

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawfirm.com

Attorney for Joseph M. Ardizzone, David R. Schwarz,
Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore.

**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.: 3:12-cv-02164-GPC-JMA

**ARDIZZONE INVESTORS NOTICE
OF MOTIONS AND MOTIONS
(1) FOR A STAY OF ORDERS
PENDING APPEAL,
(2) TO ALTER OR AMEND A
JUDGMENT, AND
(3) FOR RECONSIDERATION**

Date: November 10, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Notice is hereby given that on November 10, 2016, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 2D of the United States District Court, Southern District of California, located at 221 W. Broadway, San Diego, CA 92101, Joseph M. Ardizzone, David R. Schwarz, Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore, (“Ardizzone Investors”) will and hereby do move this Court for an order:

1. to stay any further execution of the receiver’s liquidation plan (Dkt. No. 1304), the sale of the Jamul Valley property (Dkt. No. 1361), and the engagement of CBRE (Dkt. No. 1359);
2. to alter or amend under Fed. R. Civ. P. (“Rule”) 59(e) or reconsider under Rule 60(b) the order (Dkt. No. 1359) denying the Ardizzone Investors’ motion to intervene (Dkt. No. 1348), including intervention to seek an order vacating the May 25, 2016, order (Dkt. No. 1304);
3. to alter or amend under Rule 59(e), and to reconsider under Rule 60(b), the order (Dkt. No. 1359) granting Receiver Thomas C. Hebrank (“Hebrank”) the authority to engage CBRE as a consultant (Dkt. No. 1341); and
4. to alter or amend under Rule 59(e) or to reconsider under Rule 60(b) the order (Dkt. No. 1361) approving the sale of the Jamul Valley property.

The motion for a stay is brought on the grounds that the Ardizzone Investors are likely to succeed on the merits with their appeal, that the Ardizzone Investors are likely to suffer irreparable harm in the absence of the relief sought, that the balance of equities tips in the Ardizzone Investors’ favor, and that a stay is in the public interest.

The Ardizzone Investors are entitled to relief under four separate grounds of Fed. R. Civ. P. 60(b) (“Rule 60(b)”) as set forth in the points and authorities filed with this motion, including each of the following grounds:

1. The March 13, 2013, stipulated order (Dkt. No. 174) making Hebrank permanent receiver, the May 25, 2016, order (Dkt. No. 1304) approving

the liquidation plan, and the August 30, 2016, orders (Dkt. Nos. 1359 and 1361) carrying out steps in the liquidation plan are all void, because the Court lacked subject matter jurisdiction (Rule 60(b)(4)) and the orders were issued in violation of due process of law;

2. The Ardizzone Investors present newly discovered evidence (Rule 60(b)(2));

3. The SEC and Hebrank made misleading and untrue statements of fact and law in their opposition briefs (Dkt. Nos. 1355 and 1358) (Rule 60(b)(3)); and

4. Other reasons justify relief (Rule 60(b)(6)).

The Ardizzone Investors are entitled to relief under four separate grounds of Fed. R. Civ. P. 59(e) ("Rule 59(e)") as set forth in the points and authorities filed with this motion, including each of the following grounds:

1. the motion is necessary to correct manifest errors of law and fact upon which the orders are based;
2. the Ardizzone Investors present newly discovered or previously unavailable evidence; and
3. the motion is necessary to prevent manifest injustice.

This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the accompanying declarations of Gary J. Aguirre, Joseph M. Ardizzone, Dennis P. Gilman and Alice Jacobson, the accompanying objections to Inadmissible Statements in Thomas C. Hebrank's Declaration (Dkt. No. 1355-1), and all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing.

DATED: September 13, 2016

Respectfully submitted,

By: /s/ Gary J. Aguirre
 GARY J. AGUIRRE
 Aguirre Law, A.P.C.

gary@aguirrelawapc.com
Attorney for Investors Joseph M.
Ardizzone, David R. Schwarz,
Lois Schwarz, Dennis Frisman,
Eric Gilbert, and Rick Moore

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawfirm.com

Attorney for Joseph M. Ardizzone, David R. Schwarz,
Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore.

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.: 3:12-cv-02164-GPC-JMA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ARDIZZONE INVESTORS'
MOTIONS (1) FOR A STAY OF
ORDERS PENDING APPEAL,
(2) TO ALTER OR AMEND A
JUDGMENT, AND
(3) FOR RECONSIDERATION**

Date: November 10, 2016

Time: 1:30 p.m.

Dept.: 2D

Judge: Hon. Gonzalo P. Curiel

Table of Contents

I. Introduction.....	1
II. Lack of Notice to Investors.....	2
III. Grounds for a Stay.....	4
IV. Grounds for Relief under Fed. R. Civ. P. 59(e) and 60(b).....	4
V. Hebrank Failed to Prove He Gave Investors Adequate Notice	7
A. Hebrank’s Website and His Occasional Emails Were Not Adequate Notice.....	7
B. Hebrank’s Communications, or Lack thereof, with Ardizzone and the Schwarzes Demonstrate His Failure to Use Alternative Notices.....	14
C. Hebrank’s Self-Serving Claim He Neglected to Send Notices to Save Money.....	16
VI. The SEC’s Defense of Hebrank’s Failure to Comply with L.R. 66.1.....	17
A. Hebrank Was Appointed Permanent Receiver in Violation of L.R. 66.1.a.2 and the Due Process Clause.....	17
B. Failure to Give Notice of the Liquidation Plan Forfeiting Investors’ Rights	22
C. Court Orders Cannot Sanction a Due Process Violation.....	24
D. The SEC’s Contention that Some Investors Submitted Letters to the Court Is Irrelevant.....	25

Table of Authorities

Cases

<i>Brady v. United States</i> ,	
397 U.S. 742, 748 (1970).....	11
<i>Gates v. City of Chicago</i>	
623 F.3d 389 (7th Cir. 2010).....	2, 12, 13
<i>Humane Soc. of U.S. v. Gutierrez</i> ,	
558 F.3d 896 (9th Cir. 2009)	4
<i>In Re Los Angeles Land & Invest., Ltd.</i> ,	
282 F.Supp. 448 (d. Haw. 1968).....	10, 23, 17
<i>In Re San Vicente Medical Partners, Ltd.</i> ,	
962 F.2d 1402 (9th Cir. 1992).....	18
<i>Jones v. Flowers</i> ,	
547 U.S. 220 (U.S. 2006).....	13
<i>Leiva-Perez v. Holder</i>	
640 F.3d 962 (9th Cir. 2011).....	4
<i>MBIA Ins. Corp. v. FDIC</i> ,	
708 F.3d 234 (D.C. Cir. 2013).....	10, 23
<i>Mullane v. Central Hanover Bank & Trust Co.</i>	
339 U.S. 306 (1950).....	13, 14
<i>SEC v. American Capital Invs.</i> ,	
98 F.3d 1133 (9th Cir. 1996).....	5
<i>SEC v. Global Online Direct, Inc.</i> ,	
2007 U.S. Dist. LEXIS 81803 (N.D. Ga. Nov. 5, 2007).....	3, 12
<i>SEC v. McGinn, Smith & Co.</i> ,	
2011 U.S. Dist. LEXIS 49548 (N.d.N.Y. May 6, 2011).....	10
<i>SEC v. Ross</i> ,	
504 F.3d 1130 (9th Cir. 2007).....	3, 24

1	<i>Systems Indus. v. Pius Han,</i>	
2	1986 U.S. Dist. LEXIS 25142 (E.D. Pa. May 23, 1986).....	5
3	<i>Turner v. Burlington N. Santa Fe R.R. Co.,</i>	
4	338 F.3d 1058, 1063 (9th Cir. 2003).....	7
5	<i>U.S. v. Ritchie,</i>	
6	342 F.3d 903 (9th Cir. 2003).....	9, 13, 15
7	<i>World-Wide Volkswagen Corp. v. Woodson,</i>	
8	444 U.S. 286 (1980).....	5
9	Federal Rules	
10	Fed. R. Civ. P. Rule 59	<i>passim</i>
11	Fed. R. Civ. P. Rule 60	<i>passim</i>
12	Supplemental Rules for Admiralty or Maritime Claims	
13	and Asset Forfeiture Actions.....	9, 13
14	Local Rules	
15	Rule 66.1.....	<i>passim</i>

1 **I. Introduction**

2 Investors Joseph M. Ardizzone, David R. Schwarz, Lois Schwarz, Dennis Frisman,
3 Eric Gilbert, and Rick Moore (“Ardizzone Investors”) seek an order:

- 4 1. to stay any further execution of the receiver’s liquidation plan (Dkt. No. 1304),
5 the sale of the Jamul Valley property (Dkt. No. 1361), and the engagement of
6 CBRE (Dkt. No. 1359);
- 7 2. to alter or amend under Fed. R. Civ. P. (“Rule”) 59(e) or reconsider under Rule
8 60(b) the order (Dkt. No. 1359) denying the Ardizzone Investors’ motion to
9 intervene (Dkt. No. 1348), including intervention to seek an order vacating the
10 May 25, 2016, order (Dkt. No. 1304);
- 11 3. to alter or amend under Rule 59(e), and to reconsider under Rule 60(b), the
12 order (Dkt. No. 1359) granting Receiver Thomas C. Hebrank (“Hebrank”) the
13 authority to engage CBRE as a consultant (Dkt. No. 1341); and
- 14 4. to alter or amend under Rule 59(e) or to reconsider under Rule 60(b) the order
15 (Dkt. No. 1361) approving the sale of the Jamul Valley property.

16 Although each of these motions has different procedural requirements, all make
17 one primary contention on the merits in this brief: the SEC and Hebrank failed to give
18 investors the constitutionally required notice at each stage of this case. The Ardizzone
19 Investors present new evidence below of Hebrank’s failure to give investors notice in the
20 context of the evidence previously presented to the Court on that issue.

21 The procedural issues raised by the motions for a stay and the motions under Rules
22 59(e) and 60(b) of course raise different issues. We address the procedural grounds for
23 obtaining a stay pending appeal in Section III, the grounds for relief under Rules 59(e)
24 and 60(b) in Section IV, Hebrank’s contentions on the adequacy of the notice in Section
25 V, and the SEC’s contentions on the same issues in Section VI.

26 By focusing this brief on the adequacy of notice served on investors, the Ardizzone
27 Investors have not withdrawn their contentions on other issues. To be clear, the
28 Ardizzone Investors contend the Court erred in denying their motion to intervene on all

1 legal and factual grounds stated in that motion. (Dkt. Nos. 1348, 1348-1 and 1348-2).
 2 They also assert all legal and factual contentions in their oppositions to (1) engage CBRE
 3 (Dkt. No. 1341) and (2) the approval of the sale of the Jamul Valley property (Dkt. No.
 4 1310). The Ardizzone Investors opposed both motions on the same grounds as the
 5 Graham Investors did. Dkt. Nos. 1348 and No. 1352. They do not reargue many of these
 6 contentions in this brief, because they are satisfied the appellate record is complete on
 7 those issues. Hence, this brief focuses on a narrower set of issues.

8 **II. The Lack of Notice to Investors**

9 The Ardizzone Investors' motion to intervene focused primarily on the SEC's and
 10 Hebrank's lack of adequate notice to investors at each step in the receivership
 11 proceedings. In that motion, we cited *Gates v. City of Chicago*, 623 F.3d 389 (7th Cir.
 12 2010) for the principle that Hebrank and the SEC have the burden to establish adequate
 13 notice on investors under the Due Process Clause. Dkt. No. 1348 at 5. Nothing in the
 14 record before this Court satisfies that burden. At the outset of this proceeding, Hebrank
 15 filed a list of all investors. Dkt. No. 184, Ex. C. He has never filed a proof of service
 16 attesting to any notice served on those investors. Aguirre Declaration filed herewith
 17 ("Aguirre Decl."), ¶ 11. Hebrank has admitted that most investors do not visit his
 18 website. Dkt No. 852 at 2. No case law upholds using a website, which most investors do
 19 not visit, to give them notice of forfeiture. Hebrank cites none and we can find none.

20 Hebrank filed a declaration on August 23, 2016, in which he identifies a single
 21 letter that he claims to have sent to investors through Beverly Schuler and Alice
 22 Jacobson. Dkt. No. 1355-1, ¶ 3. This is pure fiction. The letter was drafted and sent by
 23 his attorney, Ted Fates ("Fates").¹ See also Declaration of Alice Jacobson ("Jacobson
 24 Decl.") filed herewith, ¶¶ 7 and 8.

25 Hebrank has also admitted he lacks email addresses for many investors and has
 26 erroneous email addresses for others. Dkt. No. 1348-3, ¶ 3 and Ex 1. We sought
 27

28 ¹ *Infra*, at 8.

1 information from Hebrank whether he used an alternative means of service on these
2 investors and he declined to respond. Aguirre Decl. ¶¶ 3-5, Exs. 1-3. We asked if he
3 would provide us the contact information for investors so we could assess its accuracy.
4 He again refused. *Id.*, ¶¶ 4-5, Exs. 2-3.

5 In this void, we have conducted an investigation to ascertain how many investors
6 are receiving Hebrank's email communications. Based on records obtained from
7 Hebrank's receivership staff in August 2014 and updated as of March 2015, Hebrank
8 lacks email addresses for at least 571 investors and has erroneous email addresses for
9 between 430 to 630 more investors, a total between 1,000 and 1,200 investors. Aguirre
10 Decl., ¶¶ 10 and 12 and Exs. 7 and 8. See also Gilman Decl., ¶¶ 5-10. Since Hebrank has
11 apparently taken no steps to update his email list, the total number may even be larger.
12 Only Hebrank and his attorney know for sure and neither will share the true facts.

13 The Investor Committee for the Investors represented by Aguirre law sent letters to
14 70 investors and the results confirm investors are not receiving the emails Hebrank sends,
15 few as they are. *Id.* And then there is another question: how many investors open
16 Hebrank's emails? In another case handled by Allen Matkins, *SEC v. Global Online*
17 *Direct, Inc.*, 2007 U.S. Dist. LEXIS 81803 *2 (N.D. Ga. Nov. 5, 2007), the receiver
18 reported that only 40% of investors *who received emails* in fact opened them. Assuming
19 investors did the same here, another 900 investors do not receive Hebrank's emails for
20 any number of reasons: the email address is no longer used, the emails go to junk mail, or
21 the investors do not recognize the sender. Adding the two groups together, some 60% of
22 investors may not be actually be receiving Hebrank's emails. Obviously, Hebrank can
23 confirm at no cost who is opening his emails, as Allen Matkins did in *Global Online*.

24 Our numbers are estimates. Hebrank has the actual numbers. He is represented by
25 a law firm that focuses on receivership cases such as this one. They are intimately
26 familiar with the need for keeping records of communications with investors and the
27 receiver's duty to prove due process. In this light, we refer the Court to *SEC v. Ross*, 504
28 F.3d 1130 (9th Cir. 2007), where the Ninth Circuit concluded the receiver, also

represented by Allen Matkins, failed to provide the objector with due process. Hebrank's failure to provide evidence of his actual communications to investors is a tacit admission that he knows his "notices" to investors do not satisfy due process requirements.

III. Grounds for Stay

"A party seeking a stay must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of relief, that the balance of equities tip in his favor, and that a stay is in the public interest." *Humane Soc. of U.S. v. Gutierrez*, 558 F.3d 896, 896 (9th Cir. 2009). These factors are balanced on a "sliding scale," and thus the Court may order a stay if there are "serious questions" going to the merits and "the balance of hardships tips sharply in [the applicant's] favor." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). The Court previously considered all four issues when it addressed the Graham Investors' motion for a stay, but denied that motion on a single ground, i.e., the Graham Investors failed to demonstrate the likelihood their appeal would succeed on the merits. Dkt. No. 1359. Accordingly, the Ardizzone Investors will focus below on the likelihood of success on the merits of their appeal.

IV. Grounds for Relief under Fed. R. Civ. P. 59(e) and 60(b)

The Ardizzone Investors are entitled to relief under four separate grounds of Fed. R. Civ. P. 60(b) ("Rule 60(b)"):

- (1) The March 13, 2013, stipulated order (Dkt. No. 174) making Hebrank permanent receiver, the May 25, 2016, order (Dkt. No. 1304) approving the liquidation plan, and the August 30, 2016, orders (Dkt. Nos. 1359 and 1361) carrying out steps in the liquidation plan are all void, because the Court lacked subject matter jurisdiction (Rule 60(b)(4)) and the orders were issued in violation of due process of law;
- (2) The Ardizzone Investors present newly discovered evidence (Rule 60(b)(2));
- (3) The SEC and Hebrank made misleading and untrue statements of fact and law in their opposition briefs (Dkt. Nos. 1355 and 1358) (Rule 60(b)(3)); and
- (4) Other reason that justifies relief (Rule 60(b)(6)).

1 The Ardizzone Investors offer two separate reasons why the four orders (Dkt. Nos.
 2 174, 1304, 1359, and 1361) are void. First, none of the orders may lawfully include the
 3 GPs in the receivership, because (1) the Court lacks subject matter jurisdiction over the
 4 GPs, *SEC v. Am. Capital Investments*, 98 F.3d 1133, 1141 (9th Cir. 1996), and (2) the
 5 orders were granted in violation of investors' rights to due process of law. *World-Wide*
 6 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) "[T]here is no time limit on an
 7 attack on a judgment as void." *Systems Indus. v. Pius Han*, 1986 U.S. Dist. LEXIS 25142
 8 *20 (E.D. Pa. May 23, 1986). In any case, the Ardizzone Investors moved to intervene
 9 within days of the date they learned Hebrank was seeking to forfeit their property rights in
 10 their GPs. This motion has been filed less than two weeks after the Court denied the
 11 Ardizzone Investors' motion to intervene. Further, more than half of the 3,370 investors
 12 may still be in the dark over Hebrank's plan to forfeit their property rights.

13 For the same reasons, the Ardizzone Investors are entitled to relief under Rule
 14 60(b)(6). The following Court errors also support this ground for relief:

- 15 1. Multiple errors in its interpretation and application of Local Rule ("L.R.") 66.1
 16 to the facts of this case;
- 17 2. Failing to require the SEC and Hebrank to satisfy their burden of establishing (i)
 18 the Court had subject matter jurisdiction over the GPs and (ii) the forfeiture has
 19 been done in compliance with the Due Process Clause;
- 20 3. Not requiring Hebrank to submit concrete evidence of the name and number of
 21 investors who received his October 12, 2012, letter, his email notices, and his
 22 website notices;
- 23 4. Permitting the SEC, Hebrank, and the defendants to stipulate to an order
 24 depriving investors of their rights to oppose the permanent appointment of a
 25 receiver before his appointment;
- 26 5. Treating Hebrank's May 6, 2016, email as notice of his liquidation plan, despite
 27 the fact it was sent to investors three weeks after the deadline for filing
 28 opposition;

6. Failing to provide investors any procedure to object to Hebrank's liquidation plan forfeiting their rights;
7. Failing to uphold its March 7, 2013, order (Dkt. No. 170) requiring Hebrank to serve his liquidation plan by mail on investors;
8. Failing to recognize or apply the Supreme Court and the Ninth Circuit decisions defining the adequacy of notice in a forfeiture proceeding;
9. Basing its factual findings on Hebrank's inadmissible statements and by denying the Ardizzone Investors an opportunity to object. See Ardizzone Investors' motion to strike Hebrank's declaration. Dkt. No. 1355-1.

As a third ground, under Rule 60(b)(3), Hebrank and the SEC have made multiple untrue and half true statements of law and fact in their reply briefs. Dkt. Nos. 1355 and 1358. Here are a few:

1. Hebrank's statements in his declaration regarding notices he sent investors;
2. SEC's statements to the Court (Judge Burns) regarding investors' rights to a hearing and notice;
3. SEC's statements of the history leading to the issuance of the March 13, 2013, order (Dkt. No. 174) appointing Hebrank permanent receiver;
4. SEC's statements how L.R. 66.1 applies to the facts of this case.

Finally, as a fourth ground under Rule 60(b)(2), the Ardizzone Investors present new evidence they could not have presented before:

1. Hebrank's emails cannot be received by an estimated 1,000 to 1,200 investors; this issue only arose when Hebrank claimed to use email to give notice;
2. Evidence refuting false and hearsay statements in Hebrank's declaration about his communications with Ardizzone and the Schwarzes; again, this issue did not arise until Hebrank filed his August 23, 2016 declaration (Dkt No. 1355-1);
3. Evidence refuting the SEC's misstatements of fact and law to the Court which first arose with the filing of its August 23, 2016, brief (Dkt No. 1358);
4. The tacit admissions of Hebrank's attorney by his failure to respond to answer

investors' question last month how Hebrank gave them adequate notice of this proceeding. Aguirre Decl., ¶¶ 3-5, Exs. 1-3.

In *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003), the Ninth Circuit addressed the grounds for a motion under Rule 59(e) as follows:

There are four grounds upon which a Rule 59(e) motion may be granted: 1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; 2) the moving party presents newly discovered or previously unavailable evidence; 3) the motion is necessary to prevent manifest injustice; or 4) there is an intervening change in controlling law (emphasis, citations, and internal quotation marks omitted).

The facts and law that establish each of these grounds overlap with those stated above as grounds for relief under Rule 59(e). Consequently, we will not repeat those contentions.

The Ardizzone Investors have filed a separate motion to strike the inadmissible statements and untrue statements of fact and opinion in Hebrank's declaration (Dkt. No. 1355-1) filed in support of his opposition (Dkt. No. 1355) to the Ardizzone Investors' motion to intervene in this case. Dkt. No. 1348. The Ardizzone Investors did not have the opportunity to assert these objections, because the Court denied the motion before the Ardizzone Investors could file their reply brief. Dkt. No. 1359.

V. Hebrank Failed to Prove He Gave Investors Adequate Notice

A. Hebrank's Website and His Occasional Emails Were Not Adequate Notice

We start with the cornerstone of Hebrank's contention he gave adequate notice to investors: his October 12, 2012, letter. Dkt. No. 1355-1. Nothing in this letter gave investors a clue Hebrank would seek to forfeit their property rights under the GPs. It was a vanilla communication that Hebrank had been appointed receiver, because the Court had decided the GPs were securities. Hebrank and the SEC's argument the Court approved this letter as notice under Rule 66.1 is both false and irrelevant for the reasons discussed below. But there is a preliminary issue that is unanswered in anything before this Court: who actually sent this letter and who actually received it?

Here is Hebrank's sworn statement how his October 12, 2012, letter was served on

investors: “I instructed Alice Jacobson and Beverly Shuler [sic] (‘Former Partnership Administrators’) to mail a letter to each investor at their address contained in the Receivership Entities’ books and records.” *Id.*, ¶ 3. Curiously, Hebrank does not say the letter was sent. His statement he gave instructions to send it is irrelevant when the issue is due process. The issue is whether it was *actually* sent.

So why would Hebrank submit a fuzzy and inadmissible statement at the core of his claim he gave investors the notice required by due process of law? We surmise Hebrank made no explicit statement that Western’s or Hebrank’s staff sent the letter, because that statement would be untrue.

The evidence proves neither Jacobson nor Schuler sent the letter. Nor were they ever asked to send the letter. Jacobson Decl., ¶ 7. Hebrank’s fee applications show he spent no time writing the letter and incurred no cost for postage or copying it. No one with E-3 Advisors or Western sent the letter. But we know who did: Fates, Hebrank’s attorney. Allen Matkins’ second interim fee application shows he spent “.5 hours” drafting the “notice of receivership to investors” (Dkt. No. 176, Ex. A, at 2) and incurred \$168.5 in copying and \$1,516.05 in postage to send the letter: “The majority of the costs requested (\$1,516.05) is for postage incurred in mailing the initial notice of receivership to investors per the Court’s authorization.” Dkt. No. 176, at 6. See also Ex. A at 5. This number (\$1,516.05) is the exact amount of postage for sending 3,369 letters at the first class mail rate of 45 cents in 2012. The same fee application indicates that Fates encountered a problem with the investors’ mailing addresses: “Attention to investor address issues” and “Discuss investor address issues with Receiver.” *Id.*, at 17-18. Hebrank’s October 25, 2012, email to Jacobson and Schuler confirms Hebrank knows the letter was not sent by either of them. Jacobson Decl., ¶ 7, Ex. 1. For all these reasons, Hebrank’s declaration should be stricken because he is not a percipient witness and his statement (“I instructed Alice Jacobson and Beverly Shuler [sic]... to mail a letter to each investor...”) is irrelevant. It is also untrue.

Hebrank also knew that posting “notice” to the E-3 Advisors website failed to

1 reach most investors. Dkt. No. 1348-3, ¶¶ 3-4 and Exs. 1, 2. Nonetheless, he continued to
 2 use the E-3 Advisors website as his primary means to give investors “notice,” even
 3 though he expressly admitted: “[M]ost investors in this case have not reviewed the
 4 reports and other important information about their GPs posted on the receivership
 5 website. ... Perhaps more receivership resources should have been expended in mailing
 6 reports directly to investors rather than making them available on the receivership
 7 website.” Dkt. No. 852 at 2. Under these circumstances, *U.S. v. Ritchie*, 342 F.3d 903,
 8 910-911 (9th Cir. 2003) required Hebrank to make an alternative personal service.
 9 Likewise, when a claimant’s identity is known, Rule G(4)(b)(iii)(A) of the Supplemental
 10 Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Asset Forfeiture
 11 Rule G”) requires: “The notice must be sent by means reasonably calculated to reach the
 12 potential claimant.”

13 It should not be surprising that most investors did not visit Hebrank’s website.
 14 Since investors began purchasing partnership interests in the early 1980s, many are now
 15 in their late 60s, 70s, 80s, and even 90s. Some have passed on. Aguirre Decl. ¶ 10. The
 16 Pew Research Center found last year that 42% of Americans above the age of 65 do not
 17 even use the internet.² We also note that Hebrank knew that he had no email address for
 18 at least 571 investors, but never informed the Court of this fact. Since the use of email is
 19 perhaps the most basic computer skill, the lack of email addresses for these investors,
 20 consistent with the Pew Research Center report, suggests they were elderly investors who
 21 were not computer literate.

22 Further, this Court never authorized Hebrank to use his website to give investors
 23 *notice of his liquidation plan*. The Court limited the scope of the “notices” Hebrank could
 24 give over his website to “notices of hearings related to petitions for confirmation of sales
 25 of property, receiver reports, and fee applications.” Dkt. No. 170 at 3. These are the
 26 notices described in L.R. 66.1.f.2 through 66.1.f.6. The Court ordered Hebrank “to mail

27 ² See [http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-](http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/)
 28 [2015/](http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/), last visited Sep. 13, 2016.

all other notices required by Local Rule 66.1.f,” which thus included the notice under L.R. 66.1.f.1: “petitions for the payment of dividends to creditors.” *Id.* The definition of “creditors” includes investors who hold contracts and/or investment contracts of the debtor and thus includes all investors in this case.³ The term “dividend” in this context means “any excess cash generated by the disposition of assets less disposition cost and reserves met.” See: *MBIA Ins. Corp. v. FDIC*, 708 F.3d 234 (D.C. Cir. 2013). Consequently, the March 13, 2013, order directed Hebrank to serve his liquidation plan by mail. Dkt. 170 at 3. Hebrank violated this order by failing to do so.

Fourth, we can find no case where a court has ever approved posting to a website as the primary means for giving notice to known claimants, much less when the receiver knows investors do not visit it. Another reason investors did not find the website useful was Hebrank’s tendency to use misleading or innocuous descriptions as links. For example, any investor who visited the E-3 Advisors website for *SEC v. Schooler* after February 4, 2016, would have found this innocuous link: “Mtn for Authority to Conduct Sale of GP Props” at the page 7 of single-spaced links to the case filings. Aguirre Decl., ¶ 13, Ex. 9, at 59. Since Hebrank had previously given multiple notices proposing to sell GP realty, the fact he was doing so again gave no notice that his plan would forfeit investors’ property rights.

A plan that forfeits the rights of investors under an enforceable partnership agreement should be conspicuous and be titled something like: “Notice: The Receiver’s Liquidation Plan Forfeits Your Rights to a Distribution under the Partnership Agreements. Read More Here.” But this link merely states: “Mtn for Authority to Conduct Sale of GP Props.” It linked to a 52-page liquidation plan packed with legalese. The plan offered no procedure for investors to object and was only addressed to the

³ *In Re Los Angeles Land & Invest., Ltd.*, 282 F. Supp. 448 (D. Haw. 1968). See also: *SEC v. McGinn, Smith & Co.*, 2011 U.S. Dist. LEXIS 49548 *15 (N.D.N.Y May 6, 2011)(“‘creditor’ is ‘a person having a claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.’”)

1 “parties.” In order to object, investors would have to intervene in this case, which likely
2 meant retaining counsel.

3 In essence, the SEC and Hebrank contend investors waived their right to object to
4 the proposed plan by failing to navigate Hebrank’s website, locate the link with its
5 innocuous title, click it, open the document, understand their rights would be forfeited,
6 and then either (1) master the Federal Rules of Civil Procedure and the Local Rules or (2)
7 hire an attorney to do so for them. This was not a notice; it was a needle in a haystack. In
8 effect, Hebrank and the SEC are claiming investors waived their Constitutional rights to
9 due process of law, because they were not computer literate, did not visit the website, did
10 not find the link, failed to understand the link was to the liquidation plan, or failed to
11 understand the plan proposed a forfeiture of their rights. “Waivers of constitutional rights
12 not only must be voluntary but must be knowing, intelligent acts done with sufficient
13 awareness of the relevant circumstances and likely consequences.” *Brady v. United*
14 *States*, 397 U.S. 742, 748 (1970).

15 We also note the SEC has argued in this case that, “many of Western’s investors
16 were so inexperienced and unknowledgeable about business affairs, they were not
17 capable of intelligently exercising their partnership powers.” Dkt. No. 3 at 15. If
18 investors are unable to grasp the language in the five-page GP agreements, how could the
19 same investors be expected to navigate through Hebrank’s website, find the link to the
20 liquidation plan, understand it as such, grasp how the 52 pages of legalese would forfeit
21 their partnership rights, and what they could do about it.

22 Apparently, as a secondary method of giving notice, Hebrank has *sometimes* used
23 email to communicate with investors, but once again he admits, “Many investor email
24 address [*sic*] were unavailable or were returned undeliverable.” Dkt. No. 1348-3, ¶¶ 3-4
25 and Exs. 1, 2. Hebrank did not challenge the Ardizzone Investors’ earlier projection that
26 hundreds of investors were not receiving his email “notices.” Dkt. Nos. 1348-2 at 5 and
27 1355. Further, his attorney failed to answer questions what alternative method he used to
28 give investors notice. Aguirre Decl. ¶¶ 3-4, Exs. 1-3.

Given these circumstances, we have looked deeper into this issue. In August 2014, Hebrank had no email addresses for 578 investors and erroneous email addresses for hundreds of others, possibly over 700 investors. Gilman Decl., ¶ 5. By March 2015, Hebrank had no email addresses for 571 investors and, we estimate, erroneous email addresses for between 430 to 630 other investors. Aguirre Decl. ¶¶ 10 and 12, Exs. 7 and 8. This does not include emails that are unopened, because they are delivered to unused email addresses, junk mail folder or for other reasons. As Allen Matkins attorneys well know, the unopened emails may reduce the “notices” actually received by investors by another 40%. See: Allen Matkins case, *SEC v. Global Online Direct, Inc.*, 2007 U.S. Dist. LEXIS 81803 *2 (N.D. Ga. Nov. 5, 2007)(40% of emails unopened). This suggests that possibly 60% of the email notices sent to investors in this case were phantom notices.

We cannot provide the Court with more accurate information, because Hebrank’s attorney refuses to provide investors with Hebrank’s current email list for investors or their mailing addresses. Our repeated efforts to obtain this data have been rejected. Aguirre Decl. ¶¶ 3-5, Exs. 1-3. The Ardizzone Investors’ brief in support of the motion to intervene placed the ball in Hebrank’s Court:

The evidence available to Ardizzone and the Schwarzes’ counsel suggests the number of investors who received no notice may be very high, likely in the hundreds. In any case, Hebrank has the burden to show his notice to investors complied with due process. *Gates v. City of Chicago*, 623 F.3d 389 (7th Cir. 2010).

Dkt. No. 1348-2 at 5. Hebrank has never recognized this burden, much less addressed it. We tried with our letter of August 10, 2016, to Hebrank’s counsel:

I am also aware of your statement in one of the Receiver’s reports (Dkt. No. 852) that “most investors in this case have not reviewed the reports and other important information about their GPs posted on the receivership website.” *In view of the fact Mr. Hebrank knew his website was providing no actual notice to most investors, what alternative means, if any, did you take to*

1 *provide investors with notice? Alternatively, on what legal theory do you*
 2 *contend that posting notice on the website was adequate notice, given the*
 3 *fact Mr. Hebrank knew that most investors were not reading it (emphasis*
 4 *added)?*

5 Aguirre Decl. ¶ 3, Ex. 1. He has yet to reply. More recently, we asked his counsel for his
 6 investor contact list so we could assess the accuracy. He again declined. *Id.*, ¶¶ 4-5, Exs.
 7 2-3.

8 No doubt, there is some information we lack, since Hebrank and his attorney are
 9 tightlipped on this issue. But being tightlipped or attacking our evidence does not satisfy
 10 Hebrank's burden of proof. Hebrank has the burden to prove his notice to investors
 11 complied with the due process requirements; he has failed to address the issue much less
 12 satisfy that burden. *Gates v. City of Chicago*, 623 F.3d 389, 403 (7th Cir. 2010).
 13 The evidence before this Court shows Hebrank's "notices" to investors fail to comply
 14 with *Mullane v. Central Hanover Bank & Trust Co.* 339 U.S. 306, 314 (1950), since,
 15 among other reasons, the notices were not "reasonably calculated, under all the
 16 circumstances, to apprise interested parties of the pendency of the action and afford them
 17 an opportunity to present their objections." Since Hebrank knew his "notices" failed to
 18 reach a large class of investors, he had an obligation "to make reasonable additional
 19 efforts to provide personal notice." *U.S. v. Ritchie*, 342 F.3d 903, 910-911 (9th Cir.
 20 2003)("[W]hen initial personal notice letters are returned undelivered, the government
 21 must make reasonable additional efforts to provide personal notice.") The Supreme Court
 22 extended this principle to all state and federal courts in *Jones v. Flowers*, 547 U.S. 220,
 23 228 (U.S. 2006). See also: Asset Forfeiture Rule G(4)(b)(iii)(A). Despite Hebrank's and
 24 his counsel's extensive experience, both ignore these explicit mandates.

25 Hebrank also claims to have sent investors some communications by U.S. mail: his
 26 October 12, 2012, letter, a mid-2015 postcard referring to the GP informational packets
 27 that were online, and annual K-1 statements. Dkt. No. 1355 at 9-13. He has also mailed
 28 notices of proposed property sales to the partners in specific GPs. Neither the SEC nor
 Hebrank has pointed to any language in any of these communications that separately or

collectively satisfies *Mullane*'s command that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. 314. None states or implies that Hebrank would propose a liquidation plan that works a forfeiture of investors' property rights. None affords investors an "opportunity to present their objections," as *Mullane* requires.

B. Hebrank's Communications, or Lack thereof, with Ardizzone and the Schwarzes Demonstrate His Failure to Use Alternative Notices

To summarize, Hebrank has used two forms of notice (email and his website) and he acknowledges both have failed. Dkt. Nos. 852-2 and 1348-3, ¶¶ 3-4, Exs. 1-2. A majority of investors do not go to his website. Dkt. No. 852 at 2. His alternative means of notice—emails—may not reach between 1,000 and 1,200 investors. Another 40% likely do not open them. Further, those who actually received and opened Hebrank's May 6, 2016, email got defective notice for multiple reasons: it should have been in writing, it was late under the Court's April 5, 2016, order (Dkt. No. 1224); the two-week period was unreasonably short; the motion (Dkt. No. 1181) did not permit investors to be heard. Ardizzone was among the between 1,000 to 1,200 investors who did not receive the May 6, 2016, email. Dkt. No. 1348-4, ¶ 3 and Ardizzone Decl. ¶¶ 1-2.

Ardizzone swears he never received an email from Hebrank. Dkt. No. 1348-4 ¶ 3. Hebrank responds with smoke, a half-truth, and clearly untrue speculation. His declaration offers this half truth: "The Court's July 22, 2014 order was also emailed to Ardizzone as directed in the final paragraph of that order." Dkt. No. 1355-1 at 2. Hebrank speculates why Ardizzone did not receive the May 6, 2016, email informing investors of the May 20 hearing: "It appears Mr. Ardizzone may have changed his email address at some point without notifying the Receiver." Dkt. No. 1355 at 10, n. 4. Neither statement is true. Hebrank's attorney has advised us that: "The email was sent to Joe.ardizzonee@verizon.net. This was the email for Mr. Ardizzone contained in the company records." Aguirre Decl. ¶ 7, Ex. 4. No email could ever be delivered to this

1 email address. *Id.*, ¶ 8, Ex. 5.

2 Ardizzone states in his second declaration that Joe.ardizzonee@verizon.net
3 incorrectly spells his true email address. Ardizzone Decl., ¶ 2. The Court will note the
4 email address misspells Ardizzone's last name by adding an extra "e." Any email sent to
5 this email address prompts a non-delivery notice to the sender. Aguirre Decl., ¶ 8, Ex. 5.
6 Since this was the email address Hebrank obtained from Western in 2012, Hebrank's first
7 email to Joe.ardizzonee@verizon.net would have triggered a non-delivery notice. *Id.*
8 Hence, Hebrank would know the email address was inaccurate and his statement he
9 emailed the July 22, 2014, order (Dkt. No. 1355 at 9) is a half-truth, since Hebrank knew
10 it was not delivered. In short, Hebrank must have known from the first email that the
11 address was incorrect. Hence, his declaration on this point is pure myth. We estimate that
12 Hebrank had erroneous email addresses for somewhere between 430 and 630 investors.
13 Aguirre Decl., ¶12, Ex. 8.

14 This evidence creates a clear picture. The first email Hebrank sent to Ardizzone
15 generated a non-delivery notice. Aguirre Decl., ¶ 8, Ex. 5. Hebrank did not bother to send
16 any more emails to Ardizzone, until the Court ordered him to do so with his July 22,
17 2014, order. Technically complying with the letter of the order, but defying its spirit,
18 Hebrank emailed the order, triggering a non-delivery notice. *Id.* The non-delivery notices
19 may have already vanished, because Hebrank deletes his emails. Dkt. No. 967, at 3-4.

20 When Hebrank learned his notices were not reaching investors, his duty under
21 *Ritchie* kicked in. He was required to "make reasonable additional efforts to provide
22 personal notice." *Ritchie*, 342 F.3d 910-911. For example, Hebrank could have contacted
23 Ardizzone through his mailing address or by phone. He did neither and his attorney will
24 not answer questions on the subject. Aguirre Decl. ¶¶ 3-5, Exs. 1-3. Our investigation
25 indicates between 1,000 and 1,200 other investors do not receive Hebrank's emails,
26 because Hebrank has no email address for them or the email addresses he has for them—
27 like Ardizzone's—are erroneous.

28 Hebrank's description of his email communications with the Schwarzes is equally

bizarre. In the same declaration, he swears under oath he had no email address for them until August 21, 2015 (Dkt. No. 1355-1 at 2), but also swears under oath he sent the Schwarzes an email per the Court's May 12, 2015, order. *Id.* We accept Hebrank's statement he had no email address for the Schwarzes until August 2015. Yet, there is no evidence Hebrank took any step to obtain an email address from the Schwarzes *until Lois Schwarz contacted his office* in August 2015. *Id.* Consequently, in violation of *Ritchie*, Hebrank took no steps to "make reasonable additional efforts to provide personal service" on the Schwarzes.

Hebrank's statements regarding his office's communications with the Schwarzes are empty noise, except for his description of the communications between Lois Schwarz and Geno Rodriguez on April 1, 2016, two months after Hebrank filed his proposed liquidation motion, which was heard on May 20, 2016. Schwarz made this simple and clear inquiry: "Is there any recent updated information with the status of Checkered Flag?" Aguirre Decl., ¶ 9, Ex. 6. An honest answer would have been: "Yes, the Receiver's proposed plan forfeits your property rights to receive 88% of your investment. Instead, you will get 13.4%. A copy of the plan is attached." Instead, Rodriguez replied:

Have you taken a look at the information packet on the Receiver's website? See the attached form (<http://www.ethreeadvisors.com/downloads/SECvLVS/LV%20Kade%20Propery%20Information%20Packet.pdf>). If you have any questions after reading that document, feel free to give me a call. The packet explains why there is a receiver, Western's business model, what the funds that you contributed were used for, and the financial status of your partnership.

Id. Significantly, even when an investor directly asks a question that should have prompted a reference to the liquidation plan, Hebrank's office replies evasively.

C. Herbrank's Self-Serving Claim He Neglected to Send Notices to Save Money

We find it challenging to accept Hebrank's persistent claim that he failed to mail notice to investors to save them money. According to Hebrank, he will receive and disburse \$40 million during his receivership. By our estimate, he will pay \$3.2 million to himself and his team. For \$26,000, Hebrank could have mailed a status report to

investors every six months informing them of factors affecting their property rights. Put differently, the cost would have been less than one tenth of one percent (.01%) of the assets passing through the receivership. Even less burdensome, for \$6,600, he could have mailed notice to investors of (1) the proceedings to appoint a permanent receiver and (2) his liquidation plan to forfeit their rights in an investment they made decades before and supported ever since. Further, he was required to provide the written notice of his appointment and his liquidation plan under L.R. 66.1. Again, the two notices would have cost \$6,600.

VI. The SEC's Defense of Hebrank's Failure to Comply with L.R. 66.1

A. Hebrank Was Appointed Permanent Receiver in Violation of L.R. 66.1.a.2 and the Due Process Clause

The SEC's brief (Dkt. No. 1358) opposing the Ardizzone Investors' motion to intervene is less remarkable for what it says than what it does not say. The SEC fails to cite a single authority to support its contention that Hebrank's "notices" to investors satisfy the requirements of due process of law. Indeed, it does not cite a single case on anything. Rather, it misinterprets L.R. 66.1 and then applies its misinterpretation to the facts of this case.

First, the SEC contends: "Both the SEC and the Receiver provided the notices provided by [sic] Local Rule 66.1." Dkt. No. 1358, at 1. This is creative fiction. The SEC and Hebrank gave no notice of the receiver's permanent appointment and defective notice of the liquidation plan.

Local Rule 66.1.a.2 explains *who* should have done *what* and *when before* the Court appointed Hebrank permanent receiver. The rule states: "Not less than seven (7) days before the hearing, the temporary receiver... must mail to the creditors listed the notice of the hearing, and file the proof of mailing." The definition of "creditors" includes investors who hold contracts and/or investment contracts of the debtor.⁴

⁴ *Supra*, n. 3.

1 Hebrank filed the creditor list identifying each of the investors. Dkt. No. 184, Ex. C. At
 2 this point, L.R. 66.1.a.2 required him to (1) send investors a notice of the hearing date for
 3 his appointment as permanent receiver and then (2) file a proof of service with the Court.
 4 He did neither. This Court has frequently cited *In re San Vicente Medical Partners, Ltd.*,
 5 962 F.2d 1402, 1407 (9th Cir. Cal. 1992) as the Ninth Circuit decision setting the
 6 procedure this Court has followed. Yet, in *San Vicente*, Judge Nielsen “ordered the
 7 subsidiaries of APHI and the creditors of APHI ‘to show cause, if there be any, why a
 8 permanent receiver should not be appointed.’” *Id.* The SEC points to no evidence this
 9 was done and we can find none.

10 Hebrank gave no notice to investors of his permanent appointment before or after
 11 the order granted the motion on March 13, 2013. Dkt. No. 174. He even failed to mention
 12 it in his letter of March 18, 2013, sent 5 days after the order was issued. It would not
 13 have cost a penny more to tell investors in this letter about the March 13, 2013 order.

14 This Court apparently accepted the SEC’s argument “the Court’s March 7, 2013
 15 order permitted the Receiver to give substitute notice on his website. Dkt. No. 170 at p.
 16 3; *see also* L.R. 66.1.” Dkt 1358, at 1, 25-27. This is one of several SEC half truths. The
 17 Court’s August 30, 2016, order reads: “[T]he Court previously authorized the Receiver to
 18 fulfill the requirements of Rule 66.1 by posting notices related to petitions for
 19 confirmation of sales of property, reports of the receiver, and fee applications on the
 20 Receiver’s website (www.ethreadvisors.com).” Dkt. No. 1359 at 3. This order blurs the
 21 clear distinctions the Court made in its March 7, 2013, order (Dkt. No. 170), just as the
 22 SEC’s brief blurs the same distinctions. Dkt. No. 1358 at 11-13.

23 The March 7, 2016, order was very specific in modifying Hebrank’s duties under
 24 L.R. 66.1. Dkt. No. 170, at 3. It modified Hebrank’s duties under *subsection e* of L.R.
 25 66.1 to allow him to file a modified list of investors. *Id.* It also modified *subsection f* of
 26 L.R. 66.1 to allow him to serve the notices required by *subsection f.2 through f.6* of L.R.
 27 66.1 on his website. *Id.*, at 3. It nowhere mentioned, much less modified Hebrank’s duty,
 28 under *subsection a.2* of L.R. 66.1, which specifies: “Not less than seven (7) days before

the hearing, the temporary receiver...must mail to the creditors listed the notice of the hearing, and file the proof of mailing.” Likewise, it did not mention, much less modify, Hebrank’s duty under *subsection e* to L.R. 66.1, which requires Hebrank to do the following: “Within thirty (30) days of appointment, a permanent receiver must file with the court a verified report and petition for instructions, *which must be heard on fourteen (14) days’ notice to all known creditors and parties* (emphasis added).” Hebrank had himself appointed as permanent receiver without giving the notice required under L.R. 66.1.a.2 and without the second hearing required under L.R. 66.1.e.

The SEC next contends that Judge Burns excused the SEC from setting a hearing on Hebrank’s permanent appointment and giving notice to investors of that hearing. The SEC erroneously contends: “The Court elected not to lift the 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.” Dkt. No. 1358 at 12. The SEC has quoted a fragment of what Judge Burns held and then misstates his holding. We quote the relevant part of Judge Burns’ September 13, 2012, order below. The language quoted by the SEC is italicized:

The Court will not lift the stay on the receiver’s notification obligation until it hears from the parties at the September 17 hearing. The Court remains, it should say, extremely skeptical of Defendants’ position—basically, that their investors should not be notified of a public proceeding and public documents that are a part of that proceeding. On the other hand, the SEC’s suggestion notwithstanding, the Court doubts that between the time this Order is issued and the time of the September 17 hearing the investors could even be properly notified and make plans to appear in court. This issue, *apparently the highest of Defendants’ concerns*, can wait until Monday.

Dkt. No. 22 at 6. The SEC’s quote left out the phrase “can wait until Monday,” which, contrary to the SEC’s statement, makes clear judge Burns had made no decision on notice in his September 13, 2012, order. *Id.*

Judge Burns apparently wanted further input from the SEC at the September 17, 2012, hearing on the notice requirement for investors. During that hearing, the notice

1 issue arose in an exchange between Judge Burns and the SEC's counsel:

2 The Court:The notice would be something to the effect that the court has
3 determined that these may be securities and that computer-aided
4 transcription there may be a requirement that they be registered before these
5 investments can be made and has, therefore, issued an injunction?

6 September 17, 2012, Reporter's Transcript at 51-52. At this point, SEC attorney Molly
7 White correctly replied: "[A]ctually, the notice issue for us refers to the receiver. Right
8 now there is a temporary receiver in place. I didn't hear in your tentative what your
9 intentions were with respect to the receiver." *Id.*, at 52. So far, Ms. White was correct.
10 But then she went on:

11 But if there is—if the court is going to make the receiver a permanent
12 receiver, *then notice needs to be given that the general partnerships have*
13 *been placed in receivership.* That is really the crux of our concern. *And how*
14 *that notice—what that looks like is not as significant as long as they know*
15 (emphasis added).

16 *Id.*, at 52. This guidance was dead wrong. Local Rule 66.1.a.2 is very specific about the
17 required notice to investors. The SEC should have told Judge Burns:

- 18 • L.R. 66.1.a.2 requires a hearing *before* a permanent receiver can be appointed;
- 19 • L.R. 66.1.a.2 requires notice by mail to investors; and
- 20 • L.R. 66.1.a.2 requires proof of service on investors be filed with the Court.

21 The SEC's statement "what that [notice] looks like is not as significant as long as
22 they know" (*Id.*) cannot be reconciled with L.R. 66.1.a.2 or the notice requirements of the
23 controlling Ninth Circuit cases. Nor can this SEC statement be reconciled with the SEC's
24 statement in its brief filed in support of the temporary and permanent appointment of
25 Hebrank as receiver one month before. On this point, that brief reads: "The GPs will then
26 have notice and an opportunity to be heard before any of their assets are placed under the
27 control of a permanent receiver." Dkt. No. 3-1 at 23. For his part, Hebrank's counsel
28

1 remained mute on the notice issue.⁵

2 We disagree with Hebrank's contention that the October 6, 2012, order approved
3 some form of notice in footnote 11. Dkt No. 1355 at 5-6. Footnote 11 reads:

4
5 With respect to notifying the general partners of this action, which has been
6 a substantial concern of Defendants from the beginning, the Court is willing
7 to approve the receiver notifying them that the general partnerships have
been placed into a court-ordered receivership on a preliminary finding that
their interests are unregistered securities.

8 Dkt. No. 44 at 22, n. 11. Footnote 11 follows this statement in the text: "If there are
9 disagreements among the parties as to the contents of the order, the SEC should submit a
10 proposed order to chambers while filing in the case docket a joint statement in which the
11 parties' respective positions on disputed contents are explained." *Id.* In short, the
12 comments in footnote 11 related to the SEC's submission of a proposed order to Judge
13 Burns. The proposed order the SEC submitted to Judge Burns contained no reference to
14 any notice to investors. Dkt. No. 62. Hence, Judge Burns never ruled on the issue.

15 In this way, the SEC and Hebrank dodged two dangerous issues. The SEC had
16 asserted Western's control over the GPs for two separate reasons: (1) as a basis for
17 subject matter jurisdiction over the GPs and (2) as a basis for its contention that the GP
18 agreements were securities. Judge Burns had concluded Western did not control the GPs
19 (Dkt. No. 44 at 9-10) and therefore he was only one step away from holding the Court
20 had no subject matter jurisdiction over the GPs. The SEC could ill afford a hearing on the
21 permanent appointment of Hebrank which would raise the subject matter jurisdiction of
22 the Court over the GPs and thus the collateral issue whether the GPs were securities.
23 Empowering 3,370 investors to appear at the hearing to argue Western lacked control
24 over the GPs was even less appealing to the SEC.

25 Hence, the SEC ceased contending investors were entitled to both a hearing and
26 notice of that hearing before Hebrank could be made permanent receiver. Instead, the

27 ⁵ Hebrank's counsel never addresses the notice issue at the hearing. See: Sep. 17, 2012,
28 Reporter's Transcript

SEC submitted a proposed order to Judge Curiel containing no term relating to notice to investors or the need for a hearing before Hebrank's permanent appointment. It did inject this term into the proposed order: "This Court has jurisdiction over the parties to, and the subject matter of, this action." Dkt. No. 62 at 1. In essence, the SEC had managed to send the hearing on the permanent appointment of the receiver and the required notice to investors into a judicial limbo. This avoided the risk that the Court might release the GPs from the receivership or, worse yet, dismiss the case on the grounds the GP agreements were not securities. We note that 18 months later SEC appellate counsel was still advising Fates not to assert an alternative to keeping the GPs in the receivership for the same reason:

I hate to have to say this but I don't think that having a property management firm or whatever sort of entity was suggested as an alternative to the receiver if GPs are released fixes the problem + *endorsing that wld [sic] be inconsistent w/ [sic] and undercut the holding that the interests are securities* (emphasis added).

Herman Decl., Dkt. No. 976-1, Ex. 38.

The SEC, Hebrank and defendants orchestrated a process by which Hebrank was appointed permanent receiver by stipulation without compliance with L.R. 66.1. After the case was transferred to Judge Curiel, the SEC filed its proposed order appointing Hebrank permanent receiver. Hebrank and defendants filed their responses and objections. The net effect was to carry out the stipulation among the SEC, Hebrank and the defendants to appoint Hebrank as permanent receiver without a whiff of compliance with L.R. 66.1.

B. Failure to Give Notice of the Liquidation Plan Forfeiting Investors' Rights

The SEC contends Hebrank's May, 6, 2016, email (Dkt. No. 1348-3, ¶ 6, Ex. 3) satisfied L.R. 66.1.f, because it gave investors two-week notice of the May 20, 2016, hearing on his liquidation plan. There are multiple flaws in this argument. First, the Court's March 7, 2013, order (Dkt. No. 170) specified that it only permitted to post

certain types of notices on Hebrank’s website: notice of hearings related to petitions for (1) confirmation of sales of property (L.R. 66.1.f.2), (2) receiver reports (L.R. 66.1.f.3), and (3) fee applications (L.R. 66.1.f.4). The same order (Dkt. No. 170) also stated Hebrank “is required to mail all other notices required by Local Rule 66.1.f” *Id.* at 3. Hence, the order (Dkt. No.170) directed Hebrank to mail investors notices of (1) “Petitions for the payment of dividends to creditors” (L.R. 66.1.f.1) and (2) “Applications for discharge of the receiver” (L.R. 66.1.f.5). The February 4, 2016, motion and its advocated “one pot approach” (Dkt. No.1181-1 at 25) is a petition “for the payment of dividends to creditors” within the meaning of L.R. 66.1.f.1. The definition of “creditors” includes investors who hold contracts and/or investment contracts of the debtor.⁶ Likewise, the payment is clearly a “dividend” to creditors as that term is used in receivership proceedings. *MBIA Ins. Corp. v. FDIC*, 708 F.3d 234 (D.C. Cir. 2013)(“any excess cash generated by the disposition of assets less disposition cost and reserves met”). This meant Hebrank had to send the contents of the May 6, 2016, email by U.S. mail, since the March, 7, 2013, order “required [Hebrank] to mail all other notices required by Local Rule 66.1.f.” Dkt. No. 170 at 3.

Further, Hebrank’s March 18, 2013, letter told investors only a certain class of communications would be placed on his website: notices of hearings related to petitions for confirmation of sales of property (L.R. 66.1.f.2), receiver reports (L.R. 66.1.f.3), and fee applications (L.R. 66.1.f.4). Aguirre Decl., ¶ 14, Ex. 10. Hence, investors were told not to look for the distribution plan on the website. Rather, they should look for the plan in their mail.

The SEC also fails to address other deficiencies in Hebrank’s May 6, 2016, email “notice.” The time to file opposition had expired three weeks earlier. Dkt. No. 1224. The SEC argues that Hebrank was only required to give 14-day notice under L.R. 66.1.f. Dkt. 1358 at 9-10. But this misstates what the rule says. Local Rule 66.1 states notice must be

⁶ *Supra*, n. 3.

1 given “*at least* fourteen (14) days” before the hearing. Obviously, that assumes investors
 2 can object at the hearing, but that right was cut off by the Court’s April 5, 2016, order,
 3 Dkt. No. 1224.

4 To be heard at the May 20, 2016, liquidation motion hearing, an investor would
 5 have to perform with the skill level of a judicial acrobat. To be heard, the investor was
 6 required to bring a motion to intervene, but the time to do so had also expired. *See* L.R.
 7 7.1.e. The investor, unless he was an attorney himself, would have to hire counsel. The
 8 attorney would need to familiarize himself with almost 1,200 filings, including more than
 9 100 orders. The attorney would have to obtain an order reopening the filing deadlines
 10 under the Court’s prior orders and the local rules. We respectfully submit this schedule
 11 would make the 20-day notice the Ninth Circuit condemned in *SEC v. Ross*, 504 F.3d
 12 1137 look leisurely.

13 All of this points to the obvious conclusion the May 6, 2016, email “notice” was
 14 an afterthought, as does the timing of that email. This is the only “notice” Hebrank sent
 15 to investors, despite the fact the hearing was initially scheduled for April 22, 2016 (Dkt.
 16 No. 1181), then rescheduled to May 6 (Dkt. Nos. 1224) and then rescheduled again for
 17 May 20, 2016 (Dkt. No. 1279), when it took place. Hebrank delayed service of “notice”
 18 for three months before sending his May 6, 2016, email, and then he sent it two days after
 19 the Court’s May 4, 2016, order (Dkt. No. 1279) continued the hearing from May 6 to
 20 May 20, 2016. But for the Court’s *sua sponte* order on May 4, 2016, the hearing would
 21 have proceeded with no “email notice.”

22 ***C. Court Orders Cannot Sanction a Due Process Violation***

23 The SEC argues vigorously that it and Hebrank cannot be responsible for the
 24 decisions the Court makes. This misses the point. For the sake of clarity, we pointed out
 25 the SEC and Hebrank’s responsibility for the circumstances that resulted in the notice
 26 violations of due process. The SEC’s argument that the Court sanctioned those due
 27 process violations misconceives the law. It does not matter whether the Court, the SEC,
 28 Hebrank, some of them or all of them caused the due process violation. Nothing in L.R.

66.1 requires a party to prove who was responsible for the notice violation. Neither does *Mullane* or *Ritchie*. Consequently, the SEC's argument "we didn't do it" is irrelevant.

D. The SEC's Contention that Some Investors Submitted Letters to the Court Is Irrelevant

There is a logical disconnect between Hebrank's and the SEC's argument that some investors submitted letters to the Court and thus all investors were given the notice required by due process of law. According to Hebrank and the SEC, investors submitted approximately 300 letters to the Court. Dkt. Nos. 1355 at 7 and 1358 at 3-4. Many came from the same investors, so the number of individual investors is far less. What is the relevance that less than 300 investors submitted letters to the Court? This argument is based on a faulty syllogism: (1) some investors wrote letters to the Court; (2) therefore all investors received notice; (3) consequently, there was no due process violation. There is no causal connection between the fact that 300 investors wrote the Court and the SEC's conclusion that 3,370 investors are therefore presumed to have received adequate notice of Hebrank's forfeiture of their property rights.

DATED: September 13, 2016

Respectfully submitted,

By: /s/ Gary J. Aguirre
 GARY J. AGUIRRE
 Aguirre Law, A.P.C.
gary@aguirrelawapc.com
 Attorney for Investors Joseph M.
 Ardizzone, David R. Schwarz,
 Lois Schwarz, Dennis Frisman,
 Eric Gilbert, and Rick Moore

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawfirm.com

Attorney for Investors Joseph Ardizzone, David R. Schwarz,
Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore

**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.: 3:12-cv-02164-GPC-JMA

**DECLARATION OF GARY J.
AGUIRRE IN SUPPORT OF
ARDIZZONE INVESTORS'
MOTIONS (1) FOR A STAY OF
ORDERS PENDING APPEAL,
(2) TO ALTER OR AMEND A
JUDGMENT, AND
(3) FOR RECONSIDERATION**

Date: November 10, 2016
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

1 I, Gary J. Aguirre, of San Diego, California, declare:

2 1. I have personal knowledge of the facts set forth in this declaration and, if
3 called as a witness, could and would testify competently to such facts under oath.

4 2. I am the attorney for Joseph M. Ardizzano, David R. Schwarz, Lois
5 Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore investors in general partnerships
6 subject to the receivership in this matter.

7 3. A true and correct copy of my letter of August 10, 2016, to Ted Fates
8 (“Fates”), counsel for the receiver, Thomas C. Hebrank (“Hebrank”), is attached hereto
9 and incorporated herein as Exhibit 1. This letter inquired of Fates what efforts Hebrank
10 had made to serve investors with notice since he had admitted that most investors were
11 not visiting his website and many were not receiving his emails. I never received a
12 response to this letter.

13 4. When Fates did not respond to my August 10, 2016, letter to Fates (Ex. 1), I
14 sent him my letter of August 22, 2016, requesting the contact information for investors in
15 each GP. A true and correct copy of my August 22, 2016, letter is attached hereto and
16 incorporated herein as Exhibit 2. By his email of the same date, Fates declined to provide
17 that information and requested that I provide him with the reason I was requesting it. A
18 true and correct copy of Fates’ email of August 22, 2016, is attached hereto and
19 incorporated herein as Exhibit 3.

20 5. I replied to Fates’ email of August 22 (Exhibit 3) by my email of August 26,
21 2016, in which I stated: “Unfortunately, since you will not provide the information, we
22 have requested the contact information you have for investors so we can independently
23 ascertain how accurate it is.” Fates did not reply. A true and correct copy of my email of
24 August 26, 2016, is attached hereto and incorporated herein as Exhibit 3

25 6. Hebrank’s declaration of August 23, 2016, (Dkt. No. 1355-1) made the
26 following statement regarding his email communications to Joseph Ardizzone
27 (“Ardizzone”):
28

1 The Court's July 22, 2014 Order was emailed to Mr. Ardizzone as directed
2 in the final paragraph of that order. Dkt. No. 629. Notice that information
3 packets for the GPs in which Mr. Ardizzone has interests had been posted to
4 receivership website was mailed and emailed to Mr. Ardizzone in August
5 2015 per the Court's May 12, 2015 order. Dkt. No. 1069.

6 Dkt. No. 1355-1 at 2. In addition, Fates' brief of August 23, 2016, (Dkt. No. 1355) stated
7 in footnote 4 at page 10: "It appears Mr. Ardizzone may have changed his email address
8 at some point without notifying the Receiver."

9 7. Fates' statement above conflicted with the statement in Ardizzone's
10 declaration that he had never received an email from Hebrank. I therefore inquired Fates
11 with my email of August 26, 2016, what the email address Hebrank used to communicate
12 with Ardizzone. Fates responded with his email of August 27, 2016, where he states:
13 "The email was sent to Joe.ardizzonee@verizon.net. This was the email for Mr.
14 Ardizzone contained in the company records." A true and correct copy of my email of
15 August 26, 2016, to Fates and his answer of August 27 is attached hereto and
16 incorporated herein as Exhibit 4.

17 8. The email address Fates provided me for Ardizzone was erroneous. It was
18 the same erroneous email address that appeared on the investor list Dennis P. Gilman, an
19 investor and one of my clients, had provided me. I sent several test emails to this email
20 address (Joe.ardizzonee@verizon.net) and each one was returned undelivered. I am
21 attaching hereto and incorporating herein as Exhibit 5 a true and correct copy of the most
22 recent delivery failure notice prompted by an email sent to the email address Fates
23 provided for Ardizzone (Joe.ardizzonee@verizon.net).

24 9. A true and correct copy of the April 1, 2016, email Lois Schwarz sent to
25 Gino Rodriguez, and Rodriguez's answer of the same date is attached hereto and
26 incorporated herein as Exhibit 6.

27 10. I was provided by Dennis P. Gilman ("Gilman") with the investor list he
28 obtained from the GPs' Administrative Secretaries in August 2014. That document listed
578 investors for whom Hebrank had no email addresses in August 2014. I have

1 compared the information I received from Gilman with the information I received from
2 other investors regarding the investors for whom Hebrank had no email address in March
3 2015. I am attaching that list as Exhibit 7, and incorporating it herein by reference. From
4 all sources available to me, I believe Hebrank had no current email address for at least the
5 571 investors on this list as of March 15, 2015. Many of the investors in this list are in
6 their 60s, 70s, and 80s and even in their 90s. Our investigation indicates that some on the
7 list are now deceased. Based on my communications with hundreds of investors, and a
8 survey of approximately 200 clients, I found no evidence that Hebrank has taken any
9 steps to obtain email addresses for the approximate 571 investors for whom he had no
10 email addresses in March 2015.

11 11. I have searched the docket to find any proof of service by Hebrank for any
12 notices he has served on investors and can find none.

13 12. Gilman states in his declaration that he sent an email in late August 2016 to
14 the investors on the list he obtained from the GP Administrative Secretaries in August
15 2014 and that 731 were returned, of which 494 email addresses were clearly erroneous.
16 Gilman provided me with the list of the 494 investors whose email addresses were clearly
17 erroneous. From the sources available to me, I have lowered the estimated number of
18 erroneous email addresses Hebrank had as of March 2015 from between 494 and 731 to
19 between 430 and 630. Based on my communications with hundreds of investors, and a
20 survey of approximately other 200 clients, I found no evidence that Hebrank has initiated
21 any steps to obtain correct email addresses for the approximate 430 to 630 investors for
22 whom he had incorrect email addresses. I am attaching as Exhibit 8, and incorporating
23 herein by reference the list of the 430 investors' names who were not receiving
24 Hebrank's emails as of March 2015 due to Hebrank having an erroneous email address
25 for them. To this point, I do not have sufficient information to confirm whether the email
26 addresses for the remaining 200 investors are erroneous, though the evidence provided to
27 me suggests they are. I expect to have this evidence by the time the reply brief is due to
28 be filed.

Exhibit List

Exhibit 1.....	6
Exhibit 2.....	9
Exhibit 3.....	11
Exhibit 4.....	15
Exhibit 5.....	18
Exhibit 6.....	20
Exhibit 7.....	23
Exhibit 8.....	40
Exhibit 9.....	53
Exhibit 10.....	63

Exhibit 1

AGUIRRE LAW, APC

501 W BROADWAY, SUITE 800 · SAN DIEGO CA 92101 · PHONE: 619-400-4960 · GARY@AGUIRRELAWAPC.COM



By Electronic Mail to tfates@allenmatkins.com

August 10, 2016

Ted Fates, Esq.
Allen Matkins Leck Gamble Mallory & Natsis, LLP
501 West Broadway, 15th Floor
San Diego, CA 92101-3541

Re: *SEC v. Schooler*

Dear Mr. Fates:

I have recently reviewed the docket in this case and communications from the Receiver and your office to investors. This review suggests that there has been inadequate notice by your office to investors regarding actions taken by the Receiver that potential forfeit investors' property rights. Our investigation is not complete, but we have reached the point where I am requesting your input on three issues.

First, I can find no communications from the Receiver or your office informing the investors of the February 4, 2016, motion, the Receiver's proposed plan and the hearing date other than the Receiver's email of May 6, 2016. Would you kindly advise me on what legal and factual theory the Receiver contends he gave investors adequate notice of the May 20, 2016, hearing on his proposed plan?

Second, I have a similar question regarding any notice provided to investors in relation to the hearing on the appointment of Mr. Hebrank as permanent receiver in this case. Would you kindly advise me what notice you served on investors and on what theory you contend this notice satisfied due process requirements?

Third, your office obtained an order (Dkt. No. 170) that allowed you to serve certain records specified in that order by posting them on your website for the case. I am also aware of your statement in one of the Receiver's reports (Dkt. No. 852) that "most investors in this case have not reviewed the reports and other important information about their GPs posted on the receivership website." In view of the fact Mr. Hebrank knew his website was providing no actual notice to most investors, what alternative means, if any, did you take to provide investors with notice? Alternatively, on what legal theory do you contend that posting notice on the website was adequate notice, given the fact Mr. Hebrank knew that most investors were not reading it?

I intend to make a supplemental filing on behalf of the Graham investors, but would appreciate your feedback before doing so.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Aguirre', with a stylized flourish at the end.

Gary J. Aguirre

Exhibit 2

AGUIRRE LAW, APC

501 W BROADWAY, SUITE 800 · SAN DIEGO CA 92101 · PHONE: 619-400-4960 · GARY@AGUIRRELAWAPC.COM



By Electronic Mail

August 22, 2016

Ted Fates, Esq.
Allen Matkins Leck Gamble Mallory & Natsis, LLP
501 West Broadway, 15th Floor
San Diego, CA 92101-3541

Re: *SEC v. Schooler*

Dear Mr. Fates:

In its order of August 16, 2013, the court stated:

The Court further finds that investors should be permitted to freely communicate with one another as soon as possible. The Court thus directs the Receiver to permit Western personnel to provide investors with the contact information of other investors in their respective GPs and co-tenancies to the extent such information has not already been provided. This information should be provided in the most economical way possible.

As you know, I represent at least one investor in every GP. Accordingly, on their behalf, I am requesting that you provide me, as the Court ordered, with the contact information of the investors in each GP as soon as possible.

The matter is time urgent, among other reasons, because this contact information relates to the notice issue Mr. Ardizzone and other investors have raised in their motion to intervene scheduled for hearing on September 6.

Sincerely,

Gary J. Aguirre

Exhibit 3

From: Gary Aguirre
To: Ted Fates
Cc: Thomas Hebrank
Subject: Re: SEC v. Schooler
Date: Friday, August 26, 2016 9:12:22 AM
Attachments: image001.png

Mr. Fates:

As you are aware, Mr. Hebrank used postings to his website to provide investors with notice, despite his knowledge that investors were not visiting the website. Your statement in your report to the Court (Dkt. No. 852) specifically states:

"Unfortunately, most investors in this case have not reviewed the reports and other important information about their GPs posted on the receivership website." Further, the sporadic use of emails to provide notice was also inadequate since it was sporadic and since Mr. Hebrank acknowledged in two emails: "Many investor email address [sic] were unavailable or were returned undeliverable."

Further, I previously requested you in my August 10, 2016, letter to provide the following information: "what alternative means, if any, did you take to provide investors with notice? Alternatively, on what legal theory do you contend that posting notice on the website was adequate notice, given the fact Mr. Hebrank knew that most investors were not reading it?" You did not respond.

Furthermore, your opposition to Dkt. No. 1348 failed to contradict our estimate that hundreds of investors were not receiving emails, because you lack accurate email addresses for them. You did not address that issue or even indicate the number of investors whose emails were being returned or for whom you have no email address.

Unfortunately, since you will not provide the information, we have requested the contact information you have for investors so we can independently ascertain how accurate it is.

Finally, I understand the Court decided *sua sponte* to reconsider the term of the August 2013 order allowing the GPs to exit the receivership. I am unaware of any order that vacated the August 16, 2013, order. If there is such an order, please direct me to it. If not, please comply with the following terms of that order: "The Court further finds that investors should be permitted to freely communicate with one another as soon as possible. The Court thus directs the Receiver to permit Western personnel to provide investors with the contact information of other investors in their respective GPs and co-tenancies to the extent such information has not already been provided." Dkt. No. 470 at 24.

Sincerely,

Gary J. Aguirre
Aguirre Law, APC
501 W. Broadway, Suite 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072

www.aguirrelawapc.com

This E-Mail is intended only for the use of the individuals to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. If you have received this communication in error, please do not distribute it and notify us immediately by email to maria@aguirrelawapc.com.

From: Ted Fates <tfates@allenmatkins.com>
Date: Monday, August 22, 2016 at 11:45 PM
To: Gary Aguirre <gary@aguirrelawapc.com>
Cc: Thomas Hebrank <thebrank@ethreadvisors.com>
Subject: RE: SEC v. Schooler

Mr. Aguirre:

We have received your request for the personal contact information of the approximately 3,300 investors in this case. For reasons of protecting their personal privacy and protecting them from unwanted solicitation, the personal contact information of investors in federal equity receiverships is generally not disclosed. Moreover, there does not appear to be any urgent reason or purpose to be served by you directly contacting all investors. If you believe such a purpose exists, please explain. However, the issue raised in your latest motion to intervene – *i.e.* what notice of the receivership your clients received – does not warrant disclosure of other investors' personal contact information. Finally, the order you quote from was entered in August 2013 at a very different stage in the case and was then stayed by the Court. Dkt. No. 513. Under the present circumstances, we believe the Court would share our concerns with your broad request and would require that an important purpose be served by the requested disclosure before allowing it.

Regards,

Ted Fates Esq.

Partner

Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 235-1527 (direct)
(619) 886-4466 (mobile)
tfates@allenmatkins.com

Allen Matkins
CHALLENGE. OPPORTUNITY. SUCCESS.

From: Gary Aguirre [<mailto:gary@aguirrelawapc.com>]
Sent: Monday, August 22, 2016 2:31 AM
To: Fates, Ted <tfates@allenmatkins.com>

Cc: Maria Pomares <maria@aguirrelawapc.com>

Subject: SEC v. Schooler

Mr. Fates:

Please see my attached letter.

Sincerely,

Gary J. Aguirre
Aguirre Law, APC
501 W. Broadway, Suite 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072

www.aguirrelawapc.com

This E-Mail is intended only for the use of the individuals to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. If you have received this communication in error, please do not distribute it and notify us immediately by email to maria@aguirrelawapc.com.

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

Exhibit 4

Subject: RE: SEC v. Schooler

Date: Saturday, August 27, 2016 at 12:50:48 AM Central European Summer Time

From: Fates, Ted

To: Gary Aguirre

CC: Thomas Hebrank

Mr. Aguirre:

The email was sent to Joe.ardizzonee@verizon.net. This was the email for Mr. Ardizzone contained in the company records.

Ted Fates Esq.

Partner

Allen Matkins Leck Gamble Mallory & Natsis LLP

501 West Broadway, 15th Floor, San Diego, CA 92101-3541

(619) 235-1527 (direct)

(619) 886-4466 (mobile)

tfates@allenmatkins.com

Allen Matkins
CHALLENGE. OPPORTUNITY. SUCCESS.

From: Gary Aguirre [<mailto:gary@aguirrelawapc.com>]

Sent: Friday, August 26, 2016 12:05 PM

To: Fates, Ted <tfates@allenmatkins.com>

Cc: Thomas Hebrank <thebrank@ethreadvisors.com>

Subject: SEC v. Schooler

Mr. Fates:

One other question: your points and authorities (Dkt. No. 1355) contains the following statement: "The Court's July 22, 2014 Order was also emailed to Mr. Ardizzone as directed in the final paragraph of that order." To what email address for Mr. Ardizzone did Mr. Hebrank send the above-referenced email? Do you have an email proof of service? If so, would you kindly provide it?

Sincerely,

Gary J. Aguirre

Aguirre Law, APC

501 W. Broadway, Suite 800

San Diego, CA 92101

Tel: 619-400-4960

Fax: 619-501-7072

www.aguirrelawapc.com

This E-Mail is intended only for the use of the individuals to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. If

you have received this communication in error, please do not distribute it and notify us immediately by email to maria@aguirrelawapc.com.

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

Exhibit 5

From: MAILER-DAEMON
To: joe.ardizzonee@verizon.net
Subject: Undeliverable: test
Date: Monday, September 12, 2016 10:48:25 AM

Delivery has failed to these recipients or groups:

HYPERLINK "mailto:joe.ardizzonee@verizon.net"joe.ardizzonee@verizon.net

The e-mail address you entered couldn't be found. Please check the recipient's e-mail address and try to resend the message. If the problem continues, please contact your helpdesk.

The following organization rejected your message: relay.verizon.net.

Diagnostic information for administrators:

Generating server: smtp2.relay.ord1c.emailsrvr.com

joe.ardizzonee@verizon.net

relay.verizon.net # <relay.verizon.net #5.1.1 smtp; 550 5.1.1 unknown or illegal alias: joe.ardizzonee@verizon.net> #SMTP#

Original message headers:

Return-Path: <gary@aguirrelawapc.com>

Received: from smtp2.relay.ord1c.emailsrvr.com (localhost [127.0.0.1])

by smtp2.relay.ord1c.emailsrvr.com (SMTP Server) with ESMTP id 58EAC0380

for <joe.ardizzonee@verizon.net>; Mon, 12 Sep 2016 13:48:19 -0400 (EDT)

X-SMTPDoctor-Processed: csmtpprox beta

Received: from smtp2.relay.ord1c.emailsrvr.com (localhost [127.0.0.1])

by smtp2.relay.ord1c.emailsrvr.com (SMTP Server) with ESMTP id 5658FC0381

for <joe.ardizzonee@verizon.net>; Mon, 12 Sep 2016 13:48:19 -0400 (EDT)

Received: from smtp192.mex05.mlsrvr.com (unknown [184.106.31.85])

by smtp2.relay.ord1c.emailsrvr.com (SMTP Server) with ESMTPS id 4C7D0C0380

for <joe.ardizzonee@verizon.net>; Mon, 12 Sep 2016 13:48:19 -0400 (EDT)

X-Sender-Id: gary@aguirrelawapc.com

Received: from smtp192.mex05.mlsrvr.com ([UNAVAILABLE], [184.106.31.85])

(using TLSv1 with cipher AES256-SHA)

by 0.0.0.0:25 (trex/5.7.7);

Mon, 12 Sep 2016 13:48:19 -0400

Received: from ORD2MBX05G.mex05.mlsrvr.com ([fe80::90e2:baff:fe30:69dc]) by

ORD2HUB24.mex05.mlsrvr.com ([fe80::be30:5bff:fef5:60b0%15]) with mapi id

14.03.0279.002; Mon, 12 Sep 2016 12:48:19 -0500

From: Gary Aguirre <gary@aguirrelawapc.com>

To: "joe.ardizzonee@verizon.net" <joe.ardizzonee@verizon.net>

Subject: test

Thread-Topic: test

Thread-Index: AdINHdeIbIJWJAVNT1OT2+KPqVfR+A==

Date: Mon, 12 Sep 2016 17:48:18 +0000

Message-ID: <6C594577C250A44E82C8EB51D78737DCC5C338@ORD2MBX05G.mex05.mlsrvr.com>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach:

X-MS-TNEF-Correlator:

x-originating-ip: [68.101.222.110]

Content-Type: text/plain

MIME-Version: 1.0

Exhibit 6

From: Geno Rodriguez [<mailto:grodriguez@ethreadvisors.com>] **Sent:** Friday, April 1, 2016 4:29 PM **To:** LOIS SCHWARZ **Subject:** Re: Checkered Flag K-1

Hello Ms. Schwarz,

Have you taken a look at the information packet on the Receiver's website? See the attached form (<http://www.ethreadvisors.com/downloads/SECvLVS/LV%20Kade%20Property%20Information%20Packet.pdf>). If you have any questions after reading that document, feel free to give me a call. The packet explains why there is a receiver, Western's business model, what the funds that you contributed were used for, and the financial status of your partnership.

Geno Rodriguez
E3 Advisors
Office: 619.567.7223x102
CA Bureau of Real Estate # 01841759

From: LOIS SCHWARZ Redacted > **Date:** Friday, April 1, 2016 at 4:21 PM **To:** Geno <grodriguez@ethreadvisors.com> **Subject:** RE: Checkered Flag K-1

Thanks,
Is there any recent updated information with the status of Checkered Flag?
Thanks,
Lois Schwarz

From: Geno Rodriguez [<mailto:grodriguez@ethreadvisors.com>] **Sent:** Friday, April 1, 2016 3:56 PM **To:** Redacted **Subject:** Re: Checkered Flag K-1

Hello,

We received your message regarding your Checkered Flag K-1. These just went in the mail yesterday, so they should reach you in just a day or two.

Let us know if you have any other questions.

Thanks,
Geno Rodriguez
Managing Director
E3 Advisors
401 West 'A' Street, Suite 1830
San Diego, CA 92101

Off (619) 567-7223

Cel (619) 807-9867

grodriguez@ethreadvisors.com

CA Bureau of Real Estate # 01841759

No virus found in this message. Checked by AVG -
www.avg.com Version: 2016.0.7497 / Virus Database: 4545/11937
- Release Date: 04/01/16

No virus found in this message. Checked by AVG -
www.avg.com Version: 2016.0.7497 / Virus Database: 4545/11937
- Release Date: 04/01/16

Exhibit 7

1	Alan & Mary Dasca
2	Timothy K Yoshimura
3	Abdul G Malikyar
4	Adam Paul Ruis
5	Ahsanullah Malikyar
6	Al Surdez
7	Alan Bice
8	Alan Furman
9	Alan H Fleckenstein
10	Alberto Rodriguez
11	Alfred B Meichler
12	Alison J Epps
13	Allan Eddolls
14	Allan Swartz
15	Amy E Hays
16	Andrea Campbell
17	Andrew R Bianco
18	Anthony Sylvester
19	Antoine Sturgies
20	Antonio & Noeleen Tillman
21	Antony Brock
22	Anurag Goel
23	April Westfall
24	Arash Khorvash
25	Art Montgomery
26	Ashok Varma
27	Atrayon D Trevino
28	Balaji V Tamirisa
29	Barbara Wittner
30	Barry Foster
31	Bart Jan Wanders
32	Bart T and Julia Hayashi
33	Benito R Jimeno, Jr.
34	Bernard R Caraco
35	Bernard Smura
36	Bernie Colon
37	Billie Bowen

38	Blaise Kunani Morita
39	Bohuslav Stejskal
40	Brant R Bender
41	Brazil Gilliam
42	Brent A. Johnson
43	Brent Lindberg
44	Brett Cooper
45	Brian C O'Neill
46	Brian D Black
47	Bridgette Chi
48	Bryan Harvey
49	Caleb M Rosenberger
50	Candyce Straus
51	Carl Joseph
52	Carl Schulthess
53	Carlyle Eberly
54	Carolyn Wylie
55	Cary Ridpath
56	Celestino Menguita
57	Chana S Cabatan
58	Charles and Joyce Stiffler
59	Charles F. Flinner
60	Charles G Steck
61	Cheryl A Pooler-Wayland
62	Cheryl Ann Spainhour
63	Chester James O'Dell
64	Chris Plotz
65	Christina English
66	Christina O Brock and Antony J. Brock
67	Christine D Hauser
68	Christine T Henry
69	Christopher and Angela Morrow
70	Christopher Holden
71	Christopher Kim
72	Christopher M and Monique J Risdon
73	Christopher N Coulter
74	Christopher S and Heather L Robert

75	Clark F and Robin Baker
76	Claudia H Stewart
77	Colin and Laura Hunt
78	Conrad P Lindberg
79	Cornel Boitor
80	Corrine Powell
81	Courtney Noble
82	Craig Jackson
83	Craig R Knee
84	Cynthia C Hays
85	Dale L Boger
86	Dale Stuber
87	Daniel & Amber Rubert
88	Daniel D Holbert
89	Daniel F Ardourel
90	Daniel F Edson
91	Daniel L Raguse
92	Daniel P Schwartz
93	Daniel Sewell
94	Daniel Tentler
95	Danny Yniguez
96	Darrick Pierce
97	David & Carol Wardwell
98	David & Cynthia Schorr
99	David & Heather McDonald
100	David A Cheresh
101	David and Katherine Nichols
102	David Churchville
103	David F Olson
104	David G Trivoli
105	David Greenbaum
106	David Hagenbuch
107	David J O'Dell
108	David Jackson
109	David Kraus
110	David L Farley
111	David Lee

112	David M Francisco
113	David M Hlavac
114	David M Ruben
115	David Patrick Bailey
116	David Scott Lukeman
117	David Y Wang
118	Deanna Weatherly Stoops
119	Debbie A Williamson
120	Debbie Tharp
121	Deborah A Peoples
122	Deborah Walker
123	Debra S Lundbalde
124	Debra Schreiner
125	Deidra C Miller
126	Della June
127	Denae D Garcia
128	Dennis Backer
129	Dennis Dasher
130	Dennis R Morrison
131	Devin L Julien
132	Diana Lee Shatz
133	Diane B Bontrager
134	Diane P Leffingwell
135	Dionne T White
136	Dolly Belenky
137	Dominique Briaire
138	Donald & Karen Eisenhart
139	Donald Dupuis
140	Donald E Sims
141	Donald E Spicer
142	Donald R Couch
143	Donald R McCoy
144	Donna Aguirre
145	Donna Jean Putnam
146	Douglas Gwilliam
147	Dustin A Ojeda
148	Earl Scott Grindell

149	Edith Taylor
150	Edward A Martinez
151	Edward B Ramirez
152	Edward F Plow
153	Edward H Westland
154	Edward J Carlson
155	Edward Lane Kern Jr.
156	Edward M Kline
157	Edward P Wade
158	Edwin R Woodward
159	Eileen R Brooker
160	Eleanor R Wiebe
161	Elizabeth Barragan
162	Elizabeth Siekierski
163	Ellen Obuhanych
164	Emilio Chuidian
165	Emily J. Averill
166	Emmett B Davis
167	Enrico Maldia
168	Eric Burton
169	Eric Burtson
170	Eric D Krebs
171	Eric J Getzen
172	Eric J Lekven
173	Erika L DeLa Cruz
174	Estelle B Knight
175	Esther Ramirez Jones
176	Evan Harrison
177	Evan P Cavic
178	Evelyn A. Roquemore
179	Evelyn C Amster
180	Fort Zackary
181	Frank and Ann E Strelau
182	Frank and Kathy Seaton
183	Frank L Bixler
184	Frank Mann
185	Frank Seaton

186	Frankie M Chippas
187	Fred J Mangarelli
188	Garrett Goldfield
189	Gary P Chwala
190	Gary R Leidolf
191	George & Karol Whittlesey
192	George J Dawson
193	George J Wimberley
194	George N Popa, III
195	George O'Day
196	Georgia Kay Hamersky
197	Gerard B Felicitas
198	Gilbert Quintana
199	Gregory Anderson
200	Gregory Pyke
201	Gregory Topp
202	Gustavo Ros
203	Hani Shatila
204	Hannis H Hudson
205	Harry A Gauld
206	Harry Don Kergil
207	Heather Lombardo
208	Hien T Luu
209	Howard Williams
210	Ilan Peer
211	Itala M Sanez
212	J P Aragon
213	Jacalynne Felman
214	Jack P Abram
215	Jacob Smith
216	Jacqueline Siebenthal
217	James A Summers, Jr.
218	James A. Armstrong
219	James Brandon
220	James E Fish
221	James E Shotwell
222	James F Gaupsas

223	James Golisch
224	James Karns
225	James L Shipley
226	James M Keller
227	James M. Morrison
228	James R Lopez
229	James R Miller
230	James R Shelledy Jr.
231	James Romine
232	James Sallis
233	James Taylor
234	James Wells
235	Janet Kubinski
236	Janis Poole
237	Jason T Beal
238	Javier Fosado
239	Jayson L Truttmann
240	Jean-Michel Bernstein
241	Jeff H and Nancy N Kagawa
242	Jeff H Seeman
243	Jeffrey A Milman
244	Jeffrey D Montgomery
245	Jeffrey Kuns
246	Jeffrey Loyland
247	Jeffrey Peth
248	Jeffrey S Henry
249	Jeffrey Teng
250	Jenifer L Murphy
251	Jennie L Hollis
252	Jenny M Le
253	Jerry Butts
254	Jerry Patee
255	Jerry T McFadden
256	Jill Greenstein
257	Jim Dennis
258	JoAnn Hellmer
259	Joe and Melissa Worland

260	Joey Guevara
261	John A Rice
262	John Blackwell
263	John Cox
264	John E Gerard
265	John E Glenn
266	John F Follin
267	John F O'Donnell
268	John Man Chung Chau
269	John P Elder
270	John Rhine
271	John Rivas
272	John W Noerenberg
273	Jonathan & Karen Rivard
274	Jonathan B Arcilla
275	Jonathan Good
276	Jonathan Lopez
277	Jonathan M Plotz
278	Joseph A Zaitz
279	Joseph G Jerauld
280	Joseph McCurdy
281	Joseph T Richards
282	Josh Cardenas
283	Julie Ann Reed
284	Julie M Trandem
285	Julie Villafranca
286	K Zachary Abbott
287	Kamlendra Patel
288	Kanani M Magno
289	Kathleen Santoro-DeClark
290	Kathryn Sue Berkowitz
291	Kathy Hom
292	Kathy L Hirabayashi
293	Keith Asmussen
294	Keith J Anderson
295	Keith Weir
296	Kelly C Perez

297	Kelly J Barth
298	Kelly R Sneed
299	Ken Stephenson
300	Kenneth & Laurie Isensee
301	Kenneth F Mudrak
302	Kenneth Garland
303	Kenneth R Cheney
304	Kevin & Asami Post
305	Kevin H Le
306	Kevin T Richards
307	Kevin Y and Rhonda Kaya
308	Kim W Premuda
309	Kimberly A Hutchinson
310	Kirk D Brust
311	Kirk L Brado
312	Kris D Schwartz
313	Kristi K Pauly-Schuricht
314	Kristi Klotzly
315	Kristina Stilwell
316	Kurt Schubert
317	Kwok Y Kwan
318	Lael Southworth Seibert
319	Lang K Dao
320	Larry Abernathy
321	Laszlo Waczek
322	Laura Gibson
323	Laurie Delman
324	LaVonda R. Hoover
325	Lawrence V Guertin
326	Leon Danell
327	Leonard J Christian
328	Leslie A Figgins
329	Leslie Allen
330	Lester Yocum
331	Linda Rodgers
332	Lisa E Bennett
333	Louis J Noble II

334	Mack J Lyons
335	Majorie M Holland
336	Marc E LeClaire
337	Marc Tippy
338	Margaret R Whitmore
339	Maria A Acosta
340	Maria Bernardina Perez
341	Maria Leonor Forero
342	Marilyn Ishii-Urner
343	Mario Venditti
344	Marjorie A Watson
345	Mark A Bramhall
346	Mark A Pastor
347	Mark A Stanley
348	Mark Anderson
349	Mark J Marcelli
350	Mark J Philipp
351	Martha Drotzman
352	Martha T Foltyn
353	Martin Randant
354	Mary Alice Cole
355	Mary E Byrne
356	Mary Janke
357	Mary L. Kaiwi
358	Mary S Rau
359	Mary T MacDonald
360	Mary Zaklan
361	Matthew Golebiowski
362	Matthew Gubitosi
363	May Lansigan
364	Melissa A Lopez
365	Melissa Riggert
366	Meri Lightbody
367	Merril Rangel
368	Michael & Lavonne Smith
369	Michael A Horton
370	Michael A Roosth

371	Michael Ang
372	Michael Borgschulte
373	Michael Costas
374	Michael D Healy
375	Michael E Wehrs
376	Michael F Morris
377	Michael H Booher
378	Michael J Joseph
379	Michael J Schlehuber
380	Michael McDonell
381	Michael Muscato
382	Michael Perry Elam
383	Michael R Chester
384	Michael T Jerauld
385	Michelle McGraw
386	Miguel Ayala
387	Mitchell Shaffer
388	Natalie Sylvester
389	Nedra Crow
390	Neil E Malabuyoc
391	Nicholas DJ Crossley
392	Nick Dopudja
393	Nick J Dispalatro
394	Nicole English
395	Nya Stilwell
396	Olivia M Park
397	Oscar G Lopez
398	Oscar Preciado
399	Pamela J Miles
400	Patricia A Hofmayer
401	Patricia A Tager
402	Patricia Greene
403	Patricia L Schuster
404	Patrick A Fitzsimmons
405	Patrick Hartman
406	Patrick Houston
407	Patrick O'Day

408	Paul A Martignoni
409	Paul Galvin
410	Paul H Kim
411	Paul Hacker
412	Paul McDermott
413	Paul Paolini
414	Perry L Faneuf
415	Pete McNulty
416	Peter Francis Kim
417	Peter Jovanovic
418	Peter Violi
419	Philip R LaBarbera
420	Phuc Nguyen
421	Phyllis Luick c/o Anna M. Camarena
422	Preston Brendel
423	R Logan Kock
424	Ralph U Cummings
425	Randy F. Sivila
426	Randy Sifferman
427	Raymond Cota
428	Raymond K Jessup
429	Reese Grady
430	Reyna M Haua
431	Rhonda L Walker
432	Rhonda Lilien
433	Ric Sorenson
434	Rich Minga
435	Richard A Rossba
436	Richard A Rossback
437	Richard C Blackwood
438	Richard Johnston
439	Richard K Casparie
440	Richard Larson
441	Richard M Avila
442	Richard Matthews
443	Richard S Peat-Hanna
444	Richard W Boland

445	Richmond Ramage
446	Rick Itzkowich
447	Rick Oswalt
448	Robbin E Henderson
449	Robert A Borden
450	Robert Chase
451	Robert Crahan
452	Robert G Jones
453	Robert Hays
454	Robert I Smith
455	Robert Juarez
456	Robert Lichtenberger
457	Robert Martin
458	Robert McCulloch
459	Robert Patterson
460	Robert Pearson
461	Robert Roy Helling
462	Robert S Maurer
463	Robert Stiff
464	Robert Turner
465	Robert W Young
466	Robin A Carl
467	Rodell Lizaso
468	Rodney Feilen
469	Rodolfo Rodriguez
470	Roel V Tungcab
471	Roger Newton
472	Ron J Mazur
473	Ron Romero
474	Ronald Martino
475	Ronald R Beane
476	Roslyn G Holler
477	Roy Everingham, Jr
478	Ruben O Flores
479	Rudy L Burruss
480	Russell Riviere
481	Ryan M Ritchie

482	Ryan R Bonini
483	Sandra Sealy
484	Santo A Messina
485	Sayoko Hebert
486	Scott A Kruth
487	Scott Ledesma
488	Scott McElmury
489	Scott R Davis
490	Scott Seuferling
491	Scott Swartz
492	Scott W Reid
493	Shan Nageswaran
494	Shannon L Pullaro
495	Shari Jane Young
496	Sharon A Owen
497	Sharon Ferraro
498	Sharon Kravet
499	Shawn A McAtee
500	Shelton Green
501	Sheri Gracelyn
502	Sherry L Green
503	Sheryl A Northington
504	Spencer J Dowell
505	Stanley Krimerman
506	Stephen L Rhoden
507	Stephen Plante
508	Stephen Speth
509	Steve Corn
510	Steve D D'Apuzzo
511	Steve S Jung
512	Steven A Marx
513	Steven Busby
514	Steven D Schiffer
515	Steven J Bark
516	Steven J Hynd
517	Steven Stilwell
518	Subramaniam & Lata Sundaram

519	Sue Mahon
520	Sue Perkins
521	Susan Coyle
522	Susan E Brady
523	Susan Naomi Iguchi
524	Susan Tostado-Pope
525	Sushma Prasada
526	Sylvia White
527	Teresita Gelbart
528	Terri Haua
529	Terry A McNeill
530	Thelma J Hennink
531	Thomas C Liao
532	Thomas Earl Propst
533	Thomas G Cummings
534	Thomas Holland
535	Thomas Lee Nash
536	Thomas Leedy
537	Thomas M Gifford
538	Thomas P Valdas
539	Thomas Polson
540	Thomas Virgil kelley
541	Tim Clark
542	Timothy Bruton
543	Timothy Goodwin
544	Timothy K Yoshimura
545	Timothy Lucey
546	Todd C Olsen
547	Todd Stevens Sallenbach
548	Tom & Jennifer Rutherford
549	Tom Keck, III
550	Tom True
551	Tommy English
552	Tyler D Womack
553	Venita Villanueva
554	Veronica Herrera
555	Victor Barragan

556	Vikram D Desai
557	Vitek Zaba
558	William A Davis
559	William A Drennen
560	William and Donna Dorney
561	William Benedict
562	William E Richardson
563	William Foster
564	William Hebert
565	William N Jessee
566	William Ryan, Jr.
567	William S Vaughan
568	William Spencer Phillips
569	Xianjun Kong
570	You K Wong
571	Yvette Broderick

Exhibit 8

1	Adrian Marrujo
2	Aida Souleiman
3	Alan & Kathy Cash
4	Alan Lucero
5	Alan R Michaelson
6	Albert B Haley
7	Alexander J Ogg, Jr
8	Alicia & Mark Scaglione
9	Andrea C Rubio
10	Andrew A Tuccillo
11	Anita Louise Byrum
12	Anna Seiders
13	Anthony JD Manibusan
14	Arkady Bablumyan
15	Barbara A Nenno
16	Bart M Smith
17	Becky A Betian
18	Bela Bartha
19	Bernard King
20	Beverley S Scheftz
21	Beverly Dahl
22	Bill Joe Lairmore
23	Bonnie Granzow
24	Bonnie Kay Mitzel
25	Bradley Burger Calehuff
26	Bret D'Vincent
27	Brian D. West
28	Brooke Moore
29	Brooks J Hoven
30	Bruce K & Rose Marquez
31	Bruce Webster
32	Carl & Anne Roberts
33	Carlos T Torres
34	Carol A Winckler
35	Carole L Bishton
36	Carter A Swanson
37	Mary Castle

38	Cathy C Spatuzzi
39	Catrina & Colton West
40	Charles J Lozinger
41	Charles W Giebelhausen
42	Chris & Michonne Taylor
43	Chris Boyer
44	Christian A. Maese
45	Christine D Brohoski
46	Christine Pollard
47	Christopher Schuyler
48	Christopher Sullivan
49	Christopher W Poehlman
50	Claudia J Davis
51	Clifford Eardensohn
52	Collin E Hall
53	Corine A Smith
54	Cort Fraser
55	Courtland Young
56	Craig & Carlena Stevens
57	Craig Bell
58	Curt W Stromstedt
59	Cynthia Jurica
60	Cynthia S Kelley
61	Cyril Vedomske
62	Dale H Benson
63	Daniel & Erin Burk
64	Daniel D Mahaffey
65	Darren R Maglidt
66	David A Rose
67	David D Mains
68	David H Babcock
69	David H Lyon
70	David J Cohen
71	David J Kaplan
72	David P Roum
73	David R Wild
74	David Sonsara

75	Dean Bayerle
76	Deanna M Evango
77	Deborah A Gubernick
78	Deborah Cherniak
79	Denise R Wallace
80	Dennis & JoAnn Blakemore
81	Dennis R Howe
82	Derek Poirier
83	Devin Caringella
84	Don L Skaggs
85	Donald & Susan O'Dell
86	Donald D Steffensen Jr.
87	Donald G Holden
88	Donald P Capotosto
89	Donald Uhler
90	Donilo Gamboa
91	Donna R Alexander
92	Dorothy Peterson
93	Douglas Eric Clayton
94	Eddie Keith
95	Edward Babas
96	Edward Dinkins
97	Edward E Fernandez
98	Edward R Gibson
99	Eleonore K Gorwin
100	Elfren D Almazan
101	Elise A Fischer
102	Elizabeth A Waggener
103	Emil C Haury, Jr
104	Eric Knight
105	Ernest A Martz
106	Ernest S Luckhardt, VI
107	Eugene C D'Avanzo
108	Farhad Noroozi
109	Fredda L Prinsen
110	Gary Allen Gorman
111	Gary Braslawsky

112	Gary E Whitney
113	Gary Haynes
114	George E Wetmore
115	George Michaels
116	George T Veeder, III
117	Gerald Carnahan
118	Gerald L Beckwith
119	Glenn A Phelps
120	Glenn B Tonnemacher
121	Greg L Campbell
122	Greg P Vujnov
123	Harold J. Welzel
124	Hector J Lebron
125	Hector J. Rodriguez
126	Helena Hessle
127	Henry Striedel
128	Henry VanderWeit
129	Howard R Pattison, Jr
130	Ian Robertson
131	Ilona H Yenny
132	Indar M Rai
133	Jack & Geraldine Lovett
134	Jack L Underwood
135	Jack Naviaux
136	Jack W Mills
137	Jacqueline B Riley
138	James & Lynn Yockey
139	James Allen Martin
140	James D Miller
141	James Jewell & Maureen Boggs
142	James L Gilbert
143	James Limjoco
144	James M Shadek
145	James R Blacksmith
146	James R Woodard
147	James S Cabana
148	James, Jr McMahon

149	Jamie L Callinan
150	Jane M Le Bouef
151	Janet Lee Kelly
152	Janis Hill
153	Jasdeep S Bal
154	Jason L Rodman
155	Jean Havel
156	Jean L Sacher
157	Jeannie Schatzberg
158	Jeff Marasso
159	Jeff S Grissen
160	Jeffrey A LaDouceur
161	Jeffrey Hays
162	Jeffrey S Alix
163	Jeffrey S Walcher
164	Jennifer Y Wang
165	Jerry M Castor
166	Jim & Collette Gelrud
167	Joan M Cerutti
168	John A Loague
169	John A Warren
170	John C Zimmerman
171	John E. De Jong
172	John H Palleva
173	John L Rietman
174	John Lavery
175	John Martino
176	John Redman
177	John W Piaschyk
178	Jon C Sengstacke
179	Jon G De Lucia
180	Jonathan Cobb
181	Joseph A Russo
182	Joseph Advento
183	Joseph Bunn
184	Joseph John Pacelli
185	Joseph L Stine

186	Joseph M Ardizzzone
187	Joseph Viggianelli
188	Joshua Alexander Betian
189	Judy E Jacquez
190	Judy J Carter
191	Julie E Ernest
192	Kameron Hedayat
193	Karan J Osborne
194	Karen K Berger
195	Karen L Johnson
196	Karen Levine
197	Karen Sue Bauser
198	Karim Younes
199	Kathleen A Becker
200	Kathleen J Henry
201	Kathy Larson
202	Keith A Palmer
203	Keith Trudel Nicol
204	Kenneth A Corlett
205	Kenneth J Moore
206	Kenneth W Rietkerk
207	Kent M Palmer
208	Kim Crown
209	Kim M Cabotaje
210	Kim S Allan
211	Kristie B Pillow
212	Kristin M Halton
213	Kristopher B Field
214	Larry & Karen Breedlove
215	Larry Courtney
216	Larry G Gravatt
217	Larry Johnson
218	Larry R Posavad
219	Laura L Grimm
220	Laura M Littrell
221	Lauren A Gingrich
222	Lawrence Pearlman

223	Lee Ritze
224	Leisa Jayne Ruiz
225	Leo & Cynthia Dufresne
226	Leonard W Gemar
227	Linda & Gary Neff
228	Linda Vitta
229	Lois E Schwarz
230	Lonnie J Norsworthy, Jr
231	Lorryn Abbott
232	Lou R Centanni
233	Louis V Sacharske
234	Louise M Austin
235	Luis Fernando Garcia
236	Lyle E Forcum
237	Marc Zaslov
238	Margaret E Pound
239	Margaret Glenn
240	Maria R Wright
241	Marisa Brechwald-Schaefer
242	Mark & Liz Brolaski
243	Mark C Edwards
244	Mark C Fricke
245	Mark Clifton
246	Mark D Hadley
247	Mark D Hooper
248	Mark Dalea
249	Mark Frapwell
250	Mark Greene
251	Mark L Richards
252	Mark M Gnesin
253	Mark P Crompton
254	Mark Rogers
255	Mark S Binney
256	Mark Seefeld
257	Mark T Hale
258	Marlene Maat
259	Mary E Holmes

260	Mary M Lind
261	Mary R Montanus
262	Mary Schaubel
263	Matt Hand
264	Matthew A Holman
265	Matthew Berta
266	Matthew C Marchesano
267	Matthew D. Adams
268	Matthew F Deline
269	Matthew S O'Connell
270	Meagan Moore
271	Melissa J Schmidt
272	Merwin & Kathy Edwards
273	Michael & Cheryl Zozaya
274	Michael & Jennifer Forsstrom
275	Michael Allen Murray
276	Michael B Flathers
277	Michael B Gardner
278	Michael Hoag
279	Michael J Bacho
280	Michael J Will
281	Michael R Tucker
282	Michael W Gerow
283	Michael W Mull
284	Michele Ruth Dortch
285	Michelle J Goldbach
286	Nariman Noorzady
287	Nat Chauhan
288	Neal J Linson
289	Neal Tonnemacher
290	Nicholas D Mott
291	Nicholas G Hidalgo
292	Nina C Wright
293	Pamela Frantz
294	Pamela Jones
295	Pamela Lynne Petti
296	Pamela Russell

297	Patrick L Chilidonia
298	Paul & Lea Leccese
299	Paul Casillas
300	Paul J Woods
301	Paul M Lindberg
302	Paul S Marshall
303	Paula Trovato
304	Pearl S Hoftiezer-Boelter
305	Philip & Wendy Rose
306	Philip Bunch
307	Philip L Gioia
308	Philip L Sansone
309	Phillip A England
310	Rachel Neeley
311	Raj Acharya
312	Ralf Goericke & Elizabeth Young
313	Randey C Smith
314	Randie H Dorrance
315	Raymond R Bickel
316	Relie M Bacho
317	Reza A Gamagami
318	Ricci L Barnes
319	Richard A Hoffman
320	Richard C Poepsel
321	Richard D Huffman
322	Richard G Stansbury
323	Richard Hendrickson
324	Richard L Klemke
325	Richard L Krueger
326	Richard Marra
327	Richard Mattingley, II
328	Rick B Logemann
329	Robert C De Berard
330	Robert D Butterfield
331	Robert E Allen
332	Robert E Pickle
333	Robert F Centanni

334	Robert Fried
335	Robert J & Tamara P Smith
336	Robert K Heckler
337	Robert L Eckle
338	Robert L Gordon III
339	Robert L Lorenzini
340	Robert L Wittouck
341	Robert M LaDue
342	Robert M Zentz
343	Robert Michael Bingham
344	Robert Miller
345	Robert Pardy
346	Robert W Sullivan
347	Robin Gunning
348	Rochelle M Sullivan
349	Roger Shahnazarian
350	Ron J Davis
351	Rose M Engel
352	Rose Newell
353	Rupert & Martha Lucas
354	Russell Zinser
355	Salvador Guinto
356	Samuel Oliner
357	Samuel P Moracco
358	Sandra L Griffey
359	Sarah Shaw Murray
360	Scott & Dana Smith
361	Scott Barnhart
362	Scott J Wilson
363	Scott Tonnemacher
364	Sean L O'Neil
365	Shari Perryman
366	Sharon Ferraro
367	Shawn Graham
368	Sim Romero
369	Steve & Debra Cobb
370	Steve & Vicci Glenn

371	Steve B Paris
372	Steve K Petroski
373	Steve Svoboda
374	Steven & Barbara Mundy
375	Steven & Janet Manier
376	Steven Barnard
377	Steven Bushong
378	Steven D Parker
379	Steven Huizenga
380	Steven Kyle Linhardt
381	Steven M Kosta
382	Steven Reynolds
383	Steven Smiley
384	Steven T Rubin
385	Steven Welnick
386	Sven Blomberg
387	Tahsin Atrushi
388	Tammy L Miller
389	Ted Schwing
390	Teddy Liu
391	Thane Kelton
392	Theodore Cohen
393	Thomas A Blanco
394	Thomas F Hut
395	Thomas J Fermin
396	Thomas N Engler
397	Thomas R Hubbard
398	Thomas R Mistretta
399	Thomas Williams
400	Tim Smith & Maria Alexander
401	Timothy Hurley
402	Timothy J Fagan
403	Timothy P Fitting
404	Todd Caddell
405	Todd L Bavaro
406	Tom R Hackett
407	Traci Jensen

408	Trisha S McAfee
409	Tyrol & Susan Ponder
410	Valerie P Good
411	Vernon P Cooke
412	Vickie Patterson
413	Victor & Joanne Mera
414	Victor & Susan Warriner
415	Victor Osnaya & Jessica Lamb
416	Vipul Pabari
417	W Arnold Kimmons
418	Warren T Anderson
419	Wayne F Nielsen
420	Wayne H Russell
421	Wayne T Yuen
422	Wendy Sue Oliver
423	Willam R Fuller
424	William & Lisa Jackson
425	William & Tamara Wilson
426	William A Loeber
427	William C. West
428	William Cosby
429	William S Borneman
430	Yasuyoshi Hirano

Exhibit 9



Experienced. Efficient. Effective.

- [Home](#)
- [About Us](#)
- [Services »](#)
- [Projects »](#)
- [Professionals »](#)
- [SEC Case Docs »](#)
- [CFPB Case Docs »](#)
- [Contact](#)

🔍

[Home](#) » SEC v. Louis V. Schooler and First Financial Planning Corp d/b/a Western Financial Planning Corp

SEC v. Louis V. Schooler and First Financial Planning Corp d/b/a Western Financial Planning Corp

Case Summary:

On September 6, 2012, Thomas C. Hebrank of E3 Advisors was appointed temporary receiver for Western Financial Planning Corporation and the entities it controls, including the general partnerships ("Defendants"), pursuant to an Order entered by the United States District Court for the Southern District of California in an action against Defendants filed by the Securities and Exchange Commission.

Document Links (PDF Format):

Case Updates:

Court Order re: Receiver's Proposal to Conduct Orderly Sale of GP Properties & Approval of Distribution Plan

The Court held a hearing on the above referenced motion on May 20, 2016. On May 25, 2016, the Court issued its order, which can be found at this link: [LINK: Order Granting-Denying-Motion for Authority to Conduct Sale of GP Properties & Aguirre's Motion for Trial](#)

In summary, the Court ruled that (1) the Receiver shall file a proposed modified orderly sale process to incorporate a public sale component in compliance with 28 USC § 2001 within 14 days; (2) the Receiver shall submit a report and recommendation with the Court within 180 days, evaluating the pros and cons of the Xpera Group's recommendations that can feasibly maximize the value of the receivership estate; (3) it would be inequitable and impractical to allow the GPs to exit the receivership; (4) allegations that the Receiver was behaving unethically or irresponsibly are without merit; (5) the Receiver shall refile his Fourteenth Interim Report and file a final fee application at the end of the case consistent with the SEC billing instructions, including the Standardized Fund Accounting Report; (6) any newly created investor entities that seek to purchase GP properties may utilize their projected distribution amounts as a component of their bids; (7) the Receiver's proposed "one pot" distribution of receivership assets is approved; and (8) the Receiver's proposed distribution plan and proposed procedures for the administration of investor claims are approved.

We encourage you to read the Court's order in its entirety. We will be providing additional details and information as it becomes available.

Please note that as a result of the approval of the one pot distribution proposal, assets of the receivership entities (Western and the GPs) have been pooled together, past due taxes and other property expenses will be paid from pooled funds, and investor note payments owed to their GPs will no longer be collected.

Case Updates:

INVESTOR INFORMATION PACKETS:

The Court has ordered investor information packets to be prepared for all of the Western GPs, as soon as updated appraisals or other valuation information has been received. As this information becomes available, the property name and associated GPs will be listed below. The name will contain a link to that particular information packet.

1. Bratton Valley Property – Valley Vista, Bratton View & Honey Springs Partnerships
2. Dayton I Property – Dayton View, Fairway, Green View and Par Four Partnerships
3. Dayton II Property – Storey County, Comstock, Silver City, Nevada View Partnerships
4. Dayton III Property – Gold Ridge, Sky View, Grand View & Rolling Hills Partnerships
5. Dayton IV Property – Eagle View, Falcon Heights, Night Hawk & Osprey Partnerships
6. Fernley I Property – Crystal Clearwater & High Desert Partnerships
7. Jamul Valley Property – Jamul Meadows, Lyons Valley & Hidden Hills Partnerships
8. Las Vegas I Property – Park Vegas, Production & Silver State Partnerships
9. Las Vegas II Property – Rainbow & Horizon Partnerships
10. LV Kade Property – Hollywood, BLA, Checkered Flag and Victory Lap Partnerships
11. Minden Property – Carson Valley, Heavenly View, Sierra View and Pine View Partnerships
12. Santa Fe Property – Santa Fe View, Pueblo and Pecos Partnerships
13. Silver Springs North Property – North Springs, Rawhide, Highway 50 & Orange Vista Partnerships
14. Silver Springs South Property – Rail Road, Spruce Heights, Vista Del Sur & Lahontan Partnerships
15. Stead Property – P-39 Aircobra, P-40 Warhawk & F-86 Partnerships [Updated]
16. Tecate Property – ABL, Mex-Tec, Borderland, Prosperity, Freetrade, Suntec, Via 188, International, Tecate South, Twin Plat & Vista Tecate Partnerships
17. Washoe I Property – Reno View, Reno Vista & Reno Partnerships
18. Washoe III Property – Spanish Springs, Antelope Springs, Wild Horse and Big Ranch Partnerships
19. Washoe IV Property – Rose Vista, Steam Boat, Galena Ranch and Redfield Heights Partnerships
20. Washoe V Property – Pyramid Highway 177 & Frontage 17 Partnerships
21. Yuma I Property – Gila View, Painted Desert & Snow Bird Partnerships
22. Yuma II Property – Desert View, Sonora View, Mesa View and Road Runner Partnerships
23. Yuma III Property – Mountain View, Ocotillo, Cactus Ridge & Mohawk Mountain Partnerships

SCHOOLER DISGORGEMENT:

On May 19, 2015, the Court granted the SEC's motion for partial summary judgment and ordered Defendants Schooler and Western to disgorge \$136,654,250, plus prejudgment interest. Enforcement of the order is outside the scope of the receivership and will be handled by the SEC.

On January 21, 2016, the Court granted the SEC's motion for injunctive relief and monetary remedies against Mr. Schooler and ordered disgorgement in the total amount of \$147,610,280, representing profits gained as a result of the conduct alleged by the SEC. Attached is a link to the Court's Order.

Order Granting Final Judgment and Monetary Remedies

FREQUENTLY ASKED QUESTIONS:

Who is the Receiver? Why was there a Receiver appointed? Thomas C. Hebrank was appointed by the Federal District Court on September 6, 2012. The Receiver was appointed after a complaint was filed by the Securities and Exchange Commission against Louis V. Schooler and First Financial Planning Corp. dba Western Financial Planning Corp. (“Western”). Your partnership was created by Western and is one of the subjects of the ongoing litigation between the SEC and Louis Schooler.

Who can I talk to about my investment? You can periodically visit the Receiver's website for additional updates as far as the case, Receiver's Reports and other legal filings (www.ethreeadvisors.com). The Receiver and his staff are happy to take your questions, however to keep expenses low we ask that you check the FAQ or website first. Please direct inquiries to the Receiver to wfp@ethreeadvisors.com.

What are the next steps in the receivership? As ordered by the Court, the Receiver has pooled all GP bank accounts, and is in the process of retaining a real estate expert to supplement the work of the Xpera Group and to advise the Court and Receiver regarding certain recommendations for the properties made by the Xpera Group. An attorney for a minority group of investors has filed an appeal of the Court's Order re: Receiver's Proposal to Conduct Orderly Sale of GP Properties & Approval of Distribution Plan, and has opposed the sale of certain properties that were in process or near completion. The Court has scheduled a hearing for September 6, 2016 to address these issues.

Court Filings:

- o TRO and Orders: (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of Documents; (4) Granting Expedited Discovery; and (5) Requiring Accountings and Appointing a Permanent Receiver
- o Preliminary Injunction Order 10-5-12
- o Receivers First Report 09-14-12
- o Defendant's Motion to Dismiss
 1. Def's Motion to Dismiss Complaint
 2. Schooler Dec – Def's Motion to Dismiss Complaint
 3. Ps&As – Def's Motion to Dismiss Complaint
 4. Order Denying Defendants' Motion to Dismiss
- o Western Investor Initial Notification Letter 10-12-12
- o Receivers Report #2 and Monitor Proposal
 1. SEC's Brief re Receivers Second Report
 2. Defendant Response to Receiver Rpt 2 and Monitor Proposal
 3. Order on Receivers Report #2
- o Fee Applications #1
 1. Allen Matkins 1st Fee Application
 2. Receiver's 1st Fee Application
 3. Teris 1st Fee Application
 4. Order Granting in Part First Fee Applications
- o Preliminary Injunction Filing
 1. SEC's Ntc of Filing Proposed PI Order
 2. Def's Objs to Proposed PI Order
 3. SEC's Ntc of Filing Rsps to Def's Objs to Proposed PI Order
 4. Ntc of Filing of Receiver's Rsps to Proposed PI Order
 5. Defendants Reply to SEC and Receiver
 6. Ntc Mtn & Mtn for Modification of Prelim Injunction
 7. Memo P&As/ISO Mtn for Modification of Prelim Injunction
 8. Decl Schooler ISO Mtn for Modification of Prelim Injunction
 9. Receiver's Response – Mtn for Modification of Prelim Injunction
 10. SEC's Response – Mtn for Modification of Prelim Injunction
 11. Schooler's Reply re Motion to Modify
 12. Receiver's Sur-reply to Motion to Modify
- o Receiver's Report #3
 1. Order Approving Receiver's Third Report
- o Motion for Authority to Sell Automobiles and Gold

1. Hebrank Dec – Motion for Authority to Sell Autos & Gold Coins
2. Motion for Authority to Sell Autos & Gold Coins
3. OST on Receiver's Mtn to Sell Autos & Gold Coins
4. Order Granting Mtn to Sell Autos Gold Coins
5. Order Granting Receiver's Motion on Notifications of Investors
6. Preliminary Injunction Order 3-13-13
7. Fee Applications #2:
 1. Allen Matkins 2nd Fee Application
 2. Receiver's 2nd Fee Application
 3. Schooler Objection to Second Fee Apps
 4. Receivers Reply to 2nd Fee Apps Opposition
 5. Order Granting In Part 2nd Fee Apps
 6. Cotton Driggs 1st Interim Fee App
 7. Receiver's Forensic Accounting Report – Part One
 8. Order Granting Forensic Accounting Report – Part One
 9. Receiver's Report #4
 10. Order Approving 4th Interim Report
 11. Motion for Authority to Pursue LinMar Claims
 12. Hebrank Dec – Motion for Authority to Pursue LinMar Claims
 13. Motion for Authority to Pursue LinMar Claims
 14. Schoolers Opp – Motion for Authority to Pursue LinMar Claims
 15. Ps&As – Motion for Authority to Pursue LinMar Claims
 16. Receiver's Reply to Opposition
8. Fee Applications #3:
 1. Allen Matkins 3rd Fee Application
 2. Receiver's 3rd Fee Application
 3. Duffy Kruspodin 1st Fee Application
 4. Hebrank Declaration
 5. Schooler's Opp to 3rd Fee App
 6. Dyson Dec – Schooler's Opp to 3rd Fee App
 7. SECs Ntc of Non-Opp to Fee Apps
 8. Reply ISO 3rd Fee App
 9. Order Re 3rd Fee Apps
 10. Receiver's Valuation Report & Exhibits
 11. Schooler's Response to Receiver's Report
 12. SEC's Reply to Schooler's Opp to RE Report
 13. Kalin Dec – SEC's Reply to Schooler's Opp to RE Report
 14. Receiver's Reply to Schooler's Opp to RE Report
 15. Hebrank Dec – Receiver's Reply to Schooler's Opp to RE Report
 16. Receiver's Motion to Sell Office Equipment and Relocate
 17. Receiver's Declaration re Motion to Sell Office Equipment and R
 18. Order Approving Motion to Sell Furniture Etc.
 19. Order RE: Prel Injunction, GP's, Valuation Rpt., & LinMar
 20. Schooler's Ntc of Mtn for Reconsideration of Courts Order Modi
 21. Ps&As – Schooler's Ntc of Mtn for Reconsideration of Courts Or
 22. POS – Schooler's Ntc of Mtn for Reconsideration of Courts Order
 23. Schooler's Mtn for OST – Mtn for Reconsideration of Courts Oro
 24. Schooler's Request for Oral Argument – Mtn for Reconsideration
9. Fee Applications #4
 1. Receiver's 4th Interim Fee App
 2. AM's 4th Interim Fee App
 3. Ntc of 4th Interim & Cotton Driggs Fee Apps
 4. Schooler's Response to 4th Fee App
 5. Receiver's Reply to Schooler's Opposition
 6. Hebrank Declaration re: Reply to Schooler's Opposition
 7. Order re: 4th Fee Apps
 8. 5th Interim Report
 9. Order re: 5th Interim Report
 10. Receiver's Forensic Accounting Report – Part Two
 11. Mtn for Stay Pending Appeal
 12. P&A's ISO Mtn for Stay Pending Appeal
 13. 2013-11-01 0509 Receiver's Opp – Mtn for Stay Pending Appeal
 14. 2013-11-01 0510 SEC's Opp – Mtn for Stay Pending Appeal

4. 2013-11-08 0512 Defs Reply ISO Mtn for Stay Pending Appeal
5. 2013-11-14 0513 Order Granting In Part – Denying In Part Motion for Stay
h Interim Report
1. Order on 6th Interim Report
Parte Request re Use of GP Funds to Pay Mortgages
1. Defendants' Opposition to Ex Parte App
2. Dyson Dec re Ex Parte App
3. Schooler Dec re Ex Parte App
4. Order Granting Ex Parte
e Applications #5
1. Receiver's 5th Fee Application
2. Allen Matkins 5th Fee Application
3. Schooler Opposition to Fifth Fee Applications
4. Order Approving Fifth and Sixth Fee Applications
5. Duffy's 2nd Fee Application
6. Order Approving Fifth and Sixth Fee Applications
h Interim Report
1. Order Approving 7th Interim Report
2. Schooler's Mtn for Reconsideration of Receiver's 7th Report
3. Ps&As – Schooler's Mtn for Reconsideration of Receiver's 7th Report
4. Schooler Dec – Schooler's Mtn for Reconsideration of Receiver's 7th Report
5. Order Denying Schooler's Mtn for Reconsideration of Receiver's 7th Report
6. Receiver's Response to Schooler's Motion for Reconsideration of Approval of 7th Interim Report
7. SEC's Response to Schooler's Motion for Reconsideration
8. Schooler's Reply in Support of his Motion for Reconsideration
e Applications #6
1. Receiver's 6th Fee Application
2. Matkin's 6th Fee Application
3. Duffy's 2nd Fee Application
4. Notice of Hearing on Fee Applications
5. Order Approving Fifth and Sixth Fee Applications
6. Schooler's Opposition to 6th Fee Applications
7. Receiver's Response to Schooler's Opposition
orders Regarding Summary Judgment Motions – GPs as Securities & Receivership
1. SEC's May 9, 2014 Response to Court's Reconsideration of 8-16 Order
2. Schooler's May 9, 2014 Response to Court's Reconsideration of 8-16 Order; Declaration
3. SEC's May 23, 2014 Responsive Brief to Court's Reconsideration of 8-16 Order
4. Schooler's May 23, 2014 Responsive Brief to Court's Reconsideration of 8-16 Order
efendant's Motion to Remove Western from Receivership
1. Defendant's Motion to Remove Western from Receivership
2. Ps&As – Defendant's Motion to Remove Western from Receivership
3. Receiver's May 9, 2014 Response to Schooler's Motion to Remove Western & Court's Reconsideration of its August 16 Order
4. SEC's May 9, 2014 Response to Schooler's Motion to Remove Western
5. Schooler's May 23, 2014 Reply in Support of Motion
6. Order Denying Motion to Remove Western from Receivership
ceiver's 8th Interim Report
1. Order Approving Receiver's 8th Interim Report
e Applications #7
1. Receiver's 7th Fee Application
2. Allen Matkins 7th Fee Application
3. Order on Seventh Interim Fee Applications
4. Schooler's Opposition – 7th Fee Application
5. Schooler's Declaration – 7th Fee Application
6. Receiver's Reply – 7th Fee Application
7. Rodriguez's Declaration – 7th Fee Application
8. Order Granting Fee Applications
der on Reconsideration of Releasing the GPs from the Receivership
1. GP Briefs Filed
2. Filed Receiver's Response
3. SEC Response to GP Briefs
4. Declaration of James and Karen Miller
5. Defendants' Response to GP Briefs
6. Order re Investor Hearing

- ## 7. Order Modifying Dates in Order Re Investor Hearing

- Fee Applications #11
 1. Receiver's 11th Fee Application
 2. Allen Matkins' 11th Fee Application
 3. Duffy's 4th Fee Application
 4. Order Granting 10th, 11th and 12th Fee Applications
- Receiver's 12th Interim Report
 1. Order Granting 12th Interim Reports
- Fee Applications #12
 1. Receiver's 12th Fee Application
 2. Allen Matkins 12th Fee Application
 3. Duffy's 5th Fee Application
 4. Order Granting 10th, 11th and 12th Fee Applications
- Receiver's 13th Interim Report
 1. Order Granting 13th Interim Reports
- Fee Applications #13
 1. Receiver's 13th Fee Application
 2. Allen Matkins 13th Fee Application
 3. Order Granting 13th Fee Application
- Receiver's Recommended Brokers for Listing 5 GP Properties
 1. Order Granting Receiver's Recommendation to Sell 5 GP Properties
- Receiver's Motion for Authority to Conduct Sale of GP Properties
 1. Notice of Motion for Authority to Conduct Sale of GP Props
 2. Mtn for Authority to Conduct Sale of GP Props
 3. SEC Response to Receiver's Motion to Sell GP Props
 4. Atty Dillon Response to Distribution Motion
 5. Atty Aguirre Response to Distribution Motion
 6. Ex Parte Mtn Re Withdrawal Mis-Stmt of Fact – Aguirre's Opp – Mtn for Authority to Conduct Sale of GP Props
 7. Receiver's Reply – Dillon's Opp – Mtn for Authority to Conduct Sale of GP Props
 8. Receiver's Reply – Aguirre's Opp – Mtn for Authority to Conduct Sale of GP Props
 9. Atty Aguirre Ex Parte Motion to File Supplemental Response
 10. SEC Response in Opposition to Aguirre Ex Parte Motion
 11. Order Granting-Denying – Mtn for Authority to Conduct Sale of GP Props & Aguirre's Mtn for Trial
 12. Proposal Re Modified Orderly Sale Process
- Receiver's 14th Interim Report
 1. Atty Objection to Receiver's 14th Interim Report
- Ex Parte Application for Order Confirming Jamul Property Sale
 1. Ex Parte Application for Time to File Opposition
 2. Receiver's Response to Ex Parte Application re: Jamul Sale
 3. Movants Reply to Receiver's Response
 4. Notices of Joinder filed by Gary Aguirre
 5. Receiver's Supplemental Brief on Jamul Sale
 6. Order Re Recs Re Dayton I & IV Fernley I LV2 & Stead Etc
 7. Jamul Valley Sale Motion
 8. Notice of No Overbidders for Jamul Property Sale
 9. Atty Aguirre Late Opposition to Jamul Property Sale
 10. Receiver's Response to Atty Aguirre Late Opposition
 11. Order Approving Jamul Property Sale
- Receiver's Recommendation Re: Engagement of Real Estate Brokers for Las Vegas 1, Las Vegas 2, and Tecate Properties
 1. Movant's Ex Parte Opposition to Receiver's Motion
 2. Receiver's Response to Movant's Opposition
 3. Movant's Reply to Receiver's Response
 4. Atty Dillon Ex Parte Application
 5. Atty Aguirre Joinder
 6. Receiver's Notice of Intent to Respond
 7. Receiver's Response to Opposition
 8. Order Re Recs Re Dayton I & IV Fernley I LV2 & Stead Etc
- SEC's Omnibus Submission re Pending Motions
 1. Atty Aguirre Response to SEC Filing
- Atty Dillon Motion to Unseal Documents
 1. Receiver's Opp – Dillon's Mtn to Unseal-Unredact Various Orders
 2. Dillon's Reply – Dillons Unseal Motion
 3. Order Granting Limited Intervention
- Atty Aguirre Motion for Accounting

1. Atty Aguirre's Refiled Accounting Motion
2. Dillon's Partial Joinder – Aguirre's Mtn for Accounting or Audit
3. Receiver's Opposition to Aguirre Accounting Motion
4. Aguirre Ex Parte Mtn and Dec for Order Setting Evid Hrg and Disc Schedule
5. Aguirre Investors Response to Receivers & SEC Opposition
- o Atty Aguirre Motion to Vacate Prior Orders GP Sale
 1. REFILED: Atty Aguirre Motion to Vacate Prior Orders Approving GP Property Sales
 2. Recvr's Opp – Aguirre's Motion to Vacate Orders Approving Receiver's Recommendations to Sell GP Props
- o Court's Order for Additional Briefing and Denial of Investor's Motions
 1. Receiver's Court-Ordered Proposal Re GPs
 2. Receiver's Ex Parte Motion to File Supplemental Response
 3. Atty Aguirre Ex Parte Motion to File Addn Opposition to Receiver's Court Ordered Proposal
 4. Receiver's Opp – Aguirre Ex Parte Mtn to File Opp – Receiver's Court-Ordered Proposal Re GPs
 5. SEC's Opp – Aguirre Ex Parte Mtn to File Opp – Receiver's Court-Ordered Proposal Re GPs
 6. Court Order Approving Modified Orderly Sales Process
- o Attys Aguirre & Dillon Motions to Intervene
 1. Atty Aguirre Motion to Intervene
 2. Atty Dillon Motion to Intervene
 3. Receiver's Opp – Aguirre's Motion to Intervene
 4. Receiver's Opp – Dillon Motion to Intervene
 5. SEC Opposition to Motions to Intervene
 6. Dillon Reply – Dillon Motion to Intervene
 7. Aguirre Reply re Intervention Motion
 8. Atty Aguirre's Investor Request For Judicial Notice
 9. Atty Aguirre's Reply ISO Motion To Intervene
 10. SEC's Opposition to Mtns to Intervene
 11. Order Granting Limited Intervention
 12. Order Denying Aguirre's Mtn to Intervene & File Excess Pgs
- o Motion for Sale of Reno View and Reno Vista Properties
 1. Order Re Recs Re Dayton I & IV Fernley I LV2 & Stead Etc
 2. Notice of No Overbidders for Reno View/Reno Vista Sale
 3. Order Approving Reno Properties Sales
- o Motion for Sale of Western's Silver Springs Property
 1. Notice of No Overbidders for Silver Springs Property Sale
 2. Order Approving Western's Silver Springs Property
- o Atty Aguirre Notice of Appeal
 1. Atty Aguirre Motion to Appeal and Stay
 2. Receiver's Oppositions to Motion to Stay and Appeal
 3. SEC's Opposition to Atty Aguirre Stay Pending Appeal
 4. Atty Aguirre Reply to Oppositions
 5. Receiver's Motion to Dismiss
 6. Atty Aguirre Opposition to Motion to Dismiss
 7. Receiver's Reply to Opposition to Motion to Dismiss
 8. Court Order Denying Stay Pending Appeal
- o Receiver's 15th Interim Report
 1. Atty Aguirre Objection to Receiver's 15th Interim Report
- o Fee Applications #14
 1. Receiver's 14th Fee Application
 2. Allen Matkins 14th Fee Application
 3. Atty Aguirre Opposition to Fee Application
- o Fee Applications #15
 1. Receiver's 15th Fee Application
 2. Allen Matkins 15th Fee Application
 3. Duffy's 6th Fee Application
 4. Atty Aguirre Opposition to Fee Application
- o Receiver's Motion to Engage CBRE as Real Estate Consultant
 1. Atty Aguirre's Opposition to Receiver's Motion to Engage CBRE
 2. Receiver's Reply to Atty Aguirre's Opposition
 3. Court Order Approving Engagement of CBRE
- o Receiver's 16th Interim Report
- o Atty Aguirre Motion to Intervene on Behalf of Addn Investors
 1. Receiver's Opposition to Motion to Intervene
 2. SEC's Opposition to Motion to Intervene

3. Court Order Denying Motion to Intervene

Email Thomas C. Hebrank: wfp@ethreadvisors.com

Pages

- [About Us](#)
- [Services](#)
 - [Problem Resolution/Fiduciary](#)
 - [Real Estate Management](#)
- [Projects](#)
 - [Receivership – Real Estate](#)
 - [Retail](#)
 - [Hospitality](#)
 - [Multi-Family, Single-Family, Office](#)
 - [Receivership – Operating Businesses](#)
 - [Bankruptcy](#)
 - [Forensic Accounting & Litigation Support](#)
 - [Referee, Liquidating Agent, Provisional Director](#)
 - [SEC & Other Regulatory Agencies](#)
 - [Other](#)
- [Professionals](#)
 - [Krista L. Freitag](#)
 - [Thomas C. Hebrank](#)
 - [Alicia Herren](#)
 - [Steven M. Hoslett](#)
 - [Geno Rodriguez](#)
 - [Lisa Ryan](#)
- [SEC Case Docs](#)
 - [SEC v. World Capital Market Inc.; WCM777 Inc.; WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Ming XU a/k/a Phil Ming XU](#)
 - [SEC v. Louis V. Schooler and First Financial Planning Corp d/b/a Western Financial Planning Corp](#)
 - [SEC v. Copeland Wealth Management](#)
 - [SEC v. Alvin R. Brown, First Choice Investment, Inc., and Advanced Corporate Enterprises, Inc. d/b/a A-Corp Enterprises a/k/a ACorp Development a/k/a A-Corp Investment](#)
- [CFPB Case Docs](#)
 - [Consumer Financial Protection Bureau and Maria T. Vullo, Superintendent of Financial Services of the State of New York, Plaintiffs, v. Pension Funding, LLC; Pension Income, LLC; Steven Covey; Edwin Lichtig; and Rex Hofelter, Defendants](#)
- [Contact](#)

E3 Press Release

- [E3 Celebrates its 3rd Year Anniversary](#)
- [E3 Advisors Closes On \\$131.5 Million Sale Of Legends Outlets – Kansas City](#)
- [E3 Advisors Completes Successful 1st Year](#)

Press Archive

Press Archive ↕

All Material Copyright ©2012–2016 E3 Advisors | All Rights Reserved

Exhibit 10



March 18, 2013

Investors/General Partners:

As I have previously advised you, pursuant to orders of the United States District Court for the Southern District of California in an action filed by the Securities and Exchange Commission, I was appointed receiver over Western Financial Planning Corporation ("Western") and the General Partnerships set up by Western. My appointment by the District Court was based on its preliminary finding that the General Partnerships interests sold by Western are unregistered securities.

Generally, Receivers are required to provide notice by mail of important documents filed with the Court, including requests that the Court confirm sales of property, reports of the receiver, and fee applications. Due to the large number of investors associated with the General Partnerships (approximately 3,370), each of these mailings costs approximately \$3,000. It is critical that receiverships costs be kept to a minimum. In addition, many investors have called to state their frustration with receiving these mailings and not understanding why they were sent out.

Accordingly, the Receiver requested that the Court allow him to post these documents on his website rather than mail them to each investor. On March 7, 2013, the Court granted the Receiver's request as follows:

"The Receiver shall send a written notice by mail to investors (1) providing them with the Receiver's web address, (2) informing them that the Receiver will post all future notices regarding petitions for confirmation of sales of property, receiver's reports, and fee applications on the Receiver's website, and (3) informing them of the option to continue receiving such notices my mail upon submission of a written request to that effect . . ."

Accordingly, the above-referenced documents can be found on our website at www.ethreadvisors.com (please refer to the "SEC Case Docs" tab at the top) and will be posted there in the future. Should you wish to continue to receive these notices my mail, please write me at E3 Advisors, 501 W. Broadway, Suite 800, San Diego, California 92101 or send an email request to wfp@ethreadvisors.com. Please include your complete mailing address in your request.

Sincerely,

A handwritten signature in dark ink that reads "Thomas C Hebrank".

Thomas C. Hebrank, CPA, CIRA
Receiver

1 DAVID R. ZARO (BAR NO. 124334)
 2 TED FATES (BAR NO. 227809)
 3 ALLEN MATKINS LECK GAMBLE
 4 MALLORY & NATSIS LLP
 5 501 West Broadway, 15th Floor
 6 San Diego, California 92101-3541
 7 Phone: (619) 233-1155
 8 Fax: (619) 233-1158
 9 E-Mail: dzaro@allenmatkins.com
 10 tfates@allenmatkins.com

11 Attorneys for Court-appointed Receiver
 12 THOMAS C. HEBRANK

13 **UNITED STATES DISTRICT COURT**

14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 SECURITIES AND EXCHANGE
 16 COMMISSION,

17 Plaintiff,

18 v.

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

23 Defendants.

Case No. 3:12-cv-02164-GPC-JMA

**NOTICE OF HEARING ON INTERIM
 APPLICATIONS FOR APPROVAL AND
 PAYMENT OF COMPENSATION TO
 RECEIVER AND HIS PROFESSIONALS**

Date: March 8, 2013
 Time: 1:30 p.m.
 Ctrm: 9
 Judge: Hon. Gonzalo P. Curiel

**NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT**

PLEASE TAKE NOTICE that on March 8, 2013, at 1:30 p.m. in Courtroom 9 of the United States District Court, Southern District of California, located at 221 West Broadway, San Diego, California 92101, the Court will consider the first interim fee applications ("First Fee Applications") of Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), and its subsidiaries and affiliates (collectively, "Receivership Entities") and his professionals.

The following table summarizes the fees and costs requested for the period September 6, 2012, through September 30, 2012:

Applicant and Role	Fees Incurred	Costs	Total Payment Requested
Thomas C. Hebrank, Receiver	\$28,705.50	\$870.86	\$29,576.36
Allen Matkins Leck Gamble Mallory & Natsis LLP, General Counsel	\$31,969.35	\$726.41	\$32,695.76
TERIS	\$12,200.00	-0-	\$12,200.00

Pursuant to Local District Court Rule 66.1(f), all interested parties are being given at least 14 days notice of the time and place of the hearing.

This notice along with the full fee applications are posted on the Receiver's website www.ethreadvisors.com (see the "SEC Case Docs" tab). A hard copy of the applications can also be obtained by emailing a request to the Receiver through the website or by sending a written request to the Receiver at 501 West Broadway, Suite 800, San Diego, California 92101.

If you oppose the First Fee Applications, you are required to file your written opposition with the Office of the Clerk, United States District Court, Southern District of California, 333 West Broadway, Suite 420, San Diego, California 92101, and serve the same on the undersigned no later than 14 calendar days prior to hearing date.

Dated: January 14, 2012

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

TED FATES
Attorneys for Court-appointed Receiver
THOMAS C. HEBRANK

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawfirm.com

Attorney for Investors Joseph Ardizzone, David R. Schwarz,
Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore

**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.: 3:12-cv-02164-GPC-JMA

**DECLARATION OF JOSEPH M
ARDIZZONE IN SUPPORT OF
ARDIZZONE INVESTORS'
MOTIONS (1) FOR A STAY OF
ORDERS PENDING APPEAL,
(2) TO ALTER OR AMEND A
JUDGMENT, AND
(3) FOR RECONSIDERATION**

Date: November 10, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

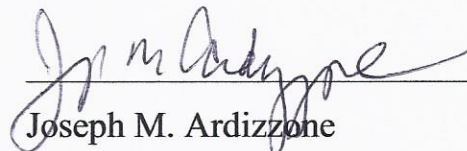
1 I, Joseph M. Ardizzone, declare as follows:

2 1. I have had the same email address continuously from 2008 to the present.

3 2. My attorney has forwarded to me Mr. Fates' email of August 26, 2016, where he
4 states: "The email was sent to Joe.ardizzonee@verizon.net. This was the email for
5 Mr. Ardizzone contained in the company records." This email address misspells
6 my email address.

7 Executed this 27th day of August 2016, in Santa Maria, California.

8 I declare under penalty of perjury under the laws of the United States that the
9 foregoing is true and correct.

10
11
12
13 
14 Joseph M. Ardizzone
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawfirm.com

Attorney for Investors Joseph Ardizzone, David R. Schwarz,
Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore

**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.: 3:12-cv-02164-GPC-JMA

**DECLARATION OF DENNIS P
GILMAN IN SUPPORT OF
ARDIZZONE INVESTORS'
MOTIONS (1) FOR A STAY OF
ORDERS PENDING APPEAL,
(2) TO ALTER OR AMEND A
JUDGMENT, AND
(3) FOR RECONSIDERATION**

Date: November 10, 2016
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

1 I, Dennis P. Gilman, declare:

2 1. I have personal knowledge of the facts set forth in this Declaration and, if
3 called as a witness, could and would testify competently to such facts under oath.

4 2. I have invested approximately \$100,000 in four general partnerships (“GPs”)
5 formed by First Financial Planning Corporation, doing business as Western Financial
6 Planning (“Western”). Other than in my capacity as an investor, I have never had any
7 business or personal connection or relationship with Louis Schooler, Western, or anyone
8 affiliated with them.

9 3. I am the Acting Chair of the *ad hoc* investors committee (“Committee”)
10 which was informally created to select counsel to represent investors in this case. The
11 Committee includes only investors who are represented by Aguirre Law, APC and who
12 volunteered to serve as members of the Committee. To the best of my knowledge, all of
13 the investors represented by Aguirre Law, including those on the Committee, oppose the
14 February 4, 2016, liquidation plan proposed by Thomas C. Hebrank (“Hebrank”),
15 because it would effectively void all GP agreements, sell all GP realty, and distribute the
16 funds pursuant to the “one pot” approach.

17 4. In August 2014, at my request, I received an Excel spreadsheet containing
18 the names and known email addresses of the partners in 85 GPs from the Administrative
19 Secretaries serving the 85 of the GPs formed by Western. I had requested this list in
20 connection with an email sent by Hebrank on August 4, 2014, forwarding the Court’s
21 order of July 22, 2014, which set a deadline of September 12, 2014, for the GPs to file
22 papers with the Court. I used the email addresses on the list to send an email to investors,
23 but the email addresses were highly unreliable. There was no email address for hundreds
24 of investors and many hundreds of emails were returned undelivered.

25 5. In late August 2016, I reexamined the investor list I had obtained in August
26 2014 from the GPs’ Administrative Secretaries. I sent a test email to the investors who
27 had an email on the list. A total of 731 emails were returned undelivered. Of those 731,
28 494 were undelivered because the email address could not be found for one reason or

another. The reason for the non-delivery of the other 237 emails varied and was less clear.

6. There was no email addresses for 578 of the investors shown in the 2014 investor list. The Committee endeavored to contact approximately 70 of these 578 investors with no listed email address to ascertain whether Hebrank was communicating with them through other email address or by U.S. mail. The 70 investors appeared to be partners in the GPs that would benefit by the enforcement of the GP agreements. The Committee did not wish to contact investors whose interests may not be in common with their own.

7. On September 1, 2016, David Karp, the prior Chair of the Committee, wrote a letter to the 70 investors, which was sent by U.S. Mail. The letter requested the recipients to answer four questions:

1. Have you received any letters or postcards from the receiver, E-3 Advisors (including Thomas C. Hebrank and Geno Rodriguez) by U.S. mail?
 _____yes _____no
2. If your answer to question #1 is yes, please state the approximate number and dates of those letters and postcards if you know.
3. Have you received any emails from the receiver, E-3 Advisors (including Thomas C. Hebrank and Geno Rodriguez)?
 _____yes _____no
4. If your answer to question 3 is yes, please state the approximate number and dates of those emails if you know them.

8. The letter included a stamped envelope with my address and the Investors were asked to answer the above questions and return the letter to me.

9. Between September 7 and September 12, 2016, I received responses from 15 investors by U.S. Mail. I opened the letters and tallied the answers as follows:

Question	Total	Yes	% Yes	No	% No
1. Received Letters or Postcards	15	2	13.33	13	86.67
2. Dates of Letters or Postcards if known	1. Two-three years ago 2. January 27, 2015				
3. Received emails	15	0	0.00	15	100.00
4. Dates of emails if known	There were none				

10. The table above shows the absolute number and proportion of the 15 investors who answered YES or NO for each question presented in the letter sent to them on September 1, 2016.

Executed this 12th day of September 2016, in Sparks, Nevada.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



DENNIS P. GILMAN

Gary J. Aguirre (SBN 38927)
Aguirre Law, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072
Email: Gary@aguirrelawfirm.com

Attorney for Investors Joseph Ardizzone, David R. Schwarz,
Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore

**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.: 3:12-cv-02164-GPC-JMA

**DECLARATION OF ALICE
JACOBSON IN SUPPORT OF
ARDIZZONE INVESTORS'
MOTIONS (1) FOR A STAY OF
ORDERS PENDING APPEAL,
(2) TO ALTER OR AMEND A
JUDGMENT, AND
(3) FOR RECONSIDERATION**

Date: November 10, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

1 I, Alice Jacobson, declare:

2 1. I have personal knowledge of the facts set forth in this declaration and, if
3 called as a witness, could and would testify competently to such facts under oath.

4 2. I worked for Western Financial Planning Corp. ("Western") and Louis V.
5 Schooler from April 1980 until September 2012. My job was to pay all expenses,
6 including commissions, track deposits, and track each investor's purchase in each general
7 partnership ("GP"). There were no computers at that time.

8 3. From September 2012 through March 2015 I continued with Western with
9 essentially the same duties, except I reported to Thomas C. Hebrank ("Hebrank"), the
10 receiver, and his staff.

11 4. Before Hebrank was appointed receiver, Western's staff had no practice to
12 maintain accurate email addresses for investors or to obtain email addresses for the
13 investors. Western communicated with investors by U.S. mail, so updating the email list
14 was never a priority.

15 5. After Hebrank was appointed Receiver, I can recall no instruction from him
16 or his staff to take any action to obtain email addresses from investors for whom we had
17 no address or to update email addresses.

18 6. From September 2012 to March 2015, our primary means of communication
19 with investors was by U.S. mail. The mailing address for these investors was reasonably
20 accurate when Hebrank was appointed receiver in September 2012.

21 7. I have read Hebrank's declaration of August 23, 2016, (Dkt. No. 1355-1)
22 and in particular the paragraph that reads as follows:

23 On or about October 5, 2012, after the Court entered its order instructing me
24 to provide notice of my appointment to investors, I instructed Alice
25 Jacobson and Beverly Shuler ("Former Partnership Administrators") to mail
26 a letter to each investor at their address contained in the Receivership
27 Entities' books and records. The letter directed investors to the website
28 dedicated to the receivership, on which the TRO and related pleadings and
orders had been posted and were available to review, and instructed them to
visit the website for further updates about the receivership.

1 I do not recall any such instruction from Hebrank. To the best of my recollection, neither
2 I nor Beverly Schuler sent Hebrank's letter of October 12, 2012, to investors. To the best
3 of my recollection, the letter was sent by Hebrank's attorney, Ted Fates ("Fates") in
4 October 2012. On October 25, 2012, Hebrank sent Beverly Schuler and me an email
5 informing us that "quite a few letters" to investors had been "returned as undeliverable."
6 A true and correct copy of Hebrank's email to me and Beverly Schuler is attached hereto
7 and incorporated herein as Exhibit 1.

8 8. When Western sent a letter to all investors, we used an outside firm, Allstate
9 Mailing Service ("Allstate"). Allstate copied, addressed, paid the postage and sent the
10 letters. Allstate then billed Western for these services. The partnerships then reimbursed
11 Western for the mailing costs. The billings from Allstate for costs incurred in October
12 2012 show no charge for Hebrank's October 12, 2012, letter.

13 Executed this 13th day of September 2016, at San Diego, California.

14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct.

16
17 
18 Alice Jacobson
19
20
21
22
23
24
25
26
27
28

DECLARATION OF ALICE JACOBSON

12cv02164

Exhibit List

Exhibit 14

Exhibit 1

From: Tom Hebrank [mailto:thebrank@ethreadvisors.com]
Sent: Thursday, October 25, 2012 10:05 AM
To: 'Alice Jacobson'; 'Beverly Schuler'
Cc: 'Geno Rodriguez'
Subject: FW: Investor returned mail

We received quite a few letters that were returned as undeliverable for the general partners (please see the second tab on the attached excel spreadsheet). Do you have updated addresses for these individuals?

Thanks - Tom

Thomas C. Hebrank
E3 Advisors

1 Gary J. Aguirre (SBN 38927)
2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawfirm.com

8 Attorney for Joseph M. Ardizzone, David R. Schwarz,
9 Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore.

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

12
13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

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

22 Defendants.

Case No.: 3:12-cv-02164-GPC-JMA

ARDIZZONE INVESTORS'
NOTICE OF OBJECTIONS TO
INADMISSIBLE STATEMENTS IN
THOMAS C. HEBRANK'S
DECLARATION (DKT. NO. 1355-1)

Date: November 10, 2016

Time: 1:30 p.m.

Dept.: 2D

Judge: Hon. Gonzalo P. Curiel

Investors Joseph M. Ardizzone, David R. Schwarz, Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore (“Ardizzone Investors”) give notice of their objects, object, and move to strike to the statements in the declaration of Thomas C. Hebrank (“Hebrank”)(Dkt. No. 1355-1) on the grounds specified below:

1. The witness has no foundation to give the testimony, because he was not a percipient witness to the relevant events. See *PNC Bank, N.A. v. Smith*, 2013 U.S. Dist. LEXIS 6141 (E.D. Cal. Jan. 14, 2013)(witness testimony by affidavit must be based on the percipient knowledge about the facts they personally experience.);
2. The evidence is inadmissible under Fed. R. Evid. 802 (the rule against hearsay);
3. The evidence is inadmissible under the “best evidence rule” and Fed. R. Evid. 1002 (requirement of the original); and
4. The evidence is inadmissible under Fed. R. Evid. 401 (relevant evidence).

I. Ardizzone Investors Object to Statements in Hebrank’s Declaration

A. *Statement 1 at paragraph 3 of Hebrank’s Declaration:*

“I instructed Alice Jacobson and Beverly Shuler (“Former Partnership Administrators”) to mail a letter to each investor at their address contained in the Receivership Entities’ books and records.”

Objections to Statement 1

1. The Ardizzone Investors object to this statement on the grounds that Hebrank’s instructions to the former partnership administrators are irrelevant to any issue in this case, unless those instructions were carried out and there is no evidence they were.
2. To the extent Hebrank’s statement is offered to prove that the letters were actually sent, the Ardizzone Investors object on the grounds that Hebrank has not shown to be a percipient witness to the sending of the letters and, for such purpose, his statement would be an inadmissible conclusion of fact.
3. The statement is vague and uncertain in that it fails to state whether

investors received the letter, whether the notice specified a return address, and how many letters were returned undelivered.

4. The statement the letters went to investors addresses contained in the
5. “Receivership Entities' books and records” is also vague and uncertain and without foundation in that it assumes investors’ home addresses were maintained in such records and they were constantly updated with accurate information.

B. Statement 2 at paragraph 5 of Hebrank’s Declaration

“The Court’s July 22, 2014 Order was emailed to Mr. Ardizzone as directed in the final paragraph of that order.”

Objections to Statement 2

1. The Ardizzone Investors object to this statement on the grounds that Hebrank has not established a foundation for this statement, i.e., that he had Ardizzone’s email address.
2. The statement by Hebrank’s attorney, Ted Fates, conclusively establishes that Hebrank had an erroneous email address for Ardizzone since Hebrank became receiver in this case email address. See Aguirre Declaration filed herewith (“Aguirre Decl.”), ¶¶ 7 and 8, Exhibits 4 and 5.

C. Statement 3 at paragraph 5 of Hebrank’s Declaration

“Mr. Rodriguez emailed Mrs. Schwarz about her 2015 K-1 tax statement. Mrs. Schwarz responded to the email and Mr. Rodriguez directed her to the receivership website and the information packet concerning Checkered Flag Partners.”

Objections to Statement 3

1. The Ardizzone Investors object to this statement on the grounds that it is vague, uncertain, inadmissible hearsay, violates the best evidence rule, and contains factual conclusions. Since the communications were made by email, the best evidence of their contents are the emails themselves, which

1 the Ardizzone Investors have offered into evidence. See Aguirre Decl, ¶ 9,
2 Exhibit 6.

3
4 DATED: September 13, 2016

Respectfully submitted,

5
6 By: /s/ Gary J. Aguirre
7 GARY J. AGUIRRE
8 Aguirre Law, A.P.C.
9 gary@aguirrelawapc.com
10 Attorney for Investors Joseph M.
11 Ardizzone, David R. Schwarz,
12 Lois Schwarz, Dennis Frisman, Eric
13 Gilbert, and Rick Moore
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28