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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants.

Case No. 12 CV 2164 GPC JMA

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NON-PARTY INVESTORS' MOTION TO INTERVENE

Dkt. No. 1348

Date: September 6, 2016
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

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I. INTRODUCTION

This is the fourth time that the Court has had to address a motion to intervene filed on behalf of investors represented by Gary Aguirre (the "Aguirre Investors"). The Securities and Exchange Commission ("SEC") opposes the motion.

As they have done before, Mr. Aguirre and the Aguirre Investors seek to intervene to re-litigate asset disposition issues that have already been decided by the Court, to re-litigate specious arguments regarding purported collusion between the Receiver and the SEC, to complain generally about the Receiver's conduct, and to effectively substitute Mr. Aguirre in place of the Court as monitor of the Receiver. *See* Dkt. Nos. 1229, 1230, 1258. The Court already rejected previous requests by Aguirre Investors for broad intervention, permitting them only to intervene for the sole purpose of commenting on the receiver's asset distribution motion.

Despite this, Mr. Aguirre has now filed essentially the same motion on behalf of some new investors. The SEC opposes the motion for all the reasons it gave in its oppositions to the Mr. Aguirre's previous motions to intervene filed on April 8, 11 and 21, 2016, and incorporates those oppositions here. *See* Dkt. No. 1266, Dkt. No. 1291.

In support of his fourth bite at the apple, Mr. Aguirre trumps up what he calls "new evidence" about supposed misconduct by the Receiver and the SEC, which he claims supports intervention. But this so-called "evidence" is not new at all, and it again fails to support intervention by Mr. Aguirre's clients. For one, Mr. Aguirre claims he has uncovered "evidence" that the SEC and the Receiver failed to give investors required notice of these proceedings under Local Rule 66.1. But Mr. Aguirre's reading of this notice provision is contrary to both the local rule and the Court's prior rulings, both of which he seems to ignore and misread. Both the SEC and the Receiver provided the notices provided by Local Rule 66.1, and the Court's March 7, 2013 order permitted the Receiver to give substitute notice on his website. Dkt. No. 170 at p.3; *see also* L.R. 66.1. Indeed, Mr. Aguirre ignores the fact, laid out clearly in the public docket, that it was the defendants—over the SEC's objection—

who initially asked the Court not to give the investors notice of the TRO. *See* Dkt. No. 14 at p. 16; Dkt. No. 18 at p. 6.

The Aguirre Investors also argue that they have "new evidence" that the SEC and the Receiver conspired to pursue an agenda adversarial to investors. Dkt. No. 1348-2 at pp. 9-12. But the "evidence"—which Mr. Aguirre pulled from the public docket in this matter—are email communications between the SEC and the Receiver that have already been considered and rejected by the Court as misconduct, when it ruled on previous motions filed by the defendant and Mr. Aguirre. *See* Dkt. Nos. 976-1, Exs. 5, 36, and 38 and 860-2, Ex. 6; Dkt. No. 1004 at p. 10-11 (declining to remove the Receiver for seeking input from the SEC and noting that the Receiver has "largely discharged his duties in an unbiased way"); Dkt. No. 1296 at p. 5 ("the Court examined numerous allegations from Defendants and individual investors that the Receiver was behaving unethically or irresponsibly, and found no merit in these allegations").

Finally, the Aguirre Investors recycle two arguments from prior motions to intervene—they argue that the Receiver should have filed SFARs with his periodic reports, and that the Receiver violated the requirements of 28 U.S.C. § 2001. *Cf.* Dkt No. 1258-1 at pp. 15-16; Dkt. No. 1348-2 at p. 10. But the Court already rejected these arguments in May 2016. Dkt. No. 1296 at p. 6, fn. 4; Dkt. 1303 at p. 2.

Having previously denied Mr. Aguirre's previous attempts to for broad intervention in this case, the SEC respectfully requests that the Court do so again, and deny his latest motion.

II. BACKGROUND

In its prior oppositions, the SEC has laid out in detail the context in which Mr. Aguirre's motions to intervene are sought. Because he has sought intervention again, that background is relevant once more and is provided below.

A. Litigation About the Receivership

The SEC commenced this enforcement action on September 4, 2012. *See* Dkt. Nos. 1, 3. On March 13, 2013, the Court entered a preliminary injunction enjoining

1 the defendants from violating Section 5 of the Securities Act of 1933 (the "Securities
2 Act"), and appointed Thomas Hebrank as the permanent equity receiver in the case.
3 *See* Dkt. No. 174. Initially, this receivership included defendant First Financial
4 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), as
5 well as the 87 GPs, whose interests the defendants had offered and sold to investors as
6 part of the fraudulent and illegal scheme alleged (and later proven) by the SEC. *See id.*
7 Almost a year later, the SEC moved for summary judgment on the issue of
8 whether the interests in the general partnerships, or "GPs," sold by defendants were
9 securities. The Court granted that partial summary judgment motion on April 25,
10 2014. *See* Dkt. No. 583. Having settled that threshold issue, the SEC moved for
11 summary judgment on its Section 5 claim alleging that the defendants offered and sold
12 these securities without registration. On May 19, 2015, the Court granted that motion.
13 *See* Dkt. No. 1074. The Court then granted, in part, the SEC's motion for summary
14 judgment on its fraud claims against the defendants on June 3, 2015, finding that the
15 defendants had defrauded their investors in connection with the offer and sale of
16 securities related to the Stead, Nevada property. *See* Dkt. No. 1081.
17 The Court entered final judgment against defendant Louis Schooler on January
18 21, 2016, permanently enjoining him from violations of Sections 5(a), 5(c) and 17(a)
19 of the Securities Act , and Section 10(b) of the Exchange Act and Rule 10b-5
20 thereunder. *See* Dkt. Nos. 1170, 1190. As part of that judgment, Schooler was ordered
21 to pay over $147 million in monetary remedies. *See id.*
22 While the SEC was prosecuting its enforcement action against the defendants,
23 issues regarding the scope of the receivership and the conduct of the receiver were
24 heavily litigated. During that time, hundreds of investors were allowed to express their
25 views to the Court.
26 Between February and July 2013, over 220 investors filed letters with the Court,
27 the vast majority of which complained about the receiver and requested that the GPs be
28 removed from receivership. *See* Dkt. No. 470 (order releasing GPs from receivership)

at 14-15. On August 16, 2013, the Court issued an order releasing the GPs from the receivership. *See id*. The Court spent over two pages of that order reviewing and analyzing the content of these investor letters. *See id.* at 14-17.

After the Court concluded that the interests in the GPs were securities on April 25, 2014, the Court, *sua sponte*, asked for additional briefing on the issue of whether the Court should reconsider its decision to release the GPs from the receivership. *See* Dkt. No. 583 at 20-21. Again, the investors were given a chance to be heard on this decision. Following briefing by the SEC and the defendants, investors filed letters with the Court. Although the Court concluded on July 22, 2014 that the GPs should remain in receivership, it gave the investors an opportunity to be heard before vacating its previous order releasing the GPs. *See* Dkt. No. 629 at 7. The Court allowed the investors to file briefs on the issue, and set a hearing for October 10, 2014 specifically to permit them to argue their positions to the Court. *See id.* at 7-8.

Following a second hearing on October 15, 2014, the Court directed the receiver to conduct an analysis regarding the financial health of each GP to determine whether any of the GPs could be released from receivership. *See* Dkt. No. 808 at 3-6. The receiver filed the requested report on November 21, 2014. *See* Dkt. No. 852.

Then, again, the Court permitted investors to be heard. On December 22, 2014, the defendants filed a motion to remove and replace the receiver. *See* Dkt. No. 860. A month later, beginning in January 2015, at least 32 investors submitted letters with the Court commenting on the receiver's November 21, 2014 report, and a hearing was held on January 23, 2015. *See* Dkt. No. 947; Dkt. No. 1003 at 1 (listing the filings of investors).

On March 4, 2015, after considering arguments from all of the parties, as well as arguments from the investors, the financial analysis of the GPs prepared by the receiver, and the evidence presented by the parties regarding the conduct of the receiver in this case, the Court decided to keep the GPs in the receivership and to keep Mr. Hebrank as the receiver. *See* Dkt. Nos. 1003, 1004. The Court specifically noted

that, in making its final determination to keep the GPs in receivership, it had considered all of the additional investor letters commenting on the receiver's November 2014 report. *See* Dkt. No. 1003 at 1-2.

B. The Numerous Investor Motions

The Aguirre Investors and another pool of investors represented by Timothy Dillon ("Dillon Investors") have previously filed dozens of motions and applications with the Court. In fact, as of April 6, 2016, by the receiver's count, the Mr. Aguirre and Dillon Investors had filed 32 pleadings and declarations with the Court since February 18, 2016, made over 40 informal requests for documents and information from the receiver, and sent over 110 emails and letters to the receiver and his counsel. Dkt. No. 1225 at 4.

This activity began in February 2016, when the receiver requested the Court to modify part of the Court's prior order approving the sale of the Jamul Valley property. *See* Dkt. No. 1191. The modification was necessary to satisfy the title insurer. *Id.* On March 7, 2016, in compliance with a prior Court order, the receiver asked the Court to approve his retention of listing agents for ten other properties. *See* Dkt. No. 1203. In response, the Aguirre Investors filed at least 15 pleadings—nine in response to the February 26th application (before Mr. Aguirre was even retained), and three for the March 7th application. *See* Dkt. Nos. 1194, 1194-1, 1194-2, 1194-3, 1198, 1199, 1200, 1201, 1202 (responding to the Feb. 26, 2016 application, Dkt. No. 1191), Dkt. Nos. 1204, 1204-1, 1206 (responding to the Mar. 7, 2016 application, Dkt. No. 1203).

Thereafter, the Aguirre Investors and the Dillon Investors filed numerous motions:

- On April 1, 2016, the Aguirre Investors filed a motion to vacate the Court's prior orders approving the sale of receivership assets. Dkt. No. 1221.
- That same day, the Aguirre Investors also filed a motion seeking an accounting by the receiver, or in the alternative, and audit of the receivership, predicated on a complete falsehood: their assertion that the receiver "keeps no books

and records." Dkt. No. 1223-1 at 3.

- Also on April 1, the Dillon Investors filed a motion to unseal all previously sealed documents in the Court's docket, despite the fact that the receiver had previously provided unredacted copies of these materials to Dillon. Dkt. No. 1222.
- On April 8, both the Mr. Aguirre and Dillon Investors filed motions to intervene. Dkt. Nos. 1227 and 1229.
- Also on April 8, the Aguirre Investors filed a notice of intent to file yet another opposition to the sale of the Jamul property. Dkt. No. 1226.
- On April 8, the Dillon Investors filed another motion to unseal previously sealed documents in the Court's docket. Dkt. No. 1228. The Aguirre Investors joined that motion. Dkt. No. 1231.
- On April 11, the Aguirre Investors filed another motion seeking to vacate all of the Court's prior orders permitting sales of receivership properties. This motion was also styled as a motion to intervene. Dkt. No. 1230.
- Finally, on April 21, the Aguirre Investors filed another motion seeking an accounting by the receiver, or an independent audit of the receivership. This motion was also styled as a motion to intervene. Dkt. No. 1258. Mr. Aguirre acknowledged that motion sought the same relief as two prior motions, Dkt. No. 1223 and Dkt. No. 1229. *See* Dkt. No. 1258-1 at 3.

On April 5, 2016, the Court denied, without prejudice, the seven motions of the Mr. Aguirre and Dillon Investors that were before the Court at that time, because they did not comply with the requirements of Rule 24 of the Federal Rules of Civil Procedure governing the intervention of non-parties. *See* Dkt. No. 1224 at 2. The Court directed the Mr. Aguirre and Dillon Investors to "file motions to intervene to the extent that they wish to refile any of these motions." *Id.*

Both the Aguirre Investors and the Dillon Investors then filed motions to intervene. In the motion to intervene filed by the Aguirre Investors, they claimed they seek "to intervene in this action solely for the purposes of obtaining relief in relation

1 [to] [*sic*] post judgment proceedings." Dkt. No. 1229-1 at 4. But their supporting
2 brief, and their proposed intervention complaint sought "an audit of the receivership,"
3 "to modify the receivership ordered by this Court in this litigation" and "to investigate"
4 the receiver's management of the receivership for the past four years. *Id*. at 4, 5, Ex. A
5 at ¶¶ 13, 14, 17, 19. Moreover, their proposed complaint sought to litigate their claims
6 that the receiver has failed his duties in overseeing the estate for the past four years and
7 that the receiver is conflicted because, in their view, his "primary objective is to please
8 the SEC." *Id*., Ex. A at ¶ 14.

9 In its May 18, 2016 order denying the Mr. Aguirre and Dillon motions to
10 intervene, the Court described the relief sought as requests to intervene to:

11 (a) file complaints in intervention; (b) contest the Receiver's previous
12 sale recommendations with regards to a number of properties; (c)
vacate previous Court orders approving Receiver sale
13 recommendations; (d) 'oversee and evaluate' the receivership; (e)
move for an accounting or audit of the receivership; (f) obtain full
14 access to the Receiver's filings and recommendations submitted to the
Court; (g) obtain all books and records related to the Receiver's
15 management of the GPs and the GPs' assets; (h) release the GPs from
the receivership; and (i) oppose the Receiver's orderly sales plan.

16 Dkt. No. 1296 at p. 3, *citing* Mr. Aguirre Mot., Ex. A, at 15-16.

17 Other than permitting limited intervention for the purposes of opposing the
18 Receiver's orderly sales motion, the Court denied all of this relief as untimely, in large
19 part "because the Court had already carefully considered these issues during the course
20 of the litigation" and had "found no merit" in allegations that "the Receiver was
21 behaving unethically or irresponsibly." Dkt. No. 1296 at p. 4-7.

22 On May 25, 2016, the Court denied the motions filed by Mr. Aguirre on April 11
23 and April 21, 2016. *See* Dkt. No. 1303. The Court concluded that these motions
24 "raise[d] substantially similar issues and request substantially similar relief as that
25 denied in the Court's May 18, 2016 Order," and denied them "for the same reasons as
26 set forth" in that prior order. *Id*. at p. 2.

27 Undeterred, on August 9, 2016, Mr. Aguirre filed the instant motion on behalf of
28 three additional investors. Dkt. No. 1348. It seeks substantially the same relief as the

prior intervention motions and should be denied for all the reasons those were.

III. ARGUMENT

A. Mr. Aguirre Seeks Relief the Court Has Already Denied

Mr. Aguirre now moves on behalf of three new investors, asking yet again for (1) leave to file a complaint in intervention that again seeks, *inter alia*, accountings from the Receiver and release of the GPs from the Receivership (*Cf.* Dkt. Nos. 1229-1 and 1348-1); (2) to vacate the Court's May 25, 2016 Order approving the orderly sales motion; (3) oppose yet again the Receiver's Motion to sell the Jamul property; and (3) join in previously filed motions to stay the Court's May 25, 2016 Order on the distribution of Receivership assets. Dkt. No. 1348-2 at p. 2; Ex. A. In addition, Mr. Aguirre once again seeks an order requiring the Receiver to make the books and records of defendants available to investors. *Id.*

This is the same relief Mr. Aguirre sought in his prior intervention motions. Dkt. Nos. 1229, 1230, 1258. And even those motions were a repeat of previous motions filed by Mr. Aguirre on behalf of investors, specifically "incorporate[ing] by reference" and "refil[ing]" each of those motions. *See* Dkt. No. 1229-1 at 4; *see also* Dkt. No. 1230-1 at 2:12-13 (acknowledging that their Dkt. No. 1230 motion to vacate the Jamul Valley property sale was same as their earlier Dkt. No. 1221 motion, which was "re-filed" with their April 8th omnibus motion, Dkt. No. 1229);[1] Dkt. No. 1258-1 at 3:18-19 (acknowledging that their new Dkt. No. 1258 motion to seek

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[1] In their April 8, 2016 motion to intervene, the Aguirre Investors sought not only to vacate the Jamul Valley property sale, as they did before; they also sought to vacate all of the Court's prior orders relating to property sales. Specifically , the Aguirre Investors sought to vacate: (1) the Court's June, 17, 2015, order (Dkt. No. 1085) approving the sale of the Jamul Valley property; (2) the May 12, 2015 order (Dkt. No. 1069) setting an "orderly sale" process for the receivership properties; and (2) the January 14, 2016 order (Dkt. No. 1168) "to the extent it granted the Receiver's recommendations to (1) sell any property and (2) enter into any broker agreements to sell any property." Dkt. No. 1230-1 at 2.

accounting/audit of receiver was same as their earlier Dkt. No. 1223 motion, which was "re-filed" with their April 8th omnibus motion, Dkt. No. 1229).

The Court denied these motions as moot, unsupported, or untimely three months ago. Dkt. Nos. 1296 and 1303. Mr. Aguirre's arguments in support of intervention have not become more persuasive in the interim. There is no justification for filing an additional, duplicative motion seeking the same relief Mr. Aguirre has already sought and been denied.

B. There is No Reason to Overturn the Court's Prior Orders

Mr. Aguirre's fourth motion for intervention is purportedly supported by what he characterizes as "stunning new facts of [the Receiver's] and the SEC's violations of investors' right to due process of law, which the Court has never addressed." Dkt. No. 1348-2 at p. 3. There is nothing "stunning" or "new" about any of this. Neither the SEC nor the receiver has violated anyone's due process rights, and all of the so-called "new evidence" was either referenced by Mr. Aguirre himself in prior filings, or pulled directly from the public docket, where these matters were previously raised by defendants and adjudicated by the Court.

1. The SEC and the Receiver provided notice to the investors

First, Mr. Aguirre argues that he has uncovered evidence that the SEC and the Receiver have failed to give investors required notice of these proceedings pursuant to Local Rule 66.1. *See* Dkt. No. 1348-2 at pp. 4-9. He claims the investors were not given adequate notice of the Receiver's February 2016 motion in support of a distribution plan, and he argues they did not receive adequate notice of the SEC's motion for the appointment of a receiver. He is wrong on both counts.

a. <u>Notice of the Distribution Motion</u>

Mr. Aguirre argues that the Receiver failed to comply with Local Rule 66.1 because the Receiver's notice of the February 2016 distribution motion was not "timely" and was by "email." *Id.* at p. 4. But Local Rule 66.1 requires nothing more than two weeks' notice, and that is exactly what the Receiver provided—a fact that Mr.

Aguirre acknowledges, as he must, in his motion. *See* L.R. 66.1.f (requiring "at least fourteen (14) days' notice"); Dkt. No. 1348-2 at p. 4 (Aguirre noting notice for May 20, 2016 hearing sent on May 6, 2016). The rule also says nothing about how that notice is to be given, nor does it prohibit email service. Moreover, as Mr. Aguirre himself acknowledges *in his motion*, the Court previously issued an order permitting the Receiver to give notice of hearings on the Receiver's website for any actions where Rule 66.1.f requires notice, except for petitions for payment of dividends or the discharge of the Receiver, neither of which apply here. *See* Dkt. No. 1348-2 at p. 5, *citing* Dkt. No. 170 at p. 3; *see also* L.R. 66.1.f.

Not only did the Receiver email the notice of the hearing for the February 2016 motion, he also posted the motion on his website when it was filed, just as the Court permitted him to do. Dkt. No. 1355-1 at ¶ 4. And there is no dispute that the investors, as well as Mr. Aguirre, were on notice of the motion and had the opportunity to be heard at the hearing. As Mr. Aguirre well knows, the Court granted the investors a limited intervention for the purposes of being heard on the motion,[2] Mr. Aguirre himself filed three substantive briefs regarding the motion on behalf of the Aguirre Investors,[3] the Dillon Investors filed an opposition and hired a consultant who prepared and provided a report regarding the proposal,[4] the Court received numerous letters from investors,[5] a large group of investors attended the May 20, 2016 hearing, and Mr. Aguirre and Mr. Dillon, an behalf of their investor-clients, argued at length at the hearing. All of these materials and input were considered by the Court before ruling on the motion. *See* Dkt. No. 1304 at pp. 2 and 11 (identifying the "Dillon Resp., ECF No. 1234; Mr. Aguirre Resp., ECF No. 1235; Rec. Dillon Reply, ECF No. 1262; Rec. Mr. Aguirre Reply, ECF No. 1263; Receiver's Court-Ordered Proposal Regarding GPs

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[2] Dkt. No. 1296.
[3] Dkt. Nos. 1235, 1277, and 1293.
[4] Dkt. Nos. 1234 and 1234-2.
[5] Dkt. Nos. Nos. 1240, 1242, 1244, 1249–1257, 1282, 1283, 1288.

("Rec. CO Prop."), ECF No. 1264; Receiver's Supplement to Court-Ordered Proposal Regarding GPs ("Rec. CO Supp."), ECF No. 1275; Mr. Aguirre SEC Sur-reply, ECF No. 1277; Mr. Aguirre CO Resp., ECF No. 1293; Rec. CO Reply, ECF No. 1294. The Court has also received a number of letters from individual investors concerning the Receiver's motion. *See, e.g.*, ECF Nos. 1240, 1242, 1244, 1249–1257, 1282, 1283, 1288."). Thus, there is simply no basis for the Aguirre Investors to claim that the investors' due process rights were violated.

b. Notice of the Receivership

Likewise, Mr. Aguirre's argument that the investors' due process rights were violated in connection with the SEC's 2012 motion for the appointment of a receiver, also fails. *See* Dkt. No. 1348-2 at pp. 7-9. In making this argument, Mr. Aguirre conflates both Local Rule 66.1.f and 66.1.a.2. *See id.* at p. 7. But Rule 66.1.f does not govern notice for a hearing regarding the appointment of a receiver. *See* L.R. 66.1.f. Only Rule 66.1.a.2 applies to such proceedings. However, that rule, which Mr. Aguirre quotes in his motion, only requires the plaintiff to give notice to "all parties" of a motion seeking the appointment of a receiver. *See* L.R. 66.1.a.2 (requiring application to be "served on all parties"). There is no question that the SEC gave notice of its motion to the defendants—the only other parties to this action (then and now).

The only notice requirement regarding the investors under Local Rule 66.1.a.2 is the requirement that the receiver give notice to the "creditors listed" in a list that the defendants are obligated under the rule to provide. *Id.*[6] As to that requirement, Mr. Aguirre claims the Receiver "simply ignored" it. But that is far from true, and since Mr. Aguirre has reviewed the public docket searching for this and other arguments in

[6] As is plain from the text of the rule, this requirement applies only to the receiver, not the plaintiff.

support of his motion, he should have known that.[7] As the public record makes clear, the defendants specifically requested the Court to order the SEC and the Receiver *not* to provide notice of the preliminary injunction hearing to investors. *See* Dkt. No. 14 at p. 16. The defendants moved to dissolve the TRO, arguing, among other things, that they would suffer "harm" if the Receiver "provides all 'receivership entities and their general partners' with notice of the Order, as currently required." *Id*., quoting Dkt. No. 10 (TRO) at p. 19; see also Dkt. No. 14 at p. 17. The SEC, of course, objected to that request. *See* Dkt. No. 18 at p. 6. The Court, however, decided to stay "that portion of the TRO that requires the receiver to 'provide notice'" while the defendants' motion to dissolve the TRO was briefed and adjudicated. Dkt. No. 17 at p. 2. Then, "out of an abundance of caution for Defendants' interests," the Court elected not to lift that stay when it denied the defendants' motion, noting that the issue of notice to investors was "apparently the highest of Defendants' concerns." Dkt. No. 22 at p. 6. It was not until the Court granted the preliminary injunction that it specifically approved "the receiver notifying" the investors. Dkt. No. 44 at n.11 (again noting that the issue was of "substantial concern" to the defendants "from the beginning"). Nowhere does Mr. Aguirre address any of this, or explain how the Receiver or the SEC could be held at fault for not providing notice to investors when, at the specific request of the defendants and over the SEC's objection, the Court ordered that notice not be given until after the preliminary injunction was granted.

2. The SEC and the Receiver acted in the interests of investors

Second, Mr. Aguirre argues that the he has "new evidence" that the SEC and the Receiver have conspired to form a "superpower" pursuing an agenda adversarial to investors. Dkt. No. 1348-2 at pp. 9-12. Not only does Mr. Aguirre fail to identify

[7] Mr. Aguirre may be genuinely mistaken in this and other representations to the Court in this intervention motion. However, Rule 11 does provide that an attorney signing a motion certifies that the factual contentions therein have been made after a reasonable inquiry and are supported by the evidence.

1 what mysterious agenda he believes the SEC and the Receiver to be pursuing, he fails
2 to provide any examples of the SEC or the Receiver acting to the detriment of
3 investors. Instead, he simply rehashes an argument and recycles emails pulled from
4 the existing docket in this matter. *Id. citing* Dkt. Nos. 976-1, Exs. 5, 36, and 38 and
5 860-2, Ex. 6. These materials have all previously been considered by the Court in the
6 context of failed motions seeking the removal of the Receiver filed by Schooler,
7 against whom the SEC obtained a judgment finding that Schooler had made material
8 misrepresentations to investors, and requiring that he disgorge the $147,610,280 he
9 illegally obtained from them. Dkt. No. 1004 at p. 10-11 (declining to remove the
10 Receiver for seeking input from the SEC and noting that the Receiver has "largely
11 discharged his duties in an unbiased way"); Dkt. No. 1296 at p. 5 ("the Court examined
12 numerous allegations from Defendants and individual investors that the Receiver was
13 behaving unethically or irresponsibly, and found no merit in these allegations"); *see*
14 *also* Dkt. No. 1170 (final judgment). Again, Mr. Aguirre provides *no* evidence, let
15 alone new evidence, to support his meritless contentions.
16 Finally, Mr. Aguirre argues that the Court should permit intervention because
17 the Receiver should have filed SFARs with his periodic reports, or that he violated the
18 requirements of 28 U.S.C. § 2001 in the sales process.[8] Dkt. No. 1348-2 at p. 10. But
19 the Court has already considered and rejected these arguments in favor of intervention
20 in the context of Mr. Aguirre's prior motions. Dkt. No. 1296 at p. 6, fn. 4; 1304 at pp.
21 19-20; 23-24.
22
23 [8] In addition, the Aguirre Investors' arguments regarding 28 U.S.C. § 2001 are and
24 have been moot. Five days before they filed their first motion to overturn the Jamul
25 sale, the receiver proposed an "alternative recommendation" for the sale of the
property that would comply with that statutory provision. See Dkt. No. 1225; see Dkt.
26 No. 1230-1 at 5:16-19 (Aguirre Investors' intervention motion citing receiver's Dkt.
No. 1225 but not acknowledging the proposed alternative). So the Aguirre Investors'
27 motion is both duplicative of prior motions and has been mooted by a subsequent
submission by the receiver.
28

Thus, Mr. Aguirre has failed to provide the Court with any grounds for reconsidering its prior Orders regarding intervention, and Mr. Aguirre's current motion should be denied.

IV. CONCLUSION

For all the forgoing reasons, and those set forth in the SEC's oppositions to the Aguirre Investors' April 8, 2016 omnibus motion to intervene (Dkt. No. 1266), and his April 11, and April 21, 2016 intervention motions (Dkt. No. 1291), the SEC requests that the Court deny Mr. Aguirre's fourth motion to intervene.

Dated: August 23, 2016

/s/ Lynn M. Dean
John W. Berry
Lynn M. Dean
Sara D. Kalin
Attorney for Plaintiff
Securities and Exchange Commission

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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,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On August 23, 2016, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NON-PARTY INVESTORS' MOTIONS TO INTERVENE** 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: August 23, 2016

/s/ Lynn M. Dean
Lynn M. Dean

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SEC v. Louis V. Schooler, et al.
United States District Court—Southern District of California
Case No. 12 CV 2164 GPC JMA

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