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14 and FIRST FINANCIAL PLANNING CORPORATION

15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17	SECURITIES AND EXCHANGE)	Case No. 12 CV 2164 LAB JMA
18	COMMISSION,)	
19)	
20	Plaintiff,)	DEFENDANTS' RESPONSE TO THE
21)	RECEIVER'S SECOND REPORT AND
22	v.)	PROPOSAL REGARDING THE ASSETS
23)	OF WESTERN AND LOUIS SCHOOLER
24	LOUIS V. SCHOOLER and FIRST)	
25	FINANCIAL PLANNING)	
26	CORPORATION d/b/a WESTERN)	
27	FINANCIAL PLANNING)	
28	CORPORATION,)	
)	
	Defendants.)	
)	
)	

29 Defendants LOUIS V. SCHOOLER (“Schooler”) and FIRST FINANCIAL PLANNING
30 CORPORATION (“Western”) (collectively “Defendants”), by and through their attorneys of
31 record, Eric J. Hougen and Philip H. Dyson, respectfully submit this Response to the Receiver’s
32 Second Report and Proposal Regarding the Assets of Western and Louis Schooler (“Proposal”).

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I.

INTRODUCTION

This Court’s mandate to the receiver, Thomas C. Hebrank, (the “Receiver”) was clear and simple, “meet and confer with the parties and submit a proposal by which he will remain receiver of the general partnerships *but transition into a monitor role with respect to Defendants’ assets.*” (Preliminary Injunction Order, Docket 44 (“Order”), Pg. 25 (emphasis added).)

Instead of abiding by the mandates of this Court’s Order, the Receiver has submitted a Proposal to this Court, in which *he argues, at length, that Western should remain under his receivership and for its assets to continue to be frozen.* The Receiver further urges this Court to permit him to carry out *a de facto receivership with respect to Schooler’s assets.*

In making his Proposal, the Receiver has essentially torn up the Court’s Order, contending that *his* opinions, *based solely on conjecture and a complete misunderstanding of the relationship between the General Partnerships and Western,* should be substituted for this Court’s determination and rulings.

The Receiver’s Proposal deviates so severely from this Court’s Order *and contains so many factual inaccuracies regarding the General Partnerships and Western’s business* that one is left questioning whether the Receiver has reviewed the relevant operative documents governing the General Partnerships. One must ask whether the Receiver is, in fact, a neutral party in this action, whether the Receiver has made the effort required to understand Defendants’ business before submitting public filings misrepresenting basic facts and needlessly alarming everyone, and whether the Receiver should be the receiver at all in this action.

This Court has already analyzed the law and evidence presented in this case so far and ruled that “the SEC has offered *no evidence* that Defendants are sheltering or hiding money, or shuffling it around nefariously.” (Order, Pg. 24 (emphasis added).) In fact, the Court found that the “*SEC’s argument for any kind of asset freeze is tenuous to begin with.*” (Order, Pg. 25 (emphasis added).) Accordingly, the Court “direct[ed] the receiver to submit a proposal by which he will remain receiver of the general partnership *but transition into a monitor role with respect to Defendants’ assets.*” (Order, Pg. 25.)

1 The SEC similarly disregards the Court's Order by submitting a 7-page brief that amounts
2 to a second bite at the apple arguing for the continuation of the receiver over Western. The SEC's
3 contention that "it is not clear whether the Court intended to lift both the freeze and the
4 receivership over Western" is wholly disingenuous as this Court's order was crystal clear.
5 (Docket 50, Pg. 1, Fn. 1.) The SEC's request is, in fact, an attempt to overturn this Court's ruling
6 under the guise of a mere brief supporting the Receiver's Proposal, the entertainment of which
7 would deprive Defendants of adequate due process and severely prejudice Defendants. The SEC's
8 brief should be disregarded.

9 Likewise, the Receiver's Proposal should be rejected altogether. Instead, an Order should
10 be entered *that conforms to this Court's Order*. Defendants previously presented the Receiver
11 with such a proposed order, providing for the Receiver's *reasonable monitoring* of Defendants'
12 assets, *which the Receiver outright dismissed*. (See, Exhibit 1 attached hereto.)

13 Defendants have separately submitted herewith a proposed order akin thereto, and
14 respectfully request that this Court review and enter this order.

15 II.

16 BACKGROUND

17 On October 5, 2012, this Court issued its Preliminary Injunction Order, which granted a
18 limited version of the injunction the SEC requested. (Order.) In its 26-page Order thoroughly
19 analyzing the preliminary evidence presented by the SEC and the relevant case law, the Court
20 made a number of findings and conclusions.

21 It found that while at this stage the SEC had established "a prima facie case that the
22 general partnerships Western sells are securities," the SEC had "offered *no evidence* that
23 Defendants are sheltering or hiding money, or shuffling it around nefariously" even though the
24 SEC had been monitoring them for more than a year. (Order, Pg. 24 (emphasis added).)

25 The Court specifically declined to "[stake] its preliminary injunction on the SEC's
26 allegations of fraud," which was essential here, since "it is really where fraud is found that an asset
27 freeze has the most traction." (Order, Pg. 24.) The Court noted that it was "close to complete
28 speculation that, contrary to the interests of the general partnerships and unbeknownst to them,

1 they will receive and obey a command from Schooler to put their money out of reach.”

2 In light of its conclusion “that the SEC’s argument for any kind of asset freeze *is tenuous*
3 *at best*” and Defendant’s “reasonable” consent to their assets being monitored, the Court directed
4 the receiver to meet and confer with the parties and submit a proposal “by which he will remain a
5 receiver of the general partnerships *but transition into a monitor role with respect to Defendants’*
6 *assets.*” (Order, Pg. 25 (emphasis added).) The Court suggested that it would lift the asset freezes
7 and receivership as to Defendants once it approved a proposal from the Receiver that complied
8 with these guidelines. (Order, Pg. 25-26.)

9 Pursuant to the Order, the parties and the Receiver met concerning the details of the
10 Receiver’s Proposal. Defendants additionally submitted a proposed order regarding the
11 appointment of the Receiver as monitor, which was guided by the principles cited in the Order.
12 (See Exhibit 1).

13 On October 18, 2012, the Receiver filed his Proposal. (Proposal.) In direct contravention
14 of this Court’s Order, he proposes that Western remain under his receivership and for its assets to
15 continue to be frozen. Further, the Receiver recommends a “monitor” role that would in essence
16 extend his receivership as to Schooler as well – a step not even requested in the Commission’s
17 overly aggressive original TRO application.

18 On October 18, 2012, the SEC filed its Memorandum of Points and Authorities in Support
19 of the Receiver’s Proposal. (See, Docket 50 (“SEC’s Supporting Brief”).)

20 **III.**

21 **THE RECEIVER’S PROPOSAL DOES NOT COMPLY WITH THIS COURT’S ORDER**

22 The Receiver has responded to this Court’s Order by substituting the Court’s judgment
23 with his own. In complete disregard of the Court’s conclusion that there had been “no evidence”
24 of Defendants’ dissipation of assets, the Receiver proposes to continue the receivership and asset
25 freeze as to Western and to essentially do the same as to Schooler. (Proposal.) As detailed below,
26 the Receiver’s proposal must be rejected altogether.

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1 **A. The Receiver and the SEC Have Asserted Numerous Imagined Misfortunes to Try To**
2 **Overturn this Court’s Ruling that Western’s Assets Solely Be Monitored**

3 Purporting to act “in the best interests of all parties,” the Receiver outlines a series of
4 *hypothetical scenarios* should Defendants’ asset freeze and receivership be discontinued.
5 (Proposal, Pg. 2-5.) The SEC jumps on the bandwagon, parroting these same hypothetical
6 scenarios. (SEC’s Supporting Brief.) *These hypothetical scenarios are based on a fundamental*
7 *misunderstanding of Western’s business and its relationship with the general partnerships.*

8 **1. The Receiver and the SEC Fail to Comprehend Western’s Business**
9 **Operations**

10 The Receiver makes the following faulty assertions and assumptions, which are adopted by
11 the SEC:

12 1. “Western's financial condition directly impacts the value of GP assets and prospects
13 for recovery by the GP investors. If Western falters and does not pay its bills, the GP investors
14 stand to lose substantial sums.” (Proposal, Pg. 3.)

15 This is not true. Western’s financial condition in no way impacts the value of the GP
16 assets or the prospect for recovery by the GP investors. Western’s existence has no relation to the
17 market value of the land or what price the GP might sell the land for, which are instead impacted
18 by multiple macro-economic and political factors completely out of Western’s or the GPs’ control.
19 (See, Declaration of Louis Schooler filed herewith (“Schooler Dec.”).)

20 2. If Western’s \$4.3 million worth of “loans are not kept current, enforcement actions
21 taken by the lenders could adversely affect investors. ... [T]he Receiver's ability to protect the
22 interests of the GPs will be very limited if he is not in control of Western.” (Proposal, Pg. 3.)

23 This is also untrue. The GPs’ notes with Western allow them to *bypass Western and*
24 *divert payments directly to the underlying financier.* A default by Western on the underlying
25 notes would not result in an enforcement action by the original seller; such an act would only
26 happen if the GPs defaulted on their obligations to Western. (Schooler Dec.).

27 3. “Other than capital infusions from Mr. Schooler, the only income Western has are
28 payments from investors who borrowed money from Western to make their investments in the

1 GPs. Many of these investors have stopped payments to Western in light of the Commission's
2 allegations and the Receiver's appointment.” (Proposal, Pg. 3.)

3 This statement is untrue and reflects a complete misunderstanding of the relationship
4 between Western and the general partnerships. The income Western receives is not predominantly
5 from individual investors, but from the GPs themselves. (Schooler Dec.)

6 The above errors of fact directly call into question the Receiver’s understanding of basic
7 obligations of the very GPs for which he is supposed to be serving as Receiver. On page 9 of the
8 Proposal, the Receiver states: “Prior to the filing of this case, Western collected approximately
9 \$107,000 per month in loan payments from investors.” This is false. The \$107,000 the Receiver
10 refers to is the total of the note obligations the GPs owe to Western. (Schooler Dec.)

11 The Receiver attempts to imply that Western may no longer have the benefit of the
12 \$107,000 per month it is owed. What the Receiver does not explain to the Court is that the only
13 way that Western is not going to receive the \$107,000 in receivables is if the Receiver decides that
14 the GPs should all decide to default on their lawful obligations. (Schooler Dec.)

15 As Receiver for the GPs, one would expect the Receiver to be aware that it is his
16 responsibility to sign the checks that must be paid each month from the GPs to Western. The
17 Receiver either conveniently leaves this fact out to support his manufactured crisis or the Receiver
18 has been less than diligent in understanding the payment obligations that are clearly on the books
19 of the GPs.

20 If the Receiver has read the General Partnership Agreement governing each General
21 Partnership, he would also understand that, if he is about to take the drastic step of stopping
22 payments the GPs are legally obligated to make, that such action would require adequate notice to
23 the General Partnership members and an opportunity for the General Partnership members to vote
24 on such an action before the Receiver threw the GPs into default on such an obligation. (Schooler
25 Dec.)

26 The recklessness with which the Receiver is making false statements is shocking and calls
27 into question the level of his purported independent assessment of the operative documents he
28 claims to have gathered and reviewed.

1 2. **The Receiver and the SEC Arguments are Based on Complete Speculation and**
2 **Conjecture**

3 Not only does the Receiver and the SEC not understand the business of Western and the
4 general partnership, *the Receiver and the SEC base their arguments for the continued*
5 *receivership on complete speculation and conjecture.*

6 The Receiver and the SEC argue that the receivership should remain in place because: 1) *if*
7 the loans secured by the GPs' properties are not kept current, enforcement actions taken by lenders
8 could adversely affect investors; 2) *it is expected* that most investors, if not all, will cease
9 payments to Western; 3) Schooler *may* stop making payments to Western; 4) lenders, investors
10 and other creditors will *likely* bring suit against Western; 5) Western *could* go into bankruptcy;
11 and 6) Western *may* have claims against its officer and directors and outside professionals. (Pg. 3-
12 4.)

13 These surmised scenarios hardly serve as a basis to conclude that the receivership should
14 continue. In fact, Western has been in business *for 34 years*. There simply is no evidence of any
15 GP's failure during this period of time. There is no evidence of Western defaulting on their
16 obligations or ever being on the verge of bankruptcy. (Schooler Dec.)

17 Even if the Receiver's and the SEC's complete speculation as to Western's and the GP's
18 futures were accurate, the Receiver provides no basis for concluding that *he* is in a better position
19 to manage Western's business affairs. In fact, the Receiver has demonstrated that he does not
20 even comprehend Defendants' business.

21 The Receiver's conjecture conveniently leaves out very important facts, including:

- 22 a. Western's balance sheet is actually positive. While it owes \$4.3 million in loans, the
23 Receiver fails to point out that Western has more than \$5.3 million in receivables.
24 (Schooler Dec.)
- 25 b. With regard to current monthly receivables to Western, the Receiver identifies
26 \$107,000 paid each month to Western, but mistakenly attributes these to individual
27 investors owing payments to Western. In fact, the \$107,000 is paid each month by the
28 GPs to Western pursuant to the respective notes executed by the GPs. Thus, these

1 payments would only cease to come into Western if the Receiver made a decision that
2 the GPs are not required to meet their lawful obligations. (Schooler Dec.)

3 Simply put, the conjecture and speculation engaged in by the Receiver and the
4 Commission fails to take into account the actual facts regarding the GPs and Western.

5 **3. The Receiver and the SEC Are Wrongfully Attempting to Overturn this**
6 **Court's Ruling**

7 Via the Receiver's Proposal and the SEC's Supporting Brief, they are attempting to
8 overturn this Court's ruling that the Receiver cease his receivership of Western and solely monitor
9 Western's assets. (Order, Pg. 25.) The SEC's alleged confusion as to this Court's Order is wholly
10 disingenuous and merely an effort to avoid complying therewith. (SEC's Supporting Brief, Pg. 1,
11 Fn. 1.)

12 In fact, the SEC's 7-page brief arguing that the Court has "broad discretion to appoint an
13 equity receiver..." and that, therefore, this Court should analyze the factors set forth by *SEC v.*
14 *Wencke*, 622 F.2d 1363 (9th Cir. 1980) to determine whether to extend the receivership of
15 Western is, in effect, a motion for reconsideration of this Court's ruling and/or a new motion for
16 the appointment of an equity receiver, ***made under the guise of a mere brief in support of the***
17 ***Receiver's Proposal***. (SEC's Supporting Brief, Pg. 2.) This court's entertainment of the same
18 would wholly deprive Defendants of their due process rights and amount to severe prejudice
19 against Defendants.

20 Prior to its filing of its brief in support of the Receiver's Proposal, the SEC hung its entire
21 case for a receiver and asset freeze on the argument that the same would prevent "further
22 dissipation and misappropriation of investors' assets," and alleged "misuse of assets" and
23 commission of an "an ongoing and egregious fraud against investors" -- ***an argument this Court***
24 ***flatly rejected***. (See Docket # 3-1, Pg. 22.) The SEC should not be allowed its attempted do-over
25 that raises new, unsupported arguments.

26 This Court found that the SEC's case for an asset freeze and receiver to be "tenuous," since
27 "the SEC has offered no evidence that the Defendants are sheltering or hiding money, or shuffling
28 it around nefariously," and this Court declined to base its Order on the SEC's allegations of fraud.

1 (Order, Pg. 24-25.)

2 Accordingly, the Court “direct[ed] the receiver to submit a proposal by which he will
3 remain receiver of the general partnership *but transition into a monitor role with respect to*
4 *Defendants’ assets.*” (Order, Pg. 25.) The SEC’s and the Receiver’s urging of this Court to now
5 vacate its Order and, instead, order the Receiver’s continued receivership over Western must,
6 therefore, be rejected.

7 **B. The Receiver Proposes a De Facto Receivership With Respect to Schooler’s Assets**

8 While the Receiver proposes to undertake a “monitor” role as to Schooler, in reality, the
9 Receiver has proposed a de facto continuation, and in fact an extension, of his receivership to that
10 of Schooler’s personal assets. This goes beyond even the SEC’s original TRO request. The
11 Receiver urges this Court to grant him the ability to exercise his “business judgment” over
12 Schooler’s personal assets. (Proposal, Pg. 5.)

13 In connection therewith, Schooler would have to submit a budget of monthly expenses to
14 the Receiver and then he, as the “monitor,” would consider whether the items are “reasonable and
15 necessary.” (Proposal, Pg 5.) The Receiver would further have the power to accept or reject any
16 transaction falling outside of the budget that is between **\$2,500** and \$25,000. (Proposal, Pg 5.)
17 Transactions greater than \$25,000 would require the Court’s authorization. (Proposal, Pg 5.)

18 The Receiver further proposes that, *on each Friday*, Schooler submit “a list of payments
19 he intends to make the following week so the Monitor can confirm that the payments are
20 consistent” with the budget. (Proposal, Pg 5.) Schooler is then to pay for the costs of all this
21 resource-draining, needless oversight, including paying the monitor’s counsel’s fees. (Proposal,
22 Pg 6.)

23 These onerous and severely overreaching tasks far exceed any reasonable monitoring. To
24 impose a strict monitorship requiring pre-approval above \$2,500 and the exercise of the monitor’s
25 “business judgment” over Schooler, *including his business entities that are completely unrelated*
26 *to Western and the matters at issue*, is not supported by the law or the specific facts in this case.

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1 Further, *Defendants never consented to Schooler's assets being monitored in the first*
2 *place*. Contrary to what the Court states in its Order, Defendants *solely* consented to Western's
3 assets being monitored. (Order, Pg. 25; See Docket #34-1 ("Defendants Proposed PI Order").)

4 With the Court's clear finding that the SEC failed to meet the "likelihood of dissipation of
5 assets" standard, a decision by this Court to lift the asset freeze without imposing a monitor as to
6 Schooler's personal assets would be well supported by the law. Especially in light of the fact that
7 Schooler, over his more than 40 years of working life, has generated income and assets from many
8 sources wholly separate and apart from Western. (Schooler Dec.)

9 However, for the sake of cooperation, even at the risk of giving up more ground than the
10 legal standard on asset freezes requires, Defendants submitted to the Receiver a proposed
11 monitoring order that provides for the Receiver's reasonable monitoring of Schooler's assets, as
12 discussed further below. (See, Exhibit 1 hereto.) The Receiver wholly dismissed this proposed
13 order and, instead, asks this Court to, in effect, extend its receivership to that of Schooler's assets.

14 As detailed above, this is contrary to this Court's Order. The Receiver's proposed
15 monitoring duties for Schooler's assets must, therefore, be rejected.

16 **C. The Receiver's Proposed Alternative Monitoring Duties for Western Are Akin to the**
17 **Extension of the Receivership**

18 Just like the Receiver's proposed "monitoring" tasks with respect to Schooler's assets, the
19 Receiver's proposed "monitoring" tasks for Western's assets, in the alternative to the continuation
20 of his receiverships, are onerous and severely overreaching.

21 For instance, the Receiver proposes that any transactions outside of the approved budget
22 that are greater than \$1000 be subject to court approval. (Proposal, Pg. 7.) *Every Friday*, Western
23 would be required to submit a list of checks it intends to write the following week so the monitor
24 can review and approve them. (Proposal, Pg. 7.) If any loans secured by the GP properties are not
25 kept current, the Receiver contends that Western should then *immediately be restored to the*
26 *receivership*. (Proposal, Pg. 7.)

27 Once again, the Receiver ignores the Court's holdings and Order. The Court *solely* found
28 that the SEC made a prima facie case that the GP interests Western sells are securities. (Order, Pg.

1 24.) The Court made no findings of fraud and found that there was no evidence that Defendants
2 are sheltering or hiding money. The Court, therefore, found that the asset freeze was tenuous in
3 the first place. (Proposal, Pg. 7.) Even the Receiver and the SEC now acknowledge that Schooler
4 has been *infusing cash into Western*, not removing it.

5 Accordingly, the choke-hold that the Receiver wants to maintain on Defendants is not
6 supported by the law and cannot be allowed to continue.

7 **IV.**

8 **DEFENDANTS HAVE PRESENTED A PROPOSED ORDER PROVIDING FOR**
9 **REASONABLE MONITORING, WHICH SHOULD BE ENTERED**

10 Following the Court's Order, Defendants met with the Receiver and the SEC, and
11 submitted a proposed order detailing a reasonable role for the Receiver, acting as the monitor with
12 respect to Defendants. (See, Exhibit 1 hereto) This proposed order addressed the SEC's concerns
13 and conforms with the Court's Order, particularly in modeling itself after the order entered by the
14 court in *F.T.C. v. Millenium Telecard, Inc.*, from whom this Court took its cue. (See, Order, Pg.
15 25.)

16 Defendants' proposed order, submitted separately herewith, is akin thereto and will include
17 Defendants' presentation to the monitor of a detailed list of all of Defendants' reoccurring
18 expenses. The proposed order provides the Receiver, acting as a monitor, with the right to review,
19 on a monthly basis, a list of all checks and wires executed by Defendants to ensure that the money
20 that is being expended comports with the list of Defendants' reoccurring expenses, or otherwise is
21 being properly expended. (See, Defendants' proposed order submitted separately herewith.)

22 The proposed order further provides the monitor with the right to approve any expense that
23 exceeds \$50,000 (the same threshold used in *Millenium Telecard*). Additionally, the proposed
24 order restrains Defendants from destroying, transferring or concealing any documents relating to
25 their business practices, assets or finances. (*Id.*)

26 In sum, this proposed order provides for reasonable monitoring of Defendants' assets,
27 especially in light of the fact that the Court found no prima facie case of fraud or evidence that
28 Defendants have ever attempted to shelter or hide money. (Order, Pg. 24.)

1 The SEC has had ample opportunity over the past month to direct the Court to any facts
2 supporting the conclusion that dissipation of assets is “likely” and the SEC has failed to do so.

3 V.

4 **CONCLUSION**

5 The Receiver’s Proposal wholly fails to comply with this Court’s Order. In effect, the
6 Receiver and the SEC are seeking to overturn this Court’s ruling, by making completely false
7 statements and then, based on those false premises, detailing a series of imagined misfortunes that
8 could befall Western should this Court not extend the receivership. As detailed herein, the
9 Receiver’s and the SEC’s imagined misfortunes are based on a complete lack of understanding of
10 Western’s business operations and the relationship between Western and the General Partnerships.

11 This Court has already analyzed the law and evidence presented in this case and
12 “direct[ed] the receiver to submit a proposal by which he will remain receiver of the general
13 partnership *but transition into a monitor role with respect to Defendants’ assets.*” (Order, Pg.
14 25.)

15 Accordingly, Defendants respectfully request that this Court reject the Receiver’s Proposal
16 in its entirety and, instead, enter Defendants’ proposed order, which complies with this Court’s
17 Order by detailing reasonable monitoring duties for the Receiver with respect to both Western’s
18 and Schooler’s assets.

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20 Respectfully submitted,

21
22 _____/s/Eric J. Hougen_____
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Counsel for Defendants

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CERTIFICATION

I hereby certify that on the _19th_ day of October, 2012, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

Sam S. Puathasnanon
Sara D. Kalin
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036

Ted Fates
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
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_____/s/Eric Hougen_____

Eric Hougen

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE)
COMMISSION,)
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Plaintiff,)
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v.)
)
LOUIS V. SCHOOLER and FIRST)
FINANCIAL PLANNING)
CORPORATION d/b/a WESTERN)
FINANCIAL PLANNING)
CORPORATION,)
)
Defendants.)

Case No. 12 CV 2164 LAB JMA

**ORDER REGARDING APPOINTMENT
OF MONITOR**

I.

APPOINTMENT OF MONITOR

IT IS ORDERED that Thomas C. Hebrank (the “Monitor”) is appointed as Monitor for Defendants LOUIS V. SCHOOLER (“Schooler”) and FIRST FINANCIAL PLANNING CORPORATION dba WESTERN FINANCIAL PLANNING CORPORATION (“Western”).

The Monitor shall be the agent of this Court, and solely the agent of this Court, in acting under this Order. The Monitor shall be accountable directly to this Court.

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II.

MONITOR’S DUTIES AND AUTHORITY

IT IS ORDERED that the Monitor shall have the following duties and authority:

A. Monitor Western’s corporate records and financial transactions and Schooler’s personal financial records and financial transactions by reviewing a monthly list of checks and wires executed by Western and Schooler. The Monitor shall have the right to request the corresponding invoices for each check and wire transfer or additional information relating thereto as he deems appropriate.

B. The Monitor shall file, under seal, any financial information included in the Monitor's reports or other filings with the Court.

III.

COMPENSATION OF MONITOR

IT IS FURTHER ORDERED that the Monitor and all personnel hired by the Monitor, including counsel to the Monitor and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets of Western. On or before the 15th of every month, the Monitor shall file with the Court and serve on the parties a request for the payment of such reasonable compensation.

IV.

ASSET MONITORING

IT IS FURTHER ORDERED that:

A. Western shall have the right to pay from corporate assets any corporate debts and obligations in the ordinary course of business, which payments shall be listed on the monthly list of checks and wires to be provided by Western to the Monitor, except that Western shall provide the Monitor with forty eight (48) hours' notice of any expense exceeding \$50,000.00.

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1 The expenses detailed on Exhibit 1 attached hereto - Western's Reoccurring
2 Expenses - shall be presumed reasonable and shall not require written notice to the
3 Monitor or to Plaintiff SECURITIES AND EXCHANGE COMMISSION (the
4 "Commission") before a transfer is made, though Western shall have the right to
5 request payment of other expenses as they arise.

6 B. Schooler shall have the right to pay from his personal assets any personal
7 expenditures, debts and obligations, including those of business enterprises other than
8 Western that are either partially or wholly owned by Schooler, which payments shall be
9 listed on the monthly list of checks and wires to be provided by Schooler to the Monitor,
10 except that Schooler shall provide the Monitor with forty eight (48) hours' notice of any
11 expense exceeding \$50,000.00.

12 The expenses detailed on Exhibit 2 attached hereto - Schooler's Reoccurring
13 Expenses - shall be presumed reasonable and shall not require written notice to the
14 Monitor or to the Commission before a transfer is made, though Schooler shall have
15 the right to request payment of other expenses as they arise.

16 C. Reasonable legal fees and costs incurred by Western and/or Schooler in
17 connection with this litigation shall be presumed reasonable and shall not require written
18 notice to the Monitor or to the Commission before a transfer is made. Legal fees incurred
19 by Western are to be paid out of Western's accounts, to the extent reasonably feasible,
20 before being paid out of Schooler's personal assets.

21 **IT IS FURTHER ORDERED** that the assets affected by this Section shall
22 include assets (a) existing as of the date this Order was entered, or (b) acquired by
23 Western or Schooler following entry of this Order, if such assets are derived from the
24 conduct alleged in the Commission's Complaint.

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V.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Western and Schooler and their representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby preliminarily restrained and enjoined from:

A. destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, documents that relate to the business, business practices, assets, or business or personal finances of Western or Schooler; and

B. failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect Western’s and Schooler’s incomes, disbursements, transactions, and use of money.

VI.

DURATION OF ORDER

IT IS FURTHER ORDERED that this Order shall remain in full force and effect pending trial on the merits, unless sooner modified or dissolved by Order of this Court.

IT IS SO ORDERED.

Dated: _____

HONORABLE LARRY ALAN BURNS
United States District Judge

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13 Attorneys for Defendants LOUIS V. SCHOOLER
14 and FIRST FINANCIAL PLANNING CORPORATION

15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 SECURITIES AND EXCHANGE)
18 COMMISSION,)

19 Plaintiff,)

20 v.)

21 LOUIS V. SCHOOLER and FIRST)
22 FINANCIAL PLANNING)
23 CORPORATION d/b/a WESTERN)
24 FINANCIAL PLANNING)
25 CORPORATION,)

26 Defendants.)

Case No. 12 CV 2164 LAB JMA

DECLARATION OF LOUIS V. SCHOOLER IN SUPPORT OF DEFENDANTS' RESPONSE TO THE RECEIVER'S SECOND REPORT AND PROPOSAL REGARDING THE ASSETS OF WESTERN AND LOUIS SCHOOLER

27 I, LOUIS V. SCHOOLER, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

28 1. I am a Defendant in the above entitled action. I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would testify competently hereto under oath.

2. Defendant FINANCIAL PLANNING CORPORATION dba WESTERN FINANCIAL PLANNING CORPORATION ("Western") has been in business for 34 years.

///

1 3. Western's financial condition in no way impacts the value of the general
2 partnership ("GPs") assets or the prospect for recovery by the GP investors.

3 4. Western's existence has no relation to the market value of the land or what price
4 the GPs might sell the land for, which are instead impacted by macro-economic and political
5 factors completely out of Western's or the GPs' control

6 5. The GPs' notes with Western allow the GPs to bypass Western and divert payments
7 directly to the underlying financier. A default by Western on the underlying notes would not result
8 in an enforcement action by the original seller; such an act would only happen if the GPs defaulted
9 on their obligations to Western.

10 6. The income Western receives is not predominantly from individual investors, but
11 from the GPs themselves. And the payments the individual investors owe are predominantly not
12 to Western, but to the GPs. To the extent any individual investor decides to stop making the
13 payments it owes to the GPs, it only hurts the GPs, and has no effect on Western at all.

14 7. Prior to the filing of this case, Western did not collect approximately \$107,000 per
15 month in loan payments from investors. The approximate \$107,000 amount collected is actually
16 the total of the note obligations the GPs owe to Western.

17 8. The only way that Western is not going to continue receiving the \$107,000 in
18 receivables is if the GPs all decide to default on their obligations. The decisions to default on
19 these obligations would require adequate notice to the GP members and an opportunity for the GP
20 members to vote on whether to default or not.

21 9. Only 9 of the 22 properties have underlying notes that have not been paid off
22 completely and never in 34 years has Western defaulted on an underlying note and all of the
23 present underlying notes are paid current. Additionally the partnerships collectively have
24 approximately 6.5 million dollars in reserve. They are in a position to continue making their
25 payments for a long time if the investors who owe them money default on their monthly note
26 payments.

27 10. Western's balance sheet is currently positive. While it owes \$4.3 million in loans,
28 Western has more than \$5.3 million in receivables.

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11. I, personally, have generated income and assets from many sources wholly separate and apart from Western over my more than 40 years of working life.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 19th day of October, 2012, in San Diego, California.



LOUIS V. SCHOOLER

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CERTIFICATION

I hereby certify that on the ____ day of October, 2012, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

Sam S. Puathasnanon
Sara D. Kalin
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036

Ted Fates
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, CA 92101

_____/s/Eric Hougen_____
Eric Hougen