No. 16-55850

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. SECURITIES & EXCHANGE COMMISSION,

Plaintiff – Appellee,

v.

LOUIS V. SCHOOLER; FIRST FINANCIAL PLANNING CORPORATION,
DBA Western Financial Planning Corporation,

Defendants - Appellees,

SUSAN GRAHAM, ET AL.

Intervenors - Appellants,

THOMAS C. HEBRANK,

Receiver - Appellee.

On Appeal from the United States District Court
for the Southern District of California, Case No. 3:12-cv-02164-GPC-JMA

MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION AS TO THIRD AND FOURTH ORDERS IN NOTICE OF APPEAL

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CORPORATE DISCLOSURE STATEMENT

(Federal Rule of Appellate Procedure 26.1)

Thomas C. Hebrank ("Receiver"), the appellee herein, is an individual acting as the court-appointed equity receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation, its subsidiaries and the General Partnerships listed on Schedule 1 to the Preliminary Injunction Order entered by the District Court on March 13, 2013, in *Securities and Exchange Commission v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation*, United States District Court for the Southern District of California, Case Number 3:12-cv-02164-GPC-JMA. No parent corporation or any publicly held corporation owns 10% or more of stock in any of the Receivership Entities.

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Appellee Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the General Partnerships listed on Schedule 1 to the Preliminary Injunction Order entered by the District Court on March 13, 2013 ("GPs" and collectively, "Receivership Entities"), moves to dismiss this appeal as to the third and fourth orders in the notice of appeal on the grounds that these two orders are non-appealable interlocutory orders, and therefore the Court lacks jurisdiction to hear the appeal ("Motion").

I. INTRODUCTION

This appeal arises from an enforcement action brought by the Securities and Exchange Commission ("Commission"). On September 6, 2012, the District Court appointed the Receiver over Western and 86 GPs set up by Western. A group of GP investors represented by Gary Aguirre ("Aguirre Investors") have appealed four orders of the District Court. The first two orders deny their requests to intervene in the District Court case. The third order approves a plan of distributing receivership estate assets ("Distribution Plan"), approves procedures for the administration of investor claims, and issues other instructions to the Receiver regarding the administration of the receivership and future sales of real property assets ("Third Order"). The fourth order approves certain recommendations made by the Receiver regarding the engagement of real estate brokers and negotiations

regarding letters of intent for real properties ("Fourth Order"). The Fourth Order also denies an *ex parte* application filed by the Receiver for an order confirming a sale of real property with instructions to refile the request as a noticed motion.

The Third and Fourth Orders are non-final, non-appealable interlocutory orders. Neither order finally resolves the disposition of any receivership asset or the distribution of any receivership assets to investors. As discussed below, both orders require further District Court orders before any receivership assets can be sold or distributions can be made to investors. Accordingly, the appeal as to the Third and Fourth orders should be dismissed for lack of jurisdiction.

II. APPELLANTS' POSITION

The Receiver's counsel contacted Gary Aguirre by e-mail on June 27, 2016, stated the Receiver would be filing this Motion, and asked Mr. Aguirre to provide his clients' position on the matter. Mr. Aguirre responded that his clients will oppose the Motion.

III. FACTUAL AND PROCEDURAL BACKGROUND

On September 4, 2012, the Commission filed a Complaint for Violations of the Federal Securities Laws against Louis V. Schooler ("Schooler") and Western. Dkt. No. 1. On September 6, 2012, the District Court entered a Temporary Restraining Order, including the appointment of the Receiver on a temporary basis.

Dkt. No. 10. On March 13, 2013, the Court entered a Preliminary Injunction Order ("PI Order"), appointing the Receiver on a permanent basis. Dkt. No. 174.

A. Western and the GPs

The Receivership Entities include Western, which is owned by Schooler, and a series of 86 General Partnerships set up by Western. Prior to the commencement of the case, Western purchased various parcels of undeveloped land, set up GPs to purchase the properties, solicited investors to invest in the GPs, and then sold the properties to the GPs. The properties were marked up by Western such that the GPs purchased them from Western at prices that ranged from 109% to 1800% higher than what Western had paid for the properties. Western also encumbered some of the properties with mortgages, which remained on the properties when they were sold to the GPs. Investors were not aware of the mark ups or the mortgages.

Western made loans to the GPs so the GPs could allow their investors to finance the investments. As a result, investors owe amounts on promissory notes issued to their GPs and GPs owe amounts on promissory notes issued to Western. Investors were not aware of the promissory notes to their GPs owed to Western.

Of the funds the GPs raised from investors when the GPs were formed, approximately 93% went to Western and approximately 7% remained in the GPs' bank accounts to cover basic expenses like property taxes, property insurance

premiums, administrator fees, and fees to prepare annual tax returns. When GPs exhausted the balances in their accounts, they would send bills to their investors, but some investors would not pay. When GPs were unable to pay their bills, Western would loan the GPs money. In some cases, Western stopped collecting note payments from GPs that were unable to pay their bills. Investors were not aware of the loans Western made to the GPs or the fact that Western stopped collecting note payments from certain GPs.

B. Final Judgment

On May 19, 2015, the District Court granted in part and denied in part the Commission's motion for summary judgment on its fourth claim for relief finding that Defendants had engaged in the sale of unregistered securities and that the appropriate amount of disgorgement was $136,654,250, plus prejudgment interest calculated to May 19, 2015. Dkt. No. 1074. On June 3, 2015, the District Court granted in part and denied in part the Commission's motion for summary judgment on its first and second claims for relief, granting both causes of action as to all elements with regards to the fair market value representation of the Stead property in Western's sales brochure. Dkt. No. 1081.

On January 21, 2016, the District Court granted the SEC's motion for final judgment against Defendant Schooler, directing (1) a permanent injunction restraining the Defendant from violating federal securities laws; (2) disgorgement

of $136,654,250, with prejudgment interest of $10,956,030 (for a total of $147,610,280); and (3) imposition of a civil penalty of $1,050,000 ("Final Judgment"). Dkt. No. 1170. Schooler has appealed the Final Judgment. Case No. 16-55167.[1]

C. Receivership Proceedings

During the course of the litigation between the Commission and Defendants, the District Court addressed numerous challenges by Defendants and various investors to the scope of the receivership, including several attempts to remove the GPs from the receivership. On March 4, 2015, the District Court entered an Order Keeping GPs Under Receivership. Dkt. No. 1003. Among other things, the District Court determined the GPs would remain in the receivership until the conclusion of the case, instructed the Receiver to file a proposed "Information Packet" regarding the financial condition of each GP to be disseminated to investors, and instructed the Receiver to file a report and recommendation regarding the best course of action for the GPs. *Id.*

The Receiver filed the proposed Information Packet, which was approved by the District Court, and, to address the critical problem of GPs that were unable to

[1] The Commission filed a cross-appeal of the Final Judgment, but recently filed an unopposed motion to voluntarily dismiss its cross-appeal. Case No. 16-55414, Dkt. No. 40.

pay their bills, filed a recommendation that capital calls be issued to investors in GPs without sufficient funds to pay their operating expenses through the end of 2016. Dkt. Nos. 1023, 1056. If the capital calls failed to raise sufficient funds for the GPs to pay their 2016 operating expenses, the properties owned by those GPs would be sold. Dkt. No. 1056. The Receiver also laid out steps of the proposed "orderly sale process" for GP properties in his report and recommendation. *Id.* The Court approved the report and recommendation, with slight modifications, on May 12, 2015. Dkt. No. 1069.

The Receiver proceeded to complete the approved Information Packet for each GP, which was made available to investors via the Receiver's website, and issue capital calls to investors pursuant to the May 12, 2015 Order. Each and every capital call failed to raise the amounts necessary for the applicable GPs to cover their 2016 operating expenses. Accordingly, the Receiver began to take the steps of the approved orderly sale process for the applicable GP properties. These steps included recommending the engagement of a license real estate broker to market each property for sale. On March 7, 2016, the Receiver recommended the engagement of licensed real estate brokers for the GP properties known as Las Vegas 1, Las Vegas 2, and Tecate. Dkt. No. 1203. On May 25, 2016, the District Court approved and adopted the recommendation as part of the Fourth Order. Dkt. No. 1305.

D. Unsolicited Offers for GP Properties

With respect to unsolicited offers received for GP properties prior to the engagement of a real estate broker, the District Court instructed the Receiver to notify the District Court of the offer and make a recommendation, filed under seal, regarding how to respond to the offer, *i.e.,* accept the offer, make a counter-offer, reject the offer, take a vote of investors, or other steps. Dkt. No. 808. The Receiver filed a series of recommendations regarding unsolicited offers and letters of intent received from prospective purchasers for GP properties. One such recommendation was filed under seal on May 4, 2016, and pertained to the GP property known as Dayton IV. Dkt. No. 1281. This recommendation was approved and adopted as part of the Fourth Order. Dkt. No. 1305. Accordingly, the Fourth Order authorized the Receiver to move forward with steps to respond to the unsolicited offer for the Dayton IV property.[2]

E. The Distribution Plan Motion

On February 4, 2016, with the Final Judgment having been entered, the Receiver filed his Motion for: (a) Authority to Conduct Orderly Sale of General

[2] The remaining parts of the Fourth Order are the District Court's approval and adoption of recommendations regarding an unsolicited letter of intent and denial of the Receiver's *ex parte* application for an order confirming the sale of a GP property known as the Jamul Valley property. The Aguirre Investors are not challenging these parts of the Fourth Order.

Partnership Properties; (b) Approval of Plan of Distributing Receivership Assets; and (c) approval of Procedures for the Administration of Investor Claims ("Distribution Plan Motion"). Dkt. No. 1181. The Distribution Plan Motion sought an order authorizing the Receiver to put the remaining GP properties through the orderly sale process, *i.e.,* those properties owned by GPs with sufficient funds to pay their 2016 operating expenses, which therefore did not have a failed capital call. *Id.*

The Distribution Plan Motion also sought approval of a "One Pot" or "pooling" approach to distributing receivership assets (as opposed to distributions on a GP by GP basis) and approval of a Distribution Plan consistent with the One Pot Approach. *Id.* The Distribution Plan, which was attached to the Distribution Plan Motion as Exhibit E, provided that distributions will be made only after the District Court has entered further orders "setting the allowed amount of all Claims, and authorizing the Receiver to make interim distributions ("Approval Orders")." Dkt. No. 1181-1, Exhibit E, p. 3, l. 24 – p. 4, l. 1. Finally, the Distribution Plan Motion sought approval of procedures for administering investor claims against the receivership estate and efficiently resolving any disputes regarding such claims. *Id.*

F. The Aguirre Investors

In early 2016, a group of approximately 192 investors engaged attorney Gary Aguirre to represent them in the case. A separate group of approximately 149 investors engaged attorney Timothy Dillon to represent them in the case. These two groups became known as the Aguirre Investors and the Dillon Investors. Together they represent approximately 10% of the approximately 3,300 investors of the Receivership Entities.[3]

Without seeking to intervene in the case, the Aguirre Investors and Dillon Investors filed oppositions to certain applications filed by the Receiver, sought to continue the hearing on the Distribution Plan Motion, and filed motions seeking to vacate certain District Court orders and require the Receiver to provide further accounting information. Dkt. Nos. 1194, 1204, 1211, 1212, 1221, 1223. The District Court rejected these filings without prejudice and instructed the Aguirre Investors and Dillon Investors to first file motions to intervene if they wished to refile any motions. Dkt. No. 1224.

The Aguirre Investors and Dillon Investors then filed motions to intervene, refiled their motions to vacate orders and for accounting information, and filed

[3] The number of Aguirre Investors and, in particular, Dillon Investors grew between February 2016 and April 2016. Early during this time span, the combined groups were approximately 8% of the investors.

oppositions to the Distribution Plan Motion. Dkt. Nos. 1227, 1229, 1230, 1234, 1235, 1258. With respect to the Distribution Plan Motion, the Aguirre Investors argued the GP properties should not be permitted to be sold without a vote of investors in the GPs that own them and that receivership assets should be distributed on a GP by GP basis. Dkt. No. 1235. As part of their oppositions, the Aguirre Investors and Dillon Investors filed a report analyzing the values and market conditions for the GP properties prepared by Xpera Group ("Xpera Report"). Dkt Nos. 1234-2, 1234-4, 1237, 1238.

The District Court denied the Aguirre Investors and Dillon Investors' motions to intervene generally in the case, but allowed them to intervene for the limited purpose of opposing the Distribution Plan Motion. Dkt. No. 1296, 1303. The orders denying broader intervention are the first and second orders in the Aguirre Investors' Notice of Appeal.

The District Court held a hearing on the Distribution Plan Motion on May 20, 2016, at which Gary Aguirre and Timothy Dillon were permitted to present arguments on behalf of their respective clients. Dkt. No. 1298. On May 25, 2016, the District Court entered the Third Order, which grants in part and denies in part the Distribution Plan Motion. Dkt. No. 1304. Specifically, the Third Order (a) approves the One Pot Approach, the Distribution Plan, and the procedures for the administration of investor claims, (b) directs the Receiver to

submit a proposal for a "modified orderly sale process" that incorporates the public sale requirements of 28 U.S.C. § 2001, (c) directs the Receiver to file a report and recommendation evaluating the pros and cons of the recommendations in the Xpera Report, and (d) directs the Receiver to withdraw and resubmit his Fourteenth Interim Report, and submit all future reports with a Standardized Fund Accounting Report ("SFAR"). *Id.*

IV. DISCUSSION

A. The Third Order Is Not Appealable

The Third Order approves the Distribution Plan, but requires further orders approving the modified orderly sale process, setting the allowed amount of all claims, and authorizing interim distributions before any distributions to investors can actually be made. Therefore, the order does not finally resolve the disposition or distribution of any receivership assets.

The Aguirre Investors have appealed the Third Order under 28 U.S.C. § 1291 and 28 U.S.C. § 1292. Notice of Appeal. p. 3. In order to be appealable under 28 U.S.C. § 1291, a judgment must be final, meaning it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *American States Ins. Co. v. Dastar Corp.*, 318 F.3d 881, 884 (9th Cir. 2003). The Third Order does not end the litigation or finally resolve any issues. Therefore, section 1291 does not apply.

Nor does section 1292 apply. The only provision of section 1292 that is potentially applicable is section 1292(a)(2), which is limited to "orders appointing receivers, or refusing to wind up receiverships, or to take steps to accomplish the purposes thereof, such as directing sale or disposals of property." 28 U.S.C. § 1292(a)(2). Section 1292(a)(2) applies only to appeals of orders appointing receivers, orders refusing to wind up receiverships, and orders refusing to take steps to wind up receiverships. *See SEC v. American Principals Holdings, Inc.*, 817 F.2d 1349, 1351 (9th Cir. 1987); *Plata v. Schwarzenegger*, 603 F.3d 1088, 1099 (9th Cir. 2010). The Third Order does not appoint the Receiver, refuse to wind up the receivership, or refuse to take steps to wind up the receivership. To the contrary, approval of the Distribution Plan is a step, *albeit* an intermediate one, toward winding up the receivership. Therefore, section 1292(a)(2) does not apply.

B. <u>The Fourth Order Is Not Appealable</u>

The portions of the Fourth Order the Aguirre Investors challenge are the District Court's approval and adoption of the Receiver's recommendations to (a) engage real estate brokers for certain GP properties, and (b) respond to an unsolicited letter of intent from a potential purchaser. These are clearly interim, administrative orders regarding receivership properties. Sales of the properties at issue have not even been proposed yet.

The Fourth Order does not end the litigation on the merits, nor does it appoint the Receiver, refuse to wind up the receivership, or refuse to take steps to wind up the receivership. Therefore, sections 1291 and 1292(a)(2) do not apply.

C. The Collateral Order Doctrine Does Not Apply

Although the Aguirre Investors did not specifically reference the collateral order doctrine in their Notice of Appeal, they may argue it applies to the Third Order. This argument lacks merit, however. This Court has already rejected the same argument made in other federal equity receiverships.

For the collateral order doctrine to apply, an order must (a) conclusively determine a disputed question, (b) resolve an important question completely separate from the merits of the action, and (c) be effectively unreviewable upon appeal from a final judgment in the case. *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994). The collateral order doctrine is narrowly construed. *Id.*

This Court addressed the collateral order doctrine in detail in the context of a federal equity receivership in *SEC v. Capital Consultants, LLC*, 453 F.3d 1166 (9th Cir. 2006). In *Capital Consultants*, two investors appealed from orders regarding their claims to assets of the receivership estate. The Court held that the collateral order doctrine did not apply, explaining:

> The collateral order doctrine was designed to allow appeal from a "narrow class of decisions that do not terminate the litigation, but must, in the interest of achieving a healthy legal system[,] nonetheless be treated as final." Requirements of the doctrine are often described as threefold. Orders that do not dispose of the entire litigation are appealable as collateral orders if they "[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] [are] effectively unreviewable on appeal from a final judgment." The Supreme Court has emphasized that these requirements are to be applied strictly and that only a "narrow class of decisions" satisfy them.
>
> Strict application of the requirements is particularly important because, when a court identifies an order as an appealable, collateral one, it determines the appealability of all such orders. If courts did not apply the requirements strictly, then, the doctrine would no longer govern a "narrow class of decisions," but a broad class. Thus, we are not to consider "the chance that the litigation at hand might be speeded, or a particular injustic[e] averted, by a prompt appellate court decision" when we determine whether a particular order is an appealable, collateral one. We must take a broader view and determine if resolution of the kind of claim in question must always be immediately appealable under the collateral order doctrine.
>
> We conclude that orders such as the district court's February 9th and August 18th orders involve the merits of the litigation. Thus, they are not collateral to the merits and are not appealable under the collateral order doctrine. To be truly collateral to the merits of the litigation, a claim or right must not be "an ingredient of the cause of action" and must therefore "not require consideration with" that cause of action. The disposition of the issue should not "affect, or [] be affected by,

decision of the merits." To determine if the claims in question are collateral to the merits of the litigation, we must determine what the merits are and what the claims are. Then, we must determine if resolution of the claims affects the merits.

Defining the "merits" of the litigation is not particularly difficult. The litigation in question is a receivership proceeding instituted by the SEC, an agency charged with protecting "the national public interest and the interest of investors." In accord with its charge, the SEC sought to place CCL into receivership after determining that it and its principals, the defendants, had violated securities laws and harmed their clients. A review of the stipulated court order reveals that the receivership had several purposes and the receiver, several different duties. In addition to investigating and pursuing claims arising from legal violations, the receiver was to locate, take control of, and preserve the company's assets. The receiver was then charged with disbursing those assets in accordance with the court's orders. Because rightful claims to assets exceed the assets available, the court, with the help of the receiver, must determine how to distribute the assets equitably. Thus, distributing CCL's assets equitably is one of the central purposes of the receivership and, correspondingly, of the SEC's litigation.

The claim the appellants asserted in this case was a claim to assets held by the receiver. Specifically, the appellants asserted a right to receive traced funds without remitting settlement funds.

If one of the primary purposes of the litigation is to determine how best to distribute CCL's assets to claimants, including the appellants, their claims clearly comprise part of the merits of the litigation. The fact that they comprise only a small piece of the merits is irrelevant. Resolution of the appellants' claims will

> directly affect the ongoing litigation. If the claims succeed, the pool of assets the receiver controls will be smaller. Accordingly, the receiver will have fewer resources to distribute to other claimants.

Capital Consultants, 453 F.3d at 1171-72 (citations omitted).

The Court disagreed with contrary decisions from the Fifth and Sixth Circuit Courts of Appeal and explained that allowing certain interlocutory orders in receiverships to be appealable as collateral orders would lead to confusion, practical problems, and extra work for parties and courts. *Id.* at 1172-73. The Court concluded:

> The practical problems that would result from categorizing orders in this context as appealable collateral orders strengthens our conviction that our decision *not* to do so is correct.

Id. at 1173.

Subsequent decisions of this Court confirm the holding of *Capital Consultants*. In *CFTC v. Forex Liquidity, LLC*, 384 Fed. Appx. 645, 2010 U.S. App. LEXIS 12562 (9th Cir. June 18, 2010), the defendant appealed an order granting the receiver's "motion for a distribution order and related administrative orders." The Court dismissed the appeal and explained:

> We do not have jurisdiction over Gray's appeal of the distribution orders. Gray acknowledges that the distribution orders do not dispose of the underlying litigation, but argues that the orders are appealable as collateral orders. "Orders that do not dispose of the

> entire litigation are appealable as collateral orders if they [1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] are effectively unreviewable on appeal from a final judgment." *S.E.C. v. Capital Consultants LLC*, 453 F.3d 1166, 1171 (9th Cir. 2006) (per *curiam*) (quotations and alterations omitted). Here, first, the distribution orders at issue were merely an intermediate step, not a conclusive determination, in the disposition of the assets discussed in the orders. Second, distributing Forex's assets equitably is one of the central purposes of the receivership and, correspondingly, of the underlying action. See *id.* at 1172. Even if the distribution orders will be effectively unreviewable on appeal from the eventual final judgment in the underlying action, the orders clearly fail the first two prongs of the collateral order test and thus are not appealable as collateral orders.

Id. at *4; *see also SEC v. Tringham*, 475 Fed. Appx. 203, 2012 U.S. App. LEXIS 15689 (9th Cir. July 30, 2012) (dismissing appeal from order denying motion to release funds from ongoing federal equity receivership for lack of jurisdiction).

Here, the Third Order does not conclusively determine what amount will be distributed to investors. As discussed above, the District Court must enter further orders approving the modified orderly sale process, setting the allowed amounts of investor claims, and authorizing interim distributions before any interim distributions, let alone final distributions, to investors can be made. The Third Order is also central to the purposes of the receivership (the equitable distribution of receivership assets to investors) and therefore the underlying litigation.

Accordingly, as the Court in *Forex Liquidity* held, the Third Order clearly fails the first two prongs of the collateral order test.

V. CONCLUSION

For the reasons discussed above, this appeal should be dismissed as to the Third and Fourth Orders listed in the Notice of Appeal for lack of jurisdiction.

Dated: June 28, 2016

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: */s/ Edward Fates*
Edward G. Fates
Attorneys for Receiver
THOMAS C. HEBRANK

STATEMENT OF RELATED CASES
(9th Circuit Rule 28-2.6)

1. United States Court of Appeals, Ninth Circuit, Case No. 13-56761

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

2. United States Court of Appeals, Ninth Circuit, Case No. 13-56948

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

3. United States Court of Appeals, Ninth Circuit, Case No. 14-56313

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

4. United States Court of Appeals, Ninth Circuit, Case No. 14-56315

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

5. United States Court of Appeals, Ninth Circuit, Case No. 16-55167

   SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

   Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

6. United States Court of Appeals, Ninth Circuit, Case No. 16-55414

SEC v. Louis V. Schooler; First Financial Planning Corporation, dba Western Financial Planning Corporation

Appeal from U.S. District Court for the Southern of California, San Diego, Case No. 3:12-cv-02164-GPC-JMA

CERTIFICATE OF COMPLIANCE

The foregoing Motion to Dismiss Appeal for Lack of Jurisdiction as to Third and Fourth Orders in Notice of Appeal of Appellee Thomas C. Hebrank complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because:

This brief contains 3,945 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word 2007, in font size 14, Times New Roman.

Dated: June 28, 2016

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: */s/ Edward Fates*
Edward G. Fates
Attorneys for Receiver
THOMAS A. SEAMAN

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system on June 28, 2016. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 28, 2016

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: */s/ Edward Fates*
Edward G. Fates
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