

1 Mark Feathers, *Pro Se*, Defendant  
2 markfeathers@sbcglobal.net  
3 1520 Grant Rd.  
4 Los Altos, CA 94024  
5 Telephone: (650) 776-2496  
6 Facsimile: (650) 961-1089

**ORIGINAL FILED**  
NOV - 5 2012

Richard W. Winking  
Clerk, U.S. District Court  
Northern District of California  
San Jose

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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE  
13 COMMISSION, )

14 Plaintiff, )

15 vs. )

16 SMALL BUSINESS CAPITAL CORP.; MARK )  
17 FEATHERS; INVESTORS PRIME FUND, LLC; )  
18 and SBC PORTFOLIO FUND, LLC, )

19 Defendants. )

Case No. 5:12-cv-03237-EDJ

Motion to

Dismiss Receiver

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1 **Motion**

2 This is an emergency *ex parte* request for dismissal of the receiver  
3 for cause, and with prejudice for F.R.C.P. Rule 12(b)3 and 4  
4 violations, and for:

- 5
- 6 -Causing fifty percent loss in gross revenues to the receivership estate
- 7 -Causing operational losses where there were once large profits
- 8 -Total lack of familiarity with SBA loan servicing and operations; SBA has twice
- 9 rebuffed receiver's attempts to engage in operations which are critical to the
- 10 receivership entity
- 11 -Substantial, and ongoing, demonstrations of lack of arms-length relationship with
- 12 plaintiff in Violation of United States General Accounting Office Report to Congress;
- 13 receiver's home page lists five SEC related projects, out of six total projects, on his
- 14 home page
- 15 -Violations of Fourth And Fifth Amendment rights of Feathers with seizure, and
- 16 continued holdings, of business papers unrelated to the lawsuit which belong t Feathers,
- 17 and using information gained from these in court submissions to violate Feathers' rights
- 18 -Unlawful posting on receiver's web site of a related entity not listed in the lawsuit,
- 19 causing Violations of the California Business and Professions Code
- 20 -Repeated instances of communications failures with members of the receivership estate
- 21 -As an Agent of SEC, continued emphasis on past, and fully allowable, SB Capital fees,
- 22 employed by receiver in an illusory manner for receiver's and plaintiff's benefit
- 23 causing tens of thousand of dollars in expenses to the receivership estate on legal fees
- 24 related to California Business Bank which were redundant in nature, and not necessary
- 25 -Causing, at present, the threat of legal problems from borrowers of the estate, and, or,
- 26 tenants of SB Capital's properties which are owned by way of foreclosures, in addition
- 27 to causing these assets to be sold when neither the receivership estate's income nor cash
- 28 position require such actions.

- 11 - Receiver has not demonstrated proper construction lending protocols to be in place, i.e.,  
12 with an outside review of funds control on the Bay Rd. project of some \$2M  
13 - Receiver has failed to reflect material contractual terms of borrower loans, including a  
14 potential oversight of \$250,000 or more in lost revenues on the Bay Rd. project from a  
15 profit sharing agreement with the borrower. Receiver's staff seems to be losing  
16 important items from loan files in matters like this, to the substantial detriment of the  
17 receivership estate.  
18 - Receiver is continuing to violate the Fourth and Fifth Amendment rights of Feathers,  
19 through his counsel, and to deplete the assets and income of the receivership estate, with  
110 its pursuit of Feathers' personal legal information from the law firm of Medlin and  
111 Hargrave.  
112 - Substantial and ongoing communication complaints from the members of the  
113 receivership estate  
114

115 **Background**

116 Defendants manage specialized mortgage funds engaged primarily in small business real  
117 estate lending as licensed national U.S. Small Business Administration SBA Preferred Lenders 7(a)  
118 and 504 small business real estate lenders, which were founded, and managed by, Mark Feathers.  
119

120 **I Demonstration of Violations of U.S. General Accounting Office Report on SEC to Congress**

121 In reports to Congress in both 1992 and 2002, the United States General Accounting Office  
122 specifically criticized the SEC for creating, failing to recognize, and continuing to allow conflicts  
123 of interest with the receivers they choose:  
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125 **a. 1994 Report of the United States General Accounting O**

126 The 1994 report was critical of SEC in their management of receivers. Highlights  
127 include:  
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August 1994  
**SECURITIES  
ENFORCEMENT**  
**Improvements Needed**

Page 2 Further, SEC does not provide its attorneys formal written policies or procedures to guide them in assisting the federal courts to select individuals as receivers and ensure adequate oversight of receivers'

Page 2 Without formalizing these policies and procedures SEC cannot adequately ensure that (1) any appearance of favoritism in its receiver recommendations is precluded or (2) funds managed by receivers are safeguarded until disbursed.

Page 4 **SEC Lacks Formal Qualification Standards for Receiver Selection Process**

Qualification standards and guidelines for selecting individuals to recommend as receivers are necessary to promote public confidence that the selection was made on an impartial basis. Without such standards, the selections by federal courts and SEC can convey the appearance of favoritism. However, SEC has no formal policies or qualifying standards to ensure that the receivers it recommends to the courts are selected on an impartial basis.

Page 6 **SEC Has Weak Controls Over Receivers and the Funds in Their Possession**

Monitoring receivers and the funds they hold is an important management control for ensuring that receivers adhere to their responsibility as court-appointed fiduciaries to protect the funds with which they are entrusted and to ensure they comply with court orders. SEC does not provide its attorneys with guidelines or procedures on how to monitor receivers. One way SEC attorneys can monitor receivers is by reviewing receiver fee applications. However, no requirements are placed on

**b. The 2002 Report - Things Have Not Improved**

July 2002  
**SEC ENFORCEMENT**  
**More Actions Needed**

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Page 4 SEC does not have a system for tracking individual case data on receivers' fees, as we recommended in our 1994 report.

Page 21 As court-appointed fiduciaries, receivers are subject to the same standards of trust and confidence as other fiduciaries, and need to be selected as

Page 22 The guidelines state that the committee should avoid selecting the same person repeatedly for appointments as a receiver, so as to avoid the appearance of favoritism. The committee must also justify its

c. Year 2012 – the Reciver’s Own Home page speaks volumes about their Agency relationship with the plaintiff

As illustrated below, the reciver’s home page lists five out of his six jobs are SEC related. Additionally, receiver shows “Small Business Capital”, which is not named in the lawsuit, and is a posting that is unlawful, and also violates the California Business and Professions code.

1 Home

2 Cases

- 3 > [Construction](#)
- 4 > [Rents and Profits](#)
- 5 > [Operating Companies](#)
- 6 > [Assisted Living](#)
- 7 > [Regulatory](#)
- 8 > [Other Types of Cases](#)

9 [Institutional Clients](#)

10 [About the Company](#)

11 **Thomas Seaman, CFA**  
12 Judicial Receiver  
13 Thomas Seaman Company  
14 3 Park Plaza, Suite 550  
15 Irvine, California 92614  
16 Direct (949) 265-8403  
17 Main (949) 222-0551 ext. 101  
18 Fax: (949) 222-0661  
19 > [Email us](#)

20 Other Websites

- 21 > [SEC vs. Nathanson](#)
- 22 > [SEC vs. Carolina](#)
- 23 > [SEC vs. Safeway](#)
- 24 > [SEC vs. Medical Capital](#)
- 25 > [FTC vs. American Tax Relief](#)
- 26 > [SEC vs. Small Business Capital](#)

27 Welcome and thank you for your  
28 interest in our firm!



Thomas Seaman Company provides business management in civil matters which require a neutral third party to serve as receiver, referee, provisional director, or administrator. We have the capability to manage and administer a broad range of asset classes including operating companies, financial assets, and real property.

We contribute practical business experience to litigation. Thomas Seaman Company has broad financial and business experience and has operated companies in numerous industries including manufacturing, construction, healthcare, service and others. Since 1995 we have managed approximately 175 receiverships, usually being nominated by large financial institutions who repeatedly move the Court to appoint Thomas Seaman as receiver. Please see Thomas Seaman's [curriculum vitae](#). You may also wish to review our recent and noteworthy assignments and their outcome in the Cases sections of the website.

(Thomas Seaman – Middle of Picture)

11 **II Receiver's Reports to the Court Demonstrate Lack of Fiduciary Care to the**  
12 **Receivership Estate**

13 In his reports, the receiver acknowledges the substantial cash flow of IPF and SPF.  
14 He takes credit for cutting expenses, but does not mention that he fired 80% of the employees of  
15 the companies, vital to their operations, within twenty fours of his arrival. As a result, revenues are  
16 now down by approximately fifty percent or more. The receivership estate has swung from  
17 substantial profitability to now incurring substantial losses.

18 **III SBA Loan Premiums – a vital component of IPF revenues and profits - gone**

19 Plaintiff calls SBA loan premiums “non-recurring”. SBA loan premiums provided  
20 \$3,000,000, or more, of revenues to IPF. They are only “non-recurring”, as the receiver calls them,  
21 because the Small Business Administration has twice rebuffed the receiver’s request to either  
22 originate, or to sell loans. They specifically point out the receiver’s lack of servicing abilities, an

1 that his company has no stake (“recourse”) in the sound management of the company. Comments  
2 back from SBA to the receiver’s request included:

3  
4 (3) there is no assurance that the loans will be adequately serviced

5  
6 (4) SBA does not have adequate recourse against the Receiver or receivership estate in  
7 the event it is later discovered that there were irregularities in the making, closing,  
8 servicing or liquidation of the loans.

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11 **IV Fourth Amendment Violations by the Receiver**

12 Receiver has held Feathers commercial loan brokering books and records in continuing  
13 violation of the Fourth Amendment’s guidelines against seizure. These records were specifically  
14 pointed out by Feathers to the receiver as being personal, and not related to the lawsuit, with  
15 receiver’s arrival. Feathers has repeatedly asked for this information, and repeatedly failed to be  
16 provided that which is his.

17  
18 **IV Fifth Amendment Violation by the Receiver**

19 Receiver deliberately interfered with Feathers’ legal due process rights. During the course  
20 of requesting allowable legal fees coverage from the court, receiver sent in to the court his  
21 “unsolicited” letter, as he puts it. Receiver has unlawfully seized Feathers’ information, and then  
22 used this information against him in a court of law, violating Feathers’ Fifth Amendment Rights,  
23 and also interfering with F.R.C.P.12(b) due process proceedings.

24 The letter contained information on allowable automobile expenses which receiver falsely  
25 asserted to the court were not proper, and were made by SB Capital or the funds...neither of which  
26 is accurate, a fact that receiver was fully aware of:

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28 “The companies’ records also reflect payments for expensive cars. ”

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Additionally, the receiver told Mrs. Feathers to “get a job” to pay Mr. Feathers’ legal bills.

“Mrs. Feathers should ... obtain new employment...”

The receiver offered his opinion to the court that Mrs. Feathers’ retirement account , despite her not being named in these proceedings, should be used to pay legal fees, despite courts submissions showing that the account to be in her name, and not belonging to Feathers:

**“until his personal assets and those of Mrs. Feathers have been exhausted.”**

**V Receiver Picks on Mrs. Feathers more with comments on her compensation**

Mrs. Feathers was a full time employee, and a highly skilled one at that, who has been much sought after by banks for her talents. The receiver’s “unsolicited” letter was deliberately damaging and misleading in his comments on compensation. Plaintiff, provided by assistance from the receiver, illustrated some \$.5M or so in compensation over a thirty month period paid to Mr. or Mrs. Feathers, or combined to both. Receiver is presently charging the funds well in excess of \$50,000 per month, and his attorney’s fees are another \$100,000 per month – combined at over \$150,000. Receiver has no basis for being critical of Feathers’ compensation. Compensation details are illustrated below on Feathers income. One need look no further than the receiver’s reports to see how grossly overcompensated he is for his efforts, including billing the receivership estate \$150 for his lunches.



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Employee Reference Copy			
W-2		2009	
Wage and Tax Statement			
Copy for employee's records			
d Control number	Dept.	Corp.	Employee use only
007049 74/X33	000004	A	B
c Employer's name, address, and ZIP code			
ALTA ALLIANCE BANK 2700 W SAHARA AVE LAS VEGAS NV 89102			
Batch #01705			
e Employee's name, address, and ZIP code			
NATALIE ELENA FEATHERS 1520 GRANT RD. LOS ALTOS CA 94024			
b Employer's FED ID number		a Employee's SSA number	
20-3652841		564-57-8819	
1 Wages, tips, other comp.	2 Federal income tax withheld	3 Social security wages	4 Social security tax withheld
207783.56	43150.57	106800.00	6621.60
5 Medicare wages and tips	6 Medicare tax withheld		
221162.40	3206.85		

c Employer's name, address, and ZIP code	
ALTA ALLIANCE BANK 2700 W SAHARA AVE LAS VEGAS NV 89102	
Batch #01839	
e Employee's name, address, and ZIP code	
NATALIE ELENA FEATHERS 1520 GRANT RD. LOS ALTOS CA 94024	
b Employer's FED ID number	a Employee's SSA number
20-3652841	564-57-8819
1 Wages, tips, other comp.	2 Federal income tax withheld
164453.34	34521.94
3 Social security wages	4 Social security tax withheld
106800.00	6621.60
5 Medicare wages and tips	6 Medicare tax withheld
174951.15	2536.79

1 Wages, tips, other comp.	2 Federal income tax withheld		
218108.75	44306.87		
3 Social security wages	4 Social security tax withheld		
102000.00	6324.00		
5 Medicare wages and tips	6 Medicare tax withheld		
236783.75	3462.52		
d Control number	Dept.	Corp.	Employee use only
007883 10/VL4	830010		T 88
e Employer's name, address, and ZIP code			
VINEYARD NATIONAL BANCORP 9590 FOOTHILL BL RANCHO CUCAMONGA CA 91730			

In comparison, Mrs. Feathers compensation at SB Capital in all of 2011 \$73,800 , or about one-third of her prior wages. The receiver's reference of \$15,000 per month of income was deliberately misleading.

SMALL BUSINESS CAPITAL CORP  
SB CAPITAL  
419 S SAN ANTONIO RD STE 213  
LOS ALTOS CA 94022

e Employee's name, address, and ZIP code  
NATALIE FEATHERS  
1320 GRANT RD  
LOS ALTOS CA 94024

OMB No. 1545-0008	
1 Wages, tips, other compensation	73800.00
3 Social security wages	73800.00
5 Medicare wages and tips	73800.00
7 Social security tips	
9 Advance EIC payment	
11 Nonqualified plans	

In regards to Mark Feathers compensation, Feathers was making less than half the amounts made by his peers at PMC Trust, another SBA non-bank lender with similar loan volumes as Feathers' companies, as illustrated by this information available on line:

Mr. Jan F. Salt , 61 Chairman and Chief Exec. Officer	416.00K	0.00
Mr. Barry N. Berlin , 51 Chief Financial Officer, Principal Accounting Officer and Exec. VP	417.00K	0.00
Dr. Lance B. Rosemore , 83 Consultant	565.00K	0.00

Despite evidence of Feathers' equity contributions into the company which were available and in his possession, and available by way of the company controller, or by simply asking

11 Feathers for such, receiver made false illustrations to the court in regards to Feathers' equity  
12 injection into SB Capital, thereby further interfering with Feathers' request for legal fees.

13         Additionally, Feathers compensation was not only at substantially less than market wages,  
14 there were many citations and references in the fund offering documents to the fact that he could,  
15 or would (which he didn't) be making potentially "substantial income" for running the funds:  
16 IPF offering documents, June 2012:

17  
18             The Manager will receive substantial compensation in connection with its management of the Fund. (See  
19 "Compensation to Manager and Its affiliates.")

10	<b>COMPENSATION TO MANAGER AND ITS AFFILIATES.....</b>	<b>26</b>
11	Manager's Administrative Fee.....	26
12	Manager's Subordination Profits Interest .....	26
13	Origination and Loan Documentation Fees .....	27

14 VI     Receiver's "curiosity" about Scott's Seafood Expenses

15             statements are replete with numerous expensive restaurant bills and hotel bills. Particularly  
16 curious are charges totaling approximately \$14,000 to Scott's Seafood Grill over an 18 month  
17 period and which include eleven recurring charges of \$500 each, conceivably for gift  
18 certificates. The bank records do not reflect the companies being reimbursed for personal

19         Receiver retained the employment of Mae Saechow after he arrived. Ms. Saechow was  
20 readily able to provide verification of these legitimate expenses, and to satisfy receiver's curiosity.  
21 Ms. Saechow, in fact, openly questioned these matters to Feathers in October at the SB Capital  
22 offices when he was picking up personal items at the direction of the receiver's staff.

23 **Fourth Amendment Violation by Plaintiff's agent, the Receiver**

24         Plaintiff has itself, or through its agent, the Thomas Seaman Company, violated defendant  
25 Feathers' fourth amendment rights through violations of *required records doctrine* and by seizing,  
26 and continuing to hold, in defiance of Feathers' repeated requests, defendant Feathers' sole  
27 proprietorship books, records, and accounts. Prior to the initial court hearing in regards to a  
28 continuation of the temporary restraining order and temporary injunction, plaintiff visibly violated  
the Fifth Amendment through its threats of forced testimony, under duress, of Feathers, as well as

1 his spouse, Natalie Feathers, and as evidenced by the plaintiff's letter of June 29<sup>th</sup>, 2012 to  
2 Feathers.

3  
4 **F.R.C.P. 12(b)4 and 5**

5 Plaintiff and his agent, the receiver, employ with illusory their attempts to indicate that  
6 defendant Feathers and SB Capital have taken assets and income of the other defendants, when in  
7 fact, within both express allowances of the offering documents, and in the public way all monies  
8 were accounted for openly in the defendant's financial statement and tax returns, there is no basis  
9 for plaintiff's accusations and for their cause of action.

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11 **Additional unwarranted actions of the Receiver**

12 The receiver has made, and continues to make, frequent references to fees, and, or matters,  
13 of SB Capital compensation , in order to employ his own illusory opinions of wrongful gain by  
14 Feathers or SB Capital, as well as to maintain his own employment earnings of substantial  
15 revenues, and at the expense of the receivership estate (see attached Ex Parte draft request). In his  
16 communications with Feathers, the receiver has been provided with specific references to the  
17 offering documents, and to citations which are germane in the areas of manager's compensation.  
18 On matters of advancing proceeds on approved loans, receiver incorporates past compensation  
19 references which have no bearing on the matters of new loan advances.

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1 **Whiskey Junction Loan**

2 SBC Portfolio extended purchase money on a project known as “Whiskey Junction” in  
3 2012, one of a handful of non-SBA guaranteed legacy loans in either portfolio. This was originally  
4 a legacy loan made in 2007 in the high unemployment area of Stockton before the economic  
5 collapse of that area, which continued through that day. The loan approved and majority funded  
6 (98%) was thoroughly underwritten by trained professional in these matters with much experience  
7 in small business underwriting. As part of the financing, the borrower was provided working  
8 capital of sufficient amounts, to enable a turnkey opening on the business, which was dormant for  
9 years. Prior, hundreds of thousands of dollars went into the project to beautify the property, and to  
10 improve the area. The project was to open on Friday, June 30<sup>th</sup>. However, the receiver stopped the  
11 project dead in its tracks two days before opening.

12 Before – property had been vacant for three years by 2010:



14 Interior after work was near completion in 2011:



16 Exterior work near completion:



1           Despite an appraisal value in 2007 on the property of \$700,000, or more, and of subsequent  
2 and substantial improvements in excess of \$300,000 to the property, the receiver is estimating its  
3 value to be in the \$150,000 range. The owner, of course, has been very dismayed, as it crushed his  
4 dreams since childhood. Rather than issue the final 2% of the loan that would have enabled the  
5 business and property to open, and per receiver's report no. 3 to the court, he has questionably been  
6 issuing small & recurring payments of \$400 to the owner as a "consultant", and prepositioned the  
7 property for sale, despite substantial liquidity and income in the fund...and exposing the fund to the  
8 possibility of lawsuits from Mr. Espana which have a valid basis.

9           **Receiver is Red-lining loans in minority areas, or to minority borrowers**

10           The Receiver, who appears to be of Caucasian ancestry, appears to be deliberately targeting,  
11 with negative loan servicing actions, or monies held back from, Hispanic and African American  
12 businesses in the loan portfolios. The receiver has halted loan disbursements, or started eviction  
13 proceedings, on the Stockton and the San Leandro projects, located next to, or in, areas with high  
14 minority populations and high unemployment (Stockton and Oakland), and which are owned, or  
15 tenanted by, Mr. Espana, and Ms. Mosely.

16           In comparison, for the property in "mostly Caucasian" Calistoga", he has reversed a  
17 foreclosure on an SPF loan for a Bed & Breakfast which is owned by borrowers the "Cooks", who  
18 appear to be of Caucasian ancestry, and which had appraised in 2012 at \$200,000 less than the loan  
19 balance.

20           In closing, it is requested that the court dismiss the receiver from the lawsuit, with  
21 prejudice, and restore the funds to the management of SB Capital and Feathers.

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