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

13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

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

19 Defendants.

Case No. 5:12-CV-03237-EJD

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
OPPOSITION TO MARK FEATHERS
FOUR MOTIONS, IMPROPERLY
NOTICED WITHOUT A HEARING DATE
AND/OR IMPROPERLY NOTICED AS *EX
PARTE*, WHICH ALL SEEK
RECONSIDERATION OF VARIOUS
COURT ORDERS (DOCKET NOS. 716, 722,
731, AND 745)**

Place: Courtroom 4, 5th Floor
(Hon. Edward J. Davila)

1 The Securities and Exchange Commission (“SEC”) files this consolidated opposition to four
2 improperly filed motions of defendant Mark Feathers (“Feathers”): (1) Mark Feathers’ *Ex Parte*
3 Motion for Reconsideration, etc. (Dkt. No. 716); (2) Mark Feathers’ *Ex Parte* Application for
4 Reconsideration, etc. (Dkt. No. 722); (3) Mark Feathers’ Request for Leave of Court to Schedule a
5 Motion Hearing, etc., Request to Schedule a Hearing Date for Dismissal of the Receiver, and
6 Request for Leave of the Court to Reconsider its Prior Approvals of the Receiver’s Request for
7 Payments 1-4, etc. (Dkt. No. 731); and (4) Mark Feathers’ *Ex Parte* Motion for Reconsideration
8 and Clarification of the Court’s Order Granting Approval of Receiver’s Omnibus Motion for
9 Claims Objections, etc. (Dkt. No. 745).

10 The case against Feathers has been adjudicated. Feathers has appealed the Court’s judgment
11 against him. Yet, over the past weeks, Feathers has filed four motions that are not properly noticed
12 with a hearing date, are improperly noticed as *ex parte* motions without any basis for filing as such,
13 and which seek reconsideration of almost all prior Court Orders. In the first instance, the SEC
14 respectfully requests that the Court strike these improperly filed motions or otherwise summarily
15 deny them.

16 In addition, the Court may impose sanctions for violations of its Rules and Orders. The
17 SEC respectfully asks the Court to direct the Clerk of the Court to refuse for filing any further
18 motions of Feathers, or persons associated with him, that purport to be *ex parte* motions,
19 administrative motions, or motions that are not properly noticed for a hearing as required by the
20 Court’s Standing Order. Such a directive would be an appropriate sanction for Feathers’ repeated
21 failure to follow the Court’s Rules and Orders.

22 Over a year ago, this Court directed Feathers to comply with the Federal Rules of Civil
23 Procedure, the Local Rules, and the San Jose Judge’s Standing Order. (*See Order Re: Defendant*
24 *Mark Feathers’ Pending Motions* (Dkt. No. 106) at p. 2.) Despite the Court’s prior Order, Feathers’
25 recent filings show complete contempt for this Court’s Rules and its procedures. In November
26 2012, the Court specifically advised Feathers of the requirement to obtain a hearing date from the
27 Courtroom Deputy “*before* filing a motion.” (*Id.* at p. 2 (emphasis in original)). Feathers did not
28 obtain a hearing date for any of the four motions, and for this reason alone, they should be stricken.

1 Similarly, in the November 2012 Order, the Court addressed Feathers' use, at that time, of
2 *ex parte* motions rather than properly noticed motions. The Court denied all *ex parte* relief. (*Id.*)
3 However, Feathers has resumed his practice of ignoring the Court's requirement to get a hearing
4 date and filed three of the four motions as *ex parte* motions, and the fourth motion also was not
5 noticed for a hearing. Feathers' *ex parte* motions do not comply with Local Rule 7-10, and he has
6 not included a citation to a statute, rule, or order which permits the use of an *ex parte* motion for the
7 relief sought. For the most part, Feathers is seeking reconsideration of prior orders of the Court in
8 his four motions, so that they are clearly not appropriate for filing as *ex parte* motions.

9 Feathers has also failed to comply with the Local Rules for motions for reconsideration.
10 The Court has previously instructed Feathers concerning motions for reconsideration. (*See*
11 Amended Order re: Defendant's Pending Administrative Motions (Dkt. No. 302).) That Order,
12 issued in March 2013, explicitly instructed Feathers that in a motion for reconsideration "Defendant
13 must limit his arguments to the grounds listed in Rule 7-9(b) and must do so without repeating any
14 oral or written argument previously made. Failure to observe the requirements of the Local Rules
15 may result in an order summarily denying the motion." (*Id.* at p. 2.)

16 Feathers' motions fail to comply with the Court's prior Order and Local Rule 7-9(b),
17 because Feathers cites no new law or facts, but simply repeats arguments he has made before. In
18 each of the motions, Feathers claims that the Receiver has made a false representation as to his
19 licensing (Dkt. No. 716 at p. 4; Dkt. No. 722 at p. 2; Dkt. No. 731 at p. 1; Dkt. No. 745 at p. 2.)
20 The Court has been presented with these arguments on numerous occasions. Accordingly, these
21 arguments do not present new law or facts that support reconsideration. In fact, such repetitive
22 arguments violate Local Rule 7-9(c), which expressly prohibits repetition of argument.

23 Feathers' motions further fail to comply with Local Rule 7-9(b) because they are not filed
24 for any reason listed under that rule, but rather as some sort of appellate strategy. Feathers is
25 seeking reconsideration of virtually every substantive order issued by the Court from the inception
26 of the case, other than the summary judgment and remedies orders which he has already appealed.
27 Apparently, Feathers is doing so as part of some appellate strategy. (*See, e.g.*, Dkt. No. 731 at p. 1
28 (asking the Court to indicate that these are "final orders, so that FEATHERS may then appeal these

1 matters to the U.S. 9th Circuit Court of Appeals.”).) Feathers’ appellate strategy does not provide a
2 basis for reconsideration.

3 Feathers’ motions for reconsideration do not comply with Local Rule 7-9(a) because he did
4 not obtain leave of Court to file the motions. Local Rule 7-9(a) states that no party “may notice a
5 motion for reconsideration without first obtaining leave of Court to file the motion.” Feathers does
6 not state that he obtained leave of Court to file these motions, and his failure to obtain a hearing
7 date before filing confirms his failure to obey the Local Rules and the Court’s procedures.

8 Accordingly, the four motions should be stricken, or alternatively, summarily denied. The
9 SEC further asks the Court to direct the Clerk of the Court not to accept any additional *ex parte*,
10 administrative, or improperly noticed motions from Feathers that do not comply with the Court’s
11 Rules and Orders.

12
13 DATED: March 11, 2014

Respectfully submitted,

14
15 /s/ John B. Bulgozdy

John B. Bulgozdy

Lynn M. Dean

Susan F. Hannan

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648 Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On March 11, 2014 I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO MARK FEATHERS FOUR MOTIONS, IMPROPERLY NOTICED WITHOUT A HEARING DATE AND/OR IMPROPERLY NOTICED AS EX PARTE, WHICH ALL SEEK RECONSIDERATION OF VARIOUS COURT ORDERS (DOCKET NOS. 716, 722, 731, AND 745)** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: March 11, 2014

/s/Sarah Mitchell
Sarah Mitchell

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2 **SEC v. SMALL BUSINESS CAPITAL CORP, et al.**
3 **United States District Court – Northern District of California**
4 **San Jose Division**
5 **Case No. 5:12-CV-03237-EJD**
6 **LA-4141**

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8 SERVICE LIST

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19 ***Attorney for Receiver Thomas Seaman over Defendants Small***
20 ***Business Capital Corp.; Investors Prime Fund, LLC; And SBC***
21 ***Portfolio Fund, LLC***