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FILED

MAR 10 2014

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10 SECURITIES AND EXCHANGE
COMMISSION,
11
12 Plaintiff,
13 vs.
14 SMALL BUSINESS CAPITAL CORP., ET AL
15 Defendants.

Case No. CV12-03237-EJD

**MARK FEATHERS' EX PARTE
MOTION FOR RECONSIDERATION
AND CLARIFICATION OF THE
COURT'S ORDER [COURT DOCKET
714] GRANTING APPROVAL OF
RECEIVER'S OMNIBUS MOTION FOR
CLAIMS OBJECTIONS [COURT
DOCKET 626] AND MOTION FOR THE
COURT TO STAY ITS
CONSIDERATION OF THE
RECEIVER'S ADMINISTRATIVE
MOTION [COURT DOCKET 741] FOR
ENTRY OF SECOND AMENDED
[PROPOSED] ORDER APPROVING
OMNIBUS AND SPECIFIC CLAIM
OBJECTIONS FOR THAT SAME PLAN
UNTIL SUCH TIME AS THE COURT
HAS CONSIDERED THIS EX PARTE
MOTION FOR RECONSIDERATION**

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

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28 FEATHERS' EX PARTE MOTION FOR COURT RECONSIDERATION OF APPROVAL OF RECEIVER'S CLAIMS PLAN

1 Mark Feathers ("FEATHERS") hereby respectfully requests per L.R. 7-9 that the Court
2 reconsider its Order Approving Receiver's Claims Plan (Court Docket 626) because:

3 1. The Receiver acknowledges there to be substantial "errors" in the declarations and
4 schedules of his Claims plan (Court Docket 626-1), which the Receiver references at least three
5 times in his Admin Motion (see Court Docket 741), and causing concern as to their reliability.

6 2. The Receiver is now asking the Court to strip away almost one month after its hearings on
7 the Receiver's claims objections, without the due process of a hearing or any testimony on this
8 matter, the investment of one investor who was prior included in the Claims plan as being
9 recommended by the Receiver for claims approval, who he now belatedly recommends otherwise.

10 3. New evidence and facts have come to light that the Receiver has perjured himself to the
11 Court by making claim in his prior sworn Court declarations that he has never prior represented
12 himself as a certified public accountant (see Court Docket 731), when in fact, he has.

13 I. INTRODUCTION

14 On February 26th the Court issued an Order approving the Receiver's claims recommendations
15 (Court Docket 626). There is lawful basis for the Court to reconsider its prior orders, and
16 conserving Receivership Estate resources is of paramount importance.

17 II. ARGUMENT FOR RECONSIDERATION

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

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

24 The second and third grounds outlined for reconsideration are applicable here. New evidence
25 indicates that the Receiver perjured himself. He should be immediately removed from his position
26 as a Court officer and Receiver. The Receiver is also seeking to bring manifest injustice onto one
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1 investor by way of his new Admin Motion (Court Docket 741). Opposition to that Admin Motion
 2 is being submitted by that same investor on the date of this ex parte request for reconsideration.

3 Further, FEATHERS appeal of summary judgment against him by this Court to the 9th Circuit
 4 is likely to succeed on its merits. Further, irreparable injury will likely be sustained by
 5 FEATHERS and third party investors if the Receiver's claims plan is not reconsidered, while to the
 6 detriment of even one investor who is receiving unequal treatment under his proposed revision.

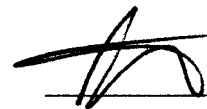
7 On these grounds, and to restore balance in equities between the Receiver's desires and those of
 8 investors, FEATHERS, on his behalf, and on behalf of third party investors, asks for
 9 reconsideration of the Court's order approving the Receiver's claims oppositions.

10 The equitable powers of this court cannot be extended to permit the Receiver to trod over
 11 the rights of any investor, or to benefit from the assets and the income of the receivership estate
 12 through concealment that he was not a CPA at the time of his appointment by SEC's request, and
 13 the subsequent discovery that he has perjured himself to the Court.

14 In *Scholes v. Schroeder*, 744 F. Supp 1419, 1420-23 (N.D. Ill. 1990), an appointed receiver
 15 attempted to raise claims "framed in terms of alleged fraud on the investors." The court precluded
 16 the receiver from pursuing the claims reiterating the principle cited in *Jarrett*, that "[f]raud on
 17 *investors* that damages those *investors* is for those *investors* to pursue-not the receiver. By contrast,
 18 fraud on the *receivership entity* that operates to *its* damage is for the *receiver* to pursue." The
 19 Receiver cannot ask the Court to amend his claims plan on the basis of his belated statements in his
 20 Admin motion, when the Court had already issued its order on summary judgment months prior to
 21 the Receiver submitting his claims plan (Court Docket 626), and the Receiver had already at that
 22 time the full universe of information in front of him from which to make his recommendations.

23 Respectfully,

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 25 Date: 3-10-14



26 Mark Feathers, in *pro per*