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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, dba Western
Financial Planning Corporation,

Defendants.

Case No. 3:12-cv-2164-GPC-JMA

**ORDER DENYING MOTION
FOR PARTIAL
RECONSIDERATION OF
ORDER APPROVING
RECEIVER’S SEVENTH
INTERIM REPORT**

(ECF NO. 560)

On February 25, 2014, this Court issued its Order Approving the Receiver’s Seventh Interim Report (“Approval Order”). (ECF No. 549.) Among other things, the Court ordered that:

1. Western’s land parcels, as identified in Exhibit D to the Receiver’s Seventh Interim Report, shall be listed for sale with a licensed broker. If and when reasonable offers are made on the parcels, the Receiver shall seek approval of such sales via a noticed motion.
2. Schooler is reminded that he is prohibited from interfering, directly or indirectly, with the Receiver’s performance of his duties. The Court notes that the letter Schooler apparently sent to investors, attached as Exhibit C to the Receiver’s Seventh Interim Report, demonstrates, in the Court’s view, an effort by Schooler to guide and influence the actions and perceptions of investors in these proceedings. These apparent efforts weigh against a finding of investor independence and in favor of a finding that investors have relied, and continue to rely, on Schooler to make decisions

1 regarding their investments.

2 (Id. at 1-2.)

3 On March 24, 2014, Schooler filed a motion for reconsideration of the Approval
4 Order, (ECF No. 560), which has been fully briefed, (ECF No. 577, 578, 585). In his
5 Motion for Reconsideration, Schooler contends the Approval Order: (1) permanently
6 deprives Western of its property interests without due process, and (2) violates
7 Schooler’s First Amendment rights to free speech and association by prohibiting
8 communications “with his fellow investors.” (ECF No. 560.)

9 District courts have the discretion to reconsider interlocutory rulings until a final
10 judgment is entered. Fed. R. Civ. P. 54(b); United States v. Martin, 226 F.3d 1042,
11 1048-49 (9th Cir. 2000). While the Federal Rules of Civil Procedure do not set forth
12 a standard for reconsidering interlocutory rulings, the “law of the case” doctrine and
13 public policy dictate that the efficient operation of the judicial system requires the
14 avoidance of re-arguing questions that have already been decided. See Pyramid Lake
15 Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 369 n.5 (9th Cir. 1989).

16 As such, most courts adhere to a fairly narrow standard by which to reconsider
17 their interlocutory rulings. This standard requires that the party show: (1) an
18 intervening change in the law; (2) additional evidence that was not previously
19 available; or (3) that the prior decision was based on clear error or would work
20 manifest injustice. Id.; Marlyn Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.,
21 571 F.3d 873, 880 (9th Cir.2009); Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263
22 (9th Cir.1993).

23 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests
24 of finality and conservation of judicial resources.” Kona Enters., Inc. v. Estate of
25 Bishop, 229 F.3d 877, 890 (9th Cir. 2000). “A motion for reconsideration is not an
26 opportunity to renew arguments considered and rejected by the court, nor is it an
27 opportunity for a party to re-argue a motion because it is dissatisfied with the original
28 outcome.” FTC v. Neovi, Inc., 2009 WL 56130, at *2 (S.D. Cal. Jan. 7, 2009)

1 (quoting Devinsky v. Kingsford, 2008 WL 2704338, at *2 (S.D.N.Y. July 10, 2008)).

2 In addition to these substantive standards, Civil Local Rule 7.1.i.1 requires a
3 party moving for reconsideration to submit an affidavit or certified statement of an
4 attorney

5 setting forth the material facts and circumstances surrounding each prior
6 application, including inter alia: (1) when and to what judge the
7 application was made, (2) what ruling or decision or order was made
8 thereon, and (3) what new or different facts and circumstances are claimed
to exist which did not exist, or were not shown, upon such prior
application.

9 Rule 7.1.i.2 provides that “any motion or application for reconsideration must be filed
10 within twenty-eight (28) days after the entry of the ruling, order or judgment sought to
11 be reconsidered.”

12 Here, Schooler has not provided the affidavit or certified statement required by
13 Civil Local Rule 7.1.i.1. This is a sufficient basis on which to deny Schooler’s Motion
14 for Reconsideration. See Neovi, Inc., 2009 WL 56130, at *2.

15 Still, considering the merits of Schooler’s arguments, the Court finds no basis
16 for granting the “extraordinary remedy” of reconsideration. Schooler does not assert
17 that new facts exist or that a change in controlling law occurred. Rather, Schooler
18 asserts the Approval Order was clearly erroneous and would work a manifest injustice.
19 The Court disagrees.

20 Schooler argues Western’s due process rights are being infringed because the
21 Approval Order requires Western’s assets to be sold without notice and a hearing.
22 (ECF No. 560-1 at 8.) The Approval Order, however, makes clear that, “[i]f and when
23 reasonable offers are made on [Western’s] parcels, the Receiver shall seek approval of
24 such sales via a noticed motion.” [ECF No. 549 at 1 (emphasis added).]

25 Schooler further argues the Approval Order infringes his own First Amendment
26 rights, in that the Approval Order operates as a prior restraint on Schooler’s rights of
27 free speech and association. (ECF No. 560-1 at 11.) The Court rejects this argument,
28 as the Approval Order merely reminded Schooler of his obligations under the Court’s


1 March 13, 2013 Preliminary Injunction Order and Order Appointing Thomas C.
2 Hebrank Permanent Receiver. (See ECF No. 174 at 8.) And to the extent that Schooler
3 is seeking reconsideration of the March 13, 2013 Order on First Amendment grounds,
4 such a challenge is untimely, as Schooler was certainly aware of the March 13, 2013
5 Order's anti-interference provision since that order was issued more than a year before
6 Schooler filed the instant Motion for Reconsideration. See CivLR 7.1.i.2.

7 Schooler cites his concern of being haled into Court upon allegations by the
8 Receiver that Schooler is violating the anti-interference provision of the March 13,
9 2013 Order. Though, if Schooler were ever to be held in contempt for violating the
10 anti-interference provision, it would only be upon a showing of clear and convincing
11 evidence that he had indeed violated said provision. See United States v. Ayres, 166
12 F.3d 991, 994-95 (9th Cir. 1999).

13 In short, the arguments Schooler raises in his Motion for Reconsideration are
14 based on speculation. The Approval Order caused no deprivation of Western's
15 property interests without due process, nor did it cause any prior restraint on Schooler's
16 rights of free speech and association.

17 For the foregoing reasons, Schooler's Motion for Reconsideration, (ECF No.
18 560), is **DENIED**. The hearing on the Motion, currently set for June 13, 2014, is
19 **VACATED**.

20 DATED: June 4, 2014

21 
22 HON. GONZALO P. CURIEL
23 United States District Judge
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