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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

CASE NO. 5:12-cv-03237 EJD

**ORDER RE: DEFENDANT MARK
FEATHERS' PENDING MOTIONS**

Plaintiff(s),

v.

SMALL BUSINESS CAPITAL CORP., et.
al.,

[Docket Item No(s). 92, 93, 94, 96, 102, 103,
104, 105]

Defendant(s).

Presently before the court are eight motions, all filed by *pro se* Defendant Mark Feathers (“Defendant”). See Docket Item Nos. 92-94, 96, 102-105. In four of the motions, Defendant seeks relief under Federal Rule of Civil Procedure 12. See Docket Item Nos. 92-94, 96. In the remaining four, Defendant seeks certain modifications to the preliminary injunction and order establishing a temporary receivership. See Docket Item Nos. 102-105. All eight of the motions were filed by Defendant on an *ex parte* basis.

Civil Local Rule 7-10 states:


Unless otherwise ordered by the assigned Judge, a party may file an *ex parte* motion, that is, a motion filed without notice to opposing party, *only if a statute, Federal Rule, local rule or Standing Order authorizes the filing of an ex parte motion in the circumstances* and the party has complied with the applicable provisions allowing the party to approach the Court on an *ex parte* basis. *The motion must include a citation to the statute, rule or order which permits the use of an ex parte motion to obtain the relief sought.*

1 Having reviewed the Defendant’s motions, the court is unable to find reference to the statute,
2 Federal Rule, local rule or standing order which allows for *ex parte* treatment of the relief requested.
3 Indeed, the four motions which arise under Federal Rule of Civil Procedure 12 can only be heard
4 after regular notice, and much of the relief Defendant seeks in the requests to modify the preliminary
5 injunction are similarly unsuited for *ex parte* review.

6 Accordingly, all *ex parte* relief requested in Defendant’s eight pending motions is DENIED.
7 The court instructs the clerk to schedule the motions under Federal Rule of Civil Procedure 12
8 (Docket Item Nos. 92-94, 96) for hearing on the next available civil motion calendar. Briefing on
9 those motions shall occur according to the deadlines provided by Civil Local Rule 7. Defendant
10 may re-file the remaining four motions (Docket Item Nos. 102-105) as regularly noticed motions
11 pursuant to Civil Local Rule 7-2. Defendant is advised that, although he is proceeding *pro se*, he is
12 nonetheless “expected to abide by the rules of the court in which he litigates.” Carter v. Comm’r of
13 Internal Revenue, 784 F.2d 1006, 1008 (9th Cir. 1986). This requires observance of all Federal
14 Rules of Civil Procedure, Civil Local Rules, standing orders applicable to this court, as well as the
15 requirement that all parties obtain a hearing date from the undersigned’s Courtroom Deputy *before*
16 filing a motion. See Standing Order Regarding Case Management in Civil Cases (San Jose Judges’
17 Standing Order), available at www.cand.uscourts.gov. Failure to do so may result in the imposition
18 of sanctions.

19 **IT IS SO ORDERED.**

21 Dated: November 13, 2012


EDWARD J. DAVILA
United States District Judge

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