

Nos. 16-55850, 16-56362

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,

JOSEPH M. ARDIZZONE, DAVID R. SCHWARZ, LOIS SCHWARZ,
DENNIS FRISMAN, ERIC GILBERT, RICK MOORE,
AND 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

MOTION TO VOLUNTARILY DISMISS APPEAL

GARY J. AGUIRRE (Bar No. 38927)
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Attorney for Appellants

Pursuant to Federal Rule of Appellate Procedure 42(b), Appellants¹ hereby move the Court for an order dismissing the above captioned appeal. The parties have agreed to the dismissal with each party paying its own costs, which is confirmed by the email chains attached hereto as Attachment 2.

Among other factors, and in view of the denial of their motion for a stay, Appellants have concluded their contentions on appeal will likely become moot during the pendency of their appeal.

DATED: March 24, 2017

Aguirre Law, APC

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

¹ The names of the Appellants are listed in Attachment 1 filed herewith.

Attachment 1

ATTACHMENT 1, APPELLANTS

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

ATTACHMENT 1, APPELLANTS

Knapp, Karen Coyne, Karen J. Coyne IRA, Karen Wilhoite, Karie J. Wright, Kimberly Dankworth, Kirsh Family Trust UTD, Kristie 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, Lawrence Slabby, Virginia Kelly, James S. Dolgas, Penco Engineering, Inc. Profit Sharing Pension Fund, George Jurica, and George Jurica IRA.

Attachment 2

Gary Aguirre

From: Yoder, Stephen G. [Redacted]
Sent: Wednesday, March 22, 2017 1:58 PM
To: Gary Aguirre
Cc: Scheuer, Therese A; Fates, Ted
Subject: RE: Graham and Ardizzone appeals

Mr. Aguirre:

The Commission also consents to the voluntary dismissal of these appeals under FRAP 42 with all parties bearing their own costs.

Regards,
Steve Yoder

From: Fates, Ted [[mailto:](#)Redacted]
Sent: Tuesday, March 21, 2017 8:33 PM
To: Gary Aguirre; Yoder, Stephen G.
Subject: RE: Graham and Ardizzone appeals

Mr. Aguirre:

The Receiver is agreeable to your proposal.

Ted Fates Esq.

Partner
Allen Matkins Leck Gamble Mallory & Natsis LLP
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(619) 235-1527 (direct)
(619) 886-4466 (mobile)
tfates@allenmatkins.com

Allen Matkins
CHALLENGE OPPORTUNITY SUCCESS.

Please Note:
Effective April 1, 2017, our San Diego office will be moving to:
600 West Broadway, 27th Floor
San Diego, CA 92101-0903

From: Gary Aguirre [[mailto:](#)Redacted]
Sent: Tuesday, March 21, 2017 3:05 PM
To: Fates, Ted <Redacted> ; Yoder, Stephen G. <Redacted>
Subject: Graham and Ardizzone appeals

Counsel:

Please advise us by the close of business on Wednesday, March 22, if you consent to the dismissal of the Graham and Ardizzone appeals pursuant to FRAP 42 with each party bearing their own costs.

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

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CERTIFICATE OF COMPLIANCE

The foregoing Motion complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because: This brief contains 91 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: March 24, 2017

Aguirre Law, APC

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

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing motion and attachments with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system on March 24, 2017. 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: March 24, 2017

Aguirre Law, APC

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