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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE )  
COMMISSION, )  
 )  
Plaintiff, )  
v. )  
 )  
LOUIS V. SCHOOLER and FIRST )  
FINANCIAL PLANNING CORPORATION, )  
dba Western Financial Planning Corporation, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 3:12-cv-2164-GPC-JMA  
**ORDER RE RECEIVER’S SECOND  
REPORT AND PROPOSAL**

**BACKGROUND**

On September 4, 2012, plaintiff Securities and Exchange Commission (“SEC”) filed a complaint against defendants Louis V. Schooler (“Schooler”) and First Financial Planning Corporation dba Western Financial Planning Corporation (“Western”) (collectively, “Defendants”), asserting claims for (1) Fraud in the Offering or Sale of Securities, (2) Fraud in Connection with the Purchase or Sale of Securities, (3) Schooler’s Joint and Several Liability, and (4) Unregistered Offer and Sale of Securities. (ECF No. 1.)

In general, the SEC alleges Defendants defrauded investors through a scheme whereby Defendants would purchase certain real property and then – by using false or misleading information – sell undivided interests in the property to investors through the use of general partnerships that Defendants themselves would organize. Thus, in conjunction, the SEC alleges those undivided

1 interests were actually unregistered securities.

2 On September 6, 2012, Judge Burns issued a temporary restraining order (“TRO”) that, among  
3 other things, froze Defendants’ assets and appointed a receiver over Western and the entities it  
4 controls, including the aforementioned general partnerships. (ECF No. 10.) On October 5, 2012,  
5 concluding the SEC had made out a prima facie case that the interests Defendants were selling were  
6 actually securities, Judge Burns converted the TRO into a preliminary injunction.<sup>1</sup> (ECF No. 44 at 22.)

7 In his October 5, 2012 order, Judge Burns stated “the SEC’s argument for any kind of asset  
8 freeze is tenuous to begin with,” and that he was “hesitant” to find a threat that Defendants would  
9 dissipate investor funds – a finding required to continue the freeze on Defendants’ assets. (Id. at 24-  
10 25.) Judge Burns noted that, in any event,

11 Defendants are willing to stipulate to a continued freeze of the assets of the general  
12 partnerships, overseen by the appointed receiver. They are also willing to consent to  
13 Schooler’s and Western’s own assets, which are now frozen, being monitored to  
address the SEC’s concerns about money that has passed straight from the general  
partnerships to Western.

14 (Id.)

15 Accordingly, guided by FTC v. Millennium Telecard, Inc., 2011 WL 2745963 (D.N.J. July 12,  
16 2011), Judge Burns “direct[ed] the receiver to meet and confer with the parties and submit a proposal  
17 by which he will remain receiver of the general partnerships but transition into a monitor role with  
18 respect to Defendants’ assets.” (Id.)

## 19 DISCUSSION

20 On October 18, 2012, the receiver, Thomas C. Hebrank (“Receiver” or “Hebrank”) filed his  
21 Second Report and Proposal (“Second Report”), in which he addresses Western’s and Schooler’s  
22 assets. (ECF No. 49.)

### 23 **I. Western’s Assets**

#### 24 **A. Receiver’s Proposal**

25  
26 <sup>1</sup> Pursuant to Judge Burns’ October 5, 2012 Order, the SEC was to meet and confer with  
27 Defendants’ counsel and submit a proposed preliminary injunction order to chambers within five days  
28 of the date that Order was issued. The SEC, however, has not submitted such a proposed order, as the  
parties agreed that the SEC would submit a proposed order no later than seven days following the  
Court’s issuance of an order adopting or modifying the Receiver’s Second Report and Proposal as  
discussed herein. (ECF No. 45.)

1 In the Second Report, Hebrank states he “believes it is in the best interests of all parties, and  
2 especially the investors in the GPs, for Western to remain in receivership and for the monitorship to  
3 be limited to Mr. Schooler’s personal assets.” (Id. at 3.) This position is apparently at odds with Judge  
4 Burns’ order directing the Receiver to “submit a proposal by which he will . . . transition into a  
5 monitor role with respect to Defendants’ assets.” Hebrank asserts, however, that a receivership over  
6 Western’s assets is more appropriate than a monitorship because of Western’s “dire financial  
7 situation.”

8 Hebrank first asserts the receivership over Western should continue because “Western and  
9 entities it controls are the borrowers on approximately \$4.3 million in loans secured by properties  
10 owned by the GPs,” and that “[i]f these loans are not kept current, enforcement actions taken by the  
11 lenders could adversely affect investors.” (Id. at 4.)

12 Hebrank asserts another reason to maintain the receivership over Western is to protect  
13 individuals who have already invested in a property located in Washoe County, Nevada. (Id. at 4-5.)  
14 Hebrank states a limited liability company called P51, LLC currently owns the Washoe County  
15 property and that, as the managing member of P51, LLC, Western currently controls the disposition  
16 of that property. Hebrank states individuals have invested more than \$780,000 in the Washoe County  
17 property through a general partnership that Defendants set up called F-86 Partners and that the majority  
18 of that cash has been transferred to Western. Hebrank provides that only \$66,066 remains in the F-86  
19 Partners account and only \$3,416 in the P51, LLC account.

20 Hebrank contends a further reason to maintain the receivership is that, in light of this lawsuit,  
21 investors who borrowed money from Western to invest in properties have stopped making payments  
22 to Western in the approximate monthly amount of \$107,000. Hebrank asserts Schooler is therefore  
23 Western’s only source of income. This, Hebrank claims will create further risk to Western’s financial  
24 stability because, even though Schooler has stated he intends to continue to fund Western, there is no  
25 way to compel Schooler to do so. (Id. at 5.)

26 Hebrank argues another reason to maintain the receivership relates to the injunction prohibiting  
27 anyone other than the SEC from initiating litigation against Defendants or interfering with the  
28 Receiver’s work. (Id. at 5.) Hebrank states three lawsuits against Western have been stayed by the

1 litigation injunction and that “it is likely that lenders, investors and other creditors will bring  
2 [additional] actions against Western.” (Id.) Hebrank asserts that, in addition to avoiding further  
3 litigation, including a potential bankruptcy action, “[t]he receivership and litigation injunction will  
4 allow [him] to evaluate each property, the status of each loan and mortgage, discuss the situation with  
5 the applicable lenders, and make a recommendation to the Court regarding the disposition of each  
6 property.” (Id.)

7 Hebrank asserts yet another reason to maintain the receivership is that, “based on the Court’s  
8 preliminary finding that Western sold unregistered securities, Western may have claims against its  
9 officer and directors (including Mr. Schooler),” and he is best able to evaluate and pursue any such  
10 claims. (Id. at 6.)

11 Hebrank asserts that continuing the receivership over Western would “not prejudice anyone.”  
12 (Id.) Hebrank states that Western does not do any business unrelated to the general partnerships and  
13 that Schooler has “acknowledged that investors’ receipt of notice of the receivership will effectively  
14 end Western’s ‘business existence.’” (Id.) Thus, Hebrank asserts that the focus at this point should  
15 be on “protecting and maximizing the value of Western’s remaining assets, as well as the GPs’ assets,  
16 for the benefit of investors.” And the best way to do that, claims Hebrank, is by continuing the  
17 receivership over Western. Hebrank claims “investors stand to be substantially harmed if Western is  
18 removed from the receivership.”

19 Finally, Hebrank recommends that, if the Court is inclined to remove Western from  
20 receivership, a monitorship be imposed. (Id. at 8.) Hebrank asserts that such a monitorship include  
21 “close oversight over [Western’s] accounts and financial transactions, and that if any of the loans  
22 secured by GP properties are not kept current, Western immediately be restored to the receivership.”

### 23 **B. SEC’s Response**

24 On October 18, 2012, the SEC filed a response to the Second Report. (ECF No. 50.) The SEC  
25 fully supports the Receiver’s proposal that Western remain in receivership, noting that Western is  
26 dependent on Schooler’s infusions of cash and that Western is responsible for the mortgages  
27 encumbering the general partnerships’ most significant assets: the properties in which they invested.  
28 (Id. at 2-5.) The SEC also asserts that, while Judge Burns’ concluded the SEC did not make the

1 required showing for an asset freeze, he did not analyze whether the SEC has made the required  
2 showing for a receivership over Western. (*Id.* at 2.) Thus, the SEC urges this Court to undertake such  
3 an analysis.

#### 4 **C. Defendants' Response**

5 On October 19, 2012, Defendants filed their response to the Second Report. (ECF No. 51.)  
6 Defendants strongly contend that the Second Report "should be rejected altogether." Defendants assert  
7 that, instead of providing a proposal of how the Receiver would continue as receiver over the general  
8 partnerships and transition to the role of monitor over Western's and Schooler's assets as Judge Burns  
9 directed, the Receiver has "essentially torn up the Court's Order" by proposing that "*Western should*  
10 *remain under his receivership*" and that the Court impose "*a defacto receivership with respect to*  
11 *Schooler's assets.*" (*Id.* at 2 (emphasis in original).)

12 Defendants argue the SEC's brief in support of the Second Report "is, in effect, a motion for  
13 reconsideration of [Judge Burns'] ruling and/or a new motion for the appointment of an equity  
14 receiver," and thus the "court's entertainment of the same would wholly deprive Defendants of their  
15 due process rights and amount to severe prejudice against Defendants." (*Id.*) Defendants assert Judge  
16 Burns "*flatly rejected*" the SEC's argument that a receivership and asset freeze would prevent further  
17 dissipation and misappropriation of investors' assets. (*Id.* (emphasis in original).)

18 Lastly, emphasizing the fact that Judge Burns "made no findings of fraud and found that there  
19 was no evidence that Defendants are sheltering or hiding money," Defendants assert the Receiver's  
20 alternative proposal to monitor Western should also be rejected as "onerous and severely  
21 overreaching." (*Id.* at 11.)

#### 22 **D. Defendants' Ex Parte Application**

23 On November 7, 2012, after this case was transferred to this Court, Defendants filed an ex  
24 parte application for a ruling on the Second Report. (ECF No. 53.) In their ex parte application,  
25 Defendants rehash their position that Judge Burns' preliminary injunction order foreclosed both an  
26 asset freeze and a receivership over Western's and Schooler's assets. Defendants also stress the  
27 urgency of addressing the Second Report, as Defendants' assets have been frozen since Judge Burns'  
28 issued the TRO in September.

1 On November 8, 2012, the SEC filed a response to Defendants' Ex Parte Application. (ECF  
2 No. 54.) In its response, the SEC agrees this Court should promptly adopt the Second Report. The  
3 SEC reiterates its argument that Judge Burns' conclusion that the SEC did not meet its burden for an  
4 asset freeze does not foreclose this Court from concluding that a receivership is nonetheless  
5 appropriate because the standard for an asset freeze is different than the standard for a receivership.

6 **E. Analysis**

7 The SEC correctly notes that, while Judge Burns concluded the SEC did not make the required  
8 showing for an asset freeze, he did not specifically address whether the SEC made the required  
9 showing for a receivership over Western.

10 Having reviewed the cases that the SEC relies on, the Court agrees that, while both an asset  
11 freeze and a receivership fall under the court's inherent equitable authority to issue a variety of  
12 ancillary relief in SEC enforcement actions, see In re Sherman, 491 F.3d 948, 959 (9th Cir. 2006), the  
13 standards for imposing an asset freeze and for imposing a receivership are different.

14 On one hand, "[a] party seeking an asset freeze must show a likelihood of dissipation of the  
15 claimed assets, or other inability to recover monetary damages, if relief is not granted." Johnson v.  
16 Couturier, 572 F.3d 1067, 1085 (9th Cir. 2009).

17 On the other hand, a receivership is justified where there is a need to (1) marshal and preserve  
18 assets from further misappropriation and dissipation; (2) clarify the financial affairs of an entity for  
19 the benefit of investors; (3) allow the receiver to conduct an independent investigation of claims an  
20 entity might have against former management or other parties; and/or (4) discover and assert defenses  
21 against actions brought against an entity. SEC v. Wencke, 622 F.2d 1363, 1372 (9th Cir. 1980).  
22 Courts have also found a receivership to be justified where management of an entity, collection of  
23 revenue, and/or the proper distribution of investor funds are required. See Sec. & Exch. Comm'n v.  
24 Fifth Ave. Coach Lines, Inc., 289 F. Supp. 3, 42 (S.D.N.Y. 1968); Sec. & Exch. Comm'n v. Credit  
25 First Fund, LP, 2006 WL 4729240, at \*15 (C.D. Cal. Feb. 13, 2006).

26 In short, while both an asset freeze and a receivership may be justified upon a showing of a  
27 "likelihood of dissipation of the claimed assets," a receivership may be justified for several additional  
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1 reasons.<sup>2</sup> Thus, this Court must decide whether the SEC has made the required showing for a  
2 continuation of the receivership over Western. This, the Court must do in light of Judge Burns'  
3 conclusions that (1) the SEC has made a prima facie showing that the general partnership interests are  
4 securities and (2) the SEC has "offered no evidence that Defendants are sheltering or hiding money,  
5 or shuffling it around nefariously."

6 "Generally, federal courts enjoy wide discretion in fashioning relief and protective measures  
7 in SEC actions." In re San Vicente Med. Partners Ltd., 962 F.2d 1402, 1406 (9th Cir. 1992); but see  
8 Sec. & Exch. Comm'n v. Hickey, 322 F.3d 1123, 1131 (9th Cir. 2003) ("[T]he exercise of the district  
9 court's broad power to fashion ancillary relief [can] be exercised only where necessary."). Under its  
10 equitable powers, a district court has the discretion to appoint a receiver over entities that are subject  
11 to SEC enforcement actions. Id.; Sec. & Exch. Comm'n v. Wencke, 622 F.2d 1363, 1365 (9th Cir.  
12 1980). Once a receiver is appointed, "the district court has broad powers and wide discretion to  
13 determine the appropriate relief in an equity receivership." Securities & Exchange Comm'n v. Lincoln  
14 Thrift Ass'n, 577 F.2d 600, 606 (9th Cir. 1978).

15 The SEC argues the receivership over Western should continue for several reasons. As to the  
16 need to marshal and preserve assets, the SEC argues a receivership is needed to ensure Western  
17 continues to make mortgage payments on the general partnership properties and, if necessary, negotiate  
18 with lenders to avoid default or sell certain Western assets to meet ongoing mortgage obligations.

19 As to the need to clarify financial affairs, the SEC argues continuing the receivership would  
20 ensure investors receive the maximum return on their investment in the "flailing enterprise" and  
21 "would also allow the entities to speak with a single voice." Citing Western's control of the Washoe  
22 County property as the managing member of P51, LLC, the SEC also argues "the capital structure and  
23 intercompany obligations among Western and the GPs need clarification to determine how and to what  
24 extent those relationships impact investors."

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25  
26 <sup>2</sup> Still, the Court recognizes that, where a court's equitable powers are invoked by allegations  
27 of fraud, the determination of whether to impose an asset freeze often overlaps with the determination  
28 of whether to impose a receivership. See SEC v. Wencke, 783 F.2d 829, 837 n.9 (9th Cir. 1986) ("The  
primary purpose of allowing courts to establish receiverships in securities fraud actions is to prevent  
further dissipation of the assets of the defrauded investors." (emphasis added)); see also Fed Trade  
Comm'n v. Millennium Telecard, Inc., 2011 WL 2745963, at \*11 (D.N.J. July 12, 2011) (analyzing  
the need to modify an asset freeze and temporary receivership under the same standard).

1 As to the need to investigate potential claims by Western against former management, the SEC  
2 argues the Receiver is in the best position to conduct such an investigation because he is “independent  
3 and would be free from any conflicts that could hinder or block any investigation.”

4 As to the need to defend Western against third party litigation, the SEC states the litigation  
5 injunction would save Western from third-party litigation and/or bankruptcy.

6 As to the need to provide Western with adequate management, the SEC argues “Schooler’s  
7 integrity, or lack of it, also weighs heavily in favor of appointing the Receiver over Western.” The  
8 SEC asserts “Schooler never told investors about the mortgages that may now cause the loss of GP  
9 properties”; “never told them that Western would spend their money before it transferred an interest  
10 in land to their GP”; and “falsely led investors to believe their GPs were buying land from Western  
11 at a fair price.”

12 As to the need to collect revenue for investors, the SEC argues that, without the Receiver,  
13 “investors are essentially at the mercy of Schooler’s whims.” The SEC argues that, conversely, the  
14 Receiver would be able to determine how best to allocate Western’s limited resources and maximize  
15 the value of those assets.”

16 As to the need to ensure orderly distribution of funds to investors, the SEC argues “[o]nly by  
17 controlling Western will the Receiver be able to fully implement the fair and orderly distributions to  
18 the investors of any assets that may be preserved or recovered from the receivership entities.

19 In response, Defendants assert both the Receiver and the SEC rely on “hypothetical scenarios”  
20 that are “based on a fundamental misunderstanding of Western’s business and its relationship with the  
21 general partnerships.” (ECF No. 51 at 5.)

22 Regarding Western’s financial relationship with the general partnerships, Defendants assert  
23 “Western’s financial condition in no way impacts the value of the GP assets or the prospect for  
24 recovery by the GP investors”; that is, “Western’s existence has no relation to the market value of the  
25 land or what price the GP might sell the land for.” (Id.)

26 Regarding the mortgages on the general partnership properties, Defendants state only nine of  
27 the twenty-two properties have underlying notes that have not been paid off. (ECF No. 51-2 at 2.)  
28 Defendants contend it is “untrue” that, if the “loans are not kept current, enforcement actions by the



1 lenders could adversely affect investors.” (ECF No. 51 at 5.) Rather, Defendants claim “the GPs’  
2 notes with Western allow them to *bypass Western and divert payments directly to the underlying*  
3 *financer* [sic].” (Id. (emphasis in original).) Defendants claims “[a] default by Western on the  
4 underlying notes would not result in an enforcement action by the original seller,” as “such an act  
5 would only happen if the GPs defaulted on their obligations to Western.” (Id.)

6       Regarding investors ceasing payments to Western and Schooler being Western’s only source  
7 of income, Defendants assert “[t]he income Western receives is not predominantly from individual  
8 investors, but from the GPs themselves.” (Id. at 6.) Defendants thus assert the Receiver’s claim that  
9 “[p]rior to the filing of this case, Western collected approximately \$107,000 per month in loan  
10 payments from investors” is false. (Id.) Defendants assert the Receiver has an obligation to ensure  
11 the general partnerships make payments to Western and that “the only way that Western is not going  
12 to receive the \$107,000 in receivables is if the Receiver decides that the GPs should all decide to  
13 default on their lawful obligations.” (Id.) Defendants further assert that, even if investors have  
14 stopped making payment to their general partnerships in light of this litigation, the general partnerships  
15 have \$6.5 million in reserve and are thus in a position to continue making payments to Western. (Id.)

16       Defendants note that Western has been in business for thirty-four years and that “[t]here is  
17 simply no evidence of any GP’s failure during this period of time” or “of Western defaulting on their  
18 obligations or even being on the verge of bankruptcy.” (Id. at 7.) Defendants assert the Receiver is  
19 in no better position to manage Western’s business affairs and, in fact, “has demonstrated that he does  
20 not even comprehend Defendants’ business.” (Id.) In that vein, Defendants assert the Receiver left  
21 out the fact that, even though Western owes \$4.3 million in loans, it has more than \$5.3 million in  
22 receivables. (Id.) Finally, Schooler provides that he has – over more than forty years in business –  
23 “generated more income and assets from many sources wholly separate and apart from Western.”  
24 (ECF 51-2 at 3.)

25       Here, this Court concludes that, while there may be no need for a receiver to marshal and  
26 preserve assets from misappropriation and dissipation, a continuation of the receivership over Western  
27 is needed to clarify Western’s financial affairs.

28       The parties spend a considerable time addressing income from investors and the mortgages on

1 the general partnership properties, and this Court is left with competing information regarding who  
2 is responsible for making payments on the notes, who may make payments on the notes, and the  
3 consequences of failing to make payments on the notes. Additionally, there is competing information  
4 with regard to whether Western receives income directly from investors or from the general  
5 partnerships, and what will happen to Western if investors stop making payments to Western (or to  
6 their general partnerships). Then there are the Receiver's and the SEC's representations about the  
7 investments made in the Washoe County property through F-86 Partners – representations that  
8 Defendants did not respond to. As such, this Court finds additional clarification is needed with regard  
9 to Western's business structure, including its relationship with the general partnerships. This is  
10 especially true given the nearly one hundred general partnerships and other entities with some  
11 relationship to Western.

12 Moreover, because Western's financial affairs need clarification, it is unknown whether a  
13 receiver would be helpful in collecting revenue on behalf of Western.<sup>3</sup> Similarly, it is unknown  
14 whether facts and information will come to light bearing on Schooler's ability to manage Western  
15 and/or on any claims Western might have against its management. The Court also notes that, while  
16 it may be too early in these proceedings to be certain, it is likely a receiver will be required to oversee  
17 the proper distribution of investor funds. Accordingly, this Court concludes a continuation of the  
18 receivership over Western is justified for the benefit of investors.<sup>4</sup>

19 Further, having reviewed the Receiver's recommendations as to what steps should be taken  
20 next, and finding good cause therefor, the Court approves the Receiver's recommendations as to asset  
21 evaluation, forensic accounting analysis, reporting, and claims review and distribution plan. (See ECF  
22 No. 49 at 12-13.)

## 23 **II. Schooler's Assets**

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24 <sup>3</sup> Although, the Court notes Western's largest source of potential revenue appears to be the  
25 general partnerships which Hebrank controls as receiver.

26 <sup>4</sup> In response to Defendants' argument that a continuation of the receivership over Western  
27 based on the Second Report and the SEC's response thereto would violate Western's due process  
28 rights, the Court finds Defendants have had ample opportunity to respond to the Second Report and  
the SEC's response thereto. Indeed, the Court notes that it has not only considered Defendants'  
response to the Second Report, but the Court has also considered Defendants' Ex Parte Application  
in which they restated their arguments against imposing a receivership over Western.

1 As to Schooler's assets, Hebrank "proposes that he be appointed Monitor to oversee Mr.  
2 Schooler's personal expenses and transactions." (ECF No. 49 at 6.) Hebrank further proposes that,  
3 if the Court decides not to continue the receivership over Western, then the monitorship of Schooler's  
4 assets should be more restrictive than the monitorship imposed in Millennium Telecard.

5 In response, the SEC does not specifically address Hebrank's proposal as to Schooler's assets.  
6 (See ECF No. 50.)

7 Defendants, however, specifically oppose Hebrank's proposal as to Schooler's assets. (ECF  
8 No. 51 at 9.) Defendants assert that Hebrank's proposal amounts to "a de facto continuation, and in  
9 fact extension, of his receivership to that of Schooler's personal assets." Defendants further note that,  
10 contrary to Judge Burns' order, "***Defendants never consented to Schooler's assets being monitored***  
11 ***in the first place.***" (ECF No. 51 at 10 (emphasis in original).) Rather, "Defendants ***solely*** consented  
12 to Western's assets being monitored." (Id. (emphasis in original).)

13 Having reviewed the record in this matter, this Court agrees that Defendants never consented  
14 to Schooler's assets being monitored. (See ECF No. 34 at 4.) This Court finds that Judge Burns' order  
15 requiring the Receiver to submit a proposal for a monitorship over Schooler's assets was based on the  
16 incorrect assumption that Schooler consented to such a monitorship. This Court further finds that  
17 neither the Receiver nor the SEC has offered any justification to continue any supervision over  
18 Schooler's personal assets, and this Court finds no such justification at this time. Accordingly, this  
19 Court concludes the freeze on Schooler's assets shall be lifted without the imposition of a monitorship.  
20 Should the SEC or the Receiver, in carrying out his duties over Western, discover cause to restore a  
21 freeze and/or impose a receivership or monitorship over Schooler's assets, the Court will entertain  
22 such a request.

### 23 CONCLUSION

24 After a review of the record in this matter, including the parties' submissions in response to  
25 the Second Report, and for the foregoing reasons, **IT IS HEREBY ORDERED** that:

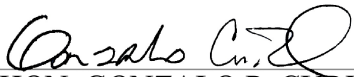
- 26 1. The freeze on Western's assets is lifted but the receivership over Western shall  
27 continue;
- 28 2. Hebrank shall proceed with the asset evaluation, forensic accounting analysis,

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reporting, and claims review and distribution plan outlined in his Second Report and Proposal, (ECF No. 49 at 12-13);

3. The asset freeze on Schooler's personal assets shall be lifted, and no receivership or monitorship shall be imposed on Schooler's personal assets; and
4. No later than seven days after the date this Order is entered, the SEC shall serve and lodge, via email (efile\_curiel@casd.uscourts.gov) a proposed preliminary injunction that is consistent with this Order.

DATED: November 30, 2012

  
HON. GONZALO P. CURIEL  
United States District Judge