

1 JOHN W. BERRY, Cal. Bar. No. 295760
Email: berryj@sec.gov
2 LYNN M. DEAN, Cal. Bar No. 205562
Email: deanl@sec.gov
3 SARA KALIN, Cal. Bar No. 212156
Email: kalins@sec.gov

4 Attorneys for Plaintiff
5 Securities and Exchange Commission
Michele Wein Layne, Regional Director
6 John W. Berry, Regional Trial Counsel
444 S. Flower Street, Suite 900
7 Los Angeles, California 90071
Telephone: (323) 965-3998
8 Facsimile: (213) 443-1904

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**
FINANCIAL PLANNING
CORPORATION,

19 Defendants.

Case No. 12 CV 2164 GPC JMA

PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
NON-PARTY INVESTORS' MOTION
TO INTERVENE TO OBJECT TO
RECEIVER'S SECOND REVISED
14TH, REVISED 15TH, AND
REVISED 16TH INTERIM REPORTS

Dkt. No. 1381

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

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1 The Securities and Exchange Commission (“SEC”) opposes the most recent
2 motion to intervene by non-party investors represented by Gary Aguirre (the “Graham
3 Investors”) for the purpose of objecting to the Receiver’s Second Revised 14th,
4 Revised 15th, and Revised 16th Interim Reports to this Court. The Graham Investors’
5 motion to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure should
6 be denied for the same reasons that their previous attempts to substitute themselves in
7 the place of the Court as the monitor of the Receivership were denied. *See* Dkt. No.
8 1296.

9 First, the Graham Investors do not meet the four-part test set forth in *Donnelly v.*
10 *Glickman*, 159 F.3d 405, 409 (9th Cir. 1998), to determine whether intervention as of
11 right should be granted:

- 12 (1) the applicant must assert a significantly protectable interest relating
13 to the party or transaction that is the subject of the action; (2) the
14 applicant’s interest must be inadequately represented by the parties to
15 the action; (3) disposition of the action without intervention may as a
16 practical matter impair or impeded its ability to protect that interest;
17 and (4) the applicant’s motion must be timely.

18 Although the investors falsely argue that the Court has already ruled that they satisfy
19 the first three prongs for intervention, what the Court actually held is that these
20 “elements are plausibly met *as to the Receiver’s orderly sale motion*,” not for all
21 purposes, and certainly not for purposes of substituting themselves as the monitor of
22 the Court-appointed Receiver. Dkt. No. 1296 at pp. 4-5, 8. The Court has already
23 considered the Graham Investors’ prior complaints regarding the Receiver’s reports
24 and has made appropriate direction to the Receiver. *See* Dkt. Nos. 1304 and 1369.
25 There is no need for the Graham Investors to intervene in this action for this purpose
26 now.

27 Second, the Graham Investors’ motion should be denied not only because they
28 have no standing to nitpick the Receiver’s compliance with the Standardized Fund

1 Accounting Reports (“SFARs”) guidelines, but because their complaints about specific
2 line items in the Interim Reports are meritless. To begin, the Graham Investors’
3 request that the Receiver itemize *by payor* every operational and GP note payment
4 made by the investors in a publicly available filing would be an unnecessary expense
5 to the Receivership and a gross violation of these investors’ financial privacy. *See* Dkt.
6 No. 1381-2 at pp. 4-5. The SFAR is intended to be a summary document, not a
7 detailed ledger. As the Graham investors admit, the Receiver has explained that the
8 income reported at Line Item 8 of the SFAR “consists of investor operational billing
9 and GP note payments.” Dkt. No. 1381-2 at p. 4. Thus, the source of the payments—
10 investors— has been identified. There is simply no need to detail these payments with
11 more granularity in a public document. To do so would violate the financial privacy of
12 the individual investors without any benefit to investors or the receivership estate.

13 As to the balance of the Graham Investors’ complaints, the Receiver has
14 explained in his opposition that (1) line 8 of the SFAR includes all payments made by
15 investors to GPs and all payments made by investors and GPs to Western; and (2) the
16 attorneys’ fees incurred in the LinMar litigation are stated in the quarterly fee
17 applications filed by the Receiver's counsel. *See* Dkt. No. 1394 at 2. The Graham
18 Investors’ requests for additional information are therefore baseless.

19 For all the foregoing reasons, the SEC requests that the Court deny the Graham
20 Investors’ motion to intervene and approve the Receiver’s revised interim reports.

21 Dated: October 20, 2016

22 */s/ Lynn M. Dean*

23 _____
John W. Berry

Lynn M. Dean

Sara D. Kalin

Attorney for Plaintiff

Securities and Exchange Commission

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 20, 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 TO INTERVENE TO OBJECT TO RECEIVER’S SECOND REVISED 14TH, REVISED 15TH, AND REVISED 16TH INTERIM REPORTS** 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 20, 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**

4 **SERVICE LIST**

5 Eric Hougen, Esq. (**served via CM/ECF only**)
6 Hougen Law Offices
7 624 Broadway, Suite 303
8 San Diego, CA 92101
9 Email: eric@hougenlaw.com
10 *Attorney for Defendants Louis V. Schooler First Financial Planning*
11 *Corporation d/b/a Western Financial Planning Corporation*

12 Philip H. Dyson, Esq. (**served via CM/ECF only**)
13 Law Offices of Philip Dyson
14 8461 La Mesa Boulevard
15 La Mesa, CA 91941
16 Email: phildysonlaw@gmail.com
17 *Attorney for Defendants Louis V. Schooler First Financial Planning*
18 *Corporation d/b/a Western Financial Planning Corporation*

19 Ted Fates, Esq. (**served via CM/ECF only**)
20 Allen Matkins Leck Gamble Mallory & Natsis LLP
21 501 W. Broadway, 15th Floor
22 San Diego, CA 92101
23 Email: tfates@allenmatkins.com
24 *Attorney for Court-Appointed Receiver, Thomas C. Hebrank*

25 Thomas C. Hebrank, CPA, CIRA (**served via electronic mail only**)
26 E3 Advisors
27 501 W. Broadway, Suite 800
28 San Diego, CA 92101
 Email: thebrank@ethreadvisors.com
 Court-Appointed Receiver

 Gary J. Aguirre, Esq. (SBN 38927) (**served via CM/ECF only**)
 Aguirre Law, APC
 501 W. Broadway, Ste. 800
 San Diego, CA 92101
 Tel: 619-400-4960
 Fax: 619-501-7072
 Email: Gary@aguirrelawfirm.com
 Counsel for Certain Investors

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Timothy P. Dillon, Esq. (**served via CM/ECF only**)
Dillon Gerardi Hershberger Miller & Ahuja, LLP
5872 Owens Avenue, Suite 200
Carlsbad, California 92008
Tel (858) 587-1800
Email: tdillon@dghmalaw.com
Counsel for Certain Investors