2 Defendants Louis V. Schooler and First Financial Planning Corporation dba  
3 Western Financial Planning Corporation (“Western”) urge the Court to remove  
4 Western from the receivership in this action because the receiver’s job is supposedly  
5 complete. However, defendants ignore the receiver’s actual day-to-day work to  
6 ensure that Western has sufficient resources and cash to protect the primary asset of  
7 many of the GPs: their land. This has proved difficult because of Western’s ongoing  
8 cash shortage. But the receiver has managed to reduce operating expenses, sell  
9 certain of Western’s assets, collect on notes owed to Western, and use money in  
10 certain GP accounts to cover the shortfall in funds and keep the mortgages current so  
11 far. The receiver’s work in this regard is far from complete.

12 The receiver also performs additional necessary and ongoing functions. First,  
13 the receiver is necessary to ensure that Western can independently pursue third party  
14 claims. Currently, Western is engaged in litigation to collect unpaid loans from  
15 certain entities controlled by Schooler. Removing Western from the receivership  
16 would place Schooler back in control and create a conflict of interest with respect to  
17 this ongoing litigation. A similar conflict of interest would arise regarding the  
18 evaluation and pursuit of any claims that may arise against any professionals that  
19 Western has relied on, which includes one of the attorneys currently representing  
20 defendants in this action. Second, the receiver is necessary to ensure that investors  
21 receive objective and accurate information about their investments and this action,  
22 subject to Court supervision. Schooler has already been cautioned by the Court  
23 against attempting “to guide and influence the actions and perceptions of investors in  
24 these proceedings.” Having a receiver over a Western can help to address any  
25 investor misunderstandings and to counteract any efforts by Schooler or his  
26 representatives in the future.

27 Accordingly, the SEC respectfully requests that the Court deny defendants’  
28 motion to remove Western from the receivership.

## 1 **II. ARGUMENT**

2 It is undisputed that the Court has broad discretion “to supervise an equity  
3 receivership and to determine the appropriate action to be taken in the administration  
4 of the receivership.” *See SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). The  
5 Ninth Circuit has recognized that appointing a receiver furthers policies underlying  
6 the securities laws, including, among other things, (1) marshaling and preserving the  
7 assets of the entities; (2) clarifying the financial affairs of the entities for the benefit  
8 of innocent shareholders; and (3) conducting, for the benefit of investors, independent  
9 investigation of claims the entities might have against former management or other  
10 parties. *See SEC v. Wencke*, 622 F.2d 622 F.2d 1363, 1372 (9th Cir. 1980). Here, the  
11 Court has entrusted the receiver with broad responsibilities that promote these  
12 policies, including marshaling and preserving Western’s assets; claim investigation  
13 and evaluation; collecting receivables from the GPs, GP investors, and third parties;  
14 determining the current values of the GP properties; and communicating with  
15 investors and other third-parties regarding the GPs and this action. These duties are  
16 ongoing and not complete.<sup>1</sup>

### 17 **A. The Receiver Is Necessary To Marshal And Preserve Western’s** 18 **Assets, And Ensure That Mortgage Payments Are Made**

19 The receiver is necessary to continue to marshal and preserve Western’s assets  
20 under challenging financial circumstances. As the receiver has made known to the  
21 Court, Western has lost its two primary sources of income: sales of general  
22 partnership units and capital infusions from Schooler. Defendants argue repeatedly  
23 that, because neither the receiver nor the SEC has alleged a single instance of  
24 operational or financial malfeasance against defendants, investors do not “need the

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25 <sup>1</sup> The SEC also believes that the GPs should be included within the receivership. The  
26 SEC’s arguments in support of this position are presented in its concurrently-filed  
27 brief in response to the Court’s April 25, 2014 order reconsidering its August 16,  
28 2013 order. *See* Dkt. 588.

1 protection of a receiver on an ongoing basis.” Dkt. 581-1, p. 6. But this is not the  
2 sole means by which to measure the necessity of a receivership. *See Wencke*, 622  
3 F.2d at 1372 (9th Cir. 1980).

4 Defendants’ argument ignores the fact that the receiver, among other things,  
5 continues to protect Western and the GP investors by continuing to make mortgage  
6 payments on certain GP properties. These payments must be made or the GPs may  
7 lose their properties. The receiver, with the Court’s approval, has addressed  
8 Western’s cash shortage, so far, by implementing certain measures, including  
9 reducing operating expenses, selling certain of Western’s assets, collecting on notes  
10 owed to Western, and using money in certain GP accounts to cover the shortfall in  
11 funds. *See, e.g.*, Dkt. 524; Dkt. 547, pp. 2-3. This has allowed the receiver to  
12 continue making mortgage payments and preventing the GP properties from going  
13 into default.<sup>2</sup> If Western were removed from the receivership, the primary assets of  
14 many of the GPs—their encumbered land—would be threatened, because Western  
15 would still owe thousands of dollars a month on the underlying mortgages, but would  
16 have no reliable way to make the payments.

17 Defendants claim that running Western is as simple as (1) collecting on  
18 receivables owed to Western by the GPs, (2) making the “corresponding” payments  
19 on the mortgages Western owes on the GP properties, (3) maintaining Western’s  
20 records, and (4) paying property taxes and insurance. *See* Dkt. 581-1, pp. 6-7.

21 Defendants are wrong – running Western in a manner that ensures it can cover its  
22 obligations is not this easy. The receiver has clearly shown that the GPs owe less to  
23 Western than Western owes on the underlying mortgages. *See* Dkt. 182-1, Ex. 1, p.  
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25 <sup>2</sup> The receiver’s efforts have also benefited the GPs in another way. Using appraisals  
26 that the receiver obtained with court approval (Dkt. No. 59, pp. 11-12), the receiver  
27 successfully appealed the property tax assessments for certain GPs, with several more  
28 still under consideration. *See* Dkt. 547, p. 5; Dkt. 584, p. 3. Defendants opposed the  
receiver’s efforts to obtain these appraisals. *See* Dkt. 51, p. 4.

1 18. Western also collects far less from the GPs on a monthly basis than is due on the  
2 mortgages, resulting in a significant monthly deficit. *See* Dkt. 508-1, ¶¶ 5-7 and Ex.  
3 A; Dkt. 511, p. 7. Defendants themselves have admitted that Western owes more in  
4 mortgage payments than the GPs owe Western. *See* Dkt. 571-1, ¶¶ 54, 56, 60. So  
5 meeting Western's monthly expense obligations is clearly not as easy as simply  
6 collecting on debts owed to Western by the GPs and making the "corresponding"  
7 mortgage payments. Defendants have provided no evidence that Western would be  
8 able to reliably cover this monthly deficit. The company has been enjoined from  
9 offering securities, which, per the Court's April 25, 2014 Order, includes the offering  
10 of GP units – Western's primary source of income in the past. Defendants  
11 themselves claim that Western's operations would consist solely of collecting on  
12 debt, maintaining records, and paying expenses (Dkt. 581-1, pp. 6-7) – a business  
13 model that would not produce cash sufficient to meet its operating expenses. And the  
14 receiver has pointed out that one of its current means of generating revenue,  
15 operational billing, has suffered because of investor defaults. *See* Dkt. 584, pp. 4-5.

16 Moreover, while, in the past, Schooler infused cash into Western to assist with  
17 operational shortfalls, Schooler has provided no such financial assistance to Western  
18 in over a year despite representations to this Court that he would do so. *See* Dkt. 470,  
19 p. 12. The fact that Schooler failed to make any of the payments he promised to  
20 Western or even attempt to explain to the Court why he chose not to follow through  
21 with his pledge, calls into question his reliability and his financial ability to continue  
22 making Western's mortgage payments.

23 The receivership over Western has the additional benefit of preserving  
24 Western's assets to make them available for distribution to investors if the Court so  
25 orders. The receiver should be kept in place over Western so that he may continue  
26 the work of marshalling and preserving Western's assets, and continue to make  
27 necessary mortgage payments. Accordingly, the Court should not remove Western  
28 from the receivership.

1           **B.     The Receiver’s Duties Involve More Than Merely Clarifying**  
2                   **Western’s Financial Affairs**

3           Defendants have argued that the “Receiver has completed all necessary tasks,  
4 namely the clarification of Western’s financial affairs.” Dkt. 581-1, p. 1. This  
5 assertion, however, is incorrect because the Court did not appoint the receiver merely  
6 to clarify Western’s financial affairs. The Court previously acknowledged the  
7 possibility that the receiver would be helpful in collecting revenue on behalf of  
8 Western. *See* Dkt. 59, p. 10. After receiving information from the receiver  
9 concerning Western’s finances, the Court subsequently directed the receiver to  
10 resume operational billing by collecting amounts owed to Western, a process that is  
11 ongoing and has not yet been completed. *See* Dkt. 547, p. 7. The Court also  
12 previously acknowledged that additional information may come to light bearing on  
13 claims against management, and presumably third parties. *See* Dkt. No. 59, p.10.  
14 Indeed, as discussed in Section II.C below, the receiver is currently pursuing claims  
15 to recover unpaid loans made by Western to the LinMar entities, which are controlled  
16 by Schooler. Moreover, the Court also previously recognized that “it is likely a  
17 receiver will be required to oversee the proper distribution of investor funds.” *Id.*; *see*  
18 *also* Dkt. 584, p. 1. These ongoing and future responsibilities counter defendants’  
19 claim that the receiver’s work is done.<sup>3</sup>

20           Defendants have also argued that the receiver should be removed because the  
21 “operations of Western are sufficiently restrained” by the preliminary injunction. *See*  
22 Dkt. 581-1, p. 1. But these “restraints” are limitations on defendants and not the  
23 work of the receiver managing Western’s operations. The terms of the preliminary  
24 injunction identified by defendants (Dkt. 581-1, p. 3) restrain defendants, not the  
25 receiver, from violating the securities laws, dissipating assets, and destroying

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26  
27 <sup>3</sup> Similar to the list here, the receiver has enumerated a series of tasks that it performs  
28 on behalf of Western. *See* Dkt. No. 584, pp. 1-2.

1 documents. Notwithstanding these terms, the receiver is necessary to carry out the  
2 tasks of the receivership, namely, marshaling and preserving assets, protecting the  
3 investments of certain GPs by paying the mortgages encumbering the GPs' land,  
4 evaluating and pursuing claims against third parties, and communicating with  
5 investors.

6 **C. Schooler Cannot Pursue Claims Against Third Parties Objectively**

7 The receiver should remain in place over Western to independently investigate  
8 and pursue claims against third parties, a function that Schooler cannot perform  
9 objectively. The Court cannot rely on Schooler to investigate and pursue such claims  
10 because he has conflicts of interest. Removing Western from the receivership would  
11 result in Schooler regaining control over Western. But Western is currently involved  
12 in litigation against the LinMar entities, which Schooler controls. Thus, the relief that  
13 defendants seek—removal of Western from the receivership—would leave Schooler  
14 in control of both plaintiff and defendants in the LinMar litigation, an obvious  
15 conflict of interest.

16 Moreover, defendants have raised an affirmative defense of reliance on  
17 professionals. This defense encompasses work performed by Eric Hougen, one of the  
18 attorneys representing defendants in this action. It is possible that Western may have  
19 claims against its professionals, including Hougen, concerning their work. Indeed,  
20 the receiver has entered into a tolling agreement with Mr. Hougen concerning any  
21 potential claims that Western may have against him, so that the receiver can evaluate  
22 such claims. But if Schooler were to regain control of Western, he would be faced  
23 with additional conflicts of interest. Specifically, Schooler could not objectively  
24 evaluate whether to file any claims against Mr. Hougen when he represents Schooler  
25 and Western in this action. The receiver should remain in place to prevent this  
26 conflict of interest and ensure that any claims against professionals or other third  
27 parties, such as LinMar, are evaluated and pursued independently from Schooler.

28 Defendants point to their decades of successful management of Western to

1 claim that the receiver is unnecessary. Even assuming they are correct, which the  
2 SEC does not concede, that purported track record is irrelevant at this stage. That  
3 track record does not necessarily show that defendants, and not the receiver, are in the  
4 best position to manage Western. In fact, given the conflicts of interest that  
5 defendants would face and Schooler's failure to deliver on his pledge to provide  
6 financial assistance to Western, defendants are not best suited to manage Western  
7 now. There is no way for them to objectively and effectively manage Western. The  
8 receiver, who is free of conflicts and subject to the Court's authority and supervision,  
9 has, and will continue to best serve Western and the investors.

10 **D. The Receiver Is Necessary To Ensure Investors Receive Accurate**  
11 **And Objective Information**

12 The receiver is also necessary to ensure that investors have access to accurate,  
13 objective, and court-supervised information concerning the GPs and this action. The  
14 Court has already found at least one example in which Schooler has attempted "to  
15 guide and influence the actions and perceptions of investors in these proceedings."  
16 *See* Dkt. 549, p. 2.

17 Moreover, in response to an investor's recent question regarding the receiver's  
18 collection of payments from investors (as ordered by the Court), one of the  
19 partnership administrators (a long-time Western employee) told the investor that,  
20 under Schooler, Western did not expect full repayment of these amounts until the GP  
21 properties were sold. *See* Dkt. 563-3, Ex. 1, p. 4. The payments were being collected  
22 now, according to the partnership administrator, because "the receiver thought  
23 otherwise." This likely led to the investor's mistaken belief that "the GPs are being  
24 forced to pay back loans to Western Financial that my understanding Western has not  
25 requested be repaid." *See id.*, Ex. 1, p. 1. The same investor also stated that Mr.  
26 Hougen apparently told him that the "court is now requiring that the GPs pay back  
27 the loans to Western presumably so that the receiver can then use those funds to pay  
28 itself legal fees." *See id.*, Ex. 1, p. 2. Based on these comments, the investor stated



1 his intention to not repay his note used finance his investment because of his  
2 understanding that Western has not requested repayment of that note. *See id.*, Ex. 1,  
3 p. 1.

4 In light of these examples, Western should remain in the receivership to ensure  
5 that investors receive objective information about their investment, their rights, and  
6 this action.<sup>4</sup>

7 **III. CONCLUSION**

8 For the foregoing reasons, the SEC respectfully requests that the Court deny  
9 defendants' motion to modify the preliminary injunction to remove Western from the  
10 receivership.

11  
12 Dated: May 9, 2014

Respectfully submitted,

13 /s/ Sam S. Puathasnanon  
14 Sam. S. Puathasnanon  
15 Lynn Dean  
16 Sara Kalin  
17 Attorneys for Plaintiff  
18 Securities and Exchange Commission  
19  
20  
21  
22  
23  
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25 \_\_\_\_\_  
26 <sup>4</sup> The receiver has identified additional instances of investor confusion and  
27 misunderstandings. *See* Dkt. 584, p. 5. Although the receiver cannot control what  
28 investors choose to review, keeping Western in the receivership is the best way to  
ensure that investors have access to accurate, reliable information.

1 **PROOF OF SERVICE**

2 I am over the age of 18 years and not a party to this action. My business address is:

3 U.S. SECURITIES AND EXCHANGE COMMISSION,  
4 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648  
Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

5 On May 9, 2014, I caused to be served the document entitled **PLAINTIFF**  
6 **SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF**  
7 **POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS'**  
8 **MOTION FOR MODIFICATION OF PRELIMINARY INJUNCTION ORDER**  
9 **TO REMOVE WESTERN FINANCIAL PLANNING CORPORATION FROM**  
10 **RECEIVERSHIP** on all the parties to this action addressed as stated on the attached  
11 service list:

12  **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for  
13 collection and mailing today following ordinary business practices. I am readily  
14 familiar with this agency's practice for collection and processing of correspondence  
15 for mailing; such correspondence would be deposited with the U.S. Postal Service on  
16 the same day in the ordinary course of business.

17  **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s),  
18 which I personally deposited with the U.S. Postal Service. Each such envelope was  
19 deposited with the U.S. Postal Service at Los Angeles, California, with first class  
20 postage thereon fully prepaid.

21  **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility  
22 regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los  
23 Angeles, California, with Express Mail postage paid.

24  **HAND DELIVERY:** I caused to be hand delivered each such envelope to the  
25 office of the addressee as stated on the attached service list.

26  **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated  
27 by United Parcel Service ("UPS") with delivery fees paid or provided for, which I  
28 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: May 9, 2014

/s/ Sam S. Puathasnanon  
Sam S. Puathasnanon

1    **SEC v. Louis V. Schooler, et al.**  
2     **United States District Court – Southern District of California**  
3    **Case No. 12 CV 2164 LAB JMA**  
4    **(LA-4059)**

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***Court-Appointed Temporary Receiver***