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8 Attorney for Proposed Intervenors

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

**PROPOSED INTERVENORS’
NOTICE OF MOTION AND
MOTION TO INTERVENE**

DEMAND FOR JURY TRIAL

Date: May 6, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Notice is hereby given that that on May 6, 2016, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 2D of the United States District Court, Southern District of California, located at 221 W. Broadway, San Diego, CA 92101 that Proposed Intervenor Susan Graham, Terry Adkinson, Lawrence Berkel, Lawrence Berkel, IRA, Darla Berkel, Mathew Berta, Allert Boersma, Charles Bojarski, Diane Bojarski, Jason Bruce, Trisha Bruce, Daniel Burns, Susan Burns, Henrik Jonson, Carol Jonson, Henrik Jonson, IRA, Curt & Janean Johnson Family Trust, Curt & Janean Johnson, jointly, Curt Johnson, Curt Johnson, Roth IRA, Curt Johnson, Roth IRA, Stephen Dankworth, David and Sandra Jones Trust, Debra Askeland, Dennis Gilman IRA, William R. Diehl, Marilyn L. Duncan, Regis T. Duncan, Regis T. Duncan, IRA, Elizabeth Lamb, Judy Froning, George Klinke, IRA, Mary Grant, Roderick C. Grant, Gary Hardenburg, Gary Hardenburg, Roth IRA, Henrik Jonson, IRA, Stephen Hogan, Val Indihar, John Jenkins, Mary J. Jenkins, IRA, Trustee, IRA, Trustee, Mary J. Jenkins, Trustee, John Lukens, John Lukens, IRA, Karen J. Coyne IRA, Craig Lamb, Lea Leccese, Paul Leccese, Lloyd Logan and Ida Logan, jointly, Lloyd Logan, IRA, William Loeber, Loretta J. Diehl, Daryl R. Mabley, Elizabeth Q. Mabley, D & E Macy Family Revocable Living Trust, Janice Marshall, Janice Marshall, IRA, Marc McBride, Marcia McRae, Mealey Family Trust, Mildred Mealey, beneficiary of Duane Mealey IRA, Jeffrey Merder, Jeffrey Merder, IRA, Rebecca Merder, Minner Trust, Jim Minner, Monique Minner, Reeta Mohleji, Roger Moucheron, Shirley Moucheron, William R. Nighswonger, Eric W. Norling, Eric W. Norling, IRA, Renee Norling, Chris Nowacki, IRA, Tamara and Chris Nowacki, jointly, Tamara Nowacki, IRA, John R. Oberman, Neil Ormonde, IRA, Nevada Ormonde, IRA, Thomas H. Panzer, Roth IRA, Thomas Herman Panzer Trust, Thomas H Panzer, Trustee, Ronald Parkinen, Deidre Parkinen, Alfred L. Pipkin, Alfred L. Pipkin, IRA, Prentiss Family Trust, Kenneth and Gail Prentiss Trustees, Robert Indihar, Nick Ruddick, Salli Sue Sammut, IRA, Salli Sammut Trust, Salli Sue Sammut Trustee, Paul R. Sarraffe, IRA, Ronald Scott, Ronald Scott, IRA,

1 William L. Summers, IRA, Carol D. Summers, William L. Summers, Robert Tuohy,
2 Gwen Tuohy, Jeffrey J. Walz, Steve P. White, IRA, Steve P. White, SEP IRA, W.C.
3 Wilhoite, Karen Wilhoite, W.C. Wilhoite, Roth IRA, Gerald Zevin, IRA, Judith
4 Glickman Zevin, Gerald Zevin, Judith Glickman Zevin, IRA, Robert Churchill IRA,
5 Robert Churchill Family Trust, Mark Clifton, Linda Clifton, Dennis and Diane Gilman,
6 John and Mary Jenkins Trustees, the Ormonde Family Trust, Ronald Askeland, Douglas
7 Sahlin IRA, Edith Sahlin IRA, George and Joan Trezek, Karen Coyne, James J. Coyne Jr.
8 Trust, David Fife IRA, Leo and Cindy Dufresne, Leo T. Dufresne Jr. IRA, Darla Berkel
9 IRA, William Nighswonger IRA, Juanita Bass, William V. and Carol J. Dascomb Trust,
10 Robert Indihar IRA, Linda Baldwin IRA, Baldwin Family Survivors' Trust, Juanita Bass
11 IRA, Matthew and Jennifer Berta, Randall S. Ingermanson IRA, Kimberly Dankworth,
12 IDAC Family Group LLC, Robert S. Weschler, Karie J. Wright, D.F. Macy IRA, Stephen
13 and Polly Yue, David Karp IRA, Iris Bernstein IRA, John and Mary Jenkins Trust, Lisa
14 A. Walz, Ralph Brenner, David Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional
15 IRA, Kirsh Family Trust UTD, The Knowledge Team Profit Sharing Plan, Joy A. de
16 Beyer, Roth IRA, Joy A. de Beyer, Traditional IRA, Joy de Beyer, Michael R. Wertz,
17 Michael R. Wertz, IRA, Catherine E. Wertz, Catherine E. Wertz IRA, Jeffrey Larsen,
18 Gene Fantano, Gwenmarie Hilleary, Arthur V. Rocco, Kristie L. Rocco, Arthur V. and
19 Kristie L. Rocco Living Trust; Bruce R. Hart IRA for Bruce R. Hart and Dixie L. Hart,
20 Lynda Igawa, Bruce A. Morey; Bruce A. Morey IRA, William c. Phillips; David Haack;
21 David Haack IRA, Cynthia J. Clarke, Douglas G. Clarke, Eben B. Rosenberger, Roger
22 Hort, Daniel Knapp, Judy Knapp, Edward Takacs and Monica Takacs, Barbara
23 Humphreys, IRA, Robert H. Humphreys, Donna M. Kopenski, IRA Roth, Richard A.
24 Kopenski, IRA Roth, Donna M. and Richard A. Kopenski Family Trust, William R.
25 Rattan Rev. Trust, Perryman Family Trust, Cathy Totman, IRA, Beverly & Mark
26 Bancroft, Beverly A. Bancroft, IRA, and Daryl Dick ("Intervenors") will and hereby do
27 move this Court for an order that Intervenors may intervene in this action as of right
28 pursuant to Federal Rule of Civil Procedure 24(a)(2). In the alternative, Investors seek the

1 Court's permission to intervene pursuant to Federal Rule of Civil Procedure 24(b)(1)(B).
2 Investors seek to intervene in this case filed by the Securities and Exchange Commission
3 ("SEC") to protect their interests.

4 The Intervenors seek to intervene in this action solely for the purpose of obtaining
5 relief in relation post judgment proceedings affecting their rights and duties as investors
6 and partners in 87 partnerships (GPs) which are the subject of the receivership ordered by
7 the Court in this action. In particular, Intervenors move to participate in all post judgment
8 proceedings relating to the disposition of receivership properties, the release of the GPs
9 from the receivership, the specific relief sought in counts I through III in the proposed
10 complaint in intervention attached hereto as Exhibit A and incorporated herein by
11 reference, including all of the following:

- 12 A. filing of the proposed complaint attached as Exhibit A;
- 13 B. Re-filing motion setting a hearing on Receiver's recommendations regarding
14 engagement of real estate brokers for Las Vegas 1, Las Vegas 2, and Tecate
15 properties (Dkt. No. 1204, 1206 and 1217);
- 16 C. Re-filing motion to vacate orders approving recommendations of Receiver to sell
17 GP properties (Dkt. No. 1221);
- 18 D. Re-filing motion for accounting or, in the alternative an audit of the receivership
19 (Dkt. No. 1223);
- 20 E. Re-filing joinder in motion to unseal and/or unredacted the filings under seal and
21 redacted orders;
- 22 F. Re-file motions opposing the sale of the Jamul Valley property (Dkt. Nos. 1194,
23 1195, 1199, 1200, 1201, 1202, and 1217);
- 24 G. Obtain full access to the Receiver's filings and recommendations submitted to this
25 Court;
- 26 H. Unseal and/or unredact documents previously filed under seal or redacted by the
27 Receiver; and

1 I. Obtain all books and records related to the Receiver’s management of the GPs and
2 the GPs’ assets.

3 The motion is brought on the grounds that Intervenors are entitled to intervene in
4 this action as a matter of right because (1) Intervenors have a legally protectable interest
5 in the subject matter of this action because it is comprised entirely of investors in the
6 general partnerships that are currently within the receivership; (2) Intervenors’ interests
7 in this action will be substantially impaired or impeded if it is not allowed to intervene
8 because (i) an immediate sale of the entirety of the GP properties would likely not
9 maximize investor return; (ii) the contemplated sale process was in violation of the 28
10 U.S.C. § 2001; (3) the existing parties do not adequately represent Intervenors’ interests
11 in the action. Defendants Louis Schooler and First Financial Planning Corporation D/B/A
12 Western Financial Planning Corporation (“Defendants”) cannot adequately represent
13 Intervenors’ interests as judgment has been entered against Schooler and there are no
14 remaining parties to the case that share a financial interest in the GPs with the investors-
15 partners; and (4) the motion for intervention was timely made in that the Receiver did not
16 recommend dissolution and liquidation of the GPs until February 4, 2016. In addition,
17 Intervenors and their counsel only discovered the invalid appraisals and brokers opinions
18 of value obtained by the Receiver for the GPs’ property in March 2016.

19 In the alternative, Intervenors should be allowed permissive intervention in this
20 action:

21 The claims that Intervenors desire to assert in this action share common questions
22 of law or fact with the current issues in the action. Specifically, Intervenors seek to
23 modify the receivership ordered by the Court in this litigation.

24 This Court has subject matter jurisdiction over the claims proposed by Intervenors
25 because it continues to have jurisdiction over the receivership, to which the GPs are
26 subject to.

27 Intervenors have attached its proposed Complaint in Intervention to this motion, as
28 required by Rule 24(c) of the Federal Rules of Civil Procedure.

1 The Motion is based upon this Notice, the accompanying Memorandum of Points
2 and Authorities, the concurrently filed Complaint in Intervention, all pleadings and
3 papers on file in this action, and upon such other matters as may be presented to the Court
4 at the time of the hearing.

5
6 DATED: April 8, 2016

Respectfully submitted,

7
8 By: /s/ Gary J. Aguirre
9 GARY J. AGUIRRE
10 Aguirre Law, A.P.C.
11 gary@aguirrelawapc.com
12 Attorney for Intervenors
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EXHIBIT A

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2 Aguirre Law, APC
3 501 W. Broadway, Ste. 800
4 San Diego, CA 92101
5 Tel: 619-400-4960
6 Fax: 619-501-7072
7 Email: Gary@aguirrelawfirm.com

8 Attorney for Proposed Intervenor-Plaintiffs

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
CORPORATION,

20 Defendants.

21 and
22 SUSAN GRAHAM et al.

23 Proposed Intervenors.

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

**PROPOSED INTERVENORS’
COMPLAINT IN INTERVENTION**

DEMAND FOR JURY TRIAL

Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

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1 Proposed Intervenor-Plaintiffs Susan Graham, Terry Adkinson, Lawrence Berkel,
 2 Lawrence Berkel, IRA, Darla Berkel, Mathew Berta, Allert Boersma, Charles Bojarski,
 3 Diane Bojarski, Jason Bruce, Trisha Bruce, Daniel Burns, Susan Burns, Henrik Jonson,
 4 Carol Jonson, Henrik Jonson, IRA, Curt & Janean Johnson Family Trust, Curt & Janean
 5 Johnson, jointly, Curt Johnson, Curt Johnson, Roth IRA, Curt Johnson, Roth IRA,
 6 Stephen Dankworth, David and Sandra Jones Trust, Debra Askeland, Dennis Gilman
 7 IRA, William R. Diehl, Marilyn L. Duncan, Regis T. Duncan, Regis T. Duncan, IRA,
 8 Elizabeth Lamb, Judy Froning, George Klinke, IRA, Mary Grant, Roderick C. Grant,
 9 Gary Hardenburg, Gary Hardenburg, Roth IRA, Henrik Jonson, IRA, Stephen Hogan,
 10 Val Indihar, John Jenkins, Mary J. Jenkins, IRA, Trustee, IRA, Trustee, Mary J.
 11 Jenkins, Trustee, John Lukens, John Lukens, IRA, Karen J. Coyne IRA, Craig Lamb,
 12 Lea Leccese, Paul Leccese, Lloyd Logan and Ida Logan, jointly, Lloyd Logan, IRA,
 13 William Loeber, Loretta J. Diehl, Daryl R. Mabley, Elizabeth Q. Mabley, D & E Macy
 14 Family Revocable Living Trust, Janice Marshall, Janice Marshall, IRA, Marc McBride,
 15 Marcia McRae, Mealey Family Trust, Mildred Mealey, beneficiary of Duane Mealey
 16 IRA, Jeffrey Merder, Jeffrey Merder, IRA, Rebecca Merder, Minner Trust, Jim
 17 Minner, Monique Minner, Reeta Mohleji, Roger Moucheron, Shirley Moucheron,
 18 William R. Nighswonger, Eric W. Norling, Eric W. Norling, IRA, Renee Norling,
 19 Chris Nowacki, IRA, Tamara and Chris Nowacki, jointly, Tamara Nowacki, IRA, John
 20 R. Oberman, Neil Ormonde, IRA, Nevada Ormonde, IRA, Thomas H. Panzer, Roth
 21 IRA, Thomas Herman Panzer Trust, Thomas H Panzer, Trustee, Ronald Parkinen,
 22 Deidre Parkinen, Alfred L. Pipkin, Alfred L. Pipkin, IRA, Prentiss Family Trust,
 23 Kenneth and Gail Prentiss Trustees, Robert Indihar, Nick Ruddick, Salli Sue Sammut,
 24 IRA, Salli Sammut Trust, Salli Sue Sammut Trustee, Paul R. Sarraffe, IRA, Ronald
 25 Scott, Ronald Scott, IRA, William L. Summers, IRA, Carol D. Summers, William L.
 26 Summers, Robert Tuohy, Gwen Tuohy, Jeffrey J. Walz, Steve P. White, IRA, Steve P.
 27 White, SEP IRA, W.C. Wilhoite, Karen Wilhoite, W.C. Wilhoite, Roth IRA, Gerald
 28 Zevin, IRA, Judith Glickman Zevin, Gerald Zevin, Judith Glickman Zevin, IRA, Robert

1 Churchill IRA, Robert Churchill Family Trust, Mark Clifton, Linda Clifton, Dennis and
 2 Diane Gilman, John and Mary Jenkins Trustees, the Ormonde Family Trust, Ronald
 3 Askeland, Douglas Sahlin IRA, Edith Sahlin IRA, George and Joan Trezek, Karen
 4 Coyne, James J. Coyne Jr. Trust, David Fife IRA, Leo and Cindy Dufresne, Leo T.
 5 Dufresne Jr. IRA, Darla Berkel IRA, William Nighswonger IRA, Juanita Bass, William
 6 V. and Carol J. Dascomb Trust, Robert Indihar IRA, Linda Baldwin IRA, Baldwin
 7 Family Survivors' Trust, Juanita Bass IRA, Matthew and Jennifer Berta, Randall S.
 8 Ingermanson IRA, Kimberly Dankworth, IDAC Family Group LLC, Robert S.
 9 Weschler, Karie J. Wright, D.F. Macy IRA, Stephen and Polly Yue, David Karp IRA,
 10 Iris Bernstein IRA, John and Mary Jenkins Trust, Lisa A. Walz, Ralph Brenner, David
 11 Kirsh, David Kirsh, Roth IRA, David Kirsh, Traditional IRA, Kirsh Family Trust UTD,
 12 The Knowledge Team Profit Sharing Plan, Joy A. de Beyer, Roth IRA, Joy A. de Beyer,
 13 Traditional IRA, Joy de Beyer, Michael R. Wertz, Michael R. Wertz, IRA, Catherine E.
 14 Wertz, Catherine E. Wertz IRA, Jeffrey Larsen, Gene Fantano, Gwenmarie Hilleary,
 15 Arthur V. Rocco, Kristie L. Rocco, Arthur V. and Kristie L. Rocco Living Trust; Bruce
 16 R. Hart IRA for Bruce R. Hart and Dixie L. Hart, Lynda Igawa, Bruce A. Morey; Bruce
 17 A. Morey IRA, William c. Phillips; David Haack; David Haack IRA, Cynthia J. Clarke,
 18 Douglas G. Clarke, Eben B. Rosenberger, Roger Hort, Daniel Knapp, Judy Knapp,
 19 Edward Takacs and Monica Takacs, Barbara Humphreys, IRA, Robert H. Humphreys,
 20 Donna M. Kopenski, IRA Roth, Richard A. Kopenski, IRA Roth, Donna M. and
 21 Riochard A. Kopenski Family Trust, William R. Rattan Rev. Trust, Perryman Family
 22 Trust, Cathy Totman, IRA, Beverly & Mark Bancroft, Beverly A. Bancroft, IRA, and
 23 Daryl Dick ("Intervenors") on their own behalf and on behalf of all other persons
 24 similarly situated state and allege as follows:

PARTIES

25
 26 1. Intervenors are among the 3,500 investors who purchased and currently
 27 own general partnership ("GP") interests in 87 partnerships formed by Defendant First
 28 Financial Planning Corporation, d/b/a Western Financial Planning Corporation, hereafter

1 “Western,” between 1981 and 2012 as alleged by the Securities and Exchange
2 Commission (“SEC”) in its complaint herein.

3 **JURISDICTION AND VENUE**

4 2. This is an action in intervention in the above-captioned suit as filed by
5 Plaintiff SEC complaint. The SEC has alleged this action arises under Sections 20(b),
6 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77t(b),
7 77t(d)(1) and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Securities
8 Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A); 78u(e)
9 and 78aa.

10 3. Venue is proper in this district pursuant to Section 22(a) of the Securities
11 Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because
12 certain of the transactions, acts, practices, and courses of conduct constituting violations
13 of the federal securities laws occurred within this district, Western is located in this
14 district, and Schooler resides in this district.

15 4. This complaint in intervention is submitted with Intervenors’ motion for an
16 order of this Court under Rule 24 of the Federal Rules of Civil Procedure permitting the
17 filing of this complaint which is now attached as Exhibit A to said motion. Intervenors
18 submit this complaint in intervention and said motion pursuant to the Court’s order of
19 April 6, 2016, (Dkt. No. 1224).

20 **INCORPORATION OF SEC COMPLAINT**

21 5. Intervenors incorporate the allegations of the SEC complaint into this
22 complaint except any allegations, contentions, or proposed remedy to:

- 23 a. Alter, modify, change or amend Intervenors rights under the GP
24 agreements investors entered into with Western from time to time
25 between 1981 and 2012;
- 26 b. Dissolve and liquidate said GPs; and
- 27 c. Distribute the funds among investors in said GPs contrary to the terms
28 of said GP agreements.

FACTUAL ALLEGATIONS

1
2 6. Intervenor is general partners in each of the 87 GPs which are the subject
3 of the receivership created by the Court's order of September 6, 2012, (Dkt. No. 10)
4 appointing Thomas Hebrank as temporary receiver ("Receiver") of said GPs and their
5 assets and by the Court's order of March 13, 2013, (Dkt. No. 174) appointing Hebrank
6 as the permanent Receiver in this case. Said orders were intended to provide Receiver
7 with broad powers to preserve and protect the assets of the GPs entrusted to him,
8 including all powers possessed by Western and the 87 GPs.¹ At any time the Receiver
9 believed he lacked the power to protect and preserve said assets, he had the duty as a
10 fiduciary to request the Court for an order allowing him to protect the GPs' assets and
11 assets transferred to Western for the purpose of protecting the GPs' assets.

12 7. Intervenor is informed and believe, and thereon allege, that investors who
13 acquired GP interests in said 87 GPs collectively own more than 95 percent of said GPs'
14 interests. The Receiver, with the SEC's consent, has proposed the distribution of
15 Western's interest. Intervenor is informed and believe and thereon allege that the SEC
16 and the Receiver have concluded that any interest of Western in said GPs should be
17 distributed to the investors as a partial offset of their losses by reason of their
18 investments in said GPs. Consequently, only investors who hold GP interests in said
19 GPs have any claim to the proceeds of the sale of GPs' assets and the liquidation of said
20 GPs.

21 8. Based on the facts alleged herein, Intervenor have an unconditional right
22 to intervene in this action under and pursuant to the Due Process Clause of the Fifth
23 Amendment and the Due Process Clause of the Fourteenth Amendment to the United
24 States Constitution and Section 7 of Article 1 to the California Constitution. Said

25 ¹ The March 13, 2013 order (Dkt. No. 174), at 5, ll. 19-22 reads: " Hebrank...is
26 immediately authorized, empowered and directed...to exercise all the lawful
27 powers of Western, its subsidiaries, and the entities listed on Schedule 1, and their
28 officers, directors, employees, representatives, partners, or persons who exercise
similar powers and perform similar duties."

1 provisions of the U.S. Constitution and the California Constitution require that
2 Intervenor be permitted to participate in plenary proceedings based on the facts alleged
3 herein. Failure to permit Intervenor to participate in plenary proceedings would
4 severely prejudice their interests, because, as more specifically explained below, the
5 Receiver proposes to modify, alter, change, and effectively void the 87 GP agreements
6 which Intervenor entered into pursuant to California law from 1981 through 2012. The
7 Receiver proposes to distribute almost 99 percent of the assets of Intervenor under said
8 GP agreements to third parties who have no legal right or claim to said assets.

9 12. Based on the facts alleged herein, Intervenor have an unconditional right
10 to intervene in this action under well-established federal and California procedural law
11 that requires Intervenor to be named and served as necessary parties, because they are
12 general partners in the GPs the Receiver plans to dissolve, liquidate and terminate, and,
13 after which, the Receiver plans to distribute said GPs' assets to third parties who have no
14 legal or equitable right to said assets.

15 13. The Receiver does not adequately represent Intervenor's interests for the
16 following reasons:

17 A. On February 4, 2016, the Receiver proposed to sell all of the properties
18 owned by the 87 GPs in which Intervenor are general partners without
19 naming or serving them in their capacity of necessary parties.

20 B. On February 4, 2016, the Receiver proposed to distribute approximately 99
21 percent of each GP in which one or more of Intervenor are partners, to
22 persons who are strangers to said GP and have no legal or equitable right to
23 said assets.

24 C. Intervenor are informed and believe, and thereon allege, that the Receiver
25 keeps no books of account relating to the individual transactions, of
26 disbursements and receipts of receivership funds since his appointment,
27 which includes at least \$20 million in receipts and \$20 million in
28 disbursements of receivership funds.

1 D. Intervenors are informed and believe, and thereon allege, that the Receiver
2 has no intention of keeping any books of account relating to his receipts and
3 disbursements of receivership funds during 2016, which are expected to
4 include more than \$20 million in receipts and \$20 million in disbursements.

5 E. The Receiver has failed to pay the property taxes on numerous properties
6 which are subject to his receivership and thus has incurred penalties on
7 unpaid taxes at rates as high as 10 percent and interest on said unpaid taxes
8 as high as 22 percent per annum. The Receiver's failure to pay said taxes
9 when due has created liability for said penalties and exorbitant interest rates
10 and constitutes a waste of receivership assets in violation of his fiduciary
11 duties to the 3,500 partners in said GPs.

12 F. The Receiver has allowed entitlements in said properties to expire, which
13 has the effect of significantly lowering their value.

14 G. The Receiver has failed to seek entitlements for the properties entrusted to
15 him that would have substantially increased their value. Instead, the
16 Receiver opposed and resisted efforts by investors who sought entitlements
17 on the properties that would have enhanced the values of those properties
18 and also resisted efforts by investors to list the properties with brokers who
19 would have marketed the properties at values that reflected the entitlements
20 available for said properties.

21 H. The Receiver listed the properties with real estate brokers who lack the
22 skill, expertise, and experience to market said properties so as to maximize
23 their sales prices.

24 14. The SEC does not adequately represent Intervenors' interests for the
25 following reasons:

26 A. The SEC approves and consents to the Receiver's proposal to liquidate all
27 GPs' assets and dissolve the GPs in which Intervenors are general partners
28 without naming or serving them in their capacity as necessary parties.

1 B. The SEC approves and consents to the Receiver's proposal to distribute the
2 proceeds, which he calculates at more than \$22 million, from the
3 dissolution of said GPs, in which Intervenors are partners, to persons who
4 have no legal or equitable right to said funds.

5 C. The SEC contends it has little or no responsibility for the actions or
6 decisions of the receivers it recommends to the court and the court has the
7 duty and responsibility of monitoring the conduct and actions of the
8 receivers so they do not abuse their extraordinary powers to the harm of
9 investors.

10 D. The Court is not an investigative body with the means or personnel to
11 conduct investigations and reviews of the Receiver's actions and decisions
12 to determine whether the Receiver has abused his authority to the harm of
13 investors.

14 E. The SEC's primary objective in this action is to prove that those charged
15 with violations of the securities acts in fact committed those violations and,
16 it is only a secondary consideration, if any, whether its actions harm
17 investors.

18 F. The Receiver's primary objective is to please the SEC in these proceedings
19 so he can expect the SEC to recommend his appointment in another case
20 where he will make substantial fees.

21 G. The Receiver has endeavored to please the SEC by surrendering his
22 independence to the SEC and allowing the SEC to edit his filings and briefs
23 and the positions he has taken before this Court.

24 H. The Receiver's primary focus has been on assisting the SEC with its
25 prosecution of the Defendants in this case, rather than protecting the assets
26 of investors which it was entrusted to do.

27 15. Intervenors have timely filed their motion for an order for leave of Court to
28 file this complaint in intervention.

1 16. It would have been premature to file this complaint until now, because the
2 Court found, concluded and held in its order of March 4, 2015, keeping general
3 partnerships under receivership (Dkt. No. 1003) that the relief sought by this complaint
4 was premature at that time and for the foreseeable future for the following reasons:

- 5 A. “[C]onsistent with “the public interest in maintaining the receivership
6 estate’s assets while the SEC pursues charges against the Defendants,” the
7 most equitable decision is to keep all the GPs within the receivership until
8 the conclusion of this case.”
- 9 B. “Generally, during the pendency of an SEC enforcement action, property
10 related to the allegedly fraudulent investment scheme is held in
11 receivership.”
- 12 C. “In this case, the SEC has moved for disgorgement, (ECF No. 685), but the
13 hearing on the SEC’s motion will not be held for several months. (ECF No.
14 849.) Outside of moving to establish that the GPs are securities, the SEC
15 has not yet moved on its fraud causes of action. Whether disgorgement is
16 granted and whether investors were defrauded bear significantly on whether
17 distribution to investors is appropriate. An order on either disgorgement or
18 fraud will take months if decided on summary judgment, and potentially
19 upwards of a year if decided at trial.”
- 20 D. “Were the Court to release the GPs, a GP property would be subject to the
21 control of its several hundred general partner investors who would have no
22 obligation to consider the interests of the thousands of investors who may
23 be able to lay claim to Western’s interest through investor restitution.
24 Continuation of the receivership ensures that the Receiver and the Court
25 maintain oversight of these properties and that any action taken in relation
26 to the GPs or GP properties is the most equitable overall.”
- 27 E. “Though the Court could order Western to divest its interest and the GPs to
28 pay the notes, and thus release the GPs without the aforementioned issue,

1 this too is problematic. Western may not be liable for disgorgement or fraud
 2 and altering the structure of the GPs at this stage may be prejudging
 3 Western's liability. As the appropriate course of action is significantly
 4 influenced by Western's liability, the Court finds it appropriate to wait until
 5 these issues are resolved before removing the GPs from the receivership or
 6 altering their structure."

7 17. From the date this case was filed until February 4, 2016, the Receiver led
 8 Intervenors to believe through his words and actions that he understood, agreed, and
 9 recognized they had enforceable rights in the 87 GPs in which they are partners,
 10 including the following:

- 11 A. His decision to bill partners for their share of the operational fees for each
 12 specific GP in which they are partners.
- 13 B. His decision to bill partners for principal and interest payments they owed
 14 on notes to the GPs in which they are invested.
- 15 C. His explanation to investors why they were being charged for operational
 16 fees, principal and interest:

17 As your investment is an interest in a partnership that owns land,
 18 there are basic operating expenses that must be met. Typically, these
 19 would be charges for the payment of administrator salaries,
 20 insurance, property taxes and monthly and annual accounting.
 21 Additionally, there are amounts owed to Western and those are
 22 being collected as well. These amounts were typically for loans that
 23 were made by Western to the partnerships. The Court has ordered
 24 the Receiver to collect these amounts.²

- 25 D. His posting informational packets pursuant to the Court's order of March 4,
 26 2015, (Dkt. No. 1003) informing partners of facts relating to the GPs in

27 ² Receiver's website on the case: <http://www.ethreadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-planning-corp-dba-western-financial-planning-corp/>.

1 which they had invested, including the land purchase price, valuation of the
2 GPs, the amount of cash in the GPs, 2015 and 2016 projected expenses, the
3 projected cash for each GP at the end of 2016, the percentage of partners
4 paying operational bills since 2013, the capital calls which partners would
5 be expected to pay, and the estimated distribution partners would receive if
6 the GP was dissolved in 2015.

7 E. His balloting of partners, at least those who were not delinquent in making
8 note payments and operational fees, so they could vote whether or not to
9 sell properties owned by the GPs in which they are partners. Most of these
10 steps were taken pursuant to orders from the Court.

11 18. Intervenors' complaint in intervention did not become timely until the
12 following events occurred:

13 A. The Court's entry of the judgment in *SEC v. Schooler* on January 21, 2016,
14 (Dkt. No. 1170) thereby eliminating many if not all of the factors the Court
15 identified in its March 4, 2015, order (Dkt. No. 1003) for keeping the GPs
16 in the receivership;

17 B. On February 4, 2016, the Receiver filed his motion (Dkt. No. 1181)
18 proposing to sell all properties owned by the GPs, deposit the proceeds in a
19 single pot, and distribute those proceeds, in violation of the GP agreements,
20 to the 3,500 investors in proportion to their investments in all 87 GPs;

21 C. Based on facts Intervenors learned within the last month, Intervenors are
22 informed and believe, and thereon allege, the Receiver was not maintaining
23 books and records of more than \$20 million he has received and disbursed
24 since his appointment as Receiver and, on information and belief, the
25 Receiver does not intend to maintain books and records of more than \$20
26 million he expects to receive and disburse in 2016.

27 D. Intervenors only learned within the past month the Receiver had filed
28 motions under seal to sell GP property, which was approved by redacted

1 orders, in violation of 28 USC § 2001.

2 E. Intervenors only learned on April 6, 2016, the Receiver now claims he is
3 free to sell GP properties in violation of 28 USC § 2001, because the SEC
4 and Defendants waived by their silence any objection to Receiver's failure
5 to comply with that statute.

6 19. Intervenors would be severely prejudiced if they were not allowed plenary
7 proceedings rather than summary proceedings, and thereby denied Due Process of Law,
8 because they cannot adequately protect their interests for multiple reasons unless they
9 are permitted to intervene as parties in this action, including the following reasons:

10 A. The Court has denied without prejudice, on the grounds Intervenors have
11 not intervened in this action, Intervenors' motions brought opposing the
12 Receiver's motion to appoint brokers to sell the properties at values below
13 their fair market values (Dkt. No. 1204), to sell realty for approximately
14 \$23.5 million in violation of 28 USC § 2001 (Dkt. No. 1221), to sell the
15 Jamul Valley property (Dkt. No. 1194); to strike inadmissible statements
16 of fact and legal conclusions (Dkt. No. 1200), and seeking an accounting
17 of the Receiver's receipts and disbursements since his appointment (Dkt.
18 No. 1223).

19 B. Intervenors expect to bring additional motions and make specific discovery
20 requests to ascertain the true financial condition of all GPs and other assets
21 of the receivership which have been under the possession, custody and
22 control of the Receiver since his appointment. It is impossible to
23 understand the true financial condition of said GPs and Western because of
24 numerous irregularities in the Receiver's record keeping and financial
25 statements which Intervenors have presented to the Court in their motion
26 for an accounting (Dkt. No. 1223).

27 F. No party in this case has taken any action or has any incentive to take any
28 action, except for Intervenors, to investigate the Receiver's failure to

1 maintain books and records of the more than \$20 million he has received
2 and disbursed since his appointment or the other accounting irregularities
3 which Intervenors have uncovered and reported to the Court in their motion
4 for an accounting (Dkt. No. 1223).

5 G. No party in this case has taken any action or has any incentive to take any
6 action, except for Intervenors, to investigate the Receiver's failure to
7 comply with 28 USC § 2001.

8 H. As of April 6, 2016, the Receiver claims he is free to sell the Jamul Valley
9 property in violation of 28 USC § 2001, because the SEC and Defendants
10 waived any right to object by their silence to the application he filed under
11 seal to sell the Jamul Valley property and the redacted order approving the
12 sale.

13 I. The SEC has consented, and the Defendants have not objected, to the
14 Receiver's decision to treat all GP assets as a common fund and disburse
15 those assets in violation of the GP agreements, despite his prior words,
16 representations, and actions, including those alleged herein, that he
17 recognized Intervenors and the other investors-partners had perfected rights
18 under California law in the 87 GPs which are the subject of his
19 receivership.

20 J. Intervenors are informed and believe, and thereon allege, that no other party
21 in this action will object to the Receiver's plan to market and sell the 23
22 properties owned by the 87 GPs at fire sale prices substantially beneath
23 their fair market value.

24 K. Neither the SEC nor Defendants took any action or had any incentive to
25 take any action to force the Receiver to disclose the full 2013 appraisals
26 rather than summary sheets for those appraisals, and the 2015 appraisals
27 and brokers' opinions of value ("BOVs"), the Receiver had not filed with
28 this Court or otherwise released, until Intervenors demanded it or,

1 in this matter would not unduly delay or prejudice the adjudication of the rights of any
2 party to these proceedings, because said rights have already been adjudicated with the
3 Court's final judgment on January 21, 2016, (Dkt. No. 1170). The only matters
4 remaining open in this action relate to the manner in which the Court will release the 87
5 GPs now in the receivership and distribute Western's assets.

6 **COUNT I-FOR RELEASE OF GPS FROM RECEIVERSHIP**

7 24. Intervenors incorporate by this reference all of their previous allegations
8 made in paragraphs 1 through 23 above as though set forth in full.

9 25. Intervenors seek an order of this Court directing that the partners in each
10 GP are balloted on whether the partners in each GP elect or vote in favor of adopting the
11 proposed plan for distribution which Intervenors shall submit to this Court.

12 **COUNT II-FOR DECLARATORY JUDGMENT**

13 26. Intervenors incorporate by this reference all of their previous allegations
14 made in paragraphs 1 through 25 above as though set forth in full.

15 27. For declaratory judgment that the GP agreements are valid and enforceable
16 and that each partner in said GPs has the rights and duties described in the partnership
17 agreement for that GP.

18 **COUNT III-FOR AN ACCOUNTING FROM THE RECEIVER**

19 28. Intervenors incorporate by this reference all of their previous allegations
20 made in paragraphs 1 through 27 above as though set forth in full.

21 29. Intervenors seek an order of this Court directing:

22 A. The Receiver to deliver to Intervenors or post on his website the Receiver's
23 books and records (journals, ledgers, and books of account) for each receipt
24 and disbursement for each GP since his appointment;

25 B. The Receiver to deliver to Intervenors or post on his website balance sheets
26 for each GP for each quarter and cash flow statements for each GP for each
27 quarter beginning with the quarter that ended on December 31, 2012,
28 through the present.

1 C. The Receiver to Deliver to Intervenors or post on his website the Receiver's
2 books and records (journals, ledgers, and books of account) for each receipt
3 and disbursement for Western and its related entities since his appointment.

4 D. The Receiver to Deliver to Intervenors or post on his website the Receiver's
5 balance sheets for Western for each quarter and cash flow statements for
6 Western and its related entities for each quarter beginning with the quarter
7 that ended on December 31, 2012, through the present.

8 E. An audit of the receivership, including each GP and Western and its related
9 entities, in the event that the Receiver cannot or will not comply with
10 Paragraphs 29(A) through (D).

11 **PRAYER FOR RELIEF**

12 Wherefore, Intervenors request judgment in their favor:

- 13 A. The Receiver produce the books and records and financial records as specified
14 herein;
- 15 B. The partners in each GP be balloted on whether they elect to adopt the plan
16 proposed by Intervenors;
- 17 C. For declaratory judgment that the GP agreements are valid and enforceable;
- 18 D. The Receiver's filings under seal be unsealed and the redacted orders obtained on
19 the Receiver's motions be unredacted;
- 20 E. Such other relief as the Court deems just and proper.

21
22 DATED: April 8, 2016

Respectfully submitted,

23
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8 Attorney for Proposed Intervenor-Plaintiffs

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

**MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF PROPOSED INTERVENORS'
MOTION TO INTERVENE**

DEMAND FOR JURY TRIAL

Date: May 6, 2016

Time: 1:30 p.m.

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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1 **I. Introduction**

2 By this motion, Intervenor-Plaintiffs (“Intervenors”) seek leave to file the
3 complaint in intervention (“proposed complaint”) under Rule 24 of the Federal Rules of
4 Procedure.¹ The proposed complaint, which is submitted with this filing,² seeks the
5 following limited post-judgment relief:

- 6 1. An order allowing GPs to withdraw from the receivership upon the approval of
- 7 the partners in accordance with the GP agreements;
- 8 2. For declaratory judgment that the GP agreements are valid and enforceable; and
- 9 3. For an accounting of the receivership and, if that is not possible, an audit.

10 Rule 24 of the Federal Rules of Civil Procedure requires a “timely motion.” In this
11 context, Webster’s defines “timely” as “done or occurring at a suitable time.” And that
12 definition fits this motion: it is neither too early nor too late. A motion to intervene before
13 the final judgment on January 21, 2016, would have injected almost 200 investor-partners
14 into an ongoing SEC prosecution. They had no intention to litigate the merits of that case.
15 Rather, they were interested in getting the GPs released from the Receivership and the
16 Court’s March 4, 2016, order held that would not happen until the SEC case was over
17 (Dkt. No. 1003, pp. 18-20).

18 Likewise, a motion to intervene before the Receiver submitted his proposed plan
19 on February 4, 2016, would have been premature, since the Receiver’s plan for the GPs
20 did not exist. No investor knew whether that plan was acceptable until they saw and read
21 it. Any motion to intervene at that time would have been untimely, because the issues
22 were not ripe. See *Wolfson v. Brammer*, 616 F.3d 1045, 1057 (9th Cir. 2010) (“The
23

24 ¹ This motion is submitted pursuant to the Court’s order of April 5, 2016 (Dkt. No.
25 1224) directing Intervenors’ counsel that they may file the motions pursuant to Rule 24
26 of the Federal Rules of Civil Procedure. Intervenors’ counsel intends for this motion to
27 comply with the Court’s order. Consequently, he will re-file the motions linking them to
28 this motion.

² The proposed complaint is attached as Exhibit A the Notice of Motion and Motion
filed with these moving papers.

1 ripeness doctrine is peculiarly a question of timing, designed to separate matters that are
2 premature for review because the injury is speculative and may never occur ... Through
3 avoidance of premature adjudication, the ripeness doctrine prevents courts from
4 becoming entangled in abstract disagreements.”) The issues did not become ripe until the
5 Receiver proposed his plan.

6 Nor has this motion been filed too late. No order has yet been issued which allows
7 any property to be sold. Nor has the Receiver been able to articulate any prejudice to
8 anyone in allowing this process to be sharpened by the participation of those who have
9 the most to lose by his actions. The motions and oppositions filed over the past two
10 months have simply defined and joined the issues. In that way, they are now ripe for the
11 Court to decide. The civil justice system works best when there are no vacant chairs at
12 the table of justice.

13 **II. The Court’s Prior Orders Favorably Support This Motion**

14 Intervenor expect the SEC and Receiver to argue that the Court has already
15 denied a motion to intervene and a motion to release the GPs from the Receivership.
16 And they will argue Intervenor are merely rehashing old issues.

17 Intervenor disagree. The orders on both of those motions in fact support
18 Intervenor’s motion to intervene. The Court’s order denying Schooler’s motion to release
19 the GPs from the receivership simply decided that motion was too early. The Court held
20 the receivership should remain in place until the case was over. The case is now over.
21 Both the Receiver and the SEC concede the receivership should be terminated soon. The
22 only question is how it will be terminated. That question is now ripe for the Court to
23 decide.

24 Likewise, the Court found that Gregory M. Post, who filed a motion to intervene
25 in this matter, had satisfied all of the requirements to intervene except two: he was
26 adequately represented by other parties and his interests would not be impaired by the
27 proceedings. Regarding representation the Court held, “[T]he Court finds that
28 Defendants adequately represent Post’s interests.” (Dkt. No. 809, at 7, l. 9) In view of

1 the \$149 million judgment against both Defendants, each likely has a nine-figure
2 negative net worth. Neither has even taken a position on the Receiver's motions, much
3 less spoken on behalf of investors. As the alleged wrongdoers who victimized
4 Intervenors through securities violations, we submit they cannot and have not
5 represented the interests of the investor-partners, at least since the judgment was entered.

6 The Court also denied Post's motion on the ground that disposing of the action
7 would not impair his interests. Again, the Defendants were aggressively pursuing the
8 same remedy that Post was pursuing: getting the GPs released from the receivership. No
9 party has lifted a finger to support the Intervenors. The Receiver has massive power and
10 funding under existing Court orders. The Receiver and the SEC, a powerful federal
11 agency, are poised to strip millions of dollars from these investor-partners and for some it
12 is a big part of their retirements. The most remarkable feature of this controversy is that
13 the SEC and the Receiver are passionately committed to preventing the investor-partners
14 from fully participating in the decision what will be done with their assets. The question
15 is why. And we submit the answer to the question is not readily evident.

16 **III. The Receiver's Abrupt 180-Degree Turn**

17 By the Receiver's actions and his words, the Receiver convinced partners over the
18 first 40 months that he saw and would treat the GPs as real entities. He pestered partners
19 to pay the operational fees *on the GPs in which they invested*, to stay current on principal
20 and interest due on notes they had delivered *to the GPs in which they invested*. Typical
21 of the message that the Receiver gave investors was the hypothetical question and
22 answer he posted to his website. It portrayed a puzzled investor who had just received a
23 bill asking the Receiver about it:

24 [Investor:] I recently received an invoice from you/the Receiver. Why am I
25 being billed?

26 [Receiver:] As your investment is an interest in a partnership that owns land,
27 there are basic operating expenses that must be met. Typically, these would
28 be charges for the payment of administrator salaries, insurance, property
taxes and monthly and annual accounting. Additionally, there are amounts

1 owed to Western and those are being collected as well. These amounts were
2 typically for loans that were made by Western to the partnerships. The Court
has ordered the Receiver to collect these amounts.³

3 For 41 months, the Receiver's words and actions conveyed this same message to
4 the partners in the 87 GPs: he recognized their rights in and duties to the 87 GPs. In
5 addition to billing them for operational fees and amounts due on the notes, he notified
6 each partner by postcard of the informational packets on his website describing the
7 details of their individual GPs,⁴ e.g., the land cost, operational expenses, capital calls,
8 current value of the property, and GP values. And when the Receiver decided to sell a
9 property, he sent the ballots to GP partners so they could vote on whether or not to sell.
10 And on June 20, 2013, he proposed to the Court and the partners the GPs could be
11 released from the receivership.⁵ After 41 months of communicating this same message by
12 his words and actions, the Receiver made a stunning 180-degree turn. Most partners were
13 not wearing seatbelts. His February 4 motion, also supported by the SEC, would void the
14 agreements as an illusion which never existed in reality. He would sell off all properties
15 and then, in violation of express terms in the GP agreements, and distribute almost 99%
16 of the assets of each GP to persons who had no right, title or interest in those assets. The
17 Receiver never informed any of the investors they were paying operational fees and note
18 payments to operate an illusion. The Receiver's conduct is not merely capricious; the
19 Intervenor believe it is unconscionable.

20
21 ³ [http://www.ethreadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-
planning-corp-dba-western-financial-planning-corp/](http://www.ethreadvisors.com/cases/sec-v-louis-v-schooler-and-first-financial-planning-corp-dba-western-financial-planning-corp/).

22 ⁴ Order (1) Granting in Part and Denying in Part Defendants Motion to Modify
23 Preliminary Injunction Order; (2) Declining to Approve Receiver's Report and
24 Recommendations Regarding Valuation of Real Estate Assets of Receivership Entities;
25 (3) Granting Receiver's Motion for Authority to Pursue Claims Against Linmar
Borrowers (Dkt. No. 470) at 24, ll. 16-21.

26 ⁵ "By voting to retain its property interest, each GP is taking sole responsibility for its
27 share of the mortgage obligations and other expenses associated with the property. A
28 group of GPs that collectively retain a property ('Separating GPs') will separate from the
receivership entirely." Receiver's Report and Recommendations Regarding Valuation
of Real Estate Assets of Receivership Entities (Dkt. No. 203) at 10, ll. 21-24.

1 And one clear question demands an answer: where did the money go? The
 2 Receiver pressed investors to pay millions into the partnerships which appear to have
 3 been transferred to Western, but that is where the trail stops. Where did the money go
 4 from there? And that is one of the reasons, but just one, the Intervenors seek an
 5 accounting.

6 **IV. Intervenors Are Entitled to Intervene as a Matter of Right under Fed. R. Civ.**

7 **P. 24(a)(2).**

8 **A. Overview**

9 Rule 24(a)(2) of the Federal Rules of Civil Procedure, upon timely motion, state
 10 the Court must permit to intervene anyone who:

11 claims an interest relating to the property or transaction that is the subject of
 12 the action, and is so situated that disposing of the action may as a practical
 13 matter impair or impede the movant's ability to protect its interest, unless
 14 existing parties adequately represent that interest.

15 Citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998), this Court noted:

16 The Circuit apply a four-part test to determine whether intervention as of
 17 right should be granted: (1) the applicant must assert a "significantly
 18 protectable interest relating to the party or transaction that is the subject of
 19 the action; (2) the applicant's interest must be inadequately represented by
 20 the parties to the action; (3) disposition of the action without intervention
 21 may as a practical matter impair or impeded its ability to protect that
 interest; and (4) the applicant's motion must be timely.

22 *In re Novatel Wireless Sec. Litigation*, No. 08-cv-1689, 2014 U.S. Dist. LEXIS 85994, at
 23 *5-6 (S.D. Cal. 2014)

24 In the same case, this Court explained the burden on the applicant: "The applicant
 25 bears the burden of establishing all of the criteria, and the rule is construed 'broadly, in
 26 favor of the applicant for intervention.'" (*Id.* at *6). In the same case, the Court explained
 27 how the applicant establishes those facts by well-pleaded allegations, "Courts are to take
 28 all well-pleaded, nonconclusory allegations in the motion to intervene as true absent

1 sham, frivolity or other objections.” See also *United States ex rel. McGough v. Covington*
2 *Tech. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992)(Generally, “Rule 24(a)(2) is construed
3 broadly in favor of proposed intervenors.”); *United States v. City of Los Angeles*, 288
4 F.3d 391, 397-98 (9th Cir. 2002)(“The ‘liberal policy in favor of intervention serves both
5 efficient resolution of issues and broadened access to the courts. ... By allowing parties
6 with a practical interest in the outcome of a particular case to intervene, we often prevent
7 or simplify future litigation involving related issues; at the same time, we allow an
8 additional interested party to express its views before the court.”) *Peruta v. County of*
9 *San Diego*, 771 F.3d 570, 577 (9th Cir. 2014).

10 **B. Intervenors Have a Significantly Protectable Interest in This Action.**

11 Citing *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897
12 (9th Cir. 2011), this Court observed in *United States v. Ballantyne*, 2013 U.S. Dist.
13 LEXIS 125632 (S.D. Cal. 2013), “To demonstrate a ‘significant protectable interest,’ an
14 applicant ‘must establish that the interest is protectable under some law and that there is a
15 relationship between the legally protected interest and the claims at issue.’” The
16 undisputable facts establish Intervenors have met that burden. On February 4, 2016, the
17 Receiver filed a motion to sell the properties owned by 87 GPs, deposit the proceeds from
18 those sales in what he calls a “single pot,” and distribute the single pot to 3,500 investors
19 in proportion to the amount each invested in one or more of the 87 GPs (Dkt. No. 1181).
20 In essence, the Receiver has moved to dissolve each GP, liquidate the assets, and disburse
21 more than 98% of the assets in violation of the GP agreements. This Court previously
22 held that the partners and GPs have protectable interests in this case (Dkt. No. 809, p. 5,
23 ll. 23-25).

24 Each GP was formed under California law. Each GP agreement provides that GP
25 assets will only be distributed to partners in each GP in proportion to the capital
26 contribution to the GP. In this case, the Receiver seeks to forfeit the partners’ interests
27 under the GP agreements which were signed as long as 35 years ago.

1 **C. The Disposition of This Action May Impair or Impede Movants’ Ability to**
2 **Protect Their Interests**

3 The proposed complaint in intervention satisfies this element for multiple reasons.
4 Most obviously, on February 4, 2016, the Receiver’s motion (Dkt. No. 1181) would
5 liquidate each GP, and distribute almost 99% of the assets to persons who, as alleged in
6 the proposed complaint in intervention, have no right, title, or interest in those assets.
7 According to the Receiver, the SEC has consented to his motion.⁶ No party to the case
8 has opposed this motion.

9 By way of example, Intervenors Mary and John Jenkins invested \$30,000 in Park
10 Vegas Partners in 1983. For 33 years, they have paid off their notes and paid operational
11 fees. According to the Receiver’s projections in his February 4, 2016, memorandum (Dkt.
12 No. 1181), the Jenkins would have received \$58,200 dollars (194%) if Park Vegas
13 Partners was dissolved in 2015 and the proceeds distributed to its partners. Under the
14 Receiver’s proposal, the Jenkins would receive approximately \$4,000. The Receiver’s
15 plan will have the same effect on each Intervenor’s interests, just as it does on the
16 Jenkins, unless they can fully participate as parties.

17 Likewise, Intervenors opposed the Receiver’s motion to sell GP properties in
18 violation of 28 USC § 2001 (Dkt. No. 1221), to list the properties with brokers at list
19 prices beneath their values, and to obtain an accounting of the receivership (Dkt. No.
20 1223). No party to this case has taken any of these steps. Nor do they have any incentive
21 to do so, since their assets are not at risk.

22 **D. Defendants Cannot Adequately Represent Intervenors in This Action**

23 The structure of the actual controversy in this case conclusively establishes
24 Defendants cannot adequately represent Intervenors in this action. According to the SEC
25 and the Receiver, Intervenors are the victims of securities violations committed by

26 _____
27 ⁶ “An opposing party’s failure to file an opposition to any motion may be construed as
28 consent to the granting of the motion pursuant to Civil Local Rule 7.1(f)(3)(c).” Dkt. No.
1181, at 2, ll. 18-20.

1 Defendants. Consequently, it is not surprising the Court found a conflict of interest
2 between Defendants and partners. *SEC v. Schooler*, 2013 U.S. Dist. LEXIS 158538
3 (S.D. Cal. 2013)(“Counsel for Defendants has a clear conflict of interest in representing
4 the interests of both Defendants and the GPs because the GPs are comprised of investors
5 alleged to have been defrauded by Defendants.”). Under these circumstances,
6 Defendants obviously cannot and have not adequately represented partners in this case.

7 And the record conclusively establishes Defendants have not represented, cannot
8 represent and have no motivation to represent Intervenors or any of the other partners in
9 the GPs. Defendants have failed to take any position in relation to the Receiver’s
10 February 4 motion as he indeed states in that motion (Dkt. No. 1225 at 2, l. 26). It is
11 highly doubtful Defendant Schooler has any funds to further participate in this case
12 given the SEC’s judgment against him for over \$147 million and his inability to post a
13 stay. Nor does Defendant Western even have any claim in the properties, given the
14 Receiver’s position that Western’s interests will be distributed to all 3,500 partners (Dkt.
15 No. 1181 at 13, ll. 13-18). Nor would Western have any incentive to support the claims
16 of one group of partners against another group of partners. Nor has Western sought an
17 accounting from the Receiver for the irregularities in his books and records and his
18 financial statements. Nor has Western opposed the Receiver’s *ex parte* applications
19 submitted to the Court under seal for redacted orders approving the sales of the
20 properties in violation of 28 USC § 2001. We submit the Defendants who committed
21 securities violations against the victims are by definition inappropriate parties to
22 represent the victims’ interests in this case.

23 **E. The Receiver Cannot Adequately Represent Intervenors in This Action**

24 Instead, the Receiver’s February 4 plan would distribute \$4,020 (13.4%) to the
25 Jenkins, rather than \$58,000 they would receive under the terms of the GP agreement.⁷
26 By any measure, the Receiver has taken an adverse position to the Jenkins’ financial

27 ⁷ The discrepancy is greater; because the Intervenors’ valuations are substantially
28 higher.

1 interests. This makes the Receiver the Jenkins' adversary. By definition, an adversary is
2 not an adequate representative for the person on the other side of the relationship.
3 Indeed, Intervenor's question whether it is appropriate for the Receiver, as a fiduciary, to
4 even propose a distribution plan adverse to those to whom he owes a fiduciary duty.

5 **F. The SEC Cannot Adequately Represent Intervenor's in This Action**

6 According to the Receiver, the SEC has approved his motion to sell off the
7 properties, create a "single pot," and distribute the single pot to all investors in
8 proportion to their total investment in all GPs.⁸ In supporting the Receiver's plan, the
9 SEC supports forfeiture of the rights of the Intervenor's under GP agreements. Hence, in
10 supporting the Receiver, the SEC has cast itself in an adversarial role in relation to the
11 Intervenor's interests in the GPs. In doing so, the SEC has made itself the Intervenor's
12 adversary. As such, the SEC obviously cannot and does not speak on behalf of
13 Intervenor's.

14 **G. Intervenor's Motion to Intervene Is Timely**

15 The Ninth Circuit has consistently held that, "In analyzing timeliness, however,
16 the focus is on the date the person attempting to intervene should have been aware his
17 'interest[s] would no longer be protected adequately by the parties,' rather than the date
18 the person learned of the litigation," *Chamness v. Bowen*, 722 F.3d 1110, 1121 (9th Cir.
19 Cal. 2013), citing *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997). In *Legal Aid Soc. v.*
20 *Dunlop*, 618 F.2d 48, 50 (9th Cir. Cal. 1980), the court focused on how the change of
21 position by the Government, as the Receiver has done here, was the event that triggered
22 the beginning of the time period for the movant's to intervene. The Ninth Circuit held:

23 We rule that the district court did not apply the correct legal standard in
24 finding the Chamber's second motion was not a timely one and that it should
25 have considered the motion in light of the substantially different position
26 that had then been assumed by the Government as the principal defendant.

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28 ⁸ *Id.*

1 618 F.2d 48, 50. See also: *League of United Latin Am. Citizens v. Wilson*, 131 F.3d
2 1297, 1304 (9th Cir. Cal. 1997)(“Although ACNFARI correctly notes that the crucial
3 date in assessing the timeliness of an intervention motion is the date that the applicant
4 ‘should have been aware [its]’ interests would no longer be protected adequately by the
5 parties.”); *Indus. Tech. Research Inst. v. LG Elecs., Inc.*, 2014 U.S. Dist. LEXIS 148865
6 at 6 (S.D. Cal. Oct. 15, 2014); *Lee v. The Pep Boys-Manny Moe*, 2016 U.S. Dist. LEXIS
7 9753 (N.D. Cal. Jan. 27, 2016); *Montgomery v. United States*, 2012 U.S. Dist. LEXIS
8 5014 (S.D. Cal. 2012).

9 In this case, the necessity for Intervenors to bring this motion was triggered by the
10 Receiver’s 180-degree reversal on February 4, 2016. Until that point, the Receiver
11 recognized and supported the existence and integrity of the GPs in a multitude of ways.⁹
12 On that date, with his motion, the Receiver proposed to nullify the operative effect of 87
13 GP agreements. The loss of those rights to Intervenors would cost them millions of
14 dollars. As discussed above in Section E, the Receiver now takes an adversarial position
15 against the interests of Intervenors. Given the extraordinary powers the Court has
16 granted the Receiver in multiple orders, it is essential that Intervenors be allowed to
17 participate in this case as parties. The Court has held that the motions Intervenors
18 brought to protect their interests (Dkt. Nos. 1194, 1200, 1204, 1221, and 1223) must be
19 preceded by this motion to intervene.

20 There is a second major event which has now caused this motion to intervene to
21 ripen. On January 21, 2016, the Court entered a final judgment (Dkt. No. 1170) in favor
22 of the SEC and against Defendants for approximately \$149 million. That judgment is
23 now final against Western, since it took no appeal. Defendant Schooler has filed an
24 appeal, but apparently is unable to post a bond. That final judgment has caused the
25 motion for intervention to ripen in two ways.

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28 ⁹ *Supra*, Introduction.

1 First, many if not all of the factors which the Court weighed in favor of “Keeping
2 the GPs in Receivership,” as explained by the Court in its March 4, 2015, order (Dkt.
3 No. 1003, pp. 18-20), are simply no longer operative. In particular, the Court cited
4 multiple factors to support its conclusion, “the most equitable decision is to keep all the
5 GPs within the receivership until the conclusion of this case.” (*Id.*, p. 18, l. 28, p. 19, l. 1)
6 As a practical matter, the case has been concluded. Even the Receiver has acknowledged
7 his receivership must end soon. Accordingly, the relief sought by Intervenors has now
8 ripened and is also timely. Likewise, Intervenors’ right to intervene in this case has also
9 ripened.

10 Indeed, Intervenors have brought this motion at exactly the right point in this case:
11 at the point when the Court is about to decide the remedies that would affect the rights of
12 all investor-partners in the GPs. Any earlier would have put the 200 Intervenors in an
13 SEC civil prosecution. A decision that this motion should have been brought sooner
14 would create a precedent that invite if not compel investors in other cases to seek earlier
15 intervention. That could be disruptive to the prosecution of those cases. Intervenors
16 interpret the Court’s order on March 4, 2015, (Dkt. No. 1003) to be saying something
17 very similar.

18 And there is yet another factor which has caused this motion to ripen since the
19 Court’s order of October 20, 2014, (Dkt. No. 809) denied the motion of Gregory Post to
20 intervene in this case. In part, that order rested on the premise that Defendants could
21 adequately represent the interests of investor-partners. Neither Defendant has shown any
22 interest in participating in post judgment proceedings in this case. Neither Defendant has
23 opposed the Receiver’s February 4, 2016, motion (Dkt. No. 1181) to sell the properties,
24 put the proceeds in a single pot, and distribute those proceeds to all investors pro rata.
25 Neither Defendant has opposed the Receiver’s sales of GP properties in violation of 28
26 USC § 2001. Indeed, the Receiver now claims that both Defendants effectively waived
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1 any right of Intervenor to oppose the sale of the Jamul Valley property.¹⁰ Neither
2 Defendant has sought an accounting of the Receiver's failure to keep books and records
3 nor his other irregular accounting practices. Consequently, it is clear Defendants, on
4 their own behalf, are not opposing any actions taken by the Receiver, much less on
5 behalf of the Intervenor. Accordingly, to the extent the Court found Defendants could
6 or would adequately represent the investor-partners, that is clearly no longer the case.

7 Nor does the entry of a final judgment necessarily affect whether intervention is
8 proper. "In determining whether a motion to intervene as of right is timely, a court
9 should look to the purpose for which intervention is sought,....," *Hodgson v. United Mine*
10 *Workers of America*, 473 F.2d 118, 129 (D.C.Cir. 1972). And this principle is
11 particularly applicable in deciding whether to permit intervention after entering final
12 judgment. Where the issues relate to post judgment proceedings as they do here, there is
13 no sound reason to prevent intervention. See: *FTC v. American Legal Distributors, Inc.*,
14 890 F.2d 363 (11th Cir. Ga. 1989):

15 There remains the issue of intervention as to issues not then decided,
16 namely, issues relating to the future sale and distribution of the frozen assets.
17 As to these issues, appellants' Motion was not untimely. Allowing
18 intervention for the limited purpose of addressing issues not then resolved
19 would not unduly delay or otherwise prejudice the district court proceedings.

20 In *Hurd v. Illinois Bell Tel. Co.*, 234 F.2d 942, 944 (7th Cir. Ill. 1956), the
21 court dealt with an issue similar to one before this Court: allowing one pensioner to
22 intervene after judgment in case with possible prejudice to that pensioner and
23 others similarly situated. The Court held:

24 But, although intervention after judgment is not to be lightly permitted this
25 cause is so fraught with elements of possible prejudice to petitioner and other
26 pensioners similarly situated, that we, in the exercise of a sound discretion
27 conclude that our order permitting petitioner to intervene should be allowed
28 to stand.

¹⁰ Dkt. No. 1225, p. 2, ll. 18-20, and p. 2, l. 27, p. 3, l. 3.

1 See also: *Stotts v. Memphis Fire Dep't*, 679 F.2d 579 (6th Cir. Tenn. 1982)(“Timeliness
2 presents no automatic barrier to intervention in post-judgment proceedings where
3 substantial problems in formulating relief remain to be resolved.”).

4 Finally, the granting of this motion would cause no prejudice to any party in this
5 case or other investors. To this date, neither the Receiver nor the SEC have been able to
6 articulate any concrete prejudice to any person by allowing Intervenors to participate in
7 this case as a party. Indeed, Intervenors are raising the very issues the Court should
8 consider and decide in relation to all investors. *United States v. City of Los Angeles*, 288
9 F.3d 391, 397-98 (9th Cir. 2002)(“The ‘liberal policy in favor of intervention serves both
10 efficient resolution of issues and broadened access to the courts. ... By allowing parties
11 with a practical interest in the outcome of a particular case to intervene, we often prevent
12 or simplify future litigation involving related issues; at the same time, we allow an
13 additional interested party to express its views before the court.”) *Peruta v. County of*
14 *San Diego*, 771 F.3d 570, 577 (9th Cir. 2014)

15 **V. In the Alternative, the Court Should Exercise Its Discretion to Permit**
16 **Intervenors to Intervene.**

17 Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure provides that, on timely
18 motion, the Court may permit anyone to intervene who “has a claim or defense that
19 shares with the main action a common question of law or fact.” When considering a
20 motion for permissive intervention, a court considers several factors, including:

21 the nature and extent of the intervenors’ interest, their standing to raise
22 relevant legal issues, the legal position they seek to advance, and its
23 probable relation to the merits of the case[,] whether changes have occurred
24 in the litigation so that intervention that was once denied should be
25 reexamined, whether the intervenors’ interests are adequately represented by
26 other parties, whether intervention will prolong or unduly delay the
27 litigation, and whether parties seeking intervention will significantly
28 contribute to full development of the underlying factual issues in the suit and
to the just and equitable adjudication of the legal questions presented.

Perry v. Schwarzenegger, 630 F.3d 898, 905 (9th Cir. 2011).

1 As discussed above, these factors weigh in favor of granting Intervenors
2 permission to intervene. They raise common issues of fact and law with the various
3 motions the Receiver has filed since February 4, 2016, to sell the GP properties and
4 distribute the proceeds pro rata to all investor-partners.

5 **VI. CONCLUSION**

6 For the foregoing reasons, Intervenors respectfully request that the Court grant
7 their Motion to Intervene as a matter of right pursuant to Fed. R. Civ. P. 24(a)(2), or
8 alternatively, to intervene by permission pursuant to Fed. R. Civ. P. 24(b)(1)(B).

9 DATED: April 8, 2016

Respectfully submitted,

11 By: /s/ Gary J. Aguirre

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