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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LOUIS V. SCHOOLER and FIRST FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION,

Defendants.

Case No. 12 CV 2164 GPC JMA

DEFENDANTS' RESPONSIVE BRIEF RE: COURT'S PROPOSED RECONSIDERATION OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO MODIFY PRELIMINARY INJUNCTION ORDER (RELEASE OF GENERAL PARTNERSHIPS FROM RECEIVERSHIP)

Date: July 18, 2014
Time: 1:30 p.m.
Courtroom: 2D
Judge: Hon. Gonzalo P. Curiel

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Defendants LOUIS V. SCHOOLER ("Schooler") and FIRST FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION ("Western") (collectively "Defendants") respectfully submit the following Responsive Brief in response to the opening briefs of Plaintiff Securities and Exchange Commission ("SEC"; Dkt. No. 588) and Court-Appointed Receiver Thomas C. Hebrank ("Receiver"; Dkt. No. 584) regarding Part IV of this Court's order of April 25, 2014, granting in part and denying in part Plaintiff Securities and Exchange Commission's ("SEC") Motion for Partial Summary Judgment (Dkt. No. 583) ("Order").

I.

APPELLATE UPDATE

On April 30, 2014, less than a week after the Order, the Ninth Circuit issued a Notice of Oral Argument for July 11, 2014, in Pasadena, California. *SEC v. Schooler*, 9th Cir. Case Nos. 13-56761 and 13-56948, Dkt. No. 37. The SEC has since filed a motion to stay further appellate proceedings pending the outcome of this Court's proposed reconsideration, to which Defendants have filed an opposition and the SEC has filed a reply. *SEC v. Schooler*, 9th Cir. Case Nos. 13-56761 and 13-56948, Dkt. Nos. 37, 38, 39.

As of the date of this Responsive Brief, the Ninth Circuit has not decided whether to grant the SEC's motion and stay further proceedings. Therefore, unless and until the Ninth Circuit grants the SEC's motion, oral argument will be held in the Ninth Circuit one week before the hearing on this Court's proposed reconsideration of its Order Granting in Part Defendants' Motion for Modification of Preliminary Injunction (Dkt. No. 470, hereafter "Modification Order").

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II.

ARGUMENT

A. Given the Pendency of the Appeal, Including Oral Argument, and the Court's Previous Rulings, An Indicative Ruling under Rule 62.1 Would be Inappropriate At This Time; the Appeal Should Be Allowed to Run Its Course and Provide Appropriate Guidance for the District Court, All Parties and the Investors

Under Rule 62.1 of the Federal Rules of Civil Procedure, a district court may issue an "indicative ruling" if a *timely* motion is made for relief that the court would otherwise be unable to decide because of a pending appeal. However, the court may defer considering the motion or deny it altogether. Fed. R. Civ. P. 62.1(a)(1), (2).

In this case, an indicative ruling is inappropriate because although the Court's proposed reconsideration is based upon the finding that the GP interests are securities (Dkt. No. 583, 20:20-21:7), this Court had previously found that (for the limited purposes of a TRO and Preliminary Injunction) the GP interests were securities. Dkt. Nos. 10, 44, 174. Those rulings had been made prior to Defendants' motion to modify the Preliminary Injunction to remove the GPs from the receivership and had not been vacated or reconsidered. Therefore, this Court had decided in the Modification Order that notwithstanding its previous orders that the GP interests were securities, there was no legal or factual basis for continuing the receivership over the GPs.

Even though this Court has now determined on a motion for partial summary judgment that the GP interests are securities – a holding that Defendants dispute – the facts and law indicate that there is nothing new that justifies reconsideration of the Modification Order and the continued saddling of the GPs with a receivership that the investors did not request, that they did not consent to, and for which they did not receive notice and a hearing to express their objections and concerns before the Receiver was appointed. Therefore there is no new evidence that raises a substantial issue under Rule 62.1(a)(3).

This Court's proposed reconsideration is also untimely because of the pendency of the appeals. All briefing, both on Defendants' appeal and the SEC's cross-appeal, was completed months ago, long before this Court's Order of April 25, 2014. The Ninth Circuit has sent notice of the oral argument, which will be held a week before oral argument on this Court's proposed reconsideration if the Ninth Circuit denies the SEC's motion to stay all appellate proceedings.

The best course for this Court to take would be to either defer consideration of its reconsideration, or reconsider the reconsideration, until after the Ninth Circuit has ruled on the cross-appeals.

B. There is Still No Legal or Factual Basis for Maintaining the GPs in the Receivership

The Receiver's and SEC's arguments for keeping the GPs in receivership are based upon purported facts and arguments that, by and large, were made in opposition to Defendants' motion to modify the Preliminary Injunction to release the GPs, or even before then. However, those arguments failed then and still fail, as there remains no valid legal or factual basis for maintaining the GPs in receivership.

Contrary to the SEC's claim that the GP investors have received due process by actual notice and the opportunity to raise objections (see Dkt. No. 588, 5:7-17), the well-established law in the Ninth Circuit and other circuits states that before a third party's property can be included in a receivership, the party is entitled to *a formal hearing before the court*. *In re San Vicente Med. Partners, Ltd.*, 962 F.2d 1402, 1408 (9th Cir. 1992) ("a district court has the power to include the property of a non-party limited partnership in an SEC receivership order as long as the non-party meets the minimum contact standard ... *and receives actual notice and an opportunity for a hearing*") (emphasis added); *Liberte Capital Group, LLC v. Capwill*, 421 F.3d 377, 384 (6th Cir. 2005), quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972) ("When protected interests are implicated, the right to some kind of prior hearing is paramount.") (other citations

omitted).

"The Constitution *requires* that property owners receive procedural due process in the form of notice and opportunity *for a hearing*." *In re San Vicente Med. Partners, Ltd.*, 962 F.2d at 1407 (emphasis added), citing *Goss v. Lopez*, 419 U.S. 565, 577-79 (1975) ("deprivation of life, liberty, or property by adjudication [must] be preceded by notice and *opportunity for hearing* appropriate to the nature of the case") (emphasis added, citations and quotations omitted). *C.f.*, *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 459 (9th Cir. 1984) (non-party received due process in receivership proceeding since they were involved in multiple steps, including appearance of their attorney at preliminary injunction hearing); *SEC v. Whitworth Energy Resources Ltd.*, 243 F.3d 549 (9th Cir. 2000) (investors' procedural due process rights protected since they were given an opportunity for a hearing concerning the sale of property in receivership).

Property ownership is likened to a bundle of rights. One of those rights is the ability to control one's property. The GP investors never got their formal hearing before this Court before one of the "sticks" – the ability to control their property – was taken away from them and given to the Receiver, without being first give a formal hearing at which to state their objections. The ability to object to the Receiver's control of the investment after the Receiver has been summarily given that control is not constitutionally sound due process.

This Court has agreed that the investors have never had an opportunity to be fully heard regarding the GPs' inclusion in the receivership. Dkt. No. 470, 19:24-25, 22:2-10. The release of the GPs from the receivership, without any vote of the investors as a condition precedent, was the fashioned remedy for the failure to be fully heard. *Id.* Therefore, the SEC's claim that the investors received due process is incorrect.

Moreover, the SEC and Receiver incorrectly claim that "the evidence in the record establishes that the investors could not as a practical matter operate the GPs

as independent entities without the managerial control of the defendants or the receiver." Dkt. No. 588, 7:15-18; Dkt. No. 584, 3:13-14. The SEC also falsely claims that "defendants have conceded that they have no evidence that the investors could oversee their investments without the aid of Western, or that any investors had ever detached themselves from Western and administered a property themselves." Dkt. No. 588, 8:11-13. The SEC, through a distortion of the hearing transcript on Defendants' Motion for Modification, forgets that ***under the law, it does not matter whether the investors actually have operated the GPs independently of Western; what matters is that the investors have the ability to do so***. *Holden v. Hagopian*, 978 F.2d 1115, 1123 (9th Cir. 1992) ("These allegations, however, merely show that appellants chose to be passive and did not actively utilize the legal powers afforded them by the partnership arrangement…Appellants' failure to participate in the partnership's decisions and to obtain information regarding its operations may prove that they sat on their rights as general partners but it does not support the conclusion that Hagopian is uniquely qualified to manage KTA within the meaning of *Williamson*'s third prong").

Furthermore, Defendants did not concede that the GP investors would be unable to manage the properties on their own – to the contrary, the central argument Defendants advanced, which this Court agreed with, is that the GPs can in fact operate their own affairs. From reading the transcript of the oral argument on the Motion for Modification, which the SEC cites to but misuses, it is apparent that Defendants' counsel was responding not to this Court's question about the *ability* of the investors to manage their properties, but to the question about *whether the investors had actually managed the properties in the past* (Dkt. No. 462, 20:4-20, 21:15-25, emphasis added):

> THE COURT: You are saying they have these rights, but I believe you also have indicated that in exercising these rights, they have relied upon Western employees to perform any number of functions. Do you have any evidence that these

> investors would be able to oversee their investments without the aid of Western? *Do you have an example of three or four investors, stakeholders, who carved out or detached themselves from the oversight of Western employees to administer their properties?*
>
> MR. HOUGEN: No. And the case law is very clear on that, Your Honor. *There is absolutely no need for a syndicator to demonstrate that anyone has actually exercised power. All of the case law on investor contracts in the securities area that addresses this issue all say what you need to have is a provision that gives them the authority. You do not have to demonstrate it has been exercised. It is sufficient that they have the ability.*
>
> ...
>
> MR. HOUGEN: But, be clear, they have been balloted on any important decision, and it's been by ballot that 63 general partnerships sold for a profit. These have met success using this format. And the idea that you are going to turn clerical functions into control, and you are going to use the lack of somebody exercising their power -- they can fire the partnership secretaries tomorrow. They have that authority. *If they want to hire ADP to run the GP's, those taxes and insurance can be paid by ADP. They can be paid by XYZ accounting firm. They have that authority. That's not our obligation to show that's actually happened in the past.*

The basic operational functions of the GPs remain the same as they have always been: paying taxes, paying insurance, and filing K-1's while the investors wait for the eventual sale of their property to a willing buyer who makes an offer that the majority of the investors – specifically excluding Defendants – agree to through the ballot process. Those functions did not, and still do not, require the presence of the Receiver. Those functions remain the same whether the GP interests are deemed as a matter of law to be securities. They are minimal activities and will remain so in the future.

The SEC further claims that the GPs in co-tenancy cannot act without the coordination of Defendants or the Receiver. Dkt. No. 588, 9:2-23. As "evidence," the SEC asserts that co-tenant GPs were unable to take back foreclosed property or to settle a condemnation action without the coordination of Defendants or the Receiver. Dkt. No. 588, 9:4-12. However, the SEC has presented no facts, through citations to the record, showing what, if anything, Defendants did to coordinate the foreclosure of the property sold by GPs in 2006 (instead making a bare assertion that the foreclosure was "presumably through the managerial activities of defendants"), or how the Receiver "was able to negotiate a settlement with the utility that was favorable to the GPs." *Id.* All that is apparent from the record is that (1) a group of GPs took back property by foreclosure (Dkt. No. 203, p. 1, n. 1) and (2) that the law firm of Cotton, Driggs, Walch, Holley, Woloson & Thompson – the same law firm that had represented a group of GPs in eminent-domain proceedings before the receivership was imposed – assisted the Receiver in settlement discussions with the condemning public utility company (see Dkt. No. 80, 9:8-20). The SEC tries to stretch that into a claim that the foreclosure and eminent domain proceedings were all the work of Defendants and/or the Receiver – or even if assisted by the Receiver, that the GPs are incapable of tending to those matters without a receiver.

Regarding the SEC's claim that the Receiver is necessary to coordinate the payment of mortgages and property taxes (Dkt. No. 588, 9:12-23), the SEC does not provide any citations to the record to support its claims that (1) the GPs could not coordinate the fractional mortgage, tax, and insurance-premium payments of multiple GPs in co-tenancy and (2) the GPs could not decide how best to avoid foreclosure if Western failed to make its mortgage payments. In fact, the SEC's counsel said nothing about these claims of inability to coordinate at oral argument on the Motion for Modification. Dkt. No. 462, pp. 4-10, 29-34 (SEC counsel's portions of oral argument).

///

In fact, when the District Court pressed the SEC's counsel about the related matter of a GP going into default and the effect on the other GPs, the SEC's counsel's response was markedly less certain (Dkt. No. 462, 33:15-21, emphasis added):

> THE COURT: The question is to the extent that money is no longer available to support a failing GP, and a particular GP did fail, what would be the impact on the remaining GP's?
>
> MR. PUATHASNANON: As far as I could tell, I don't know that any other -- to the extent there are mortgages, there could be an impact. *It's supposition.*

The SEC and Receiver have previously described the GPs' "management" as consisting of (1) paying mortgage fees for the GPs' properties; (2) conducting "administrative tasks" and acting as contact points for investors seeking information regarding their particular GPs; (3) making loans to certain GPs to cover operating expenses; and (4) repurchasing units from certain investors. Dkt. No. 206, 4:10-15, 4:22-23 (Receiver concedes "the GPs may be able to hire someone to perform some of the functions performed by Western (and possibly survive without others)"). That management has remained unchanged since the Modification Order.

The SEC has presented no evidence, and cites to none in the record, that the co-tenant GPs could not collectively manage their mortgage payments, avoid foreclosure or maintain insurance in the event of default by Western or absence of Western or the Receiver as a coordinator. The SEC can point to no evidence that any of these things have happened or are likely to happen. At best, it cites to Defendants' statements that a unanimous vote was "potentially unworkable." Dkt. No. 588, 6:13-14, quoting Dkt. No. 210-1, p. 6. Indeed, the Receiver has admitted that "The Receiver sees no reason why a group of GPs that collectively own a property…should not be able to retain the property and take sole responsibility for all mortgages and expenses associated with the property." Dkt. No. 203, 3:17-20.

No new facts have arisen that change this.

Also, the GPs do not have a foreclosure risk, contrary to the SEC's assertions (Dkt. No. 588, 9:20-21). The notes between Western and the GPs are "all-inclusive" deeds of trust, in which if Western defaulted on the underlying note to the original seller of the GP-held property (again, an event that has never happened before the Receiver took over), then the GPs' obligation to pay Western is suspended and the GPs, by the terms of the deeds of trust (without a vote required by the investors), become responsible for making the payments directly to the original sellers. Dkt. No. 195-1, 18:17-24. The all-inclusive deeds of trust are between Western and the individual GPs, not between Western and a collection of GPs in co-tenancy – a fact overlooked by the SEC in its claim that the Receiver must be in place to coordinate the mortgage payments. *See* Dkt. No. 14-2 (all-inclusive deed of trust for P-40 Warhawk Partners). In fact, the all-inclusive deeds of trust do not mention the existence of any co-tenancy. *Id*.

As Defendants have noted repeatedly, without any contradictory evidence submitted by the SEC or the Receiver, ***Western has never defaulted on any loans, etc., prior to its takeover by the Receiver***. Dkt. No. 195-1, 13:26-28, 18:7. However, once the Receiver took over, there were numerous late payments made and declarations of default by the holders of those loans, as Defendants have repeatedly reported to this Court. Dkt. No. 407, 17:5-25; Dkt. No. 462, 13:1-6; Dkt. No. 505, 4:19-5:6 and n. 2; Dkt. No. 520, 6:1-7:1; Dkt. No. 520-1, ¶¶ 15-21. If there is any risk of foreclosure to the GPs because of Western not making its mortgage payments, the blame lies squarely upon the Receiver.

Although the Receiver contends that a receivership is necessary because "no investment or real estate management company would agree to manage the GPs due to the potential liability to regulators and investors associated with them" (Dkt. No. 584, 3:20-22), that contention is based on the incorrect assumptions that an investment or real estate management company is necessary to handle those minor

tasks and that there is potential liability. The Receiver's assumption is incorrect because the GP administrator-secretaries are certainly capable of handling those duties; after all, they have done so for over 30 years, albeit under the aegis of Western. The added expense of an investment company or real estate management company is not justified. Furthermore, there is no "potential liability to regulators and investors" because whether or not the GP interests are securities – again, a disputed issue to be addressed on eventual appeal – is irrelevant to the facts that the GPs are legally-established entities that hold real title to real estate. The Receiver and SEC cannot rebut those facts, and the Court's Order did not disprove those facts either.

Some of the Receiver's other justifications for keeping the GPs in receivership are risible. For example, the Receiver points to an alleged "lack of property management" because two tenants are allowed to live on the Stead/P51 property rent-free. Dkt. No. 584, 5:8-18. However, the Receiver ignores that the Partnership Agreement for P-40 Warhawk Partners, one of the GPs established for the Stead property, expressly states that the GP is established for "acquiring, maintaining, and holding for investment purposes," which means that active management of property improvements is not part of the plan. Dkt. No. 14-1, ¶ 1.3. Furthermore, the Partner's Representations for P-40 Warhawk Partners – signed by the investor-partners under penalty of perjury – state that the investor-partners "do not look to the efforts of any other partner, nor to any person, corporation, or entity for the management, development, maintenance, mining, or farming of the Subject Property in order to make a profit," that the property includes "a duplex residential structure to be occupied by property and water system caretakers," and that "no rent, revenue, distributions, or other income will be generated by either the duplex residence or the water facilities." Dkt. No. 14-3, ¶¶ 15, 54. Whether the Receiver believes "most investors in the relevant GPs had no idea tenants were living on the property rent-free" is irrelevant because of the executed Partner's Representations.

There is no intention whatsoever to conduct active property management, particularly since doing so would suggest a possible security under the *Williamson* factors, particularly the third factor. *Hocking v. Dubois*, 885 F.2d 1449 (9th Cir. 1989) (en banc); *McConnell v. Frank Howard Allen & Co.*, 574 F.Supp. 781 (N.D. Cal. 1983).

The Receiver's complaint that there has been a lack of administrative management resulting in delays in operational billing (Dkt. No. 584, 4:19-5:7) rings equally hollow when the record is reviewed, for the Receiver has been responsible for the cessation of operational billing in the past. Dkt. No. 407, 25:6-26:12. In fact, the Receiver had admitted that he stopped operational billing, which placed the GPs at risk of not being able to pay their property taxes. Dkt. No. 203, 15:9. The Receiver's failure to conduct operational billing was a factor in this Court's ordering the Receiver to allow the GP administrator-secretaries to resume operational billing. Dkt. No. 470, 21:13-18, 26:21-27:1.

Neither the SEC nor the Receiver have shown that the GPs are complex business activities involving improved properties such as orange groves, jojoba plantations, or apartment buildings, where active management is necessary to ensure a steady flow of rental income or a marketable harvest. *See SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946); *Koch v. Hankins*, 928 F.2d 1471 (9th Cir. 1991); *McConnell v. Frank Howard Allen & Co.*, 574 F.Supp. 781 (N.D.Cal. 1983). The GPs' investment always has been the holding of raw land solely for long-term appreciation through the growth of nearby properties, with no farming, mining, grazing, or maintenance and operation of buildings upon it (and none planned during the GPs' ownership of it). The GPs were not organized to perform the business activities required for eventual development of the land, such as applying for land-use entitlements, or installing the necessary infrastructure such as roads, water and sewer mains, and electricity. Those complex activities would be done by the developers after they buy the land from the GPs.

The only decision to be made is whether to accept an offer to purchase the land held by the GP. That decision is made by the investors who have the power to vote, *a group that clearly excludes Defendants*. Dkt. No. 14-1, § 5.1.3. The investors are capable of making their own decisions, and the SEC's citing to a small handful of letters from investors expressing reliance on Defendants (Dkt. No. 588, 7:21-8:3) is more than outweighed by the hundreds of letters and petition signatures expressing the investors' desire to run their GPs free of the Receiver's heavy hand. Although Defendants have provided advice or recommendations to some GPs in the past, most of the time Defendants make no recommendation, while the investors are free to vote contrary to any advice or recommendation of Defendants, and on occasion have done so. Dkt. No. 571-1, Defendants' Additional Material Facts ("DAMF") 55-57. The investors are given space on their ballots to provide alternative ideas, and have done so. Dkt. No. 571-1, DAMF 58-59.

The SEC's position continues to be based on a fundamental misunderstanding of how the GPs are organized and operated. Dkt. No. 588, 7:15-10:2. Under the terms of the partnership agreements, the GP investors retain full control and all major decisions require a majority vote, with Defendants having only a non-voting interest. Defendants share in the profits of the eventual sale of the raw land to developers, but they do not get to control when the land is to be sold, to whom, and for how much, because of their complete lack of control through voting. The GP investors, by virtue of retaining control by majority vote, are true general partners, clothed with all necessary and sufficient authority to carry out these basic administrative tasks. Classifying the GPs as securities does not change anything about the structure, operation, and governing documents by which the GPs function.

The analysis carried out last summer with regard to the need, or lack thereof, for a Receiver over the GPs has not changed. The granting of partial summary judgment does not change a single word in the General Partnership Agreement and other governing documents. It does not cause one single additional operational

change in how any of the GPs operate. They still only have to pay taxes, pay insurance, and file K-1's while they wait for an interested buyer. The Court's granting of partial summary judgment has zero impact upon the day to day operational functions and needs of the GPs. The analysis from last summer that the GPs are separate and independent legal entities with minimal administrative needs remains exactly the same before and after the Court's April 25, 2014 Order.

The SEC and Receiver have presented an inadequate legal and factual justification for keeping the GPs in the Receivership. It does not follow that the Modification Order should be reconsidered as a result.

C. If the Court Allows Investors to File Briefs, the Briefing Schedule Must Include an Opportunity for Defendants to Respond to the Investors' Briefs if Desired; Investors Must be Given Notice and the Opportunity to Address the Court

The SEC, to its credit, has finally acknowledged that the GP investors should have the ability to file briefs and appear at the July 18, 2014 hearing. Dkt. No. 588, 10:8-9. (The Receiver stated no opinion, but stated that if the Court granted leave for the investors to file briefs, that the Receiver would be available to assist the Court with providing notice to the investors.) However, the SEC has requested that if the Court grants leave to the investors to file briefs, that a briefing schedule be set to allow the SEC to respond if it wishes. Dkt. No. 588, 11:1-4.

In order to ensure a fair and thorough briefing and hearing, Defendants are just as entitled as the SEC to respond to any filings by the investors, if not moreso by virtue of being GP investors themselves. Defendants will be directly affected by the continuance of the Receivership over the GPs, because the Receiver would continue to control property in which Defendants, as GP investors, have an interest. Defendants, by the terms of the Partnership Agreements for the GPs, cannot vote. In order for Defendants to be heard on issues affecting their fellow investors, such as the decision to continue the receivership with its attendant denial of investors'

ability to control their properties, Defendants should be able to respond to the investors' briefs if the SEC is allowed to respond. Otherwise, if the SEC is the only party allowed to respond, the SEC will have been given the equivalent of a reply brief, which this Court forbade. Dkt. No. 583, 21:6. Therefore, this Court should either prohibit any response to any briefs filed by the investors, or allow both the SEC *and Defendants* to respond.

In any event, due process dictates that the investors, as third parties whose property rights – namely, the ability to manage their property - be given actual notice and a hearing before that right is taken away and given to the Receiver, whom they did not get to select. *In re San Vicente Med. Partners, Ltd.*, 962 F.2d 1402, 1408 (9th Cir. 1992) ("a district court has the power to include the property of a non-party limited partnership in an SEC receivership order as long as the non-party meets the minimum contact standard ... and receives actual notice and an opportunity for a hearing"). Until that happens, the investors will not have the due process that they are entitled to under the Constitution.

Thus, before the Court can even undertake reconsideration of its Modification Order, the Court must provide the investors the hearing due process requires, including adequate notice and an opportunity for full briefing on the threshold question of whether a receivership can or should be imposed upon them. Until the investors are provided with that hearing, this Court lacks authority to hold the July 18, 2014 hearing that it proposed.

III.

CONCLUSION

For the reasons stated above and in their Opening Brief, Defendants respectfully request that this Court refrain from reconsidering the Order of August 16, 2013 releasing the GPs from the receivership, and maintain that Order and the Order Granting in Part Motion for Stay in full force and effect pending the Ninth Circuit's decision on the cross-appeals from the Order of August 16, 2013.

DATE: May 23, 2014

Respectfully submitted,

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CERTIFICATION

I hereby certify that on the 23rd day of May 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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