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9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

12 SECURITIES AND EXCHANGE
 COMMISSION,
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 Plaintiff,
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 vs.
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 16 SMALL BUSINESS CAPITAL CORP.;
 MARK FEATHERS; INVESTORS PRIME
 FUND, LLC; and SBC PORTFOLIO
 17 FUND, LLC,
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 Defendants.

Case No. CV12-03237

**RECEIVER'S EX PARTE APPLICATION
 FOR RECONSIDERATION AND
 CLARIFICATION OF THIS COURT'S
 AMENDED ORDER RE: DEFENDANT'S
 PENDING ADMINISTRATIVE MOTIONS
 [DOCKET NO. 302]**

Ctrm: 4 - 5th Floor
 Judge: Hon. Edward J. Davila

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1 Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for Small
 2 Business Capital Corp., Investors Prime Fund, LLC, SB Portfolio Fund, LLC, and their
 3 subsidiaries and affiliates ("Receivership Entities"), hereby requests that the Court reconsider and
 4 clarify the Amended Order Re: Defendant's Pending Administrative Motions, Docket No. 302
 5 ("Order"). The Receiver submits that the Order should require Mr. Feathers to apply to this Court
 6 and show good cause before commencing a lawsuit against the Receiver and that any such
 7 lawsuit be filed only in this Court, in accordance with the below-described Barton Doctrine.

8 I. INTRODUCTION

9 On March 15, 2013, Defendant Mark Feathers filed a motion seeking leave from the
 10 Court to sue the Receiver ("Motion"). Docket No. 296. On March 19, 2013, the Court entered
 11 the Order, which denies the Motion and states that "leave of this court is not required in order to
 12 initiate a separate legal action." The Receiver did not have the opportunity to respond to the
 13 Motion¹ and requests that the Court reconsider and clarify the Order.

14 Conserving receivership estate resources is of paramount importance. Mr. Feathers'
 15 repeated, spurious attacks on the Receiver have already cost the receivership estate tens of
 16 thousands of dollars. His proposed lawsuit against the Receiver will cost the receivership estate
 17 thousands more. He has demonstrated no valid grounds on which to sue the Receiver.
 18 Accordingly, in order to protect investors from needless consumption of receivership estate
 19 funds, Mr. Feathers should be required to show good cause before he is granted leave to sue the
 20 Receiver. Furthermore, if such leave is granted, the Court should require the lawsuit to be filed in
 21 this Court, which is familiar with the relevant facts and can oversee the litigation as necessary
 22 and appropriate to limit costs and protect investors.

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 27 ¹ It appears the Court treated the Motion as a motion for administrative relief under Local
 28 Rule 7-11, and therefore issued the Order five days after it was filed. The Motion did not
 indicate that it was requesting administrative relief or make any reference to Local Rule 7-11.
 Accordingly, the Receiver had intended to respond to the Motion within 14 days of when it
 was filed pursuant to the deadline for opposition provided under Local Rule 7-3.

1 The long-standing Barton Doctrine provides that federal receivers and bankruptcy trustees
 2 cannot be sued in a court other than the court that appointed them absent approval from the
 3 appointing court. The appointing court has *in rem* subject matter jurisdiction over receivership
 4 estate property, and therefore other courts lack subject matter jurisdiction over suits affecting
 5 such property.

6 Mr. Feathers' request to sue the Receiver reflects yet another costly misunderstanding or
 7 miscalculation by Mr. Feathers, to wit: that the Receiver is the party suing him and that he can
 8 regain control of the Receivership Entities by prevailing in a lawsuit against the Receiver.
 9 Naturally, this is incorrect. What is also apparent from the Motion and the over 200 emails sent
 10 to the Receiver by Mr. Feathers, is that Mr. Feathers believes that by harassing and interfering
 11 with the Receiver's performance of his duties he will prevail in his dispute with the Securities and
 12 Exchange Commission. This is also incorrect.

13 Mr. Feathers has gone as far as to adopt a nickname for himself: "the Honey Badger."
 14 This Honey Badger moniker is how Mr. Feathers signs off on many of his most abusive emails
 15 directed to the Receiver and often to his counsel. The inappropriateness of Mr. Feathers' conduct
 16 aside, the Receiver and counsel are forced to expend significant time and money responding to
 17 the almost daily frivolous e-mail attacks, numerous motions directed toward the Receiver, and the
 18 proposed lawsuit. Mr. Feathers' actions are directly and adversely impacting the very investors
 19 on whose behalf he purports to be acting.

20 II. ARGUMENT

21 A. Mr. Feathers Cannot Sue the Receiver Without Leave of Court

22 The long standing Barton Doctrine provides that federal receivers and bankruptcy trustees
 23 cannot be sued in any court other than the court that appointed them without approval from the
 24 appointing court. *Beck v. Fort James Corp. (In re Crown Vantage, Inc.)*, 421 F.3d 963, 970-71
 25 (9th Cir. 2005). The appointing court has *in rem* subject matter jurisdiction over the receivership
 26 estate, and therefore other courts lack subject matter jurisdiction over suits impacting receivership
 27 estate property. *Id.* (citing *Barton v. Barbour*, 104 U.S. 126, 26 L. Ed. 672 (1881)). The limited
 28 exception to the Barton Doctrine under 28 U.S.C. § 959 does not apply to receivers or bankruptcy

1 trustees who are administering the estate (*i.e.*, preserving, protecting and selling assets) and not
2 operating the business. *Crown Vantage*, 421 F.3d at 971-72.

3 Here, the Court has *in rem* subject matter jurisdiction over the property of the receivership
4 estate. The Receiver is preserving and protecting the Receivership Entities' assets, but is not
5 operating the business, *i.e.*, raising money from investors or making new loans. Indeed, the
6 grounds on which Mr. Feathers intends to sue the Receiver include that the Receiver has
7 terminated employees and not made certain loans, actions taken by the Receiver pursuant to
8 Court orders. Accordingly, Mr. Feathers cannot sue the Receiver in any court other than this
9 Court without this Court's permission.

10 **B. Mr. Feathers Has No Grounds on Which to Sue the Receiver**

11 Receivers are entitled to quasi-judicial immunity from personal liability when acting
12 pursuant to Court orders. *See Mullis v. United States Bankruptcy Court*, 828 F.2d 1385, 1390
13 (9th Cir. 1987); *Bradford Audio Corp. v. Pious*, 392 F.2d 67, 72-73 (2d Cir. 1968). All actions
14 Mr. Feathers complains of were taken by the Receiver pursuant to his authority and duties
15 ordered by the Court. Accordingly, the Receiver is immune from personal liability.

16 Furthermore, under the Preliminary Injunction Order, the Receiver's liability in his official
17 capacity (*i.e.*, as representative of the receivership estate) is limited to acts of gross negligence.
18 Docket No. 34, Part XIII. Mr. Feathers has not demonstrated any acts of negligence by the
19 Receiver, let alone gross negligence.

20 The Motion asserts the following bases on which to sue the Receiver, none of which have
21 any merit and are simply spurious, unfounded arguments:

22 The Receiver's Credentials. The record of this Court is clear that the Receiver never
23 misrepresented his credentials. The Commission has acknowledged that it made a typographical
24 error in describing Mr. Seaman as a licensed CPA in its recommendation to the Court. The
25 Receiver has submitted a declaration detailing his education, work experience, receivership
26 experience, forensic accounting experience and credentials. Docket No. 293. Mr. Feathers tries
27 desperately to turn the Commission's CPA/CFA error into an enormous scandal. This argument
28 was made in Mr. Feathers recent request for leave to file a motion seeking reversal of the Court's

1 order approving claim procedures (Docket No. 290) and rejected by the Court (Docket No. 302).
2 Regardless, the error is not a basis for Mr. Feathers to sue the Receiver. The Receiver never
3 stated he is a CPA and was not aware of the Commission's error until recently.

4 Prior Unsuccessful Arguments. Mr. Feathers has argued repeatedly that the Receiver
5 (a) is not neutral, (b) should not have terminated the Receivership Entities' employees, and
6 (c) damaged the companies by not making certain loans in the early stages of the receivership.
7 The Receiver has addressed these arguments in his prior responses to Mr. Feathers' motions and
8 the Court has rejected the motions. See Orders Denying Mr. Feathers' Motions, Docket Nos. 143,
9 209, 272, 287 and 302. Mr. Feathers also acknowledges that the Receiver's actions in terminating
10 employees and not making loans "were allowed per his authority under the court . . ." Motion,
11 p. 2. Again, there is no basis on which to sue the Receiver.

12 In the Motion, Mr. Feathers contends that the Receiver "has caused, and is causing,
13 substantial harm to the members of the receivership estate." Motion, p. 2. Not only does
14 Mr. Feathers fail to identify any harm caused by the Receiver, but he has no standing to pursue
15 claims on behalf of investors.

16 Attached as Exhibit C to the Declaration of Thomas Seaman filed herewith ("Seaman
17 Declaration") is an e-mail message sent by Mr. Feathers to the Receiver's counsel on March 19,
18 2013, outlining subjects he intends to raise in his proposed action against the Receiver. It is clear
19 from the e-mail that Mr. Feathers has no viable causes of action against the Receiver, but his
20 intention is to impede the Receiver from completing his accounting and performing his other
21 Court-ordered duties. Further receivership estate resources should not be consumed responding
22 to this nonsense. Mr. Feathers can make his arguments regarding the Receiver's actions in this
23 case (as he has been) and the Court can address them as necessary and appropriate. Indeed,
24 almost all his arguments have already been made and rejected.

25 **C. Mr. Feathers is Violating the Preliminary Injunction Order**

26 The Preliminary Injunction Order prohibits Mr. Feathers from interfering with or
27 harassing the Receiver or his counsel in the performance of the Receiver's duties. Docket No. 34,
28 Part XI. In fact, Mr. Feathers has been ordered to cooperate with and assist the Receiver. *Id.*

1 These provisions are designed to protect the orderly and efficient administration of the
2 receivership estate and conserve receivership estate resources for the benefit of investors.

3 Over the last four months, Mr. Feathers has filed numerous baseless motions² attacking
4 the Receiver, has sent approximately 500 e-mail messages³ to the Receiver, his staff and his
5 counsel, and has opposed every motion, application and report filed by the Receiver. Seaman
6 Declaration, ¶ 2. Mr. Feathers' e-mails, which he often signs off as "Honey Badger," are sent at
7 all hours of the day and night, and make open threats against the Receiver and his counsel. *Id.* at
8 ¶ 3, Exhibit A. Mr. Feathers also contacted the CFA Institute, the body that oversees Chartered
9 Financial Analysts, requiring the Receiver to prepare a response and demonstrate that he never
10 represented he is a CPA. *Id.* at ¶ 4, Exhibit B.

11 These actions have caused substantial delay and distraction, increased receivership
12 expenses by at least \$25,000, and accomplished nothing. *Id.* at ¶ 5. Although Mr. Feathers has
13 the right to make his views known to the Court and communicate with the Receiver, his actions,
14 taken together, constitute harassment and interference with the Receiver's performance of his
15 duties. Mr. Feathers should be reminded that he is prohibited from interfering with or harassing
16 the Receiver and his counsel. If Mr. Feathers continues this conduct, the Receiver will be forced
17 to seek an order to show cause why Mr. Feathers should not be held in contempt and sanctioned.

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26 ² Two more motions against the Receiver, these expressly seeking administrative relief, were
27 filed by Mr. Feathers on March 21, 2013. The Receiver's responses were filed on March 25,
28 2013.

³ This total counts an e-mail sent to the Receiver, a member of his staff, and an attorney at
Allen Matkins as three since it is viewed by three people. The number sent to the Receiver
alone is approximately 200. Seaman Declaration, ¶ 2.

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III. CONCLUSION

Conserving receivership estate resources is of paramount importance. The Receiver respectfully requests that the Court reconsider and clarify the Order to provide that Mr. Feathers is required to apply to this Court before initiating a separate legal action against the Receiver, that Mr. Feathers must demonstrate good cause for such an action, and that such an action may only be filed in this Court. The Receiver strongly believes this is necessary to protect investors from further needless consumption of receivership estate funds.

Dated: March 26, 2013

ALLEN MATKINS LECK GAMBLE
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By: _____ /s/ Ted Fates
TED FATES
Attorneys for Receiver
THOMAS A. SEAMAN