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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SECURITIES AND EXCHANGE
12 COMMISSION

Plaintiff,

13 v.

14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING
16 CORPORATION, dba Western Financial
Planning Corporation,

17 Defendants.
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Case No.: 3:12-cv-2164-GPC-JMA

ORDER:

**1) DENYING MOTION TO STAY,
MOTION TO ALTER OR AMEND**

[Dkt. No. 1368]

**2) DENYING MOTION TO
INTERVENE**

[Dkt. No. 1381]

**3) DENYING MOTION TO BE
RELIEVED AS COUNSEL, TO
NOTICE DEATH OF DEFENDANT**

[Dkt. No. 1384]

26 Before the Court are a variety of motions filed by the Ardizzone Investors, the
27 Graham Investors, and by Phil Dyson, counsel to Louis Schooler, each of whom moved
28 for separate relief.

1 The Ardizzone Investors' have moved to stay any further execution of: (1)
2 Thomas Hebrank's (the "Receiver") liquidation plan (Dkt. No. 1304); (2) the sale of the
3 Jamul Valley Property (Dkt. No. 1361); (3) and the Receiver's engagement of CBRE
4 (Dkt. No. 1359). Dkt. No. 1368. The Ardizzone Investors' have also moved to alter or
5 amend under Fed. R. Civ. P. ("Rule") 59(e) and Rule 60(b): (1) the Court's order denying
6 (Dkt. No. 1359) the Ardizzone Investors' motion to intervene (Dkt. No. 1348); (2) the
7 Court's order granting (Dkt. No. 1359) the Receiver's motion to engage CBRE as a
8 consultant (Dkt. No. 1341); and (3) the Court's order approving (Dkt. No. 1361) the sale
9 of the Jamul Valley property (Dkt. No. 1361). Dkt. 1368-1 at 9.¹ Both the Receiver and
10 the Securities and Exchange Commission ("SEC") have opposed the Ardizzone Investors'
11 motion to stay and to alter or amend. Dkt Nos. 1383, 1389. In turn, the Ardizzone
12 Investors filed replies to the Receiver's and SEC's oppositions. Dkt. Nos. 1393, 1396.

13 The Graham Investors have moved to intervene, oppose, and request clarification
14 of the Receiver's second revised 14th interim report, revised 15th interim report, and
15 revised 16th interim report. Dkt. No. 1381-1 at 1. Both the SEC and Receiver have
16 opposed the Graham Investors' motion to intervene. Dkt. Nos. 1394, 1395. The Graham
17 Investors submitted a single reply to both oppositions. Dkt. No. 1402.

18 Finally, the last matter before the Court is Phil Dyson's ("Counsel") request that he
19 be relieved as counsel for Defendant Louis Schooler, and request that the Court formally
20 notice the death of Schooler. Dkt. No. 1384. The SEC filed a response on October 27,
21 2016, Dkt. No. 1398, and Counsel filed a reply on October 31, 2016, Dkt. No. 1401.

22 **I. ARDIZZONE INVESTORS**

23 **A. Motion to Stay**

24 The standard for assessing a request for a stay pending appeal is similar to that
25 used to evaluate whether to grant a preliminary injunction. *Lopez v. Heckler*, 713 F.2d
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28 ¹ All pagination follows the internal page numbers as designated by CM/ECF.

1 1432, 1435 (9th Cir. 1980); *see also* *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Four
2 factors govern the issuance of a stay pending appeal: (1) whether the moving party has
3 demonstrated a strong likelihood of success on the merits; (2) whether the moving party
4 will be irreparably injured; (3) whether serious legal questions are raised and whether the
5 balance of hardships tips in the moving party’s favor; and (4) where the public interest
6 lies. *Lopez*, 713 F.2d at 1435.

7 **1. Likelihood of success on the merits**

8 In their motion to stay, the Ardizzone Investors address only one of the four Lopez
9 factors: that is, the likelihood that their appeal will succeed on the merits.² Dkt. No.
10 1368-1 at 8. The Ardizzone Investors argue that the SEC’s and Receiver’s “lack of
11 adequate notice to investors at each step in the receivership proceedings” provide grounds
12 for the stay. Dkt. No. 1368-1 at 6. Their primary contentions are (1) that the Receiver’s
13 website and “occasional emails” were not adequate notice; (2) that the Receiver’s
14 communications with the Ardizzone and Schwarz Investors demonstrate his failure to use
15 alternative notices; (3) that the Receiver’s claim that he neglected to send notice to save
16 money is self-serving; (4) that the Receiver failed to comply with Local Rule 66.1 and the
17 due process clause in providing notice; and (5) that the Receiver failed to give notice of
18 his “liquidation plan”³ of receivership assets. *See generally id.*

21 ² This failure, on its own, is grounds to deny the investors’ motion to stay. The Ardizzone Investors give
22 the following reason for only considering one of the relevant factors: “The Court previously considered
23 all four issues when it addressed the Graham Investors’ motion for a stay, but denied that motion on a
24 single ground, i.e., the Graham Investors failed to demonstrate the likelihood their appeal would succeed
25 on the merits. Accordingly, the Ardizzone Investors will focus below on the likelihood of success on
26 the merits.” *Id.* (citing to the Court’s May 25, 2016 Order, Dkt. No. 1359). This position is problematic
27 for two reasons. For one, the Graham Investors’ motion is not before the Court and, thus, their
28 arguments are not properly considered, here, when a different group of investors has sought a stay. But
more importantly, just because the Court denied the Graham Investors’ motion to stay because of the
failure to show a likelihood of success on the merits does not mean that the Court found that the other
factors weighed in the Graham Investors’ favor.

³ The Ardizzone Investors frequently refer to the Receiver’s motion for authority to conduct orderly sale
of the general partnership properties (Dkt. No. 1181) as the Receiver’s “liquidation plan.” This memo
will refer to the Receiver’s plan as the orderly sale plan or process.

1 These arguments, as the SEC notes in its opposition, are mostly recapitulations of
2 ones already made to and rejected by the Court. *See* Dkt. No. 1389 at 1-2; *see also* Dkt.
3 Nos. 1003, 1004, 1224, 1296, 1303, 1359. The Ardizzone Investors do not contest this
4 point. *See* Dkt. No. 1396 at 2. “While the Ardizzone Investors have incorporated in their
5 motion to intervene every contention raised by the Graham Investors, they also contend
6 that they and all other investors were deprived of due process of law in one additional
7 way the Graham Investors did not.” *Id.* Insofar as the Ardizzone Investors have
8 presented arguments already considered and rejected by the Court, the Court finds those
9 arguments similarly unpersuasive here.

10 The new argument presented by the Ardizzone Investors is that the Receiver gave
11 “inadequate or no notice” of his “liquidation plan” to 3,000 investors including the
12 Ardizzone Investors. *Id.* The Ardizzone Investors argue that the Receiver’s notice was
13 inadequate because the link that Hebrank posted on his website did not inform the reader
14 that “his plan would forfeit investors’ property rights.” Dkt. No. 1368-1 at 14 (“after
15 February 4, 2013, [an investor] would have found this innocuous link: “Mtn for Authority
16 to Conduct Sale of GP Props” . . . Since Hebrank had previously given multiple notice
17 proposing to sell GP realty, the fact he was doing so again gave no notice that his plan
18 would forfeit investors’ property rights.”).

19 The Ardizzone Investors, however, do not persuasively explain why this new
20 allegation of inadequate notice makes it more likely that they will succeed in challenging
21 the Court’s orders authorizing the Receiver to conduct an orderly sale, approving the sale
22 of the Jamul Valley Property, and permitting the Receiver to engage CBRE as a
23 consultant. For one, the Ardizzone Investors do not dispute that the Receiver provided
24 them with written notice, in October 2012, directing them to his website for further
25 updates regarding the receivership. Dkt. No. 1368-1 at 8. And more importantly, the
26 Ardizzone Investors do not argue that they did not receive “actual notice” of the
27 Receiver’s plan to conduct an orderly sale or an “opportunity for hearing.” *See SEC v.*
28 *Am. Principals Holding, Inc. (In re San Vicente Med. Partners Ltd.)*, 962 F.2d 1402,

1 1406-08 (9th Cir. 1992) (“In sum, a district court has the power to include the property of
2 a non-party limited partnership in an SEC receivership order as long as the non-party . . .
3 receives *actual notice* and an opportunity for hearing.”) (emphasis added). Accordingly,
4 the Ardizzone Investors have failed to demonstrate that they are likely to succeed on the
5 merits on appeal.

6 **2. Balance of Hardships and Public Interest**

7 Yet even assuming that the Ardizzone Investors could demonstrate a likelihood of
8 success on the merits, that fact alone is not a sufficient basis for granting a stay. The
9 third and fourth *Lopez* factors direct the Court to assess the equities involved in this case,
10 and those factors strongly counsel against granting a stay of the Receiver’s orderly sale of
11 the receivership assets.

12 To assess the balance of hardships present in this case, the Court must weigh the
13 Ardizzone Investors’ interest in preserving the status quo against the interest, held by the
14 thousands of other investors, in maximizing the receivership estate and receiving prompt
15 disbursements. *See generally* Court’s May 25, 2016 Order, Dkt. No. 1304 at 9, 18. In
16 approving the Receiver’s orderly sale plan, the Court carefully addressed and evaluated
17 the concerns expressed by the Receiver, the SEC, and myriad investors concerning
18 whether or not an orderly sale would benefit the receivership estate. *See generally* Dkt.
19 Nos. 1304, 1359. After careful deliberation, the Court approved the Receiver’s orderly
20 sale plan because it found that sale of the receivership assets would maximize the value
21 of the receivership estate for all of the investors who had been defrauded by Schooler.
22 Dkt. No. 1304 at 19, 26.

23 Halting the implementation of the Receiver’s plan now would only jeopardize the
24 very interests that justified the Court’s approval of the orderly sale process in the first
25 place. This is so because granting the Ardizzone Investors’ stay means putting at risk the
26 monetary rights of the thousands of other investors who stand to gain under the
27 Receiver’s orderly sale. Accordingly, the balance of hardships does not weigh in the
28 Ardizzone Investors’ favor. *See U.S. v. Alisal Water Corp.*, 326 F. Supp. 2d 1032, 1040

1 (N.D. Cal. 2004) (denying defendant’s motion to stay the sale of receivership assets, in
2 part, because the “substantial and not inexpensive efforts of the Court, the receiver, the
3 bidders and the public itself in carrying out the requirements of the Receivership Order
4 would be wasted if the sales were derailed at this juncture.”)

5 The public interest also weighs against granting the stay. The public interest prong
6 of the *Lopez* test is “inseparable from the issues relating to the relative hardship suffered
7 by the litigants.” *See Lopez*, 713 F.2d at 1437. Given the fraudulent nature of Defendant
8 Schooler’s scheme, the public has an interest in ensuring that “defrauded investor
9 creditors receive a speedy and economic resolution of the receivership action and at least
10 recover something.” *See S.E.C. v. Goldfarb*, 2013 WL 4865144, *3 (N.D. Cal. Sep. 12,
11 2013). As such, the fourth factor also counsels against granting the stay because granting
12 a stay would preserve the appellate rights of a few at the expense of the public’s interest
13 in recovering the \$145 million judgment outstanding.⁴

14 **B. Motion to Alter or Amend under Rule 60(b)**

15 The Ardizzone Investors move to alter or amend the Court’s (1) order denying the
16 Ardizzone Investors’ motion to intervene, Dkt. No. 1359; (2) the Court’s order granting
17 the Receiver’s authority to engage CBRE as a consultant, Dkt. No. 1359; and (3) the
18 Court’s order approving the sale of the Jamul Valley property, Dkt. No. 1361. A motion
19 for “relief from a final judgment, order or proceeding” may be filed within a “reasonable
20 time,” but usually must be filed “no more than a year after the entry of the judgment or
21 order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1). Reconsideration under
22 Rule 60 may be granted in the case of: (1) mistake, inadvertence, surprise or excusable
23 neglect; (2) newly discovered evidence; (3) fraud; (4) if the judgment is void; (5) if the
24 judgment has been satisfied; or (6) for any other reason that justifies relief. Fed. R.

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27 ⁴ Although the Ardizzone Investors have not presented the Court with any argument concerning the
28 second prong of the *Lopez* test, that is, whether the investors would be irreparably injured, the Court
would likely find this factor to be met.

1 Civ. P. 60(b). “Rule 60(b) provides for extraordinary relief and may be invoked only
2 upon a showing of exceptional circumstances.” *Engelson v. Burlington Northern R. Co.*,
3 972 F.2d 1038, 1044 (9th Cir. 1992) (citations omitted). The Ardizzone Investors seek
4 reconsideration under Rule 60(b)(2) (“newly discovered evidence”), (b)(3) (“fraud,
5 misrepresentation, or misconduct”), (b)(4) (“judgment is void”), and (b)(6) (the catch-
6 all). Dkt. No. 1368-1 at 8-9.

7 **1. Newly discovered evidence**

8 A party moving to alter or amend a judgment pursuant to Rule 60(b)(2) must show
9 that the evidence is (1) newly discovered; (2) that it could not have been discovered
10 through due diligence; and (3) is of such a material and controlling nature as to probably
11 change the outcome. *See Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d
12 208, 211 (9th Cir. 1987). The Ardizzone Investors fail to meet all of these criteria.

13 As previously addressed above, the only semblance of new evidence presented to
14 the Court by the Ardizzone Investors’ motion concerns the allegation that the Receiver
15 “gave them [the Ardizzone Investors] inadequate or no notice of his February 4, 2016,
16 motion for an order approving his liquidation plan.” Dkt. No. 1396 at 2. However, that
17 the Receiver allegedly failed to give the Ardizzone Investors notice of his “liquidation
18 plan” (that is, the Receiver’s orderly sale plan) is not new evidence but new legal
19 argument. If the Receiver did, in fact, fail to give adequate or no notice to the investors
20 of his orderly sale plan, that harm occurred in February 2016, when the plan materialized.
21 *See* Dkt No. 1396 at 2. That the Ardizzone Investors failed to bring that alleged harm to
22 the Court’s attention until nine months after the Court approved the plan, is not “new
23 evidence” that could not have been discovered through due diligence, but new legal
24 grounds for relief.

25 Furthermore, even if the Ardizzone Investors had presented new evidence, they
26 offer no argument explaining why that evidence is “material” and “controlling” such that
27 its prior discovery would have changed the Court’s decision. After the Receiver
28 submitted his orderly sale plan to the Court for review, Dkt. No. 1181, the Court engaged

1 in an extensive review of the proposal, as stated above, and took into account the views
2 of investors both for and against the proposal. The Ardizzone Investors offer no reason
3 why their “new evidence” would have changed the Court’s ultimate decision to approve
4 the orderly sale procedure. As such, the Ardizzone Investors’ Rule 60(b)(2) motion is
5 **DENIED.**

6 **2. Fraud, misrepresentation, or misconduct**

7 To demonstrate that relief is warranted under Rule 60(b)(3), a moving party must
8 establish that the order was “obtained by fraud, misrepresentation, or misconduct, and
9 that the conduct complained of prevented the moving party from fully and fairly
10 presenting the case.” *In re M/V Peacock on Complaint of Edwards*, 809 F.2d 1403, 1404
11 (9th Cir. 1987). Here, the Ardizzone Investors argue that Rule 60(b)(3) relief is
12 warranted because the SEC and Hebrank made “misleading and untrue statements of fact
13 and law” in their oppositions, Dkt. Nos. 1355, 1358, to the Ardizzone Investors’ motion
14 to intervene. Dkt. No. 1368-1 at 7.

15 That the SEC and Receiver allegedly made misleading and untrue statements in
16 opposition briefs in no way prevented the Ardizzone Investors from fully and fairly
17 presenting their case. What is more, the Court’s order denying the Ardizzone Investors’
18 motion to intervene did not rely on the SEC’s or Receiver’s opposition briefs in making
19 its ruling, but rather, on the failure of the Ardizzone Investors to demonstrate that they
20 received defective notice of the May 25, 2016 hearing. *See* Dkt. No. 1359 at 3.

21 Accordingly, the Ardizzone Investors request for Rule 60(b)(3) relief is **DENIED.**⁵

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25 ⁵ The Ardizzone Investors have also moved to strike the allegedly untrue and misleading statements
26 made by the SEC and the Receiver in their respective oppositions to the Ardizzone Investors’ motion to
27 intervene. *See* Dkt. No. 1368-1 at 11. The Court **DENIES** this motion as moot because the Court has
28 already denied the Ardizzone Investors’ motion to intervene and, as stated above, did not rely on the
opposition briefs in reaching its decision.

1 **3. Judgment as void**

2 A final judgment is void under Rule 60(b)(4) if the presiding court “lacked
3 jurisdiction, either as to the subject matter of the dispute or over the parties to be bound,
4 or acted in a manner inconsistent with due process of law.” *U.S. v. Berke*, 170 F.3d 882,
5 883 (9th Cir. 1999). The Ardizzone Investors aver that they are entitled to Rule 60(b)(4)
6 relief because the Court did not have subject matter jurisdiction: to make Hebrank the
7 receiver, Dkt. No. 174, to approve the Receiver’s orderly sale plan, Dkt. No. 1304, or to
8 carry out steps in accordance with the orderly sale, Dkt. Nos. 1359, 1361. *See* Dkt. No.
9 1368-1 at 7. The Ardizzone Investors offer two main reasons why these four orders are
10 void: (1) because the Court lacked subject matter jurisdiction over the General
11 Partnerships (“GPs”) and (2) because the Court’s orders were made in violation of the
12 investors’ due process rights. *Id.* at 9.

13 The Court has already carefully considered both of the arguments advanced by the
14 Ardizzone Investors. In its May 25, 2016 Order, it evaluated, and rejected, the arguments
15 that the Receiver did not have the authority to sell the GPs and that the investors had been
16 denied due process of law. Dkt. No. 1304 at 13-16. Because the Ardizzone Investors
17 Rule 60(b)(4) motion relies on arguments that have already been dismissed by the Court,
18 the Court **DENIES** the Ardizzone Investors’ motion for Rule 60(b)(4).

19 **4. Catch-all**

20 It has been observed that Rule 60(b)(6) is “used sparingly as an equitable remedy
21 to prevent manifest injustice.” *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097,
22 1103 (9th Cir. 2006). A party who moves for such relief “must demonstrate both injury
23 and circumstances beyond his control that prevented him from proceeding with . . . the
24 action in a proper fashion.” *Id.*

25 The Ardizzone Investors aver that they are entitled to such relief “[f]or the same
26 reasons” offered in support of their other Rule 60(b) motions and for the following
27 additional reasons: because the Court erred in (1) interpreting Local Rule 66.1; (2) not
28 requiring the SEC and Hebrank to establish subject matter jurisdiction over the GPs and

1 carry out GP “forfeiture” in compliance with due process; (3) not requiring the Receiver
2 to “submit concrete evidence of the name and number of investors who received his
3 October 12, 2016” letter; (4) “[p]ermitting the SEC, Hebrank, and the defendants to
4 stipulate to an order depriving investors of their rights to oppose the permanent
5 appointment of a receiver”; (5) “[t]reating Hebrank’s May 6, 2016, email as notice of his
6 liquidation plan”; (6) failing to provide investors with a procedure to object to the
7 Receiver’s liquidation plan; (7) failing to recognize or apply applicable precedent; (8)
8 failing to uphold its March 7, 2013 order; and (8) basing its factual findings on Hebrank’s
9 inadmissible statements and by denying the investors an opportunity to object. Dkt. No.
10 1368-1 at 9.

11 The Ardizzone Investors have failed to explain why correcting these alleged errors
12 are necessary to prevent manifest injustice. They cite to no case law in support of their
13 position. The Ardizzone Investors’ brief focuses on the lack of notice provided by the
14 Receiver, but crucially, does not explain why any of these errors are so egregious as to
15 merit Rule 60(b)(6) relief. Accordingly, the Court **DENIES** their request for Rule 60(b)
16 relief.

17 **C. Motion to Alter or Amend under Rule 59(e)**

18 A Rule 59(e) motion is properly granted “if the district court (1) is presented with
19 newly discovered evidence, (2) committed clear error or the initial decision was
20 manifestly unjust, or (3) if there is an intervening change in controlling law.” *Dixon v.*
21 *Wallowa County*, 336 F.3d 1013, 1022 (9th Cir. 2003). This category of motion seeks “a
22 substantive change of mind by the court,” *Tripati v. Henman*, 845 F.2d 205, 206 n.1 (9th
23 Cir. 1988) (quoting *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 526 (9th Cir.
24 1983)), and “should not be granted, absent highly unusual circumstances,” *McQuillion v.*
25 *Duncan*, 342 F.3d 1012, 1014 (9th Cir. 2003). “[M]otions to reconsider are not vehicles
26 permitting the unsuccessful party to ‘rehash’ arguments previously presented.” *United*
27 *States v. Navarro*, 972 F. Supp. 1296, 1299 (E.D. Cal. 1997) (rejecting “after thoughts”
28 and “shifting of ground” as appropriate grounds for reconsideration under Rule 59(e)).

1 The Court **DENIES** the Ardizzone Investors’ motion for Rule 59(e) relief for the
2 same reasons it rejects their motion for Rule 60(b) relief and because any Rule 59(e) is
3 barred for lack of timeliness. A “motion to alter or to amend a judgment must be filed no
4 later than 28 days after the entry of judgment.” Fed. R. Civ. P. Rule 59(e). In this case,
5 judgment was entered on February 23, 2016, Dkt. No. 1190, and the motion was filed on
6 September 13, 2016, Dkt. No. 1368. As such, it must be **DENIED** as untimely. *See* Fed.
7 R. Civ. P. 59(e) (“a motion to alter or amend a judgment must be filed no later than 28
8 days after the entry of judgment.”)

9 **D. Ardizzone Investors’ Ex Parte Motion**

10 On October 27, 2016, the Ardizzone Investors filed an *ex parte* application asking
11 the Court 1) to temporarily delete an exhibit⁶ that they had offered in support of their
12 reply brief pertaining to the motion to stay and alter or amend the judgment, and 2) to
13 clarify whether or not the Court’s May 18, 2016 order bars investors from filing exhibits
14 concerning the sale of the receivership properties. Dkt. No. 1397 at 2. Exhibit 4 is a
15 copy of a letter written from the Receiver to investors of the Pyramid Highway property.
16 Dkt. No. 1396-1 at 20. The letter includes details concerning the purchase price, the
17 appraised value of the property, the current bank account balance, and receivership
18 operating expenses, among others matters. *Id.* Once this document was docketed, the
19 Receiver demanded that the Ardizzone Investors remove the document from public view
20 because the information published contravened the Court’s May 18, 2016 Order. *Id.*

21 The Receiver and SEC both oppose the Ardizzone Investors’ *ex parte* application.
22 Dkt. Nos. 1400, 1403. For one, both parties note that the *ex parte* application is not
23 properly before the Court because the Ardizzone Investors’ did not seek permission to
24 intervene before making the request. *See* Dkt. No. 1400 at 3; Dkt. No. 1403 at 2. The
25 Receiver further argues that the *ex parte* application was unnecessary because the Court’s
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28 ⁶ Exhibit 4 of Counsel Gary Aguirre’s Declaration.

1 May 18, 2016 Order unequivocally states that the Receiver’s filings relating to “letters of
2 intent, offers, and negotiations with potential purchasers” should not to be included in
3 public filings. Dkt. No. 1296 at 2. The SEC echoes this argument and adds that the
4 Court’s May 18, 2016 order makes clear that the “unsealing of the documents [i.e., letters
5 of intent, etc.] for public review could have a negative impact on the GPs’ ability to
6 maximize the value of the properties under receivership.” Dkt. No. 1403 at 2.

7 To lay this frivolous dispute to rest, the Court reiterates, as it did in its May 18,
8 2016 Order, that *any* letters of intent, offers, negotiations, or any other document
9 containing sensitive information about the sale of the GP properties, such as Exhibit 4,
10 not be made publicly available or filed on the public docket. Accordingly, the Court
11 **DIRECTS** the Ardizzone Investors to withdraw their reply brief and to resubmit it
12 without Exhibit 4.

13 **II. GRAHAM INVESTORS**

14 The Graham Investors seek to intervene under Rule 24(a)(2) for the limited
15 purpose of filing a motion to oppose the Court’s approval of the Receiver’s interim
16 reports. Dkt. No. 1381-1 at 1-2. Specifically, the Graham Investors seek to intervene to
17 argue that the interim reports fail to comply with the SEC’s SFAR requirements. *Id.* at 1.

18 There are four requirements for intervention as of right: (1) timeliness, (2) an
19 interest relating to property or transaction that is the subject of the action, (3) disposition
20 if the action may impair or impede the movant’s ability to protect the interest, and (4) the
21 movant’s interest is not adequately represented by existing parties. *Northwest Forest*
22 *Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996). Failure to satisfy even one
23 of these elements prevents the applicant from intervening as of right. *League of United*
24 *Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997).

25 The Graham Investors argue that their motion is timely because they brought it just
26 14 days after the Receiver filed the three interim reports. Dkt. No. 1381-1 at 3-4. This
27 argument, however, is overly simplistic given the tenor of the Court’s previous orders
28 denying investor motions to intervene. The Graham Investors want a Court order

1 directing the Receiver to clarify the identified payors and sources of income listed on
2 Line 8 of the SFAR. *Id.* at Exhibit A. In so doing, they are essentially seeking the right
3 to intervene in order to audit the receivership and to examine the receivership records.
4 The Court already concluded, in its May 18, 2016 Order denying the Dillon Investors and
5 Aguirre Investors’ motions to intervene, that such attempts to audit the receivership are
6 untimely. *See* Dkt. No. 1296 at 3. Accordingly, the Graham Investors’ motion to
7 intervene is **DENIED**.

8 **III. COUNSEL FOR SCHOOLER**

9 Dyson moves under Rule 25 to notice the death of his client, Louis Schooler. Dkt.
10 No. 1384 at 2. The motion recounts the circumstances of Schooler’s alleged death in
11 Tahiti aboard the 42-foot boat Entertainer and includes the death certificate issued by the
12 Tahitian authorities. *Id.* at 5-6. In light of the news of his client’s death, Dyson also
13 moves to be relieved as counsel. *Id.* at 6.

14 The SEC does not oppose Dyson being relieved as counsel in this matter. Dkt. No.
15 1398 at 2. The SEC does, however, object to the suggestion of Schooler’s death because
16 the circumstances of Schooler’s death are still under investigation and because the copy
17 of the Tahitian death certificate, in its view, appears to be provisional. *Id.* at 2. Because
18 of this uncertainty and the fact that there is still an outstanding judgment against Schooler
19 for \$145 million, the SEC argues that it “is not prepared to concede that Mr. Schooler’s
20 death has been established.”⁷ *Id.*

21 Accordingly, given the suspicious circumstances of Schooler’s death and the
22 questionable authenticity of the Tahitian death certificate, the Court **DENIES** Dyson’s
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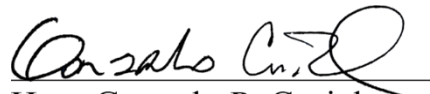
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25 ⁷ In response to the SEC’s contention that the Tahitian death certificate is provisional, Dyson states that
26 “[i]t is not believed that this death certificate is provisional, in that Linda Schooler, Mr. Schooler’s
27 widow, testified in a SEC proceeding . . . that she has requested a life insurance payment.” *Id.* at 2.
28 This argument, however, is toothless because the fact that Schooler’s wife is seeking life insurance
payouts does not make it any more likely that Schooler has actually died.

1 Rule 25 motion to notice the death of Schooler and, because the Court finds that
2 Schooler's death is uncertain, the Court also **DENIES** Dyson's motion to be relieved as
3 counsel.

4 **CONCLUSION**

5 The Court is concerned with the repetitive nature of the lawyering presented by the
6 Ardizzone Investors and Graham Investors. Both groups of investors have made
7 arguments to the Court that have already been considered and rejected in previous orders.
8 Filings and papers that seek to relitigate matters already passed upon by the Court do not
9 persuade the Court any more now than they did when first assessed. To the extent that
10 the investors disagree with the Court's prior rulings, those have been appealed and will
11 be reviewed by the Ninth Circuit. Ultimately, the repetitive and lackluster attempts to
12 influence the Court to revisit its previous orders only serve to tax the financial integrity of
13 the receivership estate, which must spend money to oppose and respond to such attempts.

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15 Dated: November 29, 2016

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17 Hon. Gonzalo P. Curiel
18 United States District Judge
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