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

12 **SECURITIES AND EXCHANGE**  
13 **COMMISSION,**

14 Plaintiff,

15 vs.

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

21 Defendants.

Case No. 12 CV 2164 GPC JMA

**PLAINTIFF SECURITIES AND**  
**EXCHANGE COMMISSION'S**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN OPPOSITION TO**  
**NON-PARTY INVESTORS' MOTION**  
**(1) FOR A STAY; (2) TO ALTER OR**  
**AMEND A JUDGMENT; (3) AND**  
**FOR RECONSIDERATION**

Dkt. No. 1368

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

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1 **I. INTRODUCTION**

2 Six investors represented by Gary Aguirre have filed yet another motion seeking  
3 to (1) stay the execution of the orderly sales plan, the sale of the Jamul Valley  
4 property, and the retention of CBRE by the Receiver; (2) for reconsideration of their  
5 prior motion to intervene; and (3) for reconsideration of the Court’s prior orders  
6 regarding the sale of the Jamul Valley property and the retention of CBRE. *See*  
7 *generally* Dkt. No. 1368-1. Once again, Mr. Aguirre and the investors he represents  
8 seek to re-litigate asset disposition issues that have already been decided by the Court,  
9 and to make specious arguments regarding the purported lack of notice by the Receiver  
10 and the SEC. *See* Dkt. Nos. 1229, 1230, 1258, 1348. The Securities and Exchange  
11 Commission (“SEC”) opposes the motion.

12 The Court already rejected previous requests by investors represented by Mr.  
13 Aguirre for this and similar relief, permitting them to intervene for the sole purpose of  
14 commenting on the receiver’s asset distribution motion. Despite this, Mr. Aguirre has  
15 now filed what is essentially the fifth version of the same motion. Because he makes  
16 much of the same arguments, the SEC opposes the motion for all the reasons it gave in  
17 its oppositions to Mr. Aguirre’s previous motions to intervene and overturn the Court’s  
18 prior rulings, and for the following reasons:

19 In short, Mr. Aguirre argues in this motion, as he has in the past, that the  
20 Receiver and the SEC have somehow violated investors’ due process rights by failing  
21 to give investors notice “at each step in the receivership proceedings.” Dkt. No. 1368-  
22 1 at p. 2. The Court has already rejected this argument. Although Mr. Aguirre claims  
23 he has new evidence, he has simply rehashed his previous arguments regarding the  
24 sufficiency of the email notices sent by the Receiver and the Receiver’s reliance on the  
25 Court’s March 7, 2013 order that permitted the Receiver to give substitute notice on his  
26 website. *See id.* at pp. 2-4, 7-17; *see also* Dkt. No. 170 at p.3; Dkt. No. 1383  
27 (Receiver’s opposition to this motion, addressing notice arguments in detail).

1 Mr. Aguirre also argues that the Court's decision to defer notice to investors  
2 until after the temporary appointment of the Receiver cannot be reconciled with Rule  
3 66.1 and "the notice requirements of the controlling Ninth Circuit cases." Dkt. No.  
4 1368-1 at p. 20. But district courts may depart from local rules so long as "substantial  
5 rights" are not affected. In any event, the Ninth Circuit law is clear that what is  
6 required to preserve due process is notice and an opportunity for a hearing, something  
7 that investors here plainly had, both as to the permanent appointment of the Receiver,  
8 and the approval of the orderly sales and distribution plan.

9 Having previously denied Mr. Aguirre's previous motions for to stay, to  
10 intervene, and to prevent the orderly sales of Receivership assets, the SEC respectfully  
11 requests that the Court do so again, and deny his latest motion.

## 12 **II. BACKGROUND**

13 In its prior oppositions, the SEC has laid out in detail the procedural history of  
14 this matter, including the prior motions filed by Mr. Aguirre. Because that background  
15 is relevant once more it is provided below.

### 16 **A. Litigation About the Receivership**

17 The SEC commenced this enforcement action on September 4, 2012. *See* Dkt.  
18 Nos. 1, 3. This case was filed on September 4, 2012, and the Receiver was appointed  
19 on a temporary basis on September 6, 2012. Dkt. Nos. 1, 10. Defendant Louis  
20 Schooler objected to notice being given to investors and argued that such notice would  
21 irreparably harm Western's business. Dkt. No. 14. Accordingly, the Court initially  
22 decided to defer giving notice to investors until it had heard from the Securities and  
23 Exchange Commission on the issue. Dkt. No. 17 (staying the portion of the TRO that  
24 instructed the Receiver to give notice to investors); Dkt. No. 22 (declining to lift the  
25 stay on the investor notice provision in the TRO). On October 5, 2012, the Court  
26 instructed the Receiver to provide notice of his appointment to investors based "on a  
27 preliminary finding that their interests are unregistered securities." Dkt. No. 44, p. 22,  
28 fn. 11. The Receiver did so, as evidenced by the fact that his counsel incurred a

1 \$1,516.05 charge for postage for the mailing. Dkt. No. 1386-1 at p. 8. Thus, investors  
2 were provided notice and an opportunity to be heard.

3 Five months later, on March 13, 2013, the Court entered a preliminary  
4 injunction enjoining the defendants from violating Section 5 of the Securities Act of  
5 1933 (the “Securities Act”), and appointed Thomas Hebrank as the permanent equity  
6 receiver in the case. *See* Dkt. No. 174. This receivership included defendant First  
7 Financial Planning Corporation d/b/a Western Financial Planning Corporation  
8 (“Western”), as well as the 87 GPs, whose interests the defendants had offered and  
9 sold to investors as part of the fraudulent and illegal scheme alleged (and later proven)  
10 by the SEC. *See id.*

11 Almost a year later, the SEC moved for summary judgment on the issue of  
12 whether the interests in the general partnerships, or “GPs,” sold by defendants were  
13 securities. The Court granted that partial summary judgment motion on April 25,  
14 2014. *See* Dkt. No. 583. Having settled that threshold issue, the SEC moved for  
15 summary judgment on its Section 5 claim alleging that the defendants offered and sold  
16 these securities without registration. On May 19, 2015, the Court granted that motion.  
17 *See* Dkt. No. 1074. The Court then granted, in part, the SEC’s motion for summary  
18 judgment on its fraud claims against the defendants on June 3, 2015, finding that the  
19 defendants had defrauded their investors in connection with the offer and sale of  
20 securities related to the Stead, Nevada property. *See* Dkt. No. 1081.

21 The Court entered final judgment against defendant Louis Schooler on January  
22 21, 2016, permanently enjoining him from violations of Sections 5(a), 5(c) and 17(a)  
23 of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5  
24 thereunder. *See* Dkt. Nos. 1170, 1190. As part of that judgment, Schooler was ordered  
25 to pay over \$147 million in monetary remedies. *See id.*

26 While the SEC was prosecuting its enforcement action against the defendants,  
27 issues regarding the scope of the receivership and the conduct of the receiver were  
28 heavily litigated. During that time, hundreds of investors were allowed to express their

1 views to the Court. Between February and July 2013, over 220 investors filed letters  
2 with the Court, the vast majority of which complained about the receiver and requested  
3 that the GPs be removed from receivership. *See* Dkt. No. 470 (order releasing GPs  
4 from receivership) at 14-15. On August 16, 2013, the Court issued an order releasing  
5 the GPs from the receivership. *See id.* The Court spent over two pages of that order  
6 reviewing and analyzing the content of these investor letters. *See id.* at 14-17.

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

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

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

27 On March 4, 2015, after considering arguments from all of the parties, as well as  
28 arguments from the investors, the financial analysis of the GPs prepared by the

1 receiver, and the evidence presented by the parties regarding the conduct of the  
2 receiver in this case, the Court decided to keep the GPs in the receivership and to keep  
3 Mr. Hebrank as the receiver. *See* Dkt. Nos. 1003, 1004. The Court specifically noted  
4 that, in making its final determination to keep the GPs in receivership, it had  
5 considered all of the additional investor letters commenting on the receiver's  
6 November 2014 report. *See* Dkt. No. 1003 at 1-2.

### 7 **B. The Numerous Investor Motions**

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

15 This activity began in February 2016, when the receiver requested the Court to  
16 modify part of the Court's prior order approving the sale of the Jamul Valley property.  
17 *See* Dkt. No. 1191. The modification was necessary to satisfy the title insurer. *Id.* On  
18 March 7, 2016, in compliance with a prior Court order, the receiver asked the Court to  
19 approve his retention of listing agents for ten other properties. *See* Dkt. No. 1203. In  
20 response, the Aguirre Investors filed at least 15 pleadings—nine in response to the  
21 February 26th application (before Mr. Aguirre was even retained), and three for the  
22 March 7th application. *See* Dkt. Nos. 1194, 1194-1, 1194-2, 1194-3, 1198, 1199,  
23 1200, 1201, 1202 (responding to the Feb. 26, 2016 application, Dkt. No. 1191), Dkt.  
24 Nos. 1204, 1204-1, 1206 (responding to the Mar. 7, 2016 application, Dkt. No. 1203).

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

27 • On April 1, 2016, the Aguirre Investors filed a motion to vacate the  
28 Court's prior orders approving the sale of receivership assets. Dkt. No. 1221.



1           • That same day, the Aguirre Investors also filed a motion seeking an  
2 accounting by the receiver, or in the alternative, and audit of the receivership,  
3 predicated on a complete falsehood: their assertion that the receiver “keeps no books  
4 and records.” Dkt. No. 1223-1 at 3.

5           • Also on April 1, the Dillon Investors filed a motion to unseal all  
6 previously sealed documents in the Court’s docket, despite the fact that the receiver  
7 had previously provided unredacted copies of these materials to Dillon. Dkt. No. 1222.

8           • On April 8, both the Mr. Aguirre and Dillon Investors filed motions to  
9 intervene. Dkt. Nos. 1227 and 1229.

10          • Also on April 8, the Aguirre Investors filed a notice of intent to file yet  
11 another opposition to the sale of the Jamul property. Dkt. No. 1226.

12          • On April 8, the Dillon Investors filed another motion to unseal previously  
13 sealed documents in the Court’s docket. Dkt. No. 1228. The Aguirre Investors joined  
14 that motion. Dkt. No. 1231.

15          • On April 11, the Aguirre Investors filed another motion seeking to vacate  
16 all of the Court’s prior orders permitting sales of receivership properties. This motion  
17 was also styled as a motion to intervene. Dkt. No. 1230.

18          • Finally, on April 21, the Aguirre Investors filed another motion seeking an  
19 accounting by the receiver, or an independent audit of the receivership. This motion  
20 was also styled as a motion to intervene. Dkt. No. 1258. Mr. Aguirre acknowledged  
21 that motion sought the same relief as two prior motions, Dkt. No. 1223 and Dkt. No.  
22 1229. *See* Dkt. No. 1258-1 at 3.

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

1 Both the Aguirre Investors and the Dillon Investors then filed motions to  
2 intervene. In the motion to intervene filed by the Aguirre Investors, they claimed they  
3 seek “to intervene in this action solely for the purposes of obtaining relief in relation  
4 [to] [sic] post judgment proceedings.” Dkt. No. 1229-1 at 4. But their supporting  
5 brief, and their proposed intervention complaint sought “an audit of the receivership,”  
6 “to modify the receivership ordered by this Court in this litigation” and “to investigate”  
7 the receiver’s management of the receivership for the past four years. *Id.* at 4, 5, Ex. A  
8 at ¶¶ 13, 14, 17, 19. Moreover, their proposed complaint sought to litigate their claims  
9 that the receiver has failed his duties in overseeing the estate for the past four years and  
10 that the receiver is conflicted because, in their view, his “primary objective is to please  
11 the SEC.” *Id.*, Ex. A at ¶ 14.

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

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

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

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

25 On May 25, 2016, the Court denied the motions filed by Mr. Aguirre on April 11  
26 and April 21, 2016. *See* Dkt. No. 1303. The Court concluded that these motions  
27 “raise[d] substantially similar issues and request substantially similar relief as that  
28 denied in the Court’s May 18, 2016 Order,” and denied them “for the same reasons as

1 set forth” in that prior order. *Id.* at p. 2.

2 On August 9, 2016, Mr. Aguirre filed another motion to intervene on behalf of  
3 three new investors. Dkt. No. 1348. That motion was denied on August 30, 2016.  
4 Dkt. No. 1359. In denying the motion, the Court noted that the only novel issue raised  
5 by the motion was the argument that the SEC and the Receiver failed to give investors  
6 notice of the Orderly Sale Process in accordance with Civil Local Rule 66.1. *Id.* at p.  
7 3. Noting that the Court had previously authorized the Receiver to fulfill the  
8 requirements of Rule 66.1 by posting notices on the Receiver’s website, the Court  
9 rejects Investors’ argument that they lacked notice. *Id.* Further, the Court noted that  
10 all of “the other arguments raised by Investors in their motion, including Investors’  
11 argument that they have been deprived of notice and the opportunity to be heard with  
12 regards to the case as a whole, have already been thoroughly considered and rejected  
13 by the Court.” *Id.*

14 Since then, Mr. Aguirre has filed two more motions to stay, intervene, and  
15 reconsider the Court’s prior rulings, one of which is the subject of this opposition.  
16 Dkt. Nos. 1368 and 1381.<sup>1</sup> Both seek substantially the same relief as the prior  
17 intervention motions and should be denied for all the reasons those were.

### 18 **III. ARGUMENT**

#### 19 **A. Mr. Aguirre Seeks Relief the Court Has Already Denied**

20 Mr. Aguirre moves on behalf of six investors out of thousands, asking that the  
21 Court (1) stay execution of the Receiver’s orderly sales plan, the sale of the Jamul  
22 property, and the Receiver’s engagement of CBRE; (2) reconsider its denial of these  
23 investors prior motion to intervene, including intervention to ask the Court to vacate its  
24 May 25, 2016 Order approving the orderly sales motion; (3) reconsider its orders  
25 granting the Receiver’s motions to engage CBRE and to sell the Jamul Valley  
26

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27 <sup>1</sup> The SEC will address the other motion (Dkt. No. 1381) in a brief to be filed on  
28 October 20, 2016.

1 property. Dkt. No. 1368-1 at p. 1.

2 This is essentially the same relief Mr. Aguirre sought on behalf of investors in  
3 prior motions. Dkt. Nos. 1229, 1230, and 1248. And even those motions were a repeat  
4 of previous motions filed by Mr. Aguirre on behalf of investors, specifically  
5 “incorporate[ing] by reference” and “refil[ing]” each of those motions. *See* Dkt. No.  
6 1229-1 at 4; *see also* Dkt. No. 1230-1 at 2:12-13 (acknowledging that their Dkt. No.  
7 1230 motion to vacate the Jamul Valley property sale was same as their earlier Dkt.  
8 No. 1221 motion, which was “re-filed” with their April 8th omnibus motion, Dkt. No.  
9 1229);<sup>2</sup> Dkt. No. 1258-1 at 3:18-19 (acknowledging that their new Dkt. No. 1258  
10 motion to seek accounting/audit of receiver was same as their earlier Dkt. No. 1223  
11 motion, which was “re-filed” with their April 8th omnibus motion, Dkt. No. 1229).

12 The Court denied these all of these motions as moot, unsupported, or untimely.  
13 Dkt. Nos. 1296 and 1303, 1359. Mr. Aguirre has no new evidence or law to offer in  
14 support of this motion for reconsideration. Instead, he simply repackages the same  
15 arguments regarding notice and due process that the Court considered and rejected in  
16 connection with the last intervention motion. *See* Dkt. No. 1359 at 3. Once again,  
17 there is no justification for filing an additional, duplicative motion seeking the same  
18 relief Mr. Aguirre has already sought and been denied.

### 19 **B. The Investors Due Process Rights Have Been Protected**

20 The bases for Mr. Aguirre’s motion are the same notice violations that he cited  
21

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22 <sup>2</sup> In their April 8, 2016 motion to intervene, the Aguirre Investors sought not only to  
23 vacate the Jamul Valley property sale, as they did before; they also sought to vacate all  
24 of the Court’s prior orders relating to property sales. Specifically, the Aguirre  
25 Investors sought to vacate: (1) the Court’s June, 17, 2015, order (Dkt. No. 1085)  
26 approving the sale of the Jamul Valley property; (2) the May 12, 2015 order (Dkt. No.  
27 1069) setting an “orderly sale” process for the receivership properties; and (2) the  
28 January 14, 2016 order (Dkt. No. 1168) “to the extent it granted the Receiver’s  
recommendations to (1) sell any property and (2) enter into any broker agreements to  
sell any property.” Dkt. No. 1230-1 at 2.

1 to in his prior motion. *Cf.* Dkt. No. 1348-1 at pp. 4-9 and Dkt. No. 1368-1 at pp. 2-4  
2 and 7-25. There is nothing new about any of this that warrants reconsideration by the  
3 Court. Neither the SEC nor the Receiver has violated anyone’s due process rights, and  
4 these matters have already been adjudicated by the Court.

5 **1. Due Process requires notice and the opportunity to be heard**

6 Mr. Aguirre argues that the SEC’s brief opposing his prior motion on these  
7 matters failed to cite authority to support the contention that the notices investors have  
8 received complied with due process. Dkt. No. 1368 at p. 17. In fact, the SEC has  
9 addressed these authorities in prior filings, but they bear repeating here. *See e.g.*, Dkt.  
10 No. 1325 at pp. 4-6. As the Ninth Circuit has made clear, a district court may exercise  
11 *quasi in rem* jurisdiction and include in a receivership all property in a defendant’s  
12 possession or control, even if such property is owned by non-parties to the action (such  
13 as the GPs here). *SEC v. Am. Principals Holding, Inc. (In re San Vicente Med.*  
14 *Partners Ltd.)*, 962 F.2d 1402, 1406-08 (9th Cir. 1992) (“*San Vicente*”). In that  
15 context, “a district court has the power to include the property of a non-party limited  
16 partnership in an SEC receivership order as long as the non-party . . . receives actual  
17 notice and an opportunity for a hearing.” *Id.* at 1408. The Ninth Circuit in *San Vicente*  
18 explained that when property belonging to a non-party is placed under receivership,  
19 due process will be satisfied if the non-party owner receives actual notice and an  
20 opportunity for a hearing “before any material deprivation of a property interest  
21 occur[s].” 962 F.2d at 1407-08. “[W]here persons may be deprived of their property,  
22 the Due Process Clause requires ‘notice reasonably calculated, under all the  
23 circumstances, to apprise interested parties of the pendency of the action and afford  
24 them an opportunity to present their objections.’” *Taylor v. Yee*, 780 F.3d 928, 933  
25 (9th Cir. 2015) (*quoting Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,  
26 314 (1950)). The notice provided here was reasonably calculated, under all the  
27 circumstances, to apprise the GP investors of the progress of the litigation.

28 Mr. Aguirre has not argued, because he cannot, that any of the GP investors

1 suffered a material deprivation of a property interest prior to receiving notice and an  
2 opportunity to be heard. As the record makes clear, the Court gave the investors actual  
3 notice and an opportunity to be heard *before* the Receiver was permanently appointed  
4 in March 2013, and again *before* approving the Receiver's distribution plan. Indeed,  
5 when defendants brought similar due process concerns to the Court's attention in 2013,  
6 the Court found that "investors have not yet been denied due process because the  
7 Receiver's actions in relation to the GPs have not deprived the GPs of any material  
8 property interest." Dkt. No. 470 at p. 19. In order to allay such concerns, the Court  
9 then allowed GP investors to file briefs and heard several hours of argument from GP  
10 investors on these issues (Dkt No. 629; Dkt. No. 790), and it expressly took their views  
11 into account in deciding to keep the GPs under the receivership. Dkt. No. 1003 at 1, 4.

12 Although Mr. Aguirre goes to great lengths to try and attack the particulars of  
13 how the Receiver gave notice to investors during the course of this case, he fails to  
14 identify how any of these supposed failure caused his clients or any others a material  
15 deprivation of their rights. For this reason alone, his due process argument should be  
16 rejected, again.

## 17 **2. The SEC and the Receiver provided notice to the investors**

18 Mr. Aguirre's argument that the investors' due process rights were violated here  
19 are utterly lacking in merit. For one, Mr. Aguirre's specific challenges, based only on  
20 his "estimates" of how many people received the Receiver's emails or accessed the  
21 Receiver's website, are soundly rejected by the facts provided by the Receiver in his  
22 opposition to the instant Aguirre Investor motion, and the SEC does not repeat those  
23 points here. *See* Dkt. No. 1383. The methods used by the Receiver and endorsed by  
24 the Court have been very successful in notifying the investors of the steps taken by the  
25 Receiver in this case.

### 26 **a. Notice of the receivership was sufficient**

27 As he has done in the past, Mr. Aguirre challenges the notice given to investors  
28 before the appointment of the Receiver. But it is beyond dispute that at the time of his

1 preliminary appointment in October 2012, the receiver was directed to provide  
2 investors written notice of the action. Dkt. No. 44, at n. 11. He did so, and directed  
3 them to his website for further updates. Mr. Aguirre cannot deny this this—in fact, he  
4 acknowledges that this mailing took place and that the Receiver’s counsel incurred a  
5 \$1,516.05 charge for postage for the mailing. Dkt. No. 1386-1 at p. 8. Also, the court  
6 record clearly shows that investors received notice before the Receiver was  
7 permanently appointed. In February 2013, investors sent the Court numerous letters in  
8 February 2013 filed in the court docket. *See, e.g.* Dkt. Nos. 77, 79, 84, 87, 90, 92, 94,  
9 96, 103, 105, 107, 109, 111-116, 119, 121-131, 133, 135, 137-139, 142-165, 168. The  
10 Receiver’s appointment did not become permanent until March 2013, months after  
11 notice was sent and investors responded. Dkt. No. 174.

12 Despite this, Mr. Aguirre continues to argue, as he did before, that the notice  
13 provided violated Local Rule 66.1. Dkt. No. 1386-1 at p. 8. The only notice  
14 requirement regarding investors under Local Rule 66.1.a.2 is the requirement that the  
15 **Receiver** give notice to the “creditors listed” in a list that the defendants are obligated  
16 under the rule to provide. L. R. 66.1.a.2. As to that requirement, Mr. Aguirre claims  
17 the Court erred in deferring notice until after the temporary appointment of the  
18 Receiver, because the Court’s order contravened the local rule, and somehow  
19 contravened “the notice requirements of the controlling Ninth Circuit cases.” Dkt. No.  
20 1368-1 at p. 20. Neither argument is well-taken. Courts in this Circuit can, and  
21 frequently do, issue orders that modify the provisions of the local rules. *See Prof’l*  
22 *Programs Grp. v. Dep’t of Commerce*, 29 F.3d 1349, 1353 (9th Cir. 1994) (district  
23 courts may depart from local rules so long as “substantial rights” are not affected).  
24 And, as explained above, the GP investors did not suffer any “material deprivation of a  
25 property interest” before receiving notice and an opportunity to be heard regarding the  
26 appointment of the Receiver. That is sufficient due process. *See San Vicente* 962 F.2d  
27 at 1407-08; *Prof’l Programs Grp.*, 29 F.3d at 1353.

28

1                   **b. Notice of the orderly sales plan motion was sufficient**

2           Mr. Aguirre also, again, argues that the SEC and the Receiver failed to give  
3 investors required notice of the Receiver’s February 2016 motion in support of a  
4 distribution plan. But again, this argument is simply not supported by the record,  
5 which establishes that investors did receive the required notices.

6           Mr. Aguirre argues that the Receiver failed to comply with Local Rule 66.1  
7 because he claims the orderly sales motion was somehow “a petition for the payment  
8 of dividends to creditors” and thus notice should have been sent by mail pursuant to  
9 Local Rule 66.1.f.1. Dkt. No. 1368-1 at p. 23. But the orderly sales and distribution  
10 motion did not seek to pay any dividends or distributions to any investors or creditors;  
11 indeed, no distributions can be made without further orders of the Court. The motion  
12 simply asked the Court to approve a distribution methodology. Actual distributions to  
13 investors will be made only after further orders have been entered approving the  
14 allowed amounts of investor claims and specifically authorizing distributions to be  
15 made. Dkt. No. 1181, Exh. E at pp. 3-4. Therefore, Local Rule 66.1.f.1 does not  
16 apply. This point was made by the SEC and the Receiver the last time Mr. Aguirre  
17 made this motion, and Mr. Aguirre continues to simply ignore it. *See* Dkt. No. 1355 at  
18 p. 8; Dkt. No. 1356 at p. 10.

19           As Mr. Aguirre knows, the Court previously issued an order permitting the  
20 Receiver to give notice of hearings on the Receiver’s website for any actions where  
21 Rule 66.1.f requires notice, except for petitions for payment of dividends or the  
22 discharge of the Receiver, neither of which apply. *See* Dkt. No. 1348-2 at p. 5, *citing*  
23 Dkt. No. 170 at p. 3; *see also* L.R. 66.1.f. Here, the Receiver emailed the notice of the  
24 hearing for his February 2016 motion, and posted the motion on his website when it  
25 was filed, just as the Court’s order permitted him to do. Dkt. No. 1355-1 at ¶ 4.

26           Indeed, Mr. Aguirre’s complaints about that notice ring hollow given that the  
27 investors he himself represented received notice and successfully moved to intervene  
28 for the limited purpose of opposing that proposal. *See SEC v. Am. Capital Invs., Inc.*,



1 98 F.3d 1133, 1147 (9th Cir. 1996) (“[A]ppellants can prove no due process violation  
2 without showing prejudice,”); *SEC v. Wencke*, 783 F.3d 829, 837-38 (9th Cir. 2986).  
3 There can be no dispute that the investors, as well as Mr. Aguirre, were on notice of  
4 the motion and had the opportunity to be heard at the hearing. As Mr. Aguirre well  
5 knows, after the Court granted the investors a limited intervention for the purposes of  
6 being heard on the motion,<sup>3</sup> Mr. Aguirre himself filed three substantive briefs  
7 regarding the motion on behalf of the Aguirre Investors,<sup>4</sup> the Dillon Investors filed an  
8 opposition and hired a consultant who prepared and provided a report regarding the  
9 proposal,<sup>5</sup> the Court received numerous letters from investors,<sup>6</sup> a large group of  
10 investors attended the May 20, 2016 hearing, and Mr. Aguirre and Mr. Dillon, an  
11 behalf of their investor-clients, argued at length at the hearing. All of these materials  
12 and input were considered by the Court before ruling on the motion. *See* Dkt. No.  
13 1304 at pp. 2 and 11 (identifying the “Dillon Resp., ECF No. 1234; Mr. Aguirre Resp.,  
14 ECF No. 1235; Rec. Dillon Reply, ECF No. 1262; Mr. Aguirre Reply, ECF No. 1263;  
15 Receiver’s Court-Ordered Proposal Regarding GPs (“Rec. CO Prop.”), ECF No. 1264;  
16 Receiver’s Supplement to Court-Ordered Proposal Regarding GPs (“Rec. CO Supp.”),  
17 ECF No. 1275; Mr. Aguirre SEC Sur-reply, ECF No. 1277; Mr. Aguirre CO Resp.,  
18 ECF No. 1293; Rec. CO Reply, ECF No. 1294. The Court has also received a number  
19 of letters from individual investors concerning the Receiver’s motion. *See, e.g.*, ECF  
20 Nos. 1240, 1242, 1244, 1249–1257, 1282, 1283, 1288.”). Thus, there is simply no  
21 basis for Mr. Aguirre to claim that the investors’ due process rights were violated.

22 Therefore, Mr. Aguirre has once again failed to provide the Court with any  
23 grounds for reconsidering its prior orders, and Mr. Aguirre’s motion should be denied.  
24 As a final note, the SEC shares the Receiver’s concern that the expense and delay

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26 <sup>3</sup> Dkt. No. 1296.

27 <sup>4</sup> Dkt. Nos. 1235, 1277, and 1293.

28 <sup>5</sup> Dkt. Nos. 1234 and 1234-2.

<sup>6</sup> Dkt. Nos. 1240, 1242, 1244, 1249–1257, 1282, 1283, 1288.

1 caused by Mr. Aguirre's serial motions have already caused substantial harm to the  
2 95% on investors that Mr. Aguirre does not represent, since they are forced to bear the  
3 costs to the Receiver of responding to these frivolous motions and their distributions  
4 are being delayed by his efforts. *See* Dkt. No. 1383 at pp. 7-9.

5 **IV. CONCLUSION**

6 For all the forgoing reasons, the SEC requests that the Court deny Mr. Aguirre's  
7 most recent motion to stay the action and reconsider the Court's prior rulings.

8 Dated: October 13, 2016

9 */s/ Lynn M. Dean*

10 \_\_\_\_\_  
11 John W. Berry  
12 Lynn M. Dean  
13 Sara D. Kalin  
14 Attorney for Plaintiff  
15 Securities and Exchange Commission  
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**PROOF OF SERVICE**

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

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

On October 13, 2016, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NON-PARTY INVESTORS’ MOTION (1) FOR A STAY; (2) TO ALTER OR AMEND A JUDGMENT; (3) AND FOR RECONSIDERATION** on all the parties to this action addressed as stated on the attached service list:

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

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

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

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

**UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service (“UPS”) with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

**ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

**E-FILING:** By causing the document to be electronically filed via the Court’s CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

**FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

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

Date: October 13, 2016

/s/ Lynn M. Dean

Lynn M. Dean

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

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