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8 Attorney for Investor Susan Graham, et al.

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

11  
12 SECURITIES AND EXCHANGE  
13 COMMISSION,

14 Plaintiff,

15 v.

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

21 Defendants.

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

**INVESTORS' *EX PARTE* MOTION  
FOR ORDER SETTING  
EVIDENTIARY HEARING AND  
DISCOVERY SCHEDULE**

Date: May 20, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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1 By this *Ex Parte* Application, Investors seek plenary participation in these  
2 proceedings to the extent the Court’s order of May 18, 2016, Dkt. No. 1296, (“Order”)  
3 has granted their motion to intervene in these proceedings. In the absence of the relief  
4 sought by this *ex parte* application, Investors *respectfully* contend the Order would  
5 deprive Investors of their rights under the Due Process Clause and their procedural rights  
6 as necessary parties in this action.

7 Investors<sup>1</sup> seek an order (1) setting a jury trial for the first available date after  
8 September 1, 2016, on the factual issues that remain open in this case after the Court's  
9 Order and (2) setting a discovery schedule over the next 60 days.

10 In the absence of the relief sought herein, Investors *respectfully* contend the Order  
11 would deprive Investors of their rights under the Due Process Clause and their procedural  
12 rights as necessary parties in this action. Further, that deprivation would permit the  
13 Securities and Exchange Commission (“SEC”) to consummate its taking of Investors’  
14 properties “for public use, without just compensation” in violation of the Fifth  
15 Amendment to the U.S. Constitution. In this regard, the SEC has violated Investors’  
16 rights under the Taking Clause of the Fifth Amendment as follows:

17 1. By obtaining orders of this Court seizing the general partnerships (“GPs”) in  
18 which Investors are partners without due process of law;

19 2. By staying any action by Investors against First Financial Planning  
20 Corporation (“Western”) under state and federal laws, including the cancellation of any  
21 debt owed to Western by themselves or the GPs in which they are general partners;

22 3. By obtaining a summary judgment against Western that would allow the  
23 SEC to obtain and execute a judgment against Western and Schooler, thus allowing the  
24 SEC to send any of Investors’ funds collected from either Defendant to the U.S.  
25 Treasury;

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28 <sup>1</sup> The names of the investors filing this opposition are listed in Attachment 1 filed  
herewith.

1           4. By obtaining and executing a judgment against Louis Schooler including  
2 terms which allow the SEC to seize any of Investors' funds still in the possession of  
3 Schooler and send those funds the U.S. Treasury;

4           5. By allowing its Receiver to coerce Investors into repaying loans to the GPs,  
5 which they had no obligation to pay under federal securities laws, which the Receiver  
6 used to pay himself;

7           6. By using the Receiver's services, at Investors' expense, to assist the SEC in  
8 prosecuting its claims against Defendants in this action under the federal securities acts.

9           7. By supporting the Receiver's failures to comply with the SEC mandates  
10 which require the Receiver to provide the Court with 13 statements of his receipts and  
11 disbursements, since the filing of this action;

12           8. By supporting and approving the Receiver's and his consultants' fee  
13 applications to this Court, despite the SEC's knowledge the applications were in violation  
14 of the SEC Billing Instructions and SFAR.

15           9. By using its image and stature as the federal agency that protects investors'  
16 rights, the SEC and its agent, the Receiver, have campaigned to deprive Investors from  
17 fully using their rights under the Due Process Clause and, in that way, the SEC has  
18 pursued its path of depriving Investors of their right to just compensation for the  
19 Government's seizure of their property.

20           The Order now prevents Investors from using their rights to plenary proceedings  
21 under the Due Process Clause to the United States and California Constitutions in relation  
22 to the allegations in their proposed complaint in intervention to oppose the SEC's and the  
23 Receiver's committed goal of depriving Investors of their rights under the 87 partnership  
24 agreements which each of them signed and which are now in full force and effect.

25           Those plenary rights include: the right to a trial by jury, the right to call witnesses,  
26 the right to cross examine witnesses of opposing parties, the right to subpoena witnesses,  
27 and the right to conduct discovery through requests for documents, depositions, and  
28 interrogatories. Wherefore, to mitigate the harm to Investors by the denial of their rights

1 to fully participate as parties in this proceeding, Investors respectfully request the Court  
2 to issue an order:

3           1. Directing the Receiver to provide Investors with documents showing the  
4 amount owed and pay downs on each mortgage since September 2012, the amount of  
5 debt of each GP to Western since September 2012, the amount of debt paid by each  
6 investor since September 2012, the amount owed for taxes and any assessments by each  
7 GP, a receipts and disbursement statement from the inception of the receivership to the  
8 present for Western and each GP, showing the categories of expenditures in the form  
9 required by SFAR, documents relating to any commingling of bank accounts, the  
10 OPADS accounting system, the ACCPAC accounting system, and other matters placed in  
11 issue by the Receiver's February 4, 2016, motion, Dkt. No. 1181;

12           2. Setting the depositions of Gino Rodriguez and Thomas Hebrank;

13           3. Allowing Investors the right to subpoena documents for the depositions of  
14 Rodriguez and Hebrank and for any trial in this matter;

15           4. Setting a jury trial for September 1, 2016, or the first available Court date  
16 thereafter.

#### 17   **I. NOTICE OF *EX PARTE* MOTION**

18           The Relief sought by this *ex parte* motion was necessitated by the Court's order of  
19 May 18, 2016, which denied Investors' motion to intervene in this action as a party with  
20 full plenary rights to participate in this action. The Order does permit Investors to  
21 participate in this action in relation to the Receiver's pending motion scheduled for May  
22 20, 2016. Investors will be seeking the relief specified herein in relation to this aspect of  
23 the Court's Order.

24           Because the hearing is less than six hours from the time this motion was filed,  
25 Investors submit they should be excused from providing notice to opposing parties, since  
26 doing so would delay the filing of this motion and its consideration by the Court prior to  
27 the hearing set for today. See Declaration of Gary J. Aguirre.

**II. CONCLUSION**

For the foregoing reasons, Investors respectfully request an order granting the relief sought herein.

DATED: May 20, 2016

Respectfully submitted,

By:           /s/ Gary J. Aguirre            
GARY J. AGUIRRE  
Attorney for Investors

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19 FINANCIAL PLANNING  
20 CORPORATION,  
21 Defendants.

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

**DECLARATION OF GARY J.  
AGUIRRE IN SUPPORT OF  
INVESTORS' *EX PARTE* MOTION  
FOR ORDER SETTING  
EVIDENTIARY HEARING AND  
DISCOVERY SCHEDULE**

Date: May 20, 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 approximately 200 investors who file this *Ex Parte*  
5 Motion for Order Setting Evidentiary Hearing and Discovery Schedule. To the best of my  
6 understanding they have collectively invested in one or more partnerships (GPs) that have  
7 ownership interest in each of the properties that are the subject of the receivership in this  
8 matter.

9 3. Since receiving the Court's order of May 18, 2016, Dkt. No. 1296, I have  
10 studied the impact of that order on Investors' rights under the Due Process Clause and the  
11 Taking Clause of the Fifth Amendment to the U.S. Constitution and also their procedural  
12 rights as partners in the general partnerships which the Receiver proposes to dissolve  
13 under his February 4, 2016, recommendation (Dkt. No. 1181).

14 4. By this *Ex Parte* Motion and Declaration, I am requesting the Court to  
15 recognize Investors' rights to plenary proceedings in relation to the matters on which they  
16 have been permitted to intervene.

17 5. In my opinion, as counsel for Investors, Investors' minimum rights require  
18 their participation in this proceeding as proposed in the *ex parte* application.

19 6. I did not reach the conclusion that Investors should seek relief and the form  
20 of that relief until this morning. Because the hearing is less than six hours from the time  
21 this motion was filed, I submit Investors should be excused from providing notice to  
22 opposing parties, since doing so would delay the filing of this motion and its  
23 consideration by the Court prior to the hearing set for today.

24 Executed this 20<sup>th</sup> day of April 2016, at San Diego, California.

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

27 /s/ Gary J. Aguirre  
28 GARY J. AGUIRRE