No. 16-55850

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. SECURITIES & EXCHANGE COMMISSION,
Plaintiff – Appellee,

v.

LOUIS V. SCHOOLER; FIRST FINANCIAL PLANNING CORPORATION,
DBA Western Financial Planning Corporation,
Defendants – Appellees,

SUSAN GRAHAM, ET AL.
Intervenors – Appellants,

THOMAS C. HEBRANK,
Receiver – Appellee.

On appeal from the United States District Court
for the southern District of California, Case No. 3:12-cv-02164-GPC-JMA

APPELLANTS' OPPOSITION TO RECEIVER'S MOTION TO EXPEDITE APPEAL AS TO ORDER APPROVING SALE OF JAMUL VALLEY PROPERTY

GARY J. AGUIRRE (Bar No. 38927)
AGUIRRE LAW, APC
501 W. Broadway, Ste. 800
San Diego, CA 92101
Phone: 619-400-4960
Fax: 619-501-7072
Email: gary@aguirrelawapc.com
Attorney for Appellants
Susan Graham, *et al.*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Federal Rules

I. Introduction

There are two motions seeking expedited treatment in relation to this appeal before this Court. D.Es[1] 21 and 28. Appellants' *unopposed* motion (D.E. 28) seeks expedited treatment of this appeal and Appeal No. 16-56362.[2] Even though the receiver, Thomas C. Hebrank ("Hebrank"), has agreed not to oppose Appellants' *unopposed* motion, he has filed an *opposed* motion to expedite *a piece* of this appeal. D.E. 21.

More accurately, Hebrank's motion is in fact two motions in one. First, it would bifurcate the order approving the sale of the Jamul Valley property (D. 1361), from the six orders on appeal. Ds. 1296, 1303 1304, 1359, 1361, and 1409. It then seeks expedited treatment of the appeal of that single order.

Appellants have filed an *unopposed* motion to expedite the entire appeal, including the order on the Jamul Valley property. D.E. 28. The difference between Appellants' and Hebrank's motions boils down to this: Hebrank's *opposed* motion bifurcates the appeal. Appellants' *unopposed* motion seeks to expedite the entire

---

[1] "D." refers to the corresponding docket entry in *SEC v. Schooler*, No. 12-cv-02164 (S.D. Cal.); "D.E." refers to docket entries in this appeal. The page numbers follow the internal page numbers as designated by CM/ECF

[2] The SEC's consent to the unopposed motion to expedite this appeal (D.E. 28, Ex. A) is contingent upon the Court granting the SEC's motion to consolidate. D.E. 10. Appellants in this appeal and the appellants in Appeal No. 16-56362 are the only opposition to the SEC's motion. D.E. 14. If the Court grants the motion to expedite this appeal, appellants in both appeals will withdraw their opposition to and join in the motion to consolidate.

appeal. Consequently, the issue comes to this: what good cause has Hebrank presented for bifurcating this appeal? The short answer is none.

Hebrank cites no legal principle supporting his motion. Nor does he make a common sense argument why bifurcation of the appeal would serve the interests of judicial economy or justice. Instead, Hebrank argues:

> With respect to the Aguirre Investors' argument that this Motion serves no purpose, the Receiver submits the purpose is clear – *if the Court does not find sufficient grounds to expedite the entire appeal, it should nonetheless expedite the appeal as to the Jamul Valley Sale Order* so as to avoid the receivership estate suffering irreparable harm … (emphasis added)

D.E. 21-1 at 6. Good cause to *expedite* does not equate to good cause to *bifurcate*. It differs in character, not in amount. One does not deliver five pounds of good cause to expedite an appeal, but three pounds to bifurcate it. Good cause is not a single currency. Hebrank is trying to substitute the good cause that exists to expedite the entire appeal for the absence of good cause to bifurcate it.

The idea of breaking this appeal into pieces conflicts with policy that underlies federal rules on joinder. The rules are designed to encourage joinder of issues and claims with common issues of fact and law or that arise out of the same transactions. Fed. R. Civ. P. 18, 20, 23, and 24. There are common issues of fact and law that pervade all six orders and all arise out of the same transactions. And the issues in the orders appealed by the Graham Appellants overlap with issues in

the orders appealed by the Ardizzone Appellants in Appeal No. 16-56362.[3] It is for that reason that the litigants have agreed to consolidate the two appeals, if the unopposed motion for expedited treatment is granted. D.E. 28.

Just as joining matters with common issues serves judicial economy, breaking apart matters with common issues disserves judicial economy. The harm caused by delay here would be concrete, major, and irreparable.

According to Hebrank's certified reports, his receivership is consuming investors' assets at the average rate of about $1.2 million per quarter. D.E. 28 at 10. Hebrank's bifurcation contemplates two briefing cycles. Because of the overlapping issues, the second briefing cycle cannot start until the first is finished. And then, the second briefing cycle would have a new set of issues: how did the first decision affect the other issues in the case? Meanwhile, the receivership is extended at the average rate of about $1.2 million per quarter according to Hebrank. *Id*.

And all this is because Hebrank wishes to advance the appeal on an order to sell one of the 36 properties with a valuation that equates to 2% of the receivership net assets. Its sale price ($520,000) is below the low end of its valuation, which appellants' experts place between $534,000 and $801,000. D. 1237-2 at 21. The

[3] Joseph M. Ardizzone, David R. Schwarz, Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick Moore are collectively the "Ardizzone Appellants" and filed Appeal No. 16-56362. The "Graham Appellants" are 192 investors who filed this appeal, No. 16-55850. The names of the Graham Appellants are listed in Attachment 1 filed herewith.

buyer has already agreed to six revisions of the closing date (D.E. 21-2 at 7) and by his own words appears willing to agree to another. On top of that, it is doubtful Hebrank would even be able to sell the property until the appeals of the orders are decided. In short, Hebrank's motion would only delay the resolution of this appeal with its extra burden for this Court, harm for all parties, and benefit for none.

II. Background: The Objective of Appellants' Intervention

Hebrank repeatedly argues that Appellants' experts advised the Jamul Valley property should be sold at the current offer and thus Appellants' counsel should agree to that sale. This misconceives the purpose for which Appellants sought to intervene in the proceedings before the district court. Appellants retained counsel and intervened to regain investors' control over the GPs, so the partners in each GP could decide under their GP agreements what should be done with the property they own.

Appellants alleged in their complaint in intervention the objective of their intervention: enforce the GP agreements so the partners could decide what should be done with their properties. On this point, the prayer of the proposed complaint in intervention sought this primary relief:

> A. The Receiver produce the books and records and financial records as specified herein;
> B. The partners in each GP be balloted on whether they elect to adopt the plan proposed by Intervenors;
> C. For declaratory judgment that the GP agreements are valid and enforceable;

D. 1229-1 at 17.

In short, Appellants retained counsel to place investors back in control of their GPs so they could make informed decisions what should be done with their properties. There are 36 properties owned by 87 GPs. D. 1264 at 6. As is always the case, each parcel of realty is unique with its own set of factors affecting its value. Appellants' experts had a range of recommendations that vary from property to property. They strongly recommended some be held for long term appreciation. D. 1237-1 at 32. They recommended some steps be taken to increase the value of some of the properties to be sold. *Id*., at 33. They recommended some be sold.

Hebrank argues six different times that Appellants' experts recommended the Jamul Valley property be sold. No one denies that fact. But that does not address who should make the decision to sell. The valuation and recommendation of Appellants' experts would be provided to all investors, including their conclusion the value of the Jamul Valley property ranges between $534,000 and $801,000. D. 1237-2 at 21. Maybe investors would take the experts' advice. Maybe they would not. The same issue exists on all 36 properties. Some decisions may be easy. Some may be tough. But easy or tough, Appellants contend those decisions are for the partners in each GP to make: not the SEC, not Hebrank, and not even the district court. Those investors who have expressed their views on this subject

overwhelmingly support the remedies Appellants seek before the district court and on this appeal.

The Jamul Valley property is a distraction from a bigger issue. The receivership is consuming the only assets available for distribution to investors. The least economical way of marketing the properties is through a receivership that costs $400,000 per month, including $66,000 per month for the receiver and his team. D.E. 28 at 10-12.

No issues exist before the district court except what to do with the assets investors own. The SEC's case against the Defendants is over. No other creditors have asserted a claim or sought to appear in the case. Yet, investors are excluded from this process. Only the SEC, Hebrank, and the Defendants have a voice in what will be done with investors' assets.

For both Hebrank and Allen Matkins, investors are nameless and should stay that way. When a group of unrepresented investors spoke against the receivership, Hebrank labeled them the "Schooler Group," as if they were pawns of Defendant Louis Schooler. Hebrank used that term 19 times in one brief to discredit their concerns about the receivership. D. 852. And when two groups of investors appeared in this case through counsel, Hebrank dubbed them the "Dillon Investors" and the "Aguirre Investors" (see, e.g., D. 1261 at 2), using the surnames of the attorneys who represented them. And when a third group of investors sought to

intervene, the Ardizzone Appellants, Hebrank dubbed them the "New Aguirre Investors." D. 1355 at 4. In this way, Hebrank casts investors who opposed his receivership as pawns of the Defendant until they became pawns of their attorneys.

Appellants are nobody's pawns. They do speak for the overwhelming majority of investors who have expressed their views on the remedies sought by this appeal. The table below reports the results of a survey sent to the investors for whom Appellants have email addresses. D. 1293-3 at 4. The questions correlate to the relief Appellants seek in the prayer to their complaint in intervention. It shows a 20 to 1 ratio of support for Appellants' objectives in this appeal:

Question	Total	Yes	% Yes	No	% No
1. Want GPs removed from Receivership	1045	977	93.49%	68	6.51%
2. Investors to decide when to sell GPs	1046	1009	96.46%	37	3.54%
3. Investors want an accounting	1047	1019	97.33%	28	2.67%

A more recent but narrower survey yields similar responses. Ds. 1368-5 ¶¶ 7-10 and 1393-2. Almost three years before Appellants appeared in this case, the district court reported investors' letters opposed keeping the GPs in the receivership by roughly a ratio of 220 to 5 or 44 to 1. D. 470 at 2, ll. 18-20. But there is a simple and conventional way to assess investor sentiment about keeping the GPs in the receivership: allow them to vote.

The fact more than 1,000 investors favor Appellants' objectives at a ratio of 20 to 1 resonates louder in light of one factor: Many investors are out of the loop. Hebrank sent defective or no notice of his liquidation plan to 3,000 investors. D.

1368-1 at 21. Approximately 2,000 of those investors have not expressed their views. Those who have recently learned of Hebrank's plan overwhelmingly oppose it. Ds. 1396-2, 1396-3, 1396-4, 1396-5, and 1396-6.

III. Hebrank's Proposed Bifurcation Lacks Support in Law and Fact

A. Legal Principles Applicable to Bifurcation

Appellants found no appellate rule or case law offering guidance when a circuit court should bifurcate an appeal. In this void, the Court may wish to consider the grounds for bifurcation it approved in *M2 Software, Inc. v. Madacy Entm't*, 421 F.3d 1073, 1088 (9th Cir. 2005): "for judicial economy and to avoid prejudice and confusion." Several district courts in this Circuit have applied this concrete guideline: "Bifurcation is particularly appropriate when resolution of a single claim or issue could be dispositive of the entire case." *Drennan v. Md. Cas. Co.*, 366 F. Supp. 2d 1002, 1007 (D. Nev. 2005).

B. The Bifurcation of the Appeal Would Disserve Judicial Economy

Hebrank does not argue that bifurcating the appeal would expedite it, dispose of the entire case, avoid confusion or prejudice, or serve judicial economy. Indeed, he concedes that bifurcating the appeal would require two rounds of briefs, which disserves judicial economy. He argues the "cost to the approximately 200 Aguirre Investors of filing an additional brief" would be "minimal." D.E. 21-1 at 6-7. This misses the point. In more accurate terms, Hebrank has acknowledged his

bifurcate and expedite motion would create a second cycle of briefing to burden the court and increase the costs to all parties.

Hebrank's two cycles of briefing, by themselves, would significantly extend the period to decide this appeal. The first cycle would deal with the issues raised by the confirmation of the sale of the Jamul Valley property. D. 1361. Appellants' opposition to this motion raised issues which overlap with issues raised by the other orders on appeal. Ds. 1296, 1303, 1304, 1359 and 1409. Consequently, the second cycle cannot begin until the first cycle is completed, since the parties would have to assess how the decision impacted other issues in the case. The extension of the appeal means the extension of the receivership. As discussed below, the costs for extending the receivership are substantial.

But the bifurcation would not merely affect issues raised by other orders. It would splinter issues such as due process. As an example only, the Graham Appellants' opposition to the sale of the Jamul Valley property raises due process, but focuses on the lack of process. The Graham Appellants concede they received notice of the February 4 liquidation motion. On the other hand, the Ardizzone Appellants contend they and 3,000 other investors received inadequate or no notice of the February 4 liquidation motion. D. 1396 at 2. This Court would decide a piece of due process in relation to the order approving the sale of the Jamul Valley

property, but would still face multiple issues related to due process raised by the other orders which deal with the lack of due process in different contexts.

C. The Fragmentation of the Due Process Issues Conflicts with the Applicable Standard

The piecemeal handling of the appeal would impair the Court's ability to conduct a meaningful review of Appellants contentions that their property was divested in violation of their due process rights. This is a violation of substantive due process and "an investigation into substantive due process involves an appraisal of *the totality of the circumstances* (emphasis added)." *Armstrong v. Squadrito,* 152 F.3d 564, 570 (7th Cir.1998). This Court did not use the terminology from *Armstrong* in *SEC v. Ross*, 504 F.3d 1130 (9th Cir. 2007), but it considered a number of factors in deciding Bustos's due process rights were violated. The bifurcation of the appeal into pieces undermines the Court's ability to consider *the totality of the circumstances* in relation to Appellants' substantive due process claims.

D. Hebrank's Motion to Bifurcate Would Delay This Appeal at a Severe Cost to Investors

As discussed above, Hebrank's two cycles of briefing advance the briefing on one order on one property while they pushes out the decision on the entire appeal. And the receivership costs are devouring investors' assets, appraised in 2015 at $23.8 million. D. 181-1 at 35. Since the SEC has recovered nothing, the only assets

investors are going to get back are the residue when Hebrank's receivership ends. And how much will that be?

After Appellants' objections, the district court ordered Hebrank to file disclosure statements in the format of Standardized Fund Accounting Reports ("SFAR"). The SEC instructions for SFARs require SEC sponsored receivers to state their receipts and disbursements by reporting period. D. 1304 at 32, ¶ 3. The table below reflects the receipts and expenditures by Hebrank on his SFARs for each period:

Date	SFAR D. No., Page	Receipts	Expenditures	Order
9/6/2012 to 9/30/2015	1376 at 17	$12,785,554	$15,539,396	1420
10/1/2015 to 12/31/2015	1376 at 20	$901,066	$1,124,436	1420
1/1/2016 to 3/31/2016	1377 at 21	$766,481	$834,145	1420
4/1/2016 to 6/30/2016	1378 at 27	$101,218	$1,078,990	1420
7/1/2016 to 9/30/2016	1422 at 21	$19,101	$985,399	
	Grand Total	**$14,573,403**	**$19,562,366**[4]	

The amount of receipts has dropped off to a trickle ($19,101) for the last reporting period, because investors have stopped paying to support their GPs.

[4] In opposing a motion by Appellants seeking clarification of his expenditures, Hebrank recently stated he was counting payments "twice." D. 1394 at 3, l. 13. Appellants brought a motion seeking clarification of the "twice" counted receipts and expenditures. D. 1394. The district court denied the motion on the grounds Appellants were seeking "to intervene in order to audit the receivership and to examine the receivership records." D. 1409 at 13.

The table above reflects expenditures of roughly $1.2 million per quarter or $4.8 million per year. Since there are no meaningful receipts, the receivership is consuming investors' assets at the average rate of $4.8 million per year. Hebrank's last appraisal of GP realty placed its total value at $23.8 properties in 2015. D. 1181-1 at 35. Consequently, at the current average consumption rate of $4.8 million per year, Hebrank will fully consume the assets of the GPs in less than five years.

This appeal has been languishing since Hebrank filed his motion for a partial dismissal five months ago. D.E. 3. That motion froze the briefing in this appeal and thus the appeal. Since Hebrank's motion sought a *partial* dismissal, it could not be dispositive. It simply stopped the machinery. Now, Hebrank wants to speed up the machinery, but only on the order he has picked. The consequence of Hebrank's new motion (D.E. 21) is the same as his last one (D.E. 3): it will likely delay the final decision on this appeal by six months and thereby consume another $2.4 million of investors assets.

E. The Speculative Minutiae Hebrank Passes Off as Irreparable Harm

Appellants pose this question: What harm does Hebrank project that warrants a second cycle of briefing, likely extending the appeal period by six months, adding to major costs of the receivership, splintering due process issues, and further complicating an already complicated appeal? It is the *possibility* that

Hebrank will not be able to sell the Jamul Valley property to the current purchaser, because the contract period could expire before Hebrank delivers title. Appellants focus on the assumptions that would cause this "irreparable harm." D.E. 21-1 at 4.

First, there is the assumption Hebrank will not be able to close the sale at the current closing date, April 12, 2017, (*Id*., at 22) and the buyer will not extend the period. Appellants note the agreement has been amended six times. D.E. 21-2 at 7. The buyer describes his sentiment about a further extension as follows:

> If the Receiver is not able to obtain a final non-appealable court order for the sale within a reasonable amount of time (i.e. a matter of months, not a year), TNC will have to reevaluate the sale, the purchase price, its funding, and its priorities and decide if it is willing to wait any longer to complete the sale.

Id., at 4. Clearly, the buyer is not saying he is walking away. His comment that he seeks a non-appealable order in a "matter of months, not a year" is consistent with a decision by this Court in the mid part of 2017. In this regard, Appellants note that the sales price of $520,000 is below the low end of the property's valuation, $534,000 to 801,000. D. 1237-2 at 21. In short, it is a good deal for the buyer.

Second, in the worst case scenario, Hebrank has a property that is worth more than the amount the buyer agreed to pay for it. Consequently, Hebrank could put the property back on the market at a higher price. Hebrank cites no authority that the loss of a sale of realty below its value constitutes irreparable harm.

Third, it is doubtful Hebrank would be able to sell the property to the buyer if this Court decides only the appeal on the order approving the sale of the Jamul

Valley property. D. 1361. There are three other orders that affect Hebrank's authority to sell any other property. First, the reversal of any of three other orders (D. 1296, 1304, and 1409) may hold the GPs are not in the receivership or entitle Appellants to further proceeds before the district court on that issue. Further, the district court's order denying (D. 1359 at 2-3) the Ardizzone Appellants motion to intervene (D. 1348) has been appealed. D. 1426. Among other things, that motion and now the appeal seek an order to vacate the May 25 order (D. 1304) on due process grounds the Graham Appellants do not raise.

In short, a decision on a fragment of the appeal will not likely provide the finality Hebrank needs to close the sale of the Jamul Valley property. Rather, that finality will only come when this Court decides the full appeal. In the unlikely event that Hebrank prevails, he would then have the unfettered power to sell the Jamul Valley property and all other GP properties. Hence, Appellants' unopposed motion to expedite the entire appeal (D.E. 28) would better serve Hebrank's putative interests than his own motion to bifurcate and expedite.

IV. The District Court's Statement Regarding the Repetitive Nature of the Lawyering by Appellants' Counsel

Appellants' counsel believes it is unfortunate the district court views his efforts to preserve and assert Appellants' rights, including their constitutional rights, in this light. And Appellants understand why the district court may view the

assertion of the jurisdictional and due process grounds as repetitive. But the nature of these grounds may not be fully defined in the context of a single order.

Appellants' counsel represents approximately 200 investors in this case. They contend the divesture of their property exceeds the jurisdiction of the district court and does not comport with the Due Process Clause. These issues come more sharply into focus for the purpose of this appeal when several rulings define concretely how the government and its receivers are divesting Appellants of their property. One ruling on an issue is a pebble. Several rulings in this case, which are now on appeal, form a mosaic that defines the issue.

Appellants informed the district court of their objective to create a record for appeal. Indeed, when one group of investors raised the same issue as an earlier investor group, Appellants' counsel advised the district court: “We merely raise the issue in this opposition to preserve our rights to appellate review." D. 1364 at 8.

But there is one other factor which has required Appellants to raise the two key issues—subject matter jurisdiction and due process—more than once. Neither issue was sufficiently defined by a district court's orders until its November 29, 2016, order. D. 1409. By our reading, the only district court ruling that even touched on subject matter jurisdiction before the November 29 order (D. 1409) was its holding that Appellants lacked the standing to raise this issue. D. 1304 at 15, ll.

7-16. See Appellants' Supplemental brief for a more complete analysis of this issue. D.E. 25-1 at 2-13.

A similar development has occurred on the due process issue whether Hebrank gave adequate notice to the Ardizzone Appellants and 3,000 other investors. In denying the Ardizzone Appellants' motion to intervene (D. 1369 at 2, l. 28 to 3, l. 20) the district court adopted the SEC's technical arguments that adequate notice had been given. D. 1358 at 9, l. 16 to 12, l. 20. The district ruled on the issue before Appellants' reply was filed. In their motion for a stay, the Ardizzone Appellants contended the SEC's argument and the district court's holding conflict with the landmark Supreme Court decision, *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). D. 1396 at 3 l. 11 to 11 at 11. The district court's most recent decision (D. 1409 at 4, l. 10 to 5, l. 5) on this issue offers different and specific grounds for its holding that Hebrank gave the Ardizzone Appellants adequate notice. In this way, this holding sharply defines the notice issue for the purposes of this appeal.

///

///

///

///

///

V. Conclusion

For the reasons stated above and in Appellants' unopposed motion to expedite, Hebrank's motion should be denied and Appellants' unopposed motion (D.E. 28) should be granted.

DATED: December 19, 2016

Aguirre Law, APC

By: /s/ Gary J. Aguirre
GARY J. AGUIRRE
Attorney for the Graham Appellants

ATTACHMENT 1,
INTERVENORS-APPELLANTS

Susan Graham, Alfred L. Pipkin, Alfred L. Pipkin, IRA, Allert Boersma, Arthur V. and Kristie L. Rocco Living Trust, Arthur V. Rocco, Baldwin Family Survivors' Trust, Barbara Humphreys, IRA, Beverly & Mark Bancroft, Beverly A. Bancroft, IRA, Bruce A. Morey IRA, Bruce A. Morey, Bruce R. Hart IRA for Bruce R. Hart and Dixie L. Hart, Carol D. Summers, Carol Jonson, Catherine E. Wertz IRA, Catherine E. Wertz, Cathy Totman, IRA, Charles Bojarski, Chris Nowacki, IRA, Cindy Dufresne, Craig Lamb, Curt & Janean Johnson Family Trust, Curt & Janean Johnson, jointly, Curt Johnson, Curt Johnson, Roth IRA, Cynthia J. Clarke, D & E Macy Family Revocable Living Trust, D.F. Macy IRA, Daniel Burns, Daniel Knapp, Darla Berkel IRA, Darla Berkel, Daryl Dick, David and Sandra Jones Trust, David Fife IRA, David Haack IRA, David Haack, David Karp IRA, David Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional IRA, Debra Askeland, Deidre Parkinen, Dennis Gilman, Dennis Gilman IRA, Diane Bojarski, Diane Gilman, Donna M. and Richard A. Kopenski Family Trust, Donna M. Kopenski, IRA Roth, Douglas G. Clarke, Douglas Sahlin IRA, Eben B. Rosenberger, Edith Sahlin IRA, Edward Takacs, Ellen O'Brien, Elizabeth Lamb, Norling, Eric W. Norling, IRA, Gary Hardenburg, Gary Hardenburg, Roth IRA, Gene Fantano, George Klinke, IRA, George Trezek, Gerald Zevin, Gerald Zevin, IRA, Gwen Tuohy, Gwenmarie Hilleary, Henrik Jonson, Henrik Jonson, IRA, IDAC Family Group LLC, Iris Bernstein IRA, James J. Coyne Jr. Trust, Janice Marshall, Janice Marshall, IRA, Jason Bruce, Jeffrey Merder, IRA, Jeffrey J. Walz, Jeffrey Larsen, Jeffrey Merder, Jennifer Berta, Jim Minner, Joan Trezek, John Jenkins, John and Mary Jenkins Trust, John and Mary Jenkins Trustees, John Lukens, John Lukens, IRA, John R. Oberman, Joy A. de Beyer, Roth IRA, Joy A. de Beyer, Traditional IRA, Joy de Beyer, Juanita Bass IRA, Juanita Bass, Judith Glickman Zevin, IRA, Judith Glickman Zevin, Judy Knapp, Karen Coyne, Karen J. Coyne IRA, Karen Wilhoite, Karie J. Wright, Kimberly Dankworth, Kirsh Family Trust UTD, Kristie

ATTACHMENT 1,
INTERVENORS-APPELLANTS

L. Rocco, Lawrence Berkel, Lawrence Berkel, IRA, Lea Leccese, Leo Dufresne, Leo T. Dufresne Jr. IRA, Linda Baldwin IRA, Linda Clifton, Lisa A. Walz, Lloyd Logan and Ida Logan, jointly, Lloyd Logan, IRA, Lynda Igawa, Marc McBride, Marcia McRae, Marilyn L. Duncan, Mark Clifton, Mary Grant, Mary J. Jenkins, IRA, Mathew Berta, Mealey Family Trust, Michael R. Wertz, Michael R. Wertz, IRA, Mildred Mealey, beneficiary of Duane Mealey IRA, Minner Trust, Monica Takacs, Monique Minner, Neil Ormonde, IRA, Nevada Ormonde, IRA, Paul Leccese, Paul R. Sarraffe, IRA, Perryman Family Trust, Polly Yue, Prentiss Family Trust, Kenneth and Gail Prentiss Trustees, Ralph Brenner, Randall S. Ingermanson IRA, Rebecca Merder, Reeta Mohleji, Regis T. Duncan, IRA, Regis T. Duncan, Renee Norling, Richard A. Kopenski, IRA Roth, Robert Indihar, Robert Churchill Family Trust, Robert Churchill IRA, Robert H. Humphreys, Robert Indihar IRA, Robert S. Weschler, Robert Tuohy, Roderick C. Grant, Roger Hort, Roger Moucheron, Ronald Askeland, Ronald Parkinen, Ronald Scott, Ronald Scott, IRA, Salli Sammut Trust, Salli Sue Sammut Trustee, Salli Sue Sammut, IRA, Shirley Moucheron, Stephen Dankworth, Stephen Hogan, Stephen Yue, Steve P. White, IRA, Steve P. White, SEP IRA, Susan Burns, Tamara and Chris Nowacki, jointly, Tamara Nowacki, IRA, The Knowledge Team Profit Sharing Plan, The Ormonde Family Trust, Thomas H. Panzer, Roth IRA, Thomas Herman Panzer Trust, Thomas H Panzer, Trustee, Trisha Bruce, Val Indihar, W.C. Wilhoite, W.C. Wilhoite, Roth IRA, William C. Phillips, William L. Summers, IRA, William L. Summers, William Loeber, William Nighswonger IRA, William R. Nighswonger, William R. Rattan Rev. Trust, William V. and Carol J. Dascomb Trust, Carmen Slabby, Lawrance Slabby, Virginia Kelly, James S. Dolgas, Penco Engineering, Inc. Profit Sharing Pension Fund, George Jurica, and George Jurica IRA.

CERTIFICATE OF COMPLIANCE

The foregoing opposition complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because: This brief contains 4,076 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word 2007, in font size 14, Times New Roman.

DATED: December 19, 2016 Aguirre Law, APC

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

STATEMENT OF RELATED CASES
(9th Circuit Rule 28-2.6)

1. United States Court of Appeals, Ninth Circuit, Case No. 13-56761

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

2. United States Court of Appeals, Ninth Circuit, Case No. 13-56948

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

3. United States Court of Appeals, Ninth Circuit, Case No. 14-56313

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

4. United States Court of Appeals, Ninth Circuit, Case No. 14-56315

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

5. United States Court of Appeals, Ninth Circuit, Case No. 16-55167

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

6. United States Court of Appeals, Ninth Circuit, Case No. 16-55414

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

7. 7. United States Court of Appeals, Ninth Circuit, Case No. 16-56362

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing opposition with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system on December 19, 2016. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: December 19, 2016

Aguirre Law, APC

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