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FILED
FEB 27 2014
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SMALL BUSINESS CAPITAL CORP., ET AL

Defendants.

Case No. CV12-03237-EJD

**MARK FEATHERS' EX PARTE
MOTION FOR RECONSIDERATION
AND CLARIFICATION OF THE
COURT'S ORDER [COURT DOCKET
675] GRANTING RECEIVER'S
ADMINISTRATIVE MOTION TO FILE
EX PARTE APPLICATION UNDER
SEAL [COURT DOCKET 663]**

**Courtroom 4 - 5th Fl.
Judge: Hon. Edward J. Davila**

**MARK FEATHERS' MOTION FOR RECONSIDERATION OF COURT'S ORDERS APPROVING RECEIVER'S
ADMINISTRATIVE MOTION TO FILE EX PARTE APPLICATION UNDER SEAL**

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I. INTRODUCTION

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Mark Feathers ("FEATHERS") hereby respectfully requests per L.R. 7-9 that the Court reconsider its Order Approving Receiver's Admin Motion to File Ex Parte Application Under Seal, and that the Court make an exception to any issue of the timeliness of this request, if the Court has such issues. This belated request some sixty days after the Court's order is due to FEATHERS status as a *pro se* defendant, and the complexity of this lawsuit and the legal issues involved for a person who is not an attorney, and the substantial burden on FEATHERS as being the sole party representing his interests, and in his belief, and as evidenced by the volume of his pleadings in this lawsuit, also representing the interests of third party members of the defendant investment funds.

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On December 20th the Court issued an Order approving the Receiver's request for sealed filings. The Receiver's request is essentially a request by the Receiver for Court approval to allow him to engage in "claw-backs" from past third party fund investors of their past distributions. However, these are misdirected efforts of the Receiver. There is lawful basis for the Court to reconsider its prior orders, and conserving Receivership Estate resources is of paramount importance.

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II. ARGUMENT FOR RECONSIDERATION

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A district Court has broad discretion to reconsider one of its own orders on three grounds:

- (1) An intervening change in controlling law; (2) the availability of new evidence; (3) a need to correct clear error or prevent manifest injustice. *See Williams v. Cruise Ships Catering & Serv. Int'l, N.V.*, 320 F. Supp. 2d 1347, 1357-58 (S.D. Fla. 2004); *Ass'n For Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457 (S.D. Fla. 2002); *Mathis v. U.S. (In re Mathis)*, 312 B.R. 912, 913 (Bankr. S.D. Fla 2004).

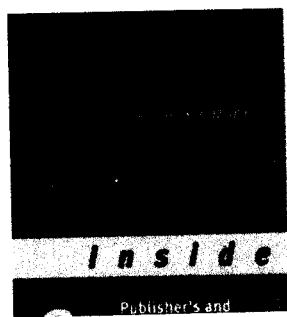
The third ground outlined for reconsideration is applicable here. FEATHERS' company Small Business Capital Corp. possesses rights which need protection, and in FEATHERS belief the defendant's third party fund investors have similar rights, which is the right that FEATHERS and their assets and their income be protected from depletion and misuse by the Receiver. Further,

1 FEATHERS appeal of summary judgment of this Court to the 9th Circuit is likely to succeed on its
2 merits. Further, irreparable injury will likely be sustained by FEATHERS and third party investors
3 if the Receiver is allowed to engage in sealed legal actions with no knowledge of FEATHERS or of
4 third party investors of these proceedings, their costs, and their likelihood of success or of being
5 cost effective while FEATHERS and third party investors assets and income is being used without
6 their consent to support these "sealed" actions of the receiver. On these grounds, and to restore
7 balance in equities between the Receiver's desires and those of FEATHERS and third party
8 investors, FEATHERS, on his behalf, and on behalf of third party investors, asks for
9 reconsideration of the Court's order based upon the following facts:

10 1. Without the opportunity to review the Receiver's filings against former third party fund
11 investors, it cannot be determined if the Receiver will succeed based upon the merits of his filings.
12 However, there is no doubt that the Receiver is using the monies of FEATHERS and the
13 Receivership Estate to pursue his claims, in that he intends to compensate himself for his efforts.
14 The entities of the Receivership Estate are California businesses. California law allows for an
15 injunction against disposing of property (in this instance the property is the assets and income of
16 the Receivership Estate)... if disposal would render the final judgment ineffectual. In this instance,
17 litigation is still moving forward, and the Court's final judgment is under review by the 9th Circuit.
18 *Heckmann v. Ahmanson*, 214 Cal. Rptr. 177, 189 (Ct. Appt. 1985). The time is not ripe for the
19 Receiver to engage in lawsuits, or for the Receivership Estate be burdened with the Receiver's and
20 his counsel's combined billing rate of more than \$750 per hour for their misguided efforts.

21 2. SEC requested, and the Court approved, the Receiver to place no bond to protect defendants
22 and unnamed third party investors at the time of the Receiver's appointment. This has burdened
23 the Receivership Estate with substantial potential economic risk, given the Receiver's pattern of
24 misconduct, which includes perjury on his part. For example, the Receiver appears to have
25 perjured himself as to his declarations in his Court pleadings (Court Docket 311-1, paragraph no. 4)
26 about never having represented himself as a "CPA". However, it cannot be denied by the Receiver
27 that he has, in fact and irrefutably, been falsely representing himself for at least a decade as a

1 “CPA” within his advertisements in receiver industry publications. Such “CPA” representations,
 2 for example, are to be seen in a tombstone the Receiver placed, in which the Receiver and his
 3 counsel, in their opposition to this request, will undoubtedly make claim, as SEC has done prior in
 4 SEC’s Court pleadings about this same false “CPA” licensing representation, that this was an
 5 “unfortunate typo”. From “Receivership News”, published in the Fall of 2003:



THOMAS A. SEAMAN, CPA,
 RECEIVER

Thomas Seaman Company
 Tel: 949.222.0551
 tom@thomasseaman.com

Is pleased to announce his appointment
 as Receiver for

Regions Medical Center, a partnership
 dispute receivership

Superior Court
 County of Orange

22 3. The Receiver’s request for Court approval of sealed proceedings is his disguised attempt to
 23 resolve claims that are his, and not those of the Receivership Estate. The Receivership Estate has
 24 no claim against these third parties, and the Receiver lacks standing to bring a claim against these
 25 third parties on behalf of the fund’s investors. Moreover, the Receiver’s motion proposes
 26 settlements with terms that will not be known to FEATHERS or to any third members of the
 27 investment funds of the Receivership Estate, and which may be detrimental to them.

1 In his motion, the Receiver has not outlined with any level of specificity just what securities
 2 law violations that these past fund third party fund investors may have violated, aided, or abetted.
 3 The Receiver has failed to allege in even his "draft" Complaints, and the Receiver has failed to
 4 produce any documents for FEATHERS, third party fund investors, or for the Court as to what he
 5 might allege. The Receiver's sole basis as to his claims, in fact, seem to be his own reports to the
 6 Court such as his interim reports 4 through 8, his preliminary forensic accounting report, and his
 7 forensic accounting report. All parties must recognize that none of these reports of the Receiver
 8 have been accepted by the Court, which only further weakens any basis to justify the Receiver's
 9 request to pursue his own claims against third parties, and which are not the claims of FEATHERS
 10 or of third party defendant investment fund investors.

11 If the Corporation (Small Business Capital Corp.) and the limited liability companies of the
 12 Receivership Estate have not shown a basis to sue past investors, and have not shown a likelihood
 13 of prevailing in any lawsuit, then the Receiver also lacks standing to initiate lawsuits on behalf of
 14 the third party investors of the defendant investment funds. *See Javitch v. First Union Sec., Inc.*,
 15 315F.3d 619, 625 (6th Cir. 2003) ("Because they stand in the shoes of the entity in receivership,
 16 receivers have been found to lack standing to bring suit unless the receivership entity could have
 17 brought the same action.") (citations omitted). The progeny of *McCandless* have recognized the
 18 general rule that a receiver acquires no greater rights and powers to sue than the person or entity
 19 whose property is in the receivership.

20 The equitable powers of this court cannot be extended to permit the Receiver to resolve
 21 claims that in reality are third party claims, and for which the Receiver has not authority or
 22 standing to assert or compromise. In 1935 the United States Supreme Court recognized that "the
 23 plaintiff in his capacity of receiver has no greater rights or powers that the corporation itself would
 24 have." *McCandless v. Furlaud*, 296 U.S. 140, 148, 56 S.Ct. 41, 80 L. Ed. 121 (1935). The reality
 25 of the Receiver's "sealed" (and therefore hidden from FEATHERS) claims is not a resolution of
 26 claims in favor of the Receivership Estate, but rather his proposed resolutions of investors' third
 27 party claims, and which they have not themselves ever made or ever made overtures about making.

1 Receiver has no authority to pursue claims against third parties, therefore, no settlements that he
2 proposes can be approved, nor can he be permitted to interfere with investors' independent causes
3 of action.

4 **III CONCLUSION**

5 Rather than burden the Receivership Estate and the Court with combined billings of over
6 \$750 per hour for writing useless, meaningless, and factually devoid issues such as the following:


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9 13 | Mr. Feathers has gone as far as to adopt a nickname for himself: "the Honey Badger."

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11 The Receiver should focus on employing a legal basis to his Court requests. The Court
12 must amend its order based upon the foregoing.

13 Respectfully,

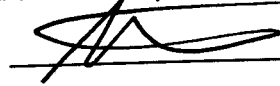
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16 Date: 2-27-14

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18 Mark Feathers, in *pro per*, on his behalf and on
19 behalf of defendant investment fund third party
20 investors

21 **CERTIFICATE OF SERVICE**

22 The undersigned hereby certifies that on February 27th, 2014, the foregoing request for
23 reconsideration, declarations, and proposed Order were filed and served on counsel
24 of record for the SEC by fax, and to all other parties of record and their counsel.

25 By: 

26 Mark Feathers, in *pro per*

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FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 vs.

14 SMALL BUSINESS CAPITAL CORP., ET AL

15 Defendants.
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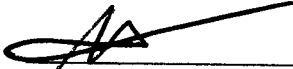
Case No. CV12-03237-EJD

**DECLARATIONS OF MARK
FEATHERS ACCOMPANYING
REQUEST OF RECONSIDERATION OF
PRIOR COURT ORDER**

Judge: Hon. Edward J. Davila

- 1 1. I, Mark Feathers, pursuant to U.S.C. §1746, declare my statements to be truthful, and that I
- 2 am willing and able to testify to these and in accordance with the penalties for perjury.
- 3 2. To my knowledge and belief the citations in my request from "Receivership News" are
- 4 from an actual copy of that publication from the Fall of 2003.
- 5 3. I can competently testify in these matters, and I am willing and able to do so.

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7 Executed this 27th day of February 2014 at Los Altos, California

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9 Mark Feathers, in *pro per*

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
SMALL BUSINESS CAPITAL CORP., ET AL)
)
Defendants.)

Case No. CV12-03237-EJD

PROPOSED [ORDER] ON MARK
FEATHERS EX PARTE REQUEST FOR
RECONSIDERATION AND
CLARIFICATION OF THE COURT'S
ORDER [COURT DOCKET 675]
GRANTING RECEIVER'S
ADMINISTRATIVE MOTION TO FILE EX
PARTE APPLICATIONS UNDER SEAL
(COURT DOCKET 663)

Judge: Hon. Edward J. Davila

ORDER ON RECONSIDERATION

1 In the Matter of Mark Feathers' Request to Reconsider the Court's Order Approving
2 Receiver's Administrative Motion to File Ex Parte Application Under Seal (Court Docket 663), the
3 Court, having received and read the Request and all papers in support thereof or opposition thereto,
4 and being so advised in the matter and finding good cause, orders as follows:

5 **IT IS ORDERED**

- 6 1. The Request is granted.
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9 Dated: _____

10 Hon. Edward J. Davila

11 Judge, United States District Court

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