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**Filed**

MAR 14 2013

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

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

11 SECURITIES AND EXCHANGE  
COMMISSION, )

Case No. CV12-03237-EJD

12 Plaintiff, )

13 vs. )

**MOTION FOR LEAVE OF THE  
COURT TO FILE A LAWSUIT  
ACTION AGAINST THE  
RECEIVER UNDER FED. R. CIV.  
P. 66 AND 28 U.S.C. § 959**

14 SMALL BUSINESS CAPITAL CORP.; MARK )  
FEATHERS; INVESTORS PRIME FUND, LLC; )  
15 and SBC PORTFOLIO FUND, LLC, )

16 Defendants. )  
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**Judge: Hon. Edward J. Davila**

1 In the matter of SEC v. Small Business Capital Corp., *et al*, *Pro Se* defendant is asking for  
2 leave of the court to initiate a lawsuit against the Thomas Seaman Company, who is the court  
3 appointed receiver. By appearance, action, and omissions, the receiver is not meeting, or has not  
4 met, the guidelines for receivers, and has caused, and is causing, substantial harm to the members  
5 of the receivership estate.

6 The receiver:

- 7 (1) Has demonstrated a pattern of allowing the Commission to represent him as a “licensed  
8 CPA” and failed to notify the courts in two lawsuits that he is not a CPA. Defendant  
9 believes that the court appointed Seaman as a receiver in whole, or in part, due to its  
10 belief that he was a “licensed CPA”. Both the Commission and the Receiver (Dockets  
11 293 and 294) have acknowledged to the court their false representation of Seaman as a  
12 “licensed CPA”. Neither Seaman nor the Commission informed the court of this matter  
13 before the defendant presented this information to the court.
- 14 (2) Upon his arrival, and likely at the bequest of the Commission, the receiver terminated  
15 eighty percent, or more, of the employees of the receivership estate, and canceled some  
16 \$25,000,000 in U.S. Small Business Administration guaranteed loan fundings, thereby  
17 gravely harming the enterprise value and income stream of the companies, with an  
18 estimate of \$10,000,000 to the receivership estate in lost future revenues. The  
19 receiver’s actions were allowed per his authority under the court, which was established  
20 in whole, or in part, upon the court’s belief that Seaman was a “licensed CPA” as  
21 presented by the Commission, and not refuted by Seaman.
- 22 (3) A receiver “owes its allegiance to the court, and not to the one who sought is  
23 appointment”. Seaman appears to have consistently violated an arms-length  
24 relationship with the Commission, or the appearance of conducting his operations  
25 without bias, as evidenced by its submission of court drafts, i.e., “receiver’s reports”,  
26 and “receiver’s forensic accounting report” to the Commission prior to the court. *Waag*  
27 *v. Hamm, supra* note 5, 10 F.Supp. 2d at 1193 (holding that receiver, whether in state or  
28 federal case, is an officer of the court that appoints it and receiver’s fiduciary duties run


1 to the court, not to any particular creditor, not to the defendant debtor, and not to any  
 2 other party in interest); *Compton v. Paul K. Harding Realty Co.*, 6 Ill.App.3d 488, 498  
 3 (Ill. App. 1972) (“A receiver is defined to be an indifferent person between the parties,  
 4 appointed by the court, and on behalf of all parties, and not of the complainant or one  
 5 defendant only, to receive the thing or property in litigation pending the suit”); *Booth v.*  
 6 *Clark*, 58 U.S. 322, 331 (1854) (“A receiver is an indifferent person between parties  
 7 appointed by the court to receive the rents, issues, or profits of land, or other thing in  
 8 question ... pending the suit, where it does not seem reasonable to the court that either  
 9 party should do it”). *See also* amjur receivers § 1:

10  
 11 The receiver has made far more than “errors in judgment” in these matters of failures in two  
 12 lawsuits to correct a court as to his licensing. He has submitted “forensic accounting reports”  
 13 which he is not properly licensed or credentialed to do. The receiver has exercised bad faith, and  
 14 has engaged in substantial self-enrichment through his actions and through his omissions.

15 Defendant seeks this leave under authority Fed. R. Civ. P. 66, and 28 U.S.C. § 959 (Trustees  
 16 and receivers suable), and requests leave of the court of this matter per local rules which may be  
 17 applicable, so as to be in compliance with the spirit and the intent of the TRO, Orders, and  
 18 Injunction. The prior cited authorities (FRCP and USC) indicate that leave of the court is not a  
 19 requirement to initiate such matter. However, the defendant is sensitive to the instructions of the  
 20 Order and the Injunction, and asks the Court for its leave before filing the lawsuit action against the  
 21 receiver, as defendant (1) believes that initiating a lawsuit is in the best interests of the members of  
 22 the receivership estate, due to the failure of the receiver on multiple occasions to correct the false  
 23 licensing statements of the Commission, and (2) the bad faith damages which have occurred, and  
 24 are occurring, to the receivership estate.

25  
 26 Dated March 14<sup>th</sup>, 2013

Respectfully submitted



Mark Feathers, *Pro Se* Defendant

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This matter came to be heard upon the *Ex Parte* request of *Pro se* defendant Mark Feathers. The court, having heard the defendant's argument and other evidence finds that:

- A. This Court has jurisdiction over the parties to, and the subject matter of this action.
- B. Good cause exists to believe that Feathers has established, through this motion for leave on the court, there to be reasons to allow him to file a lawsuit against the receiver.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IT IS SO ORDERED.

DATED: \_\_\_\_\_, 2013

TIME: \_\_\_\_\_

\_\_\_\_\_  
EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

Presented by:  
Mark Feathers, as *Pro Se* Defendant