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

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13 **SECURITIES AND EXCHANGE
COMMISSION,**

14 **Plaintiff,**

15 **vs.**

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

19 **Defendants.**

Case No. 12 CV 2164 GPC JMA

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
NON-PARTY INVESTORS' EX
PARTE APPLICATION FOR AN
ORDER ALLOWING THEM TO
WITHDRAW AND REFILE AN
EXHIBIT UNDER SEAL AND
SEEKING CLARIFICATION OF THE
COURT'S ORDER, DOCKET 1296**

Dkt. No. 1397

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

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1 The Securities and Exchange Commission (“SEC”) opposes in part the *ex parte*
2 application by non-party investors represented by Gary Aguirre (the “Ardizzone
3 Investors”) to substitute an exhibit filed under seal for an exhibit that they improperly
4 filed in the public docket and seeking clarification of the Court’s Order dated May 18,
5 2016, Docket No. 1296.

6 To begin, the SEC has no objection to Aguirre’s request to withdraw and re-file
7 under seal Exhibit 4 to his October 25, 2016 Declaration. Dkt. No. 1396-1. That
8 document was a letter of intent with a possible purchaser of a property held by the
9 Receivership, and, as Aguirre well knows, it should never have been publicly filed.
10 Investors represented by Aguirre moved in April 2016 to unseal certain filings,
11 including letters of intent, offers, and negotiations with potential purchasers, and the
12 court *denied* that motion, though it did direct that the investors could have access to the
13 documents. Dkt. Nos. 1228, 1231, 1296, pp. 10-11.

14 However, the SEC does oppose the balance of Aguirre’s *ex parte* application,
15 both on the grounds that the Aguirre investors lack standing to make the application,
16 and because it is unnecessary. First, Aguirre has attempted numerous times either to
17 file motions or *ex parte* requests in this matter and has been told that such motions
18 cannot be heard unless he moves to intervene first. *See, e.g.*, ECF Nos. 1194, 1200,
19 1204, 1211, 1221, 1222, 1223, and 1224. He failed to do so here, and the application
20 should be denied on that basis alone.

21 Second, the Court’s May 18, 2016 Order does not require clarification. The
22 Order was explicit in prohibiting public disclosure of documents relating to sales
23 negotiations for receivership properties. The Court specifically found that “the
24 unsealing of the documents for public review could have a negative impact on the GPs’
25 ability to maximize the value of the properties under receivership.” Dkt. No. 1296 at p.
26 10. In ordering that the documents be provided to investors, the Court ordered that the
27 “documents will remain sealed to the public.” *Id.* at p. 11. There is therefore no
28 ambiguity that would require clarification. Aguirre thus violated the Court’s Order by

1 publicly filing a document that the Court had ordered should remain non-public, and
2 then filed this frivolous request for “clarification” to obfuscate his failure to abide by
3 the Court’s prior order. His request should be denied.

4 For all the foregoing reasons, and those set forth in the Receiver’s opposition to
5 Aguirre’s Request (Dkt. No. 1400), the SEC requests that the Court deny the
6 Ardizzone Investors’ application for clarification of the Court’s Order dated May 18,
7 2016, Docket No. 1296.

8 Dated: November 1, 2016

9 /s/ Lynn M. Dean

10 John W. Berry
11 Lynn M. Dean
12 Sara D. Kalin
13 Attorney for Plaintiff
14 Securities and Exchange Commission
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On November 1, 2016, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NON-PARTY INVESTORS’ EX PARTE APPLICATION FOR AN ORDER ALLOWING THEM TO WITHDRAW AND REFILE AN EXHIBIT UNDER SEAL AND SEEKING CLARIFICATION OF THE COURT’S ORDER, DOCKET 1296** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency’s practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service (“UPS”) with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court’s CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: October 20, 2016

/s/ Lynn M. Dean

Lynn M. Dean

1 *SEC v. Louis V. Schooler, et al.*
2 **United States District Court—Southern District of California**
3 **Case No. 12 CV 2164 GPC JMA**

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Responses and Replies

[3:12-cv-02164-GPC-JMA Securities and Exchange Commission v. Schooler et al](#) **CASE CLOSED on 01/21/2016**

APPEAL,CLOSED,ENE,SEALDC

U.S. District Court

Southern District of California

Notice of Electronic Filing

The following transaction was entered by Dean, Lynn on 11/1/2016 at 9:52 AM PDT and filed on 11/1/2016

Case Name: Securities and Exchange Commission v. Schooler et al

Case Number: [3:12-cv-02164-GPC-JMA](#)

Filer: Securities and Exchange Commission

WARNING: CASE CLOSED on 01/21/2016

Document Number: [1403](#)

Docket Text:

RESPONSE in Opposition re [1397] Ex Parte MOTION Deletion of Exhibit, refiling under seal and order clarification re [1368] MOTION to Stay re [1361] Order on Motion for Order, [1359] Order on Motion to Stay,, Order on Motion for Miscellaneous Relief,, Order on Motion to Interv SEC's Memorandum of Points and Authorities In Opposition to Non-Party Investors' Ex Parte Application for an Order Allowing Them to Withdraw and Refile an Exhibit Under Seal and Seeking Clarification of the Court's Order, Docket 1296 filed by Securities and Exchange Commission. (Dean, Lynn)

3:12-cv-02164-GPC-JMA Notice has been electronically mailed to:

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3:12-cv-02164-GPC-JMA Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/ a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=11/1/2016] [FileNumber=10311637-0] [a792c5b2985eeda6c376d21cc029854bc3864b71b85a7e0bc26a0ca5b91dd7fc71900e282b4986553b9240478a966bc03cc4d14a6e0ee83c4e254bd292a0bc90]]