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8 Attorneys for Proposed Intervenors

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

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

20 Defendants,

21 ALEX HAUA, et al.,

22 Proposed Intervenors

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

**INVESTOR GROUP’S NOTICE OF
MOTION FOR INTERVENTION AS A
MATTER OF RIGHT, OR,
ALTERNATIVELY, FOR PERMISSIVE
INTERVENTION**

[FRCP 24]

Hearing:

Date: May 6, 2016

Time: 1:30 p.m.

Dept.: 2D

Judge: Hon. Gonzalo P. Curiel

TO ALL PARTIES AND THEIR ATTORNEY(S) OF RECORD:

NOTICE IS HERBY GIVEN 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, Investor Group¹ will, and hereby does, move this court for an order that they may intervene in this action as a matter of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure, or, in the alternative, allowing Investor Group permissive intervention in this matter under Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure.

Investor Group seeks limited-in-scope intervention to obtain collateral relief as set forth in the attached Complaint in Intervention. Specifically, Investor Group desires to participate in post-judgment remedial proceedings, including challenging the conduct and appointment of the Receiver in this action and/or modifying the terms of the Receivership as follows: The Investor Group desires to intervene to:

- A. Oppose and enjoin the contemplated sale process, including but not limited to those set forth in Dkt 1181, 1191 regarding disposition of any and all of the Properties held by the general partnerships (“GP”) that are subject to receivership in this action, of which Investor Group are the general partners;
- B. Oppose the recommendations made by the Receiver with regard to the sale and/or management of the GP assets, including but not limited to those set forth in Dkt 1203;
- C. Oversee and evaluate the Receiver’s management of the GPs and the GPs’ assets;
- D. Obtain full access to the Receiver’s filings and recommendations submitted to this Court;

¹ “Investor Group” shall have the same meaning and refer to the same individuals and entities as those identified as the Intervening Group in the [proposed] Complaint in Intervention, concurrently filed herewith as Exhibit “A” to the motion.

- 1 E. Unseal and/or unredact documents previously filed under seal or redacted
2 by the Receiver; and
3 F. Obtain all books and records related to the Receiver's management of the
4 GPs and the GPs' assets.

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

21 In the alternative, Investor Group should be allowed permissive intervention in this
22 action:

23 The claims that Investor Group desires to assert in this action share common questions
24 of law or fact with the current issues in the action. Specifically, Investor Group seeks to modify
25 the Receivership ordered by the Court in this litigation.

26 This Court has subject matter jurisdiction over the claims proposed by Investor Group
27 because it continues to have jurisdiction over the Receivership, which the Investor Group
28 partnerships are subject to.

1 Investor Group has attached its proposed Complaint in Intervention to this motion, as
2 required by Rule 24(c) of the Federal Rules of Civil Procedure.

3 The Motion is based upon this Notice, the accompanying Memorandum of Points and
4 Authorities, declaration of Timothy P. Dillon, the concurrently filed [Proposed] Complaint in
5 Intervention, all pleadings and papers on file in this action, and upon such other matters as may
6 be presented to the court at the time of the hearing.

7
8 Dated: April 8, 2016

Respectfully submitted,
DILLON GERARDI HERSHBERGER
MILLER & AHUJA, LLP

9
10 s/ Timothy P. Dillon
11 Timothy P. Dillon, Esq.
12 Attorney for ALEX HAUA, et al.
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CERTIFICATE OF SERVICE

I am employed in the County of San Diego, State of California, am over the age of 18 and not a party to the within action. My business address is DILLON GERARDI HERSHBERGER MILLER & AHUJA, LLP, 5872 Owens Avenue, Suite 200, Carlsbad, CA 92008. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing.

On April 8, 2016, I caused to be served the following documents described as:

- **INVESTOR GROUP'S NOTICE OF MOTION FOR INTERVENTION AS A MATTER OF RIGHT, OR, ALTERNATIVELY, FOR PERMISSIVE INTERVENTION**

(BY ELECTRONIC FILING) I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the Court. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. Under said practice, the following CM/ECF user(s) were served:

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Dated: April 8, 2016

s/ Ronnielyn Abrera
Ronnielyn Abrera

EXHIBIT “A”

1 Timothy P. Dillon, Esq. (SBN 190839)
2 **DILLON GERARDI HERSHBERGER MILLER & AHUJA, LLP**
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8 Attorneys for Intervenors, ALEX HAUA, et al.

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

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

19 Defendants,

20 ALEX HAUA, et al.,

21 Proposed Intervenors.

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

COMPLAINT IN INTERVENTION

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

PARTIES

1
2 1. The Intervening Group¹ are among the investors who purchased and currently own
3 general partnership interests in the 87 General Partnerships (“GPs”) formed by Defendant First
4 Financial Planning Corp. (d/b/a Western Financial Planning Corp) between 1981 and 2012 as
5 generally alleged by the SEC in its complaint herein. The GPs collectively own interests in 23
6 real property parcels as described in further detail below. The “Intervening Group” are members
7 of one or more of the GPs as described in further detailed in ¶¶2-24 below.

8 2. The Bratton Valley Property is owned by three “GPs” - Valley Vista Partners,
9 Bratton View Partners, and Honey Springs Partners. Ned Iguchi Trust, David R. Powell, JoAnne

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13 ¹ The Investor Group is comprised of more than 100 individual and entities who have invested in the various general partnerships
14 that are subject to the receivership. The Investor Group includes: Randall R. Alessi SEP IRA, Cheri A. Alguire, Cheri A. Alguire
15 IRA, Jodi Pickering, Dana Anenberg, Linda Armas IRA, Emily J. Averill, Kent & Susan Averill, jointly, Kevin B. Bacon & Karin
16 Bacon Co-Trustees of The Bacon Family Trust, Jeanne Bavaro, Kathleen A. Becker Revocable Trust, Frank A. Bendrick, Patricia
17 A. Bendrick, Simon Bibeau SEP IRA, James C. Boore IRA, Regina S. Boore 401(k), Boore Family Trust, Ed & Irene Brabant,
18 Edward H. Brahant SEP IRA, Gregory & Kathleen Brown, Megan Brown, Megan Brown Trust dated 10/1/1991, Thomas & Susan
19 Brown 2001 Trust, Thomas & Susan Brown, Trustees, William & Linda Bruno, Patricia C. Buza IRA, Anita L. Byrum, Marc Camras
20 Roth IRA, Camras Family Trust, Donna Carlomagno, Paul Carlomagno, Patricia Carras, Patricia Carras Trust, Robert J. Chastanet
21 IRA, Robert J. & Rachel I. Chastanet, Takayuki & Tomoko Chubachi, Takayuki & Tomoko Chubachi Revocable Trust dated Feb.
22 26, 2008, Cynthia Clarke, IRA, Douglas Clarke, Anthony M. Colangelo, Ken Corlett & Sylvana Corlett JTWRDS, Ken Corlett, Roth
23 IRA, Ken Corlett, SEP IRA, Kimberly A. Croke, Melanie Cullen, Richard Cullen, Christopher J. and Eileen L. Davis, Matthew
24 DeLine 401k Plan, Matthew DeLine IRA, Matthew DeLine, DeLine Family Trust, William J. Deline IRA, David DeMarais, Mary
25 Doan, Leo T. Dufresne Jr., IRA, Leo T. Dufresne Jr., IRA, Leo & Cindy Dufresne , Roger & Susan Engle, Roger Engle, Letitia
26 Fleming, Steven Goldman, Green Family Trust, Shawn T. Green, Timothy & Bessie Green, Michael Greenberg, Jon Gunter, Pattie
27 Gunter, Terry Hagen, Jensen Family Trust dated April 23, 1997, Credit Shelter Trust under the Jensen Family Trust, Traci Jensen
28 Hagerman Beneficiary IRA of Deceased Gregory Bullin-Jensen IRA, Susan E. Harrington, Wendy Hass, IRA, Mikale Associates,
Inc., Alejandro & Terri Haa, Reyna M. Haa, James R. Hettinger, Spirit At Work, Inc., Ho Trust Dated 10/10/2007, Tjung-Ling
Ho, Roselynn Ho Trustees, Richard Howe, John Huang, Priscilla Huang, Ned Iguchi Trust, Angelique Judd, Christopher &
Angelique Judd, Della June, Ronald Karp, Roth IRA, Ruey Ken, Punita Khanna IRA, Cheryl Layman, Taekyun Lee & Melina
Stafford, Taekyun Lee, Gene Lin, Gene Lin & Ruey Ken, Kevin T. & Karon C. Lingle, Karon C. Lingle IRA, Anita C. Lorr, IRA,
Eric & Anita Lorr, Eric Lorr, IRA, Paul David & Nicole Kathleen Losey, Charles J. Lozinger, Charles J. Lozinger & Tike K.
Lozinger, Chris & Sue Lupo, Trustees, Chris & Sue Lupo, Jamie Lupo (Sison), Chris Lupo, Sue Lupo, Bruce K. Marquez, Bruce K.
Marquez & Rose Marquez, Tom W. & Rosita B. McGowan, Elbert A. McLaren & Luzviminda T. McLaren, Trustees of McLaren
Family Trust dated 4/8/2008, Elbert McLaren, IRA, Luzviminda T. McLaren, IRA, Elbert A. McLaren & Luzviminda T. McLaren,
Trustees of McLaren Family Trust dated 4/8/2008, Chris A. Mekata, Stephen A. Mitchell, Stephen N. Morrill & Maria T. Morrill,
Stephen N. Morrill , Kathleen E. Nagy, Michael G. Nichols, Noel F. Owen, Salvador L. Paleo, Rosa I Paleo, Salvador L. Paleo, Rosa
I Paleo, Trustees of the Paleo Family Trust Dated 11/20/2001, Martel Pellerin, David R. Powell, JoAnne Powell, Gary A. Powell,
Gary A. Powell & Tonya J. Powell, Tonya J. Powell, Georjean Radford, Roland Ramirez, Elizabeth L. Ray, Reed Family Trust,
Robert E. & Elaine H. Richardson, Daniel Richter, Daniel Richter, IRA, Ken Robinson, Joseph J. Rousseau (but name not on
purchase contract), Pamela J. Russell, Louis Serianni, Steven R. Shuey & Kristine J. Shuey, Trustees of Shuey Family Trust dated
Jan. 12, 2008, Dana P. Smith, Scott Snyder & Mary Weickgeuant, Scott Snyder, IRA, Marc Sorgatz, Cathy C. Spatuzzi, Cathy C.
Spatuzzi & Michael A. Spatuzzi, Trustees of Spatuzzi Family Trust, Roland & Anne Staeb, Roland Staeb IRA, Anne L. Staeb IRA,
The Staeb Family Trust dated 10/7/1999, Roland & Anne Staeb Trustees, Roland Staeb Roth IRA, Nelson Stephens, Gerald Stranak,
IRA, Sylvester Family Living Trust, Richard & Sharon Sylvester Trustees, Natalie Sylvester Pestrex, Anthony Sylvester, Richard
Sylvester Roth IRA, Sharon Sylvester Roth IRA, Michael Taetzsch, Patrick Teel, Cynthia A. Teply IRA, John & Cynthia A. Teply,
Joe Toledo, Kenny & Leslie Tung, Jenny Wang, Alan & Gail Whetsine, Richard Wodiske DDS Inc. Defined Contribution Plan,
Richard Wodiske Trustee, Wodiske Family Trust, Richard & Laurie Wodiske Trustees (collectively, the “Investor Group”).

1 Powell are partners in Bratton View Partnership. Scott Snyder, Mary Weickgeuant, Scott Snyder,
2 IRA are partners in Honey Springs Partnership.

3 3. The Dayton I Property is owned by four “GPs”: Dayton View Partners, Fairway
4 Partners, Green View Partners, and Par Four Partners. Surinder Brar, The Michael E. Comer &
5 Carol Comer Revocable Trust are partners in Dayton View Partnership. Tom W. & Rosita B.
6 McGowan, Elbert A. McLaren & Luzviminda T. McLaren, Trustees of McLaren Family Trust
7 dated 4/8/2008, Steven R. & Kristine J. Shuey, Trustees of Shuey Family Trust dated 1/12/2008
8 are partners in Fairway Partnership. Richard Howe, Gene Lin are partners in Green View
9 Partnership. Taekyun Lee, Charles J. Lozinger, Salvador L. & Rosa I. Paleo are partners in Par
10 Four Partnership.

11 4. The Dayton II Property is owned by four “GPs”: Storey County Partners, Comstock
12 Partners, Silver City Partners, and Nevada View Partners. Surinder Brar, Matthew DeLine, 401k,
13 Patricia C. Buza, IRA, Charles J. & Tike K. Lozinger, Martel Pellerin are partners in Storey
14 County Partnership. Ken Corlett, SEP IRA, William J. DeLine IRA, William Albert & Donna
15 Jean Dorney, Roland & Anne Staeb, John & Cynthia A. Teply are partners in Comstock
16 Partnership. Dana Anenberg, James C. Boore, IRA, Boore Family Trust, Steven R. & Kristine J.
17 Shuey, Trustees of Shuey Family Trust dated 1/12/2008, Nelson Stephens, Matthew DeLine,
18 DeLine Family Trust, Joseph J. Rousseau are partners in Silver City Partnership. Taekyun Lee,
19 Spirit At Work, Inc. are partners in Nevada View Partnership.

20 5. The Dayton III Property is owned by four “GPs”: Gold Ridge Partners, Sky View
21 Partners, Grand View Partners, and Rolling Hills Partners. Richard & Julie Koeneke, Ed & Irene
22 Brabant, Lucy Morgan & Steve LoCicero are partners in Gold Ridge Partnership. Ken & Sylvana
23 Corlett JTWRDS, Ken Corlett, SEP IRA are partners in Sky View Partnership. Surinder Brar,
24 Patricia Carras, Patricia Carras Trust, John & Priscilla Huang, Ruey Ken, Gene Lin, Gene Lin &
25 Ruey Ken are partners in Grand View Partnership. Angelique Judd, Christopher & Angelique
26 Judd, Green Family Trust, Cynthia Dorney Roth IRA, Roland & Anne Staeb, Cathy C. Spatuzzi,
27 Jenny Wang are partners in Rolling Hills Partnership.

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1 6. The Dayton IV Property is owned by four “GPs”: Eagle View Partners, Falcon
2 Heights Partners, Night Hawk Partners, and Osprey Partners. Mikale Associates, Inc., Emily J.
3 Averill, Kent & Susan Averill, Ed & Irene Brabant, Megan Brown, Megan Brown Trust date
4 10/1/1991, Ken Corlett & Sylvana Corlett JTWRDS, Ken Corlett, SEP IRA, The Curtis Family
5 Trust, Brad & Carolyn Curtis, Trustees, Matthew DeLine, DeLine Family Trust, Richard &
6 Cynthia Dorney, Terry Hagen, James R. Hettinger, Ned Iguchi Trust, Taekyun Lee & Melina
7 Stafford, Gene Lin, Kevin T. & Karon C. Lingle, Paul David & Nicole Kathleen Losey, Ronald
8 W. Purcell, IRA, Elizabeth L. Ray, Robert E. & Elaine H. Richardson, Louis Serianni, Anne L.
9 Staeb IRA, Roland & Anne Staeb, Trustees of the Staeb Family Trust dated 10/7/1999, Gerald
10 Stranak, IRA, Sylvester Family Living Trust, Richard & Sharon Sylvester Trustees, Richard
11 Sylvester Roth IRA, Sharon Sylvester Roth IRA, Alan & Gail Whetsine, Matthew DeLine 401k
12 Plan, Matthew DeLine IRA are partners in Eagle View Partnership. James C. Boore IRA,
13 Takayuki & Tomoko Chubachi, John & Priscilla Huang, Richard & Julia Koeneke, Pamela S.
14 Ryan & Thomas E. Larson, Gene Lin, Daniel Richter, Daniel Richter IRA, Steven R. & Kristine
15 J. Shuey, Trustees of Shuey Family Trust dated 1/12/2008, Stephen J. Smith SEP IRA, Istvan
16 Szinai IRA, Stacy Woodward are partners in Falcon Heights Partnership. Katherine Goforth Roth
17 IRA, Jennifer Morris, Tom & Marilyn Wong, Patrick Teel, Jodi Pickering, Kevin B. & Karin
18 Bacon, Co-Trustees of the Bacon Family Trust, Anita L. Byrum, Takayuki & Tomoko Chubachi
19 Revocable Trust dated 2/26/2008, Jon Gunter, Cheryl Layman, Anita C. Lorr IRA, Eric & Anita
20 Lorr, Eric Lorr IRA, Stephen N. Morrill, Stephen N. & Maria T. Morrill, Dana P. Smith, Joe
21 Toledo are partners in Night Hawk Partnership. Cathy C. Spatuzzi, Oscar Amaya, Elena Amaya,
22 Kathleen A. Becker Revocable Trust, Simon Bibeau SEP IRA, Ed & Irene Brabant, Edward H.
23 Brabant SEP IRA, Surinder Brar, David DeMarais, Michele Dortch, Ho Trust Dated 10/10/2007,
24 Tjung-Ling Ho, Roselynn Ho Trustees, Punita Khanna IRA, Bruce K. Marquez, Sylvester Family
25 Living Trust, Richard & Sharon Sylvester Trustees, Michael Taetzsch, Daryl & Debra White,
26 Richard Wodiske DDS Inc Defined Contribution Plan, Richard Wodiske Trustee are partners in
27 Osprey Partnership.

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1 7. The Fernley I Property is owned by two “GPs”: Crystal Clearwater Partners and
2 High Desert Partners. Kevin B. & Karin Bacon Co-Trustees of the Bacon Family Trust, Brad &
3 Carolyn Curtis Co-Trustees of the Curtis Family Trust, Shawn T. Green, Bruce K. & Rose
4 Marquez, Stephen J. Smith SEP IRA, Richard & Sharon Sylvester Trustees of the Sylvester
5 Family Living Trust, Natalie Sylvester Pestrex, Anthony Sylvester, Joe Toledo, Cynthia Dorney
6 Roth IRA are partners in Crystal Clearwater Partnership. Surinder Brar, Ned Iguchi, Kathleen A.
7 Becker Revocable Trust, Carol Comer Beneficiary IRA, Punita Khanna IRA, Pamela S. Ryan &
8 Thomas E. Larson, Dana P. Smith, Patrick Teel, Daryl & Debra White, Richard & Laurie
9 Wodiske Trustees of the Wodiske Family Trust are partners in High Desert Partnership.

10 8. The Jamul Valley Property is owned by three “GPs”: Jamul Meadows Partners,
11 Lyons Valley Partners, and Hidden Hills Partners. Steven R. & Kristine J. Shuey, Trustees of
12 the Shuey Family Trust dated 1/12/2008, Inder Verma are partners in Jamul Meadows
13 Partnership. Roger & Susan Engle, Roger Engle are partners in Lyons’s Valley Partnership.

14 9. The Las Vegas I Property is owned by three “GPs”: Park Vegas Partners,
15 Production Partners, and Silver State Partners. Richard & Jane Sanders are partners in Park Vegas
16 Partnership.

17 10. The Las Vegas II Property is owned by two “GPs”: Rainbow Partners and Horizon
18 Partners. Cynthia Dorney is a partner in Rainbow Partnership.

19 11. The LV Kade Property is owned by four “GPs”: Hollywood Partners, BLA
20 Partners, Checkered Flag Partners, and Victory Lap Partners. Istvan & Veronika Szinai are
21 partners in Checkered Flag Partnership. Brad & Carolyn Curtis, Trustees of the Curtis Family
22 Trust are partners in Victory Lap Partnership.

23 12. The Minden Property is owned by four “GPs”: Carson Valley Partners, Heavenly
24 View Partners, Sierra View Partners, and Pine View Partners. Surinder Brar is a partner in Sierra
25 View Partnership. Charles J. Lozinger is a partner in Pine View Partners.

26 13. The Santa Fe Property is owned by three “GPs”: Santa Fe View Partners, Pueblo
27 Partners, and Pecos Partners. Matthew DeLine 401k, Matthew DeLine IRA, Matthew DeLine,
28 Trustee of the DeLine Family Trust, Emily J. Averill, Kevin B. & Karin Bacon Co-Trustees of

1 the Bacon Family Trust, Ken & Sylvana Corlett JTWRDS, Ken Corlett SEP IRA, Brad &
2 Carolyn Curtis Trustees of the Curtis Family Trust, William Albert Dorney IRA, Katherine
3 Goforth Roth IRA, Terry Hagen, James R. Hettinger, John & Priscilla Huang, Richard & Julia
4 Koeneke, Kevin T. & Karon C. Lingle, Karon C. Lingle IRA, Chris A. Mekata, Louis Serianni,
5 Steven R. & Kristine J. Shuey Trustees of the Shuey Family Trust dated 1/12/2008, Stephen J.
6 Smith SEP IRA, Gerald Stranak IRA, and Kent & Susan Averill are partners in Santa Fe View
7 Partnership. Takayuki & Tomoko Chubachi, Gene Lin, Stacy Woodward, Surinder Brar, James
8 C. Boore IRA are partners in Pueblo Partnerships. Linda Armas IRA, Kathleen A. Becker
9 Revocable Trust, David DeMarais, Dana P. Smith, Tjung-Ling & Roselynn Ho Trustees of the
10 Ho Trust dated 10/10/2007, Joe Toledo, Richard Wodiske DDS Inc Defined Contribution Plan,
11 Richard Wodiske Trustee are partners in Pecos Partnership.

12 14. The Silver Springs North Property is owned by four “GPs”: North Springs Partners,
13 Rawhide Partners, Highway 50 Partners, Orange Vista Partners. Randall R. Alessi SEP IRA,
14 Brad & Carolyn Curtis, Matthew DeLine 401k, Matthew DeLine IRA, Richard & Cynthia
15 Dorney, William A. Dorney IRA, Emily J. Averill, Pattie Gunter, Reed Family Trust are partners
16 in North Springs Partnership. Steven LoCicero, Kathleen E. Nagy, Steven R. & Kristine J. Shuey
17 Trustees of the Shuey Family Trust dated 1/12/2008, Roland Staeb IRA, Oren A. & Brandi
18 Zaslansky, Zaslansky Revocable Trust, Jodi Pickering, Della June, Kevin T. & Karon C. Lingle,
19 Thomas P. Carlow are partners in Rawhide Partnership. Dana Anenberg, Patricia Carras, Patricia
20 Carras Trust, Ken & Sylvana Corlett JTWRDS, Ken Corlett SEP IRA, Luzviminda T. McLaren
21 IRA, Adam Sun are partners in Highway 50 Partnership. Cheri A. Alguire, Cheri A. Alguire IRA,
22 Kevin B. & Karon Bacon Co-Trustees of the Bacon Family Trust, Edward H. Brabant SEP IRA,
23 Terry Hagen, James R. Hettinger, Ned Iguchi Trust, Gene Lin, Chris A. Mekata, Gerald Stranak
24 IRA, Alan & Gail Whetsine are partners in Orange Vista Partnership.

25 15. The Silver Springs South Property is owned by four “GPs”: Rail Road Partners,
26 Spruce Heights Partners, Vista Del Sur Partners, and Lahontan Partners. Brad & Carolyn Curtis,
27 Matthew DeLine 401k, Matthew DeLine Ira, Matthew DeLine, DeLine Family Trust, Richard &
28 Cynthia Dorney, Edward H. Brabant SEP IRA, John & Priscilla Huang, Roland Staeb IRA are

1 partners in Rail Road Partnership. Kent & Susan Averill, Gregory & Kathleen Brown, Ruey Ken,
2 Richard & Julia Koeneker, Chris Lupo, Sue Lupo are partners in Spruce Heights Partnership.
3 James C. Boore IRA, Regina S. Boore 401k, Patricia C. Buza IRA, Ken Corlett SEP IRA,
4 Matthew DeLine 401k, Matthew DeLine Ira, Matthew DeLine, DeLine Family Trust, Gary A.
5 Powell, Evelyn A. Roquemore, General Partner of the Evelyn A. Roquemore Limited
6 Partnership, Sharon E. Warren Trust are partners in Vista Del Sur Partners. Oscar Amaya, Elena
7 Amaya, Kevin B. & Karin Bacon Co-Trustees of the Bacon Family Trust, Larry C. & Karen K.
8 Breedlove Trustees of the Breedlove Family Trust dated 10/11/2007, Larry Breedlove IRA,
9 William Albert & Donna Jean Dorney, Mikale Associates Inc., Alejandro & Terri Haua, Reyna
10 M. Haua, Martel Pellerin, Robert E. & Elaine H. Richardson, Adam Sun, Anthony M. Colangelo,
11 Brad & Carolyn Curtis, Ned Iguchi Trust, Taekyun Lee, Steven Goldman are partners in
12 Lahontan Partnership.

13 16. The Stead Property is owned by three "GPs": P-39 Aircobra Partners, P-40
14 Warhawk Partners, F-86 Partners. Kent & Susan Averill, Linda Armas IRA, Kevin B. & Karin
15 Bacon Co-Trustees of the Bacon Family Trust, Thomas & Susan Brown Trustees of the Thomas
16 & Susan Brown 2001 Trust, Brad & Carolyn Curtis Trustees of the Curtis Family Trust, Brad
17 Curtis Ira, David DeMarais, Lisa S. Faulk, Ned Iguchi Trust, Dana P. Smith, Stephen & Nancy
18 Smith Trustees of the Smith Family Trust, Charles J. Lozinger, Richard & Laurie Wodiske
19 Trustees of the Wodiske Family Trust are partners in P-39 Aircobra Partnership. Ed & Irene
20 Brabant, Edward H. Brabant SEP IRA, Shawn T. Green, Anita L. Byrum, Robert J. & Deborah
21 L. Collins Revocable Trust dated 2/9/2000, Brad Curtis, Sohalia Daniel, Susan E. Harrington,
22 Tjung-Ling & Roselynn Ho Trustees of the Ho Trust dated 10/10/2007. Pamela S. Ryan &
23 Thomas E. Larson, Stephen A. Mitchell, William F. Morris, Elizabeth L. Ray are partners in P-
24 40 Warhawk Partnership. Kathleen A. Becker Revocable Trust is a partner in F-86 Partnership.

25 17. The Tecate Property is owned by eleven "GPs": ABL Partners, Mex-Tec Partners,
26 Borderland Partners, Prosperity Partners, FreeTrade Partners, Suntec Partners, Via 188 Partners,
27 International Partners, Tecate South Partners, Twin Plat Partners, and Vista Tecate Partners.
28 Robert J. Chastanet IRA, Robert J. & Rachel I. Chastanet, Johnson Family Trust, Joanne

1 Pasqueretta IRA, Kenny & Leslie Tung are partners in ABL Partnership. Cynthia Dorney is a
2 partner in Borderland Partnership. Cynthia Dorney is a partner in Free Trade Partnership. Mike
3 J. & Linda J. Idacavage IRA, Mike J. & Linda J. Idacavage, Richard & Jane Sanders, Jane
4 Sanders IRA are partners in International Partnership. Letitia Fleming, Timothy & Bessie Green,
5 Kenny & Leslie Tung are partners in Mex-Tec Partnership. Peter J. Barnett, Christopher J. &
6 Eileen J. Davis, Charles J. Lozinger are partners in Prosperity Partnership. Kimberly A. Croke,
7 Mike J. Idacavage are partners in Suntec Partnership. Phyllis Pilgrim is a partner in Tecate South
8 Partnership. Inder Verma, Robert & Joanne Pasqueretta are partners in Twin Plant Partnership.
9 Michael Greenberg is a partner in Via 188 Partnership.

10 18. The Washoe I Property is owned by three “GPs”: Reno View Partners, Reno Vista
11 Partners, and Reno Partners. Chris & Sue Lopo Trustees are partners in Reno View Partnership.
12 Frank A. & Patricia A. Bendrick are partners in Reno Vista Partnership. William & Linda Bruno
13 are partners in Reno Partnership.

14 19. The Washoe III Property is owned by four “GPs”: Spanish Springs Partners,
15 Antelope Springs Partners, Wild Horse Partners, Big Ranch Partners. Charles J. & Tike K.
16 Lozinger, Martel Pellerin, Steven R. & Kristine J. Shuey Trustees of the Shuey Family Trust
17 dated 1/12/2008, Nelson Stephens are partners in Spanish Springs Partnership. Ken & Sylvana
18 Corlett JTWRDS, Ken Corlett Roth IRA, Matthew DeLine 401k, Matthew DeLine IRA, Ruey
19 Ken, Steven R. & Kristine J. Shuey Trustees of the Shuey Family Trust dated 1/12/2008, Cynthia
20 A. Teply IRA, John & Cynthia A. Teply are partners in Wild Horse Partnership. Carol Comer
21 Beneficiary IRA, The Michael E. Comer & Carol Comer Revocable Trust, Johannes Dewald
22 IRA, Cynthia Dorney Roth IRA, Cynthia Dorney Trustee of the Ahumada Family Trust dated
23 10/23/2000, Ruey Ken are partners in Antelope Springs Partnership. Surinder Brar, Gene Lin,
24 Gary A. & Tonya J. Powell, Tonya J. Powell are partners in Big Ranch Partnership.

25 20. The Washoe IV Property is owned by four “GPs”: Rose Vista Partners, Steam Boat
26 Partners, Galena Ranch Partners, and Redfield Heights Partners. Surinder Brar, Ruey Ken, Chris
27 A. Mekata, Noel F. Owen, Salvador L. & Rosa I Paleo, Anne L. Staeb IRA, Daryl & Debra White
28 are partners in Galena Ranch Partnership. Edward H. Brabant SEP IRA, Reyna M. Haua, Elbert

1 A. McLaren & Luzviminda T. McLaren Trustees of McLaren Family Trust dated 4/8/2008,
2 Elbert McLaren IRA are partners in Redfield Heights Partners. Matthew DeLine 401k, Matthew
3 DeLine IRA, Richard Dorney IRA, Stephen A. Mitchell, Sharon E. Warren Trust are partners in
4 Rose Vista Partnership. Jeanne Bavaro, Matthew DeLine 401k, Matthew DeLine IRA, Johannes
5 Dewald IRA, William A. Dorney IRA, Steven R. & Kristine J. Shuey Trustees of the Shuey
6 Family Trust dated 1/12/2008, Matthew DeLine, DeLine Family Trust are partners in Steamboat
7 Partnership.

8 21. The Washoe V Property is owned by two “GPs”: Pyramid Highway 177 Partners,
9 Frontage 17 Partners. Roland Staeb Roth IRA, Dana P. Smith, Kevin B. & Karin Bacon Co-
10 Trustees of the Bacon Family Trust, James C. Boore IRA, Regina S. Boore 401k, Brad Curtis
11 IRA, Richard Wodiske DDS Inc. Defined Contribution Plan, Richard Wodiske Trustee are
12 partners in Pyramid Highway 177 Partnership. David DeMarais, Terry Hagen, Punita Khanna
13 IRA, Bruce K. Marquez, Terry Hagen IRA, Elbert A. McLaren & Luzvininda T. McLaren
14 Trustees of McLaren Family Trust dated 4/8/2008, Richard & Laurie Wodiske Trustees of the
15 Wodiske Family Trust, Elena Amaya are partners in Frontage 177 Partnership.

16 22. The Yuma I Property is owned by three “GPs”: Gila View Partners, Painted Desert
17 Partners, and Snow Bird Partners. Ned Iguchi Trust, Angelique Judd, Steven R. & Kristine J.
18 Shuey Trustees of the Shuey Family Trust dated 1/12/2008, Cathy C. & Michael A. Spatuzzi
19 Trustees of Spatuzzi Family Trust, Matthew DeLine 401k, Matthew DeLine IRA, Matthew
20 DeLine, Deline Family Trust are partners in Gila View Partnership. Gregory & Kathleen Brown,
21 Cynthia Dorney Roth IRA, William Albert Dorney IRA, Roland & Anne Staeb Trustees of the
22 Staeb Family Trust dated 10/07/1999 are partners in Painted Desert Partnership. Patricia Carras,
23 Patricia Carras Trust, Ken & Sylvana Corlett JTWRDS, William J. DeLine IRA, Mikale
24 Associates, Inc., Ronald Karp Roth IRA, Salvador L. & Rosa I. Paleo Trustees of the Paleo
25 Family Trust dated 11/20/2001 are partners in Snow Bird Partnership.

26 23. The Yuma II Property is owned by four “GPs”: Desert View Partners, Sonora View
27 Partners, Mesa View Partners, and Road Runner Partners. Ken & Sylvana Corlett JTWRDS,
28 Ruy Ken, Brad & Carolyn Curtis, Cynthia Dorney Roth IRA, William Dorney Ira, Matthew

1 DeLine 401k, Matthew DeLine IRA, Matthew DeLine, DeLine Family Trust, Thomas P. Carlow
 2 are partners in Desert View Partnership. Kent & Susan Averill, Sohalia Daniel, Steven Goldman,
 3 John & Priscilla Huang, Chris & Sue Lupo, Chris Magers, Steven R. & Kristine J. Shuey Trustees
 4 of the Shuey Family Trust dated 1/12/2008, Roland & Anne Staeb Trustees of the Staeb Family
 5 Trust dated 10/07/1999 are partners in Sonora View Partnership. Kevin B. & Karin Bacon Co-
 6 Trustees of the Bacon Family Trust, Kathleen A. Becker Revocable Trust, William F. Morris are
 7 partners in Mesa View Partnership. Kevin B. & Karin Bacon Co-Trustees of the Bacon Family
 8 Trust, Patricia C. Buza IRA, Anthony M. Colangelo, Brad & Carolyn Curtis, Gary A. Powell,
 9 Dana P. Smith, Jamie Lupo, Taekyun Lee are partners in Road Runner Partnership.

10 24. The Yuma III Property is owned by four “GPs”: Mountain View Partners, Ocotillo
 11 Partners, Cactus Ridge Partners, and Mohawk Mountain Partners. Randall R. Alessi SEP IRA,
 12 Ken Corlett SEP IRA, Matthew DeLine, DeLine Family Trust, Richard & Cynthia Dorney, Pattie
 13 Gunter, Matthew DeLine 401k, Matthew DeLine IRA are partners in Mountain View Partnership.
 14 Mary Doan, Reed Family Trust, Marc Sorgatz, Robert E. & Elaine H. Richardson are partners in
 15 Octillo View Partnership. Brad & Carolyn Curtis, Della June, Kevin T. & Karon C. Lingle, Karon
 16 C. Lingle IRA, Steven LoCicero, Charles J. Lozinger, Kathleen E. Nagy, Roland Staeb IRA,
 17 Daryl & Debra White are partners in Cactus Ridge Partnership. Patricia C. Buza IRA, Terry
 18 Hagen, John & Priscilla Huang, Richard & Julia Koenke, Gene Lin, Kevin T. & Karon C.
 19 Lingle, Luzviminda T. McLaren IRA, Steven R. & Kristine J. Shuey Trustees of the Shuey
 20 Family Trust dated 1/12/2008, Gerald Stranak IRA, Oren A. & Brandi Zaslansky, Zaslansky
 21 Revocable Trust are partners in Mohawk Mountain Partnership

JURISDICTION AND VENUE

22
 23 25. This is an action in intervention in the above-captioned suit as filed by Plaintiff
 24 Securities and Exchange Commission (“SEC”) complaint. The SEC has alleged this action arises
 25 under Sections 20(b), 20(d)(I) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15
 26 U.S.C. §§ 77t(b), 77t(d)(I) & 77v(a), and Sections 21(d)(I), 21(d)(3)(A), 21(e) and 27 of the
 27 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(I), 78u(d)(3)(A); 78u(e)
 28 & 78aa.

1 SEC's motion for a *provisional* remedy, i.e. a *preliminary injunction*) the "permanent" receiver
2 in this case (Dkt. No. 174). Said orders were intended to provide Hebrank with powers to
3 preserve and protect the assets of the GPs.

4 31. On January 21, 2016, this Court entered judgment against Schooler and closed the
5 instant case. Final judgment was entered on February 23, 2016, *nunc pro tunc*, January 21, 2016.

6 32. The Intervening Group is comprised of general partners in each of the GPs which
7 are the subject of the receivership created by this Court. The Intervening Group is informed and
8 believes, and thereon alleges, that the investors who acquired partnership interests in the GPs
9 collectively own more than 95 percent of said partnership interests. The Intervening Group is
10 further informed and believe and thereon alleges that the SEC and the Receiver have concluded
11 that any interest of Western in the GPs should be distributed to investors as a partial offset of
12 their losses by reason of their investments in the GPs. Consequently, only investors who hold
13 general partnership interests in the GPs have any claim to the proceeds of the sale of GP assets
14 and the liquidation of said partnerships.

15 33. The Intervening Group has an ownership interest in the GPs and a concomitant
16 interest in the Properties held by each of the GPs

17 34. Since judgment against Schooler was entered in the instant case, Hebrank has
18 requested authorization from this Court to sell certain of the Properties (Dkt. 1203 and 1191)
19 and/or commence an orderly sale process for certain of the Properties (Dkt. 1181). In particular,
20 on February 8, 2016, Hebrank brought a Motion for an Order: (A) Authorizing the Receiver to
21 Conduct an Orderly Sale of General Partnership Properties; (B) Approving the Plan of
22 Distributing Receivership Assets; and (C) Approving Procedures for the Administration of
23 Investor Claims (the "Motion for Sale")(Dkt. 1181).

24 35. The Intervening Group desired to oppose the Motion for Sale as it contemplated
25 the sale of substantially all of the GP assets. The Intervening Group further desired to oppose
26 the Motion for Sale because an immediate sale of the entirety of the GP Properties would likely
27 not maximize investor return. The Intervening Group further desired to oppose the Motion for
28 Sale because the contemplated sale process was in violation of the 28 U.S.C. §2001. The

1 Intervening Group also sought to advise the Court of the manner in which the Receivership Assets
2 would be distributed and the procedures for the administration of investor claims.

3 36. On or about February 26, 2016, Hebrank filed an ex parte motion for an order
4 confirming the sale of the Jamul Valley Property (the “Jamul Sale Motion”)(Dkt. 1191). The
5 Intervening Group sought to oppose the Jamul Sale Motion because many aspect regarding the
6 sale process were hidden from the investors, the sale was not in the best interest of the investors
7 and the sale process was in violation of the requirements of 28 U.S.C. §2001.

8 37. On or about March 7, 2016, Hebrank filed a Recommendation Regarding
9 Engagement of Real Estate Brokers for Las Vegas 1, Las Vegas 2, and Tecate Properties. The
10 Intervening Group desired a hearing regarding this recommendation so that there could be
11 transparency in the listing and sale process, so that the Intervening Group could determine if sale
12 of the properties was in the best interest of the GPs and so that compliance with 28 U.S.C. §2001
13 could be insured (the “Broker Recommendations”)(Dkt. 1203).

14 38. On or about March 10, 2016 another investor group represented by Gary Aguirre,
15 Esq. (the “Aguirre Investors”) filed an ex parte motion for (A) Setting a Hearing on Receiver’s
16 Recommendation Regarding Engagement of Real Estate Brokers for Las Vegas 1, Las Vegas 2,
17 and Tecate Properties, and (B) Staying Any Further Ex Parte Motions Relating To The Sale Of
18 Any Property Subject to the Receivership In the Absence of Good Cause (Dkt. 1204).

19 39. On or about March 15, 2016, the Intervening Group entered joined Aguirre
20 Investors’ March 10, 2016 ex parte motion (Dkt. 1205).

21 40. On or about March 22. 2016, the Intervening Group filed an ex parte application
22 for an extension of time to file an Opposition to the Receiver’s Motion for sale (Dkt. 1211).

23 41. On or about April 1, 2016, the Intervening Group filed a motion to unseal and/or
24 unredact 12 documents filed under seal by the receiver (Dkt. 1222). This motion was brought to
25 insure transparency with regard to Hebrank’s management of the GPs’ assets and the
26 contemplated sale of the Properties and to further insure compliance with 28 U.S.C. §2001.

27 42. On or about April 5, 2016, this Court issued an order stating the following (Dkt.
28 1224):

1 Also before this Court are seven motions filed by various investors
2 who have invested in various GPs that are subject to the receivership.
3 See ECF Nos. 1194, 1200, 1204, 1211, 1221, 1222, 1223. The
4 motions are DENIED WITHOUT PREJUDICE on the basis of non-
5 compliance with Fed. R. Civ. P. Rule 24. The Dillon and Aguirre
6 investors are directed to follow Fed. R. Civ. P. Rule 24 and file
7 motions to intervene to the extent that they wish to refile any of these
8 motions. (See Dkt. 1224).

9 43. The Intervening Group has filed the instant Complaint in Intervention and
10 accompanying motion based on the Court's direction and pursuant to FRCP Rule 24.

11 44. Hebrank proposes to prematurely sell the Properties without first properly
12 positioning them to maximize investor return. The Properties are empty lots and their values are
13 greatly increased by "positioning", e.g., via the maintenance and/or procurement of entitlements,
14 zoning variances, etc. Hebrank has neglected to engage in the positioning process when
15 managing the Properties and has thereby damaged investor return. The Intervening Group seeks
16 to forestall many of the contemplated sales proposed by Hebrank so that the Properties can be
17 properly positioned (by either waiting out the market, obtaining zoning variances and/or
18 procuring entitlements) in a way that can maximize investor return. Hebrank declines to even
19 obtain information regarding positioning and certainly declines to utilize any such information
20 to improve investor return.

21 45. Hebrank has also refused to disclose his accounting records regarding his use of
22 investor funds and has sealed many key documents that are relevant to the contemplated sale of
23 the Properties.

24 46. The Intervening Group may intervene as a matter of right because its members have
25 an interest relating to the property that is the subject of Hebrank's receivership. Hebrank seeks
26 permission from this Court to continue to manage and sell the Properties that are owned by the
27 GPs. The Intervening Group has a clear interest in this process as the investors in the GP are the
28 only parties who have a financial stake in the management and sale of substantially all the assets
of the GPs. The Intervening Group's interests are not otherwise adequately protected as judgment
has been entered against Schooler and there are no remaining parties to the case that share a
financial interest in the GPs with the investors.

1 47. The Intervening Group desires to intervene to:

- 2 A. Oppose and enjoin the contemplated sale process, including but not limited
3 to those set forth in Dkt 1181, 1191 regarding disposition of any and all of
4 the Properties;
- 5 B. Oppose the recommendations made by Hebrank with regard to the sale
6 and/or management of the GP assets, including but not limited to those set
7 forth in Dkt 1203;
- 8 C. Oversee and evaluate Hebrank's management of the GPs and the GPs'
9 assets;
- 10 D. Obtain full access to Hebrank's filings and recommendations submitted to
11 this Court;
- 12 E. Unseal and/or unredact documents previously filed under seal or redacted
13 by Hebrank; and
- 14 F. Obtain all books and records related to Hebrank's management of the GPs
15 and the GPs' assets.

16
17 WHEREFORE, the Intervening Group prays for the following relief:

- 18 1. An order denying the Motion for Sale (Dkt. 1181);
- 19 2. An order denying the Jamul Sale Motion (Dkt. 1191);
- 20 3. An order rejecting the Broker Recommendations submitted by Hebrank (Dkt.
21 1203);
- 22 4. An order requiring the disclosure and production of all accounting books and
23 records relating to Hebrank's management of the GPs and the GPs' assets;
- 24 5. An order unsealing and/or unredacting all documents filed under seal by Hebrank;
- 25 6. An order preventing Hebrank from filing any further *ex parte* motions for the sale
26 of any of the Properties;
- 27
28

1 7. An order declaring that the Intervening Group has standing to oppose further
2 recommendations and motions made by Hebrank with regard to the management and/or
3 disposition of the GPs' assets;

4 8. An order declaring that the Intervening Group has standing to make motions in
5 relation to the Hebrank's management and/or disposition of the GPs' assets;

6 9. An order declaring that the Intervening Group has standing to make
7 recommendations regarding the continuing management and/or sale of the GPs and the GPs'
8 assets; and

9 10. For such other and further relief as the court deems appropriate.

10
11 Dated: April 8, 2016

Respectfully submitted,
DILLON GERARDI HERSHBERGER
MILLER & AHUJA, LLP

12
13 s/ Timothy P. Dillon
14 Timothy P. Dillon, Esq.
15 Attorney for Intervenors,
16 ALEX HAUA, et al.

CERTIFICATE OF SERVICE

I am employed in the County of San Diego, State of California, am over the age of 18 and not a party to the within action. My business address is DILLON GERARDI HERSHBERGER MILLER & AHUJA, LLP, 5872 Owens Avenue, Suite 200, Carlsbad, CA 92008. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing.

On April 8, 2016, I caused to be served the following documents described as:

- **COMPLAINT IN INTERVENTION**

(BY ELECTRONIC FILING) I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the Court. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. Under said practice, the following CM/ECF user(s) were served:

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Dated: April 8, 2016

s/ Ronnielyn Abrera

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8 Attorneys for ALEX HAUA, et al.

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

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

20 Defendants,

21 ALEX HAUA, et al.,

22 Proposed Intervenors

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
INVESTOR GROUP'S MOTION FOR
INTERVENTION AS A MATTER OF
RIGHT, OR, ALTERNATIVELY, FOR
PERMISSIVE INTERVENTION**

[FRCP 24]

Hearing:

Date: May 6, 2016

Time: 1:30 p.m.

Dept.: 2D

Judge: Hon. Gonzalo P. Curiel

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure, Proposed Intervenor Investor Group hereby moves to intervene in this action as a matter of right. In the alternative, Investor Group seeks the Court's permission to intervene pursuant to Federal Rules of Civil Procedure, Rule 24(b)(1)(B).

Judgment has been entered in this securities action in favor of Plaintiff Securities and Exchange Commission ("SEC") and against Defendants First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western") and Louis V. Schooler ("Schooler"). Proposed Intervenor Investor Group is comprised of general partners in each of the eighty-seven (87) general partnerships ("GPs"), which were organized under Western Financial Planning Corporation and are the subjects of receivership in this action. Now that judgment has been entered against Defendants, the Receiver proposes to sell substantially all of the assets of the GPs, which consists of 23 separate real properties (the "Properties"). The Receiver also seeks to liquidate all GP assets and distribute the proceeds to the general partners.

For the reasons set forth herein, Investor Group seeks limited-in-scope intervention to obtain collateral relief as set forth in the attached [proposed] Complaint in Intervention.¹ Specifically, Investor Group desires to participate in post-judgment remedial proceedings, including challenging the conduct of the Receiver in this action and the Receiver's contemplated sale of the Properties. The Investor Group also desires to obtain product of the Receiver's books and records regarding the management of the GPs and the GPs' assets and further seeks an order unsealing documents filed under seal by the Receiver.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Underlying Action and Final Judgment.

The SEC filed this action against Western and Schooler (collectively "Defendants") for violations of federal securities laws in connection with Defendants' defrauding of investors

¹In accordance with Rule 24(c) of the Federal Rules of Civil Procedure, a copy of Investor Group's [proposed] Complaint in Intervention is attached as **Exhibit "A"**.

1 (including the Investor Group) in the sale of units in the GPs, which units were deemed
2 unregistered securities as a matter of law. During the pendency of this action, the GPs were
3 placed in receivership by this Court's orders of September 6, 2012 and March 13, 2013. The
4 September 6, 2012 order appointed Thomas Hebrank ("Hebrank" or "Receiver") as temporary
5 receiver of said GPs and their assets (Dkt. No. 10); the Court's order of March 13, 2013, issued
6 a preliminary injunction appointing Hebrank as permanent receiver in this case. (Dkt. No.
7 174). Thereafter, the Court debated releasing the GPs from receivership (See Dkt. Nos. 470,
8 499, 495, 513, 514). On July 22, 2014, the Court ultimately determined the GPs should remain
9 permanently in the receivership. (See Dkt. Nos. 583, 629). On January 21, 2016, the Court
10 granted SEC's motion for injunctive relief and monetary remedies against Schooler and entered
11 final judgment ordering disgorgement in the total amount of \$147,610,280. (Dkt. No. 1170).

12 **B. Activities By Receiver Since Judgment Was Entered Against Schooler.**

13 Since judgment against Schooler was entered in the instant case, the Receiver has
14 requested authorization from this Court to sell certain of the Properties (Dkt. 1203 and 1191)
15 and/or commence an orderly sale process for certain of the Properties (Dkt. 1181). In
16 particular, on February 8, 2016, the Receiver brought a Motion for an Order: (A) Authorizing
17 the Receiver to Conduct an Orderly Sale of General Partnership Properties; (B) Approving the
18 Plan of Distributing Receivership Assets; and (C) Approving Procedures for the Administration
19 of Investor Claims (the "Motion for Sale")(Dkt. 1181).

20 The Investor Group desired to oppose the Motion for Sale as it contemplated the sale of
21 substantially all of the GP assets. The Intervention Group further desired to oppose the Motion
22 for Sale because an immediate sale of the entirety of the GP Properties would likely not
23 maximize investor return. The Intervention Group further desired to oppose the Motion for
24 Sale because the contemplated sale process was in violation of 28 U.S.C. §2001. The
25 Intervention Group also sought to advise the Court of the manner in which the Receivership
26 Assets would be distributed and the procedures for the administration of investor claims.

27 On or about February 26, 2016, the Receiver filed an ex parte motion for an order
28 confirming the sale of the Jamul Valley Property (the "Jamul Sale Motion")(Dkt. 1191). The

1 Investor Group sought to oppose the Jamul Sale Motion because many aspects regarding the
2 sale process were hidden from the investors, the sale was not in the best interest of the investors
3 and the sale process was in violation of the requirements of 28 U.S.C. §2001.

4 On or about March 7, 2016, the Receiver filed a Recommendation Regarding
5 Engagement of Real Estate Brokers for Las Vegas 1, Las Vegas 2, and Tecate Properties (Dkt.
6 1203). The Investor Group desired a hearing regarding this recommendation so that there could
7 be transparency in the listing and sale process, so that the Investor Group could determine if
8 sale of the properties was in the best interest of the GPs and so that compliance with 28 U.S.C.
9 §2001 could be insured (the “Broker Recommendations”).

10 On or about March 10, 2016 another investor group represented by Gary Aguirre, Esq.
11 (the “Aguirre Investors”) filed an ex parte motion for (A) Setting a Hearing on Receiver’s
12 Recommendation Regarding Engagement of Real Estate Brokers for Las Vegas 1, Las Vegas 2,
13 and Tecate Properties, and (B) Staying Any Further Ex Parte Motions Relating To The Sale Of
14 Any Property Subject to the Receivership In the Absence of Good Cause (Dkt. 1204).

15 On or about March 15, 2016, the Investor Group joined the Aguirre Investors’ March 10,
16 2016 ex parte motion (Dkt. 1205).

17 On or about March 22, 2016, the Investor Group filed an ex parte application for an
18 extension of time to file an Opposition to the Receiver’s Motion for sale (Dkt. 1211).

19 On or about April 1, 2016, the Investor Group filed a motion to unseal and/or unredact
20 12 documents filed under seal by the receiver (Dkt. 1222). This motion was brought to insure
21 transparency with regard to the Receiver’s management of the GPs’ assets and the
22 contemplated sale of the Properties and to further insure compliance with 28 U.S.C. §2001.

23 On or about April 5, 2016, this Court issued an order stating the following (Dkt. 1224):

24
25 Also before this Court are seven motions filed by various investors
26 who have invested in various GPs that are subject to the
27 receivership. *See* ECF Nos. 1194, 1200, 1204, 1211, 1221, 1222,
28 1223. The motions are DENIED WITHOUT PREJUDICE on the
basis of non-compliance with Fed. R. Civ. P. Rule 24. The Dillon
and Aguirre investors are directed to follow Fed. R. Civ. P. Rule 24
and file motions to intervene to the extent that they wish to refile
any of these motions. (See Dkt. 1224).

1 The Investor Group has filed the instant motion and accompanying Complaint in
2 Intervention based on the Court's direction and pursuant to FRCP Rule 24.

3 The Receiver has also refused to disclose his accounting records regarding his use of
4 investor funds and has sealed many key documents that are relevant to the contemplated sale of
5 the Properties.

6 **C. Purpose of Investor Group Intervention.**

7 The Investor Group may intervene as a matter of right because its members have an interest
8 relating to the property that is the subject of the receivership. The Receiver seeks permission
9 from this Court to continue to manage and sell the Properties that are owned by the GPs. The
10 Investor Group has a clear interest in this process as the investors in the GPs are the only
11 parties who have a financial stake in the management and sale of substantially all the assets of
12 the GPs. The Intervening Group's interests are not otherwise adequately protected as
13 judgment has been entered against Schooler and there are no remaining parties to the case that
14 share a financial interest in the GPs with the investors.

15 The Investor Group seeks limited intervention at the post-judgment phase of the
16 proceedings to:

- 17 1) Oppose and enjoin the Receiver's contemplated sale process, including but
18 not limited to those set forth in Dkt 1181, 1191 regarding disposition of
19 any and all of the Properties;
- 20 2) Oppose the recommendations made by the Receiver with regard to the sale
21 and/or management of the GP assets, including but not limited to those set
22 forth in Dkt 1203;
- 23 3) Oversee and evaluate the Receiver's management of the GPs and the GPs'
24 assets;
- 25 4) Obtain full access to the Receiver's filings and recommendations
26 submitted to this Court;
- 27 5) Unseal and/or unredact documents previously filed under seal or redacted
28 by the Receiver; and

- 1 6) Obtain all books and records related to the Reciever’s management of the
2 GPs and the GPs’ assets.

3 The Receiver proposes to prematurely sell the Properties without first properly
4 positioning them to maximize investor return. The Properties are empty lots and their values
5 are greatly increased by “positioning”, e.g., via the maintenance and/or procurement of
6 entitlements, zoning variances, etc. The Receiver has neglected to engage in the positioning
7 process when managing the Properties and has thereby damaged investor return. The Investor
8 Group seeks to forestall many of the contemplated sales proposed by the Receiver so that the
9 Properties can be properly positioned (by either waiting out the market, obtaining zoning
10 variances and/or procuring entitlements) in a way that can maximize investor return. The
11 Receiver declines to even obtain information regarding positioning and certainly declines to
12 utilize any such information to improve investor return.

13 The Receiver’s proposed plan for sale is a “one size fits all” approach and fails to
14 consider the unique location, position, entitlements, potential for entitlements, value and
15 prospects for appreciation of the Properties. The Investor Group contends that, in light of the
16 foregoing considerations, the Receiver’s plan, as proposed, will fail to maximize the value of
17 the GP assets in that some of the Properties may benefit from being held unsold for a period of
18 time or from obtaining water, easement or other rights, as applicable, prior to being offered for
19 sale.

20 The Investor Group intends to establish, with the benefit of reports prepared by retained
21 experts, that the repositioning of many of the GP Properties would be the best way to maximize
22 investor return. See Declaration of Timothy P. Dillon (“Dillon Decl.”), concurrently filed
23 herewith, at ¶¶3-6. This would include the obtaining of additional entitlement, zoning
24 variances and/or the strategic marketing of existing entitlements. Dillon Decl. at ¶¶3-5. It may
25 also recommend that certain Properties be held for extended periods of time in order to
26 maximize their future value. Dillon Decl. at ¶6.

27 In addition, the Investor Group challenges the Receiver’s proposed plans to sell the
28 Properties because his proposals do not follow the statutory requirements established in 28

1 U.S.C. §2001. The Receiver has not provided the general partners with the transparency
2 required by §2001 and has routinely filed key documents under seal. Further, the Receiver has
3 refused to provide the investors with access to the financial books and records relating to his
4 management of the GPs and the GPs' assets.

5 The Investor Group may intervene as a matter of right because its members have an
6 interest relating to the property that is the subject of the receivership. The Receiver seeks
7 permission from this Court to continue to manage and sell the Properties that are owned by the
8 GPs. The Investor Group has a clear interest in this process as the investors in the GP are the
9 only parties who have a financial stake in the management and sale of substantially all the
10 assets of the GPs. The Investor Group's interests are not otherwise adequately protected as
11 judgment has been entered against Schooler and there are no remaining parties to the case that
12 share a financial interest in the GPs with the investors.

13 **III. LEGAL ARGUMENT**

14 The Investor Group moves this court for an order that they may intervene in this action
15 as a matter of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure, or, in the
16 alternative, allowing Investor Group permissive intervention in this matter under Rule
17 24(b)(1)(B) of the Federal Rules of Civil Procedure.

18 **A. Intervention as a Matter of Right.**

19 Federal Rule of Civil Procedure 24(a)(2) sets forth four requirements for intervention of
20 right: (1) timely application for intervention; (2) the applicant has "a 'significantly protectable'
21 interest relating to the property or transaction that is the subject of the" action; (3) the applicant
22 is situated such that "disposition of the action may, as a practical matter, impair or impede the
23 applicant's ability to protect that interest;" and (4) the applicant's interest is "inadequately
24 represented by the existing parties in the lawsuit." *Nw. Forest Res. Council v. Glickman*, 82
25 F.3d 825, 836 (9th Cir. 1996) (citation omitted); Fed. R. Civ. P. 24(a)(2).

26 "The applicant bears the burden of establishing all of the criteria, and the rule is
27 construed 'broadly, in favor of the applicant for intervention.'" *In re Novatel Wireless Sec.*
28 *Litigation*, No. 08-cv-1689, 2014 U.S. Dist. LEXIS 85994, at *6 (S.D. Cal. June 23, 2014).

1 “Courts are to take all well-pleaded, nonconclusory allegations in the motion to intervene as
2 true absent sham, frivolity or other objections.” *Id.* (citing *Sw. Ctr. for Biological Diversity v.*
3 *Berg*, 268 F.3d 810, 820 (9th Cir. 2001)).

4 **1. Timeliness.**

5 The Court looks at three factors to assess whether a motion to intervene is timely: “(1)
6 the stage of the proceeding at which the applicant seeks to intervene; (2) the prejudice to other
7 parties; and (3) the reason for and length of the delay.” *Cal. Dept. of Toxic Substances Control*
8 *v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002) (citation omitted).

9 Here, the motion for intervention was timely made in that the Receiver did not
10 recommend dissolution and liquidation of the Investor Group partnerships until February 4,
11 2016. In addition, Investor Group and its counsel only discovered the invalid appraisals and
12 brokers opinions of value obtained by the Receiver for Investor Group partnerships’ property in
13 March 2016. Admittedly, Investor Group seeks to intervene after judgment has been entered in
14 the underlying action. However, proposed intervenor Investor Group does not intend to re-
15 open any previously litigated issues and seeks only to participate in the remedial phase of the
16 litigation, specifically, winding up of the receivership and dealing with issues relating to
17 distribution of receivership assets. In such limited scope interventions, courts often permit
18 intervention even after final judgment. See *United States v. City of Detroit*, 712 F.3d 925, 932
19 (2013) (citing *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394, 97 S. Ct. 2464, 53 L. Ed.
20 2d 423 (1977) (permitting intervention for the limited purpose of appeal); *Hodgson v. United*
21 *Mine Workers of Am.*, 473 F.2d 118, 129 (1972) (permitting intervention to participate in future
22 remedial proceedings)). Limited intervention is particularly appropriate where, as here, the
23 matter is complicated and non-adversarial, and Investor Group’s participation promotes an
24 effective and fair solution. See *United States v. City of Detroit*, 712 F.3d 925, 932 (2013)
25 (“Limited intervention is particularly appropriate in fact-specific situations such as this one,
26 where the case is complicated, non-adversarial, and implicates the public interest; getting all
27 interested parties to the table promotes an effective and fair solution, but preventing an
28 expansion of the scope is necessary to keep control of the case.”)

1 Moreover, in light of the substantial length of time that may be involved in
2 implementing the Receiver's proposal, Investor Group's limited goals do not impose any
3 untoward burden on the Parties or the Court. "Timeliness presents no automatic barrier to
4 intervention in post-judgment proceedings where substantial problems in formulating relief
5 remain to be resolved." *Hodgson v. United Mine Workers*, 473 F.2d 118, 129 (1972) (citing
6 *Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.*, 386 U.S. 129, 136, 17 L. Ed. 2d
7 814, 87 S. Ct. 932 (1967)). Further, Investor Group's motion to intervene is timely in that this
8 is the most critical phase of the litigation as far as they are concerned; Investor Group will have
9 to live with the final plan of distribution implemented by the Receiver pertaining to the GP
10 Properties. See *Hodgson v. United Mine Workers*, 473 F.2d 118, 129 (1972) (post-judgment
11 intervention permitted to allow proposed intervenors to participate in trusteeship dissolution
12 proceedings).

13 **2. Significantly Protectable Interest.**

14 An economic interest may trigger the right to intervene where it is concrete and related
15 to the underlying subject matter of the litigation. *U.S. v. Alisal Water Corp.*, 370 F.3d 915, 919
16 (9th Cir. 2004). Here, Investor Group has a legally protectable interest in the subject matter of
17 this action because it is comprised entirely of investors in the general partnerships that are
18 currently within the receivership. The conduct, distribution and winding up of the receivership
19 and its assets will have a direct financial impact on the Investor Group.

20 **3. Impairment.**

21 The nature of the intervenor's interest and the effect that the disposition will have on its
22 ability to protect that interest are closely related factors. *Chiles v. Thornburgh*, 865 F.2d 1197,
23 1214 (11th Cir. 1989). Generally, "[i]f an absentee would be substantially affected in a
24 practical sense by the determination made in an action, he should ... be entitled to intervene."
25 Fed. R. Civ. P. 24, Advisory Committee Notes, 1966 Amendments.

26 Investor Group's interests in this action will be substantially impaired or impeded if it is
27 not allowed to intervene because (1) an immediate sale of the entirety of the GP Properties
28

1 would likely not maximize investor return; (2) the contemplated sale process was in violation
2 of the 28 U.S.C. §2001.

3 **4. Adequacy of Representation.**

4 To satisfy this factor, an intervenor need only show that representation of their interests
5 “may be inadequate and the burden of making that showing is minimal.” *Novatel Wireless*,
6 2014 U.S. Dist. LEXIS 85994, at *18 (emphasis in original). To determine whether an original
7 party in a litigation can adequately represent the intervenor’s interests, the Court considers
8 three factors: “(1) whether the interests of the present party are such that it will make all of the
9 arguments the intervenor would make; (2) whether the present party is capable of and willing to
10 make such arguments; and (3) whether the intervenor would offer a necessary element to the
11 proceedings that the other parties would neglect.” *Id.*

12 The existing parties do not adequately represent Investor Group’s interests in the action.
13 Defendants cannot adequately represent Investor Group’s interests as judgment has been
14 entered against Schooler and there are no remaining parties to the case that share a financial
15 interest in the GPs with the investors.

16 Moreover, according to the February 4, 2016 motion filed by the Receiver, Defendants
17 agreed with the Receiver’s proposal to sell Investor Group partnerships’ properties at under
18 market values, contrary to the rights of Investor Group. Plaintiff, SEC, has not adequately
19 represented the Investor Group interests in that the SEC agreed with the Receiver’s proposal to
20 sell Investor Group GP Properties at under market values, contrary to the rights of Investor
21 Group. To the extent the Receiver’s proposal falls short of what Investor Group itself would
22 propose regarding distribution, and based on the parties failure to challenge the same,
23 Defendants and the SEC’s representation of Investor Group in the remedial phase of the
24 litigation is inadequate. See *Hodgson v. United Mine Workers*, 473 F.2d 118, 130 (D.C. Cir.
25 1972) (failure of party to propose relief that proposed intervenors themselves would ask for is
26 sufficient to demonstrate inadequate representation).

27 ///

28 ///

1 **B. Permissive Intervention.**

2 In the alternative, Investor Group should be allowed permissive intervention in this
3 action. There are three requirements for permissive intervention under Federal Rule of Civil
4 Procedure 24(b)(1): (1) “independent grounds for jurisdiction;” (2) timely application for
5 intervention; and (3) “the applicant’s claim or defense, and the main action, have a question of
6 law or a question of fact in common.” *League of United Latin Am. Citizens v. Wilson*
7 (“LULAC”), 131 F.3d 1297, 1308 (9th Cir. 1997) (citations omitted). “Even if an applicant
8 satisfies those threshold requirements, the district court has discretion to deny permissive
9 intervention.” *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998) (citations omitted); see
10 *Spangler v. Pasadena City Board of Educ.*, 552 F.2d 1326, 1329 (9th Cir.1977) (listing other
11 factors a district court might consider). The Court must also consider whether permissive
12 intervention “will unduly delay the main action or will unfairly prejudice the existing parties.”
13 *Donnelly*, 159 F.3d at 412.

14 This Court has subject matter jurisdiction over the claims proposed by Investor Group
15 because it continues to have jurisdiction over the Receivership, which the Investor Group
16 partnerships are subject to.

17 For the same reasons set forth in the discussion concerning intervention as a matter of
18 right, the motion for intervention was timely made. Specifically, the Receiver did not
19 recommend dissolution and liquidation of the Investor Group partnerships until February 4,
20 2016. In addition, Investor Group and its counsel only discovered the invalid appraisals and
21 brokers opinions of value obtained by the Receiver for Investor Group partnerships’ property in
22 March 2016. Moreover, Investor Group seeks only a limited scope intervention for the purpose
23 of participating in remedial proceedings pertaining to implementation of the Receiver’s plan for
24 distribution of receivership assets.

25 The claims that Investor Group desires to assert in this action share common questions
26 of law or fact with the current issues in the action. Specifically, Investor Group seeks to
27 modify the Receivership ordered by the Court in this litigation.

28 ///

1 **IV. CONCLUSION**

2 Based on the foregoing, Investor Group respectfully requests the Court grant its motion
3 to intervene as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil
4 Procedure, or alternatively, to intervene y permission pursuant to Rule 24(b)(1)(B).

5
6
7 Dated: April 8, 2016

Respectfully submitted,
DILLON GERARDI HERSHBERGER
MILLER & AHUJA, LLP

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9 s/ Timothy P. Dillon
10 Timothy P. Dillon, Esq.
11 Attorney for ALEX HAUA, et al.
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CERTIFICATE OF SERVICE

I am employed in the County of San Diego, State of California, am over the age of 18 and not a party to the within action. My business address is DILLON GERARDI HERSHBERGER MILLER & AHUJA, LLP, 5872 Owens Avenue, Suite 200, Carlsbad, CA 92008. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing.

On April 8, 2016, I caused to be served the following documents described as:

- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF INVESTOR GROUP'S MOTION FOR INTERVENTION AS A MATTER OF RIGHT, OR, ALTERNATIVELY, FOR PERMISSIVE INTERVENTION**

(BY ELECTRONIC FILING) I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the Court. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. Under said practice, the following CM/ECF user(s) were served:

Gary J Aguirre
gary@aguirrelawapc.com, maria@aguirrelawapc.com

Lynn M. Dean
deanl@sec.gov, larofiling@sec.gov, berryj@sec.gov, irwinma@sec.gov, cavallones@sec.gov

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Sara D. Kalin
kalins@sec.gov, irwinma@sec.gov

Dated: April 8, 2016

s/ Ronnielyn Abrera
Ronnielyn Abrera

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2 **DILLON GERARDI HERSHBERGER MILLER & AHUJA, LLP**

3 5872 Owens Avenue, Suite 200

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7 E-Mail: tdillon@dghmalaw.com

8 Attorneys for ALEX HAUA, et al.

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

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

20 Defendants

21 ALEX HAUA, et al.,

22 Proposed Intervenors

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

**DECLARATION OF TIMOTHY P. DILLON
IN SUPPORT OF INVESTOR GROUP'S
MOTION FOR INTERVENTION AS A
MATTER OF RIGHT, OR,
ALTERNATIVELY, FOR PERMISSIVE
INTERVENTION**

Hearing:

Date: May 6, 2016

Time: 1:30 p.m.

Dept.: 2D

Judge: Hon. Gonzalo P. Curiel

1 I, Timothy P. Dillon, declare as follows:

2 1. I have personal knowledge of the facts set forth herein in this Declaration and, if
3 called as a witness, could and would testify competently to such facts under oath.

4 2. I am the attorney for approximately 130 investors (the “Investor Group”)¹.

5 3. The law firm for the Investor Group has retained Alan Nevin and Neal Singer at
6 Xpera Group (“Xpera”). Alan Nevin has more than 25 years of experience in performing
7 feasibility studies for developers and investors, as well as forensic experts. Neal Singer is the
8 COO of Xpera RE, Xpera’s full-service commercial real estate repositioning division. Xpera is
9 a comprehensive group of construction consultants, real estate advisors and forensic experts.
10 Counsel for the Investor Group has retained Xpera to perform studies and market analyses on
11 the each of the partnership properties with the intent of maximizing value to the investors.

12 4. A substantial retainer is being paid to Xpera for the purpose of providing a plan,
13 including proposing recommendations for each of the 23 general partnership properties.
14 Xpera’s report is intended to go beyond a mere appraisal of the partnership properties. Instead,
15 it will provide a strategy and plan for optimizing property value and income potential. Xpera
16 will conduct site visits, analyze past and current entitlements for the properties, will assess
17 whether the procurement of future entitlements would reasonably be expected to increase the
18 value of properties, communicate with applicable government agencies, brokers and others
19 regarding past, existing, and possible future entitlements and evaluate the properties and the
20 market surrounding the properties.

21 5. Xpera will issue a report recommending the best way each property can be
22 positioned to maximize investor return. Xpera will provide a presentation of all data obtained
23 and research conducted, will provide an analysis of each properties’ local market, will provide
24 analysis on the quality of each properties’ location in terms of future development on resale,
25 will provide a report on the status of development processing and opportunities for future
26

27 _____
28 ¹ “Investor Group” shall have the same meaning and refer to the same individuals and entities as those identified in the [proposed] Complaint in Intervention, a copy of which is concurrently filed herewith as Exhibit “A” to the Motion.

1 mapping, will provide an estimated time for future processing (if processing is deemed
2 possible) and will report on potentials for optimizing value of the properties.

3 6. It is anticipated that Xpera will not recommend the immediate sale of many of the
4 general partnership properties, but rather, would recommend a “repositioning” of the real estate
5 (i.e. by the obtaining of entitlements, zoning variances, marketing of entitlements already
6 obtained, etc.) and a change in the way the assets are marketed and valued.

7
8 Dated: April 8, 2016

Respectfully submitted,
DILLON GERARDI HERSHBERGER
MILLER & AHUJA, LLP

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11 s/ Timothy P. Dillon
12 Attorney for ALEX HAUA, et al.
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Gary J Aguirre
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Dated: April 8, 2016

s/ Darlene Chaves
Darlene Chaves