Mark Feathers, *as Applicant for Leave to Intervene*
1520 Grant Rd.
Los Altos, CA 94024
Telephone: (650) 575-7881

**UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**SAN DIEGO DIVISION**

| | |
|---|---|
| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>vs.<br><br>TOTAL WEALTH MANAGEMENT, INC.<br>and JACOB KEITH COOPER,<br><br>Defendants. | Case No. 3:15-cv-00226-BAS (DHB)<br><br>**NOTICE OF APPLICATION AND APPLICATION FOR LEAVE TO INTERVENE AND REQUEST FOR JUDICIAL NOTICE**<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES**<br><br>**DECLARATION OF INTERVENOR**<br><br>**[PROPOSED] ORDER**<br><br>**Judge: Hon. Cynthia Bashant**<br><br>**Date: May 18th, 2015**<br><br>**NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT**<br><br>**Place: Hearing Chambers of Hon. Cynthia Bashant** |

**ALL PARTIES AND THEIR ATTORNEYS OF RECORD ARE HEREBY NOTIFIED THAT**

Mark Feathers moves this Court for leave to intervene in the above captioned action pursuant to Fed. R. Civ. P. 24(a), and, or, Fed. R. Civ. P. 24(b) to protect the rights of

the public against harm to them which occur when (a) there are repeated appointments of the same receiver, or an affiliated closely held and controlled firm of that receiver, in Securities and Exchange Commission civil lawsuits, (b) when those receivers or their affiliated closely held and controlled firm repeatedly employ the same counsel with implicit concurrence of the Securities and Exchange Commission (and which on appearance represents an ongoing conspiracy of the receiver, receiver's counsel, and SEC, therefore), and (c) when these three parties, working together in their conspiracy, on appearance, repeatedly ignore recommendations of the United States General Accountability office against such practices of repeated same-receiver appointments in SEC lawsuits, and (d) when there are instances of recent past misconduct, on appearance, of the receiver (or affiliated company), receiver's counsel, and SEC, including, such as here, where these parties have conspired to obscure from this court a full understanding of the employment circumstances of the receiver, and which presents, on appearance, a likelihood that the appointed receiver will not be acting in all ways independent and neutral as anticipated by this court, which did appoint this receiver.

Under relevant Rules of Judicial Notice, which this *pro se* party is by no means a legal expert on, Intervenor requests the court to take Judicial Notice of the Exhibits which are referenced within, and attached to, the Points of Understanding.

Dated: April 7th, 2015

Mark Feathers, in *pro per*

## MEMORANDUM OF POINTS AND AUTHORITIES

## I INTRODUCTION AND ARGUMENTS

This Court approved the Plaintiff's (SEC) requested receiver. Through this Motion to Intervene, this Court should now take close note of the following facts. This Court will then then have cause for substantial concern about its choice of receiver appointments, and might rightfully draw an inference of misconduct on the part of Plaintiff, up to, and including, this civil action.

**Fact No. 1:** This Court appointed Kristin A. Janulewicz, CPA, as permanent receiver, upon request of Plaintiff, SEC.

**Fact No. 2:** In plaintiff's appointment pleading does there appear missing a proper reference that Janulewicz is an employee of the Thomas Seaman Company. Plaintiff, SEC, could have, and should have, provided to the Court disclosure on Janulewicz's employer, as a necessary part of its obligation to allow for the court's benefit a fully informed and transparent decision making process, which is a vital part of the due process in such appointments. The Court must ask why this information was omitted by SEC.

**Fact No. 3:** Thomas A. Seaman is the sole controlling individual of the Thomas Seaman Company. Janulewicz reports to Seaman, therefore. Her decisions and her reports are therefore controlled by Seaman, as her chief executive officer and her employer.

**Fact No. 4:** Thomas A. Seaman is, himself, a "CFA". Seaman is an unlicensed analyst who is not regulated by any accounting licensing authority.

**Fact No. 5:** In the fall of 2003, Seaman advertised himself and a recent appointment of his while describing himself, falsely as it were, as a "CPA"; see

Exhibit "A". Several months after his false CPA description of himself, Seaman received his first SEC receivership appointment at their request; see Exhibit (*id).* Almost all federal equity receivers are either actual CPAs, or attorneys, a fact which SEC is aware of; see exhibit "C".

**Fact No. 7**: In Seaman's first SEC appointment, David Zaro, Esq., was Seaman's counsel.

**Fact No. 8**: In 2009 plaintiff SEC requested Seaman's appointment in *SEC v. Medical Capital Holdings, LLC.* In that appointment request, for a lawsuit which appears to have been substantially complex than Seaman's prior SEC receiver appointments which all came about only after he falsely advertised himself a CPA, Plaintiff SEC falsely described Seaman as a "licensed CPA" to a federal judge, who, on appearance, had never employed Seaman prior. SEC falsely described Seaman even with awareness that he is not s CPA. Neither Seaman nor his counsel appear to have ever informed the Hon. Judge Carter in that lawsuit that he is not a CPA from the commencement of that lawsuit and through the date of this Motion for Intervention.

**Fact No. 9**: In *SEC v. Medical Capital Holdings* where SEC employed a false and misleading reference to Seaman being a CPA, David Zaro, again, was Seaman's counsel.

**Fact No. 10**:In 2012 plaintiff SEC again requested Seaman's appointment in *SEC v. SmallBusiness Capital Corp.* falsely described Seaman as a licensed CPA, this time under cover of a seal and *ex parte* to a federal judge, who, on appearance, had never employed Seaman prior. SEC thereby established a pattern here of three instances of connection to Seaman in which he, or SEC, employed a false reference as a CPA.

**Fact No. 11:** In these appointments of Seaman in which he was falsely described two times by SEC as a CPA, and which followed his own false advertisement of being a CPA, Seaman and his counsel David Zaro have garnered more than $10,000,000 in combined billings against the receivership estates in those lawsuits.

**Fact No. 12:** Seaman's counsel, David Zaro at present is under an accusation proceeding with the California Supreme Court against him for this matter; see Exhibit "B".

**Fact No. 13:** SEC's repeated employment of the same receiver is repeatedly criticized in several reports to The Congress of the United States by the United States General Accountability office[1]:

| | |
|---|---|
| SEC Lacks Formal Qualification Standards for Receiver Selection Process | Qualification standards and guidelines for selecting individuals to recommend as receivers are necessary to promote public confidence that the selection was made on an impartial basis. Without such standards, the selections by federal courts and SEC can convey the appearance of favoritism. However, SEC has no formal policies or qualifying standards to ensure that the receivers it recommends to the courts are selected on an impartial basis. |

On appearance, Janulewicz, cannot engage in her actions independently and neutrally, as is required of her position as a court officer and as a fiduciary. She is an employee, and her employer appears to be an agent of SEC, or a quasi-agent of SEC, as does the receiver's counsel. As they derive substantial income from employment, they have self-serving reasons to engage in their deviant practices, as well. In timing which the Court should note to be peculiar, and not likely coincidental, Janulewicz is but a recent "rush" hire of the Thomas Seaman Company. Indeed, Seaman, does not even show her picture on his website. Seaman presents a blank picture frame of Janulewicz with a maladroit encaption of "Picture Coming Soon":


[1] GAO Report to the Chairman, Subcommittee on Overight and Investigations Committee, August 1994

## II Abuse by SEC of Receiver Appointment Process

Abuse of the process of receiver appointments, indeed, shared by multiple parties as outlined herein, forms the basis here of Congress's watchdog agency, which is the U.S. General Accountability Office. The appointment of this receiver appears not for the purpose of promoting independent fact finding, by way of neutrality. This particular receiver's appointment reeks of SEC transparently furthering its own cause(s). These repeated appointments of Seaman, or those report to him, especially when mired in questionable circumstances outlined herein, interfere with due process for named defendants in plaintiff's lawsuits. These appointments do not promote justice therefore, and therefore harm public.

Plaintiff could have, and should have, outlined Janulewicz's employment with the Thomas Seaman Company. The Court should also require a surety bond of the Thomas Seaman company, for the normal reasons those are required. Conflicts of interest, and even the appearance of these, or of misconduct and even rising to the level, *prima facie* , of conspiracy as appears here herein, impact the efficiency of the judicial system, and harm the public.

## III BASIS FOR INTERVENTION

As To Fed. R. Civ. P. 24(b) "Permissive Intervention", the Court may permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact", such as here. And, this Application for Intervention is Timely. Other than the Court's original permanent injunction, minimal action has yet been taken with assets, discovery, and motion filing. This intervenor's action will not unduly prejudice the original parties' rights, and, in fact, will likely allow all parties who are involved in this lawsuit to more closely consider fair balance, due process, and factual matters to properly protect the rights of all investors of the defendant investment funds.

*See Commodity Futures Trading Commission v. Topworth International, Ltd*, 205 F.3d 1107 (9th Cir. 2000) which held that "a non-party to the litigation on the merits will have standing to appeal the decision below when the party participated in the proceedings, and the equities favor hearing the appeal".

Neither intervenor's, nor the public's interests are adequately represented by any parties in the case.

## IV SUMMARY

WHEREFORE, Mark Feathers, prays as follows:

For an order allowing leave for Mark Feathers to intervene pursuant to Fed. R. Civ. P. 24(b), or as a matter of Right under Fed. R. Civ. P. 24(a), should the Court determine that it is actually Fed. R. Civ. P. 24(a) that is the more appropriate Rule in this request for Intervention, and for termination of the employment of this receiver and such other and further relief as is appropriate in the circumstances.

Respectfully submitted,

Date: 4-7-15

Mark Feathers, *Applicant for Intervention*

## Declarations of Intervenor

Under penalty of perjury of the laws of the United States, I swear to my belief in the truth and accuracy of those statements made in this motion and related pleadings.

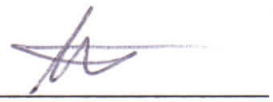
Location: Los Altos, CA Date: April 7th, 2015

Signed: _____

Mark Feathers, Intervenor, *pro se*

**Proof of Service**

On this date I swear that I have provided copies of this motion and related documents to all parties who are referenced on the Court's service list. At minimum, this includes Plaintiff, Defendant's Counsel, and Receiver's counsel. These items have been mailed on April 7th, 2015, to these parties' address of records through the United States Postal Service, or, alternatively, have been emailed to the email addresses of record for these parties.

Signed: 

Mark Feathers

Mark Feathers, in *Pro Per*
1520 Grant Rd.
Los Altos, CA 94024
Telephone: (650) 776-2496

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

| | |
|---|---|
| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br>vs.<br><br>TOTAL WEALTH MANAGEMENT, INC., AND JACOB KEITH COOPER<br><br>Defendants. | Case No. 3:15-cv-00226-BAS-DHB<br><br>**[PROPOSED] ORDER ON MARK FEATHERS MOTION TO INTERVENE AND FOR THE DISMISSAL OF THE RECEIVER** |

In the Matter of Intervenor's request(s), and all papers in support thereof or opposition thereto, and being so advised in the matter and finding good cause, and the Court finding good cause **IT IS ORDERED, and** the Motion is Approved

Dated:_____ _____

Hon. Cynthia Bashant

Judge, United States District Court

Exhibit "A"

# Federal Tax Liens and the Receiver

By Charles F. Rosen, Esq.*

*(This is Part One of a two- part series on handling Federal Tax Liens in a Receivership.)*

It is not uncommon that a receiver will be appointed over real and/or personal property assets of a taxpayer against whom a Notice of Federal Tax Lien has been filed. What are the rights/priorities of that tax lien against the interests of a receivership estate and other parties who may claim an interest? The sobering answer that the tax liability may remain a lien on the property even if it is conveyed by the receiver, may become a lien against the receivership estate, or worst of all worlds, may become a lien against the receiver personally, if the lien is not properly handled. The careful receiver will take the time to identify and properly handle federal tax liens to avoid such consequences.

## Creation and Notice of a Tax Lien

A Federal Tax Lien is created automatically when (1) an assessment has been made against a taxpayer for unpaid taxes, (2) the taxpayer has been given a notice of demand for payment of that assessed tax liability, and (3) the taxpayer has failed to pay the tax liability. Internal Revenue Code sec. 6321. [Unless otherwise stated, all code references are to the Internal Revenue Code, Title 26 U.S. Code.] Recordation is not required for

*Continued on page 14...*

ORIGINAL

FILED
CLERK, U.S. DISTRICT COURT
APR 5 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

FILED
MAR 26 2004
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY DEPUTY

KAREN MATTESON, Cal. Bar No. 102103
KELLY BOWERS, Cal. Bar No. 164007
VICTORIA A. LEVIN, Cal. Bar No. 166616
MARC J. BLAU, Cal. Bar No. 198162
JANET F. MOSER, Cal. Bar No. 199171

Attorneys for Plaintiff
Securities and Exchange Commission
Randall R. Lee, Regional Director
Sandra J. Harris, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036-3648
Telephone: (323) 965-3998
Facsimile: (323) 965-3908

Priority
Send
enter
"By Fax"

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COLIN NATHANSON, individually and doing business as NATHANSON INVESTMENT TRUST; GIANT GOLF COMPANY; PLAY BIG ENTERPRISES, INC.; STARQUEST MANAGEMENT, INC.; WHITEHAWK CONSULTING GROUP, INC.; LEAFHEAD CONSULTANTS, INC.; NETTEL CONSULTING CORP.; YRMAC CONSULTING SERVICES, INC.; and MILLENNIUM TECHNICAL GROUP, INC.

Defendants.

Case No. SACV04-0351 GLT (RZx)

[PROPOSED] TEMPORARY RESTRAINING ORDER AND ORDERS: (1) FREEZING ASSETS, (2) APPOINTING A TEMPORARY RECEIVER, (3) PROHIBITING THE DESTRUCTION OF DOCUMENTS, AND [OTHER] ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION AND APPOINTMENT OF A PERMANENT RECEIVER

04 MC 169

This matter came to be heard upon the Application of Plaintiff Securities and Exchange Commission ("Commission") for a Temporary Restraining Order And Orders: (1) Freezing Assets, (2) Appointing A Temporary Receiver, (3) Prohibiting The Destruction Of Documents, And (4) Requiring Accountings; And To Show Cause Re Preliminary Injunction And Appointment Of A

Exhibit "B"

~~ORIGINAL~~

# IN THE SUPREME COURT

# OF THE STATE OF CALIFORNIA

IN RE THE ACCUSATION OF

Mark Feathers, pro se
(your name)

AGAINST AN ATTORNEY

David Zaro, Esq.
+ Ted Fates, Esq.

State Bar Case

No. 14-26772

SUPREME COURT
FILED

APR -3 2015

Frank A. McGuire Clerk

Deputy

Mark Feathers
1520 GRANT Rd.
Los Altos, CA
94024
Ph. 650-575-7881
(your name, address and telephone number)

**ACCUSATION WITH THE CALIFORNIA SUPREME COURT AGAINST LICENSED CALIFORNIA BAR ATTORNEYS DAVID ZARO AND THEODORE FATES AND REQUEST FOR RELIEF FROM A DECISION OF THE CALIFORNIA STATE BAR COURT NOT TO RE-OPEN PETITIONER'S ACCUSATION**

*Petitioner: Mark Feathers, pro se*

**SUMMARY OF ACCUSATION AGAINST DAVID ZARO, ESQ., AND THEODORE FATES, ESQ.**

The gravamen of Petitioner's accusation is the failure of California State Bar licensed attorney David Zaro to notice and to correct two consecutive false certified public accountant ("CPA") licensing descriptions about his client in two concurrent federal securities lawsuits. The explanation offered by Zaro, and by the California State Bar, that Zaro failed to notice the two false CPA licensing descriptions of his client in court pleading appointment requests shows Zaro failed to exercise requisite care required of in his readings of these appointment pleadings for his client. Zaro's failure is amplified by the State Bar's failure of this peer group to independently and impartially review this situation.

Zaro's failure was ongoing over an expansive period of more than three years and six months. His client, a federal equity receiver, still holds control of Petitioner's personal assets and his businesses. Petitioner by way, at least in part from Zaro's failure "to notice", has had an unlicensed analyst, and not a CPA as Petitioner thought, hold control over his assets and, to some degree, his reputation, and a substantial degree of influence over the outcome of Petitioner's lawsuit, as well, due to the nature of that appointment of the court.

In Petitioner's lawsuit, the plaintiff asserted in their pleading that on his licensing basis, Zaro's client was qualified to perform his duties. Those duties included to "make accountings" outlined in the permanent injunction pleadings which concurrently accompanied the appointment pleading. Petitioner believed, as a "licensed CPA", Zaro's client could "make accountings". The gravamen of the problem here, of course, is that Zaro's client is not a licensed CPA.

Zaro failed to notice his client's wrongful and misleading financial services licensing description all told on at least five occasions, for more than three years. These included the two appointment requests for his client, and three instances of Petitioner making similar, although misled, references in his opposition court filings to Zaro's client's financial analysis work product where he made direct reference to his impression of deficits in the "accounting" work or "accountant's work" of Zaro's client while using the word "accountant" or "CPA". Yet, even while presumably reading Petitioner's three opposition filings, Zaro still did not notice or correct the wrongful licensing description of his client. Ted Fates was Zaro's co-counsel in the latter of these two lawsuits.

All told, Zaro and, or, Fates failed to read and take notice of their client's wrongful licensing description at least four times in six months, and at least five times over a three year period. Zaro and Fates, as counsel to the receiver with fiduciary control over Petitioner's assets and other important roles played which would impact Petitioner, had a duty of care to Petitioner to read Court filings which made any reference to their client with requisite care. They could have, and they should have, noticed

repeated wrongful and misled licensing representations about their client. Zaro and Fates had, or should have had, awareness that Petitioner would have justifiable reliance upon an important court pleading which described their client as a licensed CPA, and in consenting to the appointment of their client on that basis. Neither Zaro, Fates, or the California State Bar presented credible evidence that Petitioner had just cause to disbelieve that there client was "not" a licensed CPA. The California State Bar had this to say on the matter of Petitioner's accusation:

*"there is no evidence that they noticed the typographical error in the appointment motion..."*

So, here the California State Bar agrees that Zaro and Fates failed to read their client's licensing appointment with requisite care, and yet did not sanction either attorney in any way, yet did not sanction either of these licensed attorneys. Zaro, Fates, and the California State Bar have all failed to consider here that not noticing false licensing representations impedes, and cannot assist, due process.

It was Petitioner who eventually notified the court of this false licensing representation. With care and interest did Petitioner did read the appointment pleading request of Zaro's and Fates' client. Shocked and dismayed he discovered the truth of this matter eight months into his civil lawsuit. Petitioner was even more shocked when he discovered on his thereafter that in the other previous court pleading appointment request of their client, this also occurred. It should never have happened again in the second instance.

## PETITIONER'S BACKGROUND

Petitioner is 51 years old and lives in Los Altos, CA, with his spouse and two sons. Petitioner received a B.S. in Finance from the Pennsylvania State University in 1985, and served as a Naval Officer from 1986 – 1989. Subsequent to military service Petitioner received his MBA in Finance and thereafter was employed with SBA, a federal agency, from 1992 – 1994. Petitioner then held entry level, management, and executive positions in banking and financial services from 1994 through 2012. Petitioner served as a board member for a troubled state chartered bank in 2011 - 2012 after extensive background checks on him were conducted by FDIC, FBI, OCC, OTS, Federal Reserve, and the CA Department of Financial Institutions.

## PETITIONER VOLUNTARILY CEDED CONTROL OF HIS COMPANY TO ZARO'S AND FATES' CLIENT ON THE BASIS OF THEIR CLIENTS' WRONGFUL CPA LICENSING DESCRIPTION

Petitioner believed that Zaro's and Fates' client was subject to the rigorous federal and state licensing requirements that actual licensed CPAs are subject to, and that he would benefit due to that.

## ZARO'S AND FATES' CONFLICTS OF INTEREST

In these lawsuits, through this date, Zaro, Fates, and their client have billed against the assets and the income of the two receivership estates more than $10,000,000. On appearance and whether or not recognized by them, or the California State Bar, Zaro and Fates had conscious or unconscious financial or other motives in their failure to notice wrongful licensing descriptions of their client, or to cause undesired attention to the plaintiff in those lawsuits who wrongfully described their client, SEC, who they have worked with in federal securities lawsuits a score of times per public records.

## PETITIONER'S ARGUMENT AGAINST THE DECISION OF THE CALIFORNIA STATE BAR

The California State Bar's denial of Petitioner's accusation states:

"...***you indicated that the attorneys should be prosecuted for misrepresenting their client's licensure***."

That characterization is incorrect. Petitioner's wrongful conduct complaint against Zaro and Fates is in their *failure to correct* the wrongful CPA licensing description of their client, apparently which they indicate because they did not "notice" the wrongful licensing description of their client. That failure to "notice", however, is itself subject to disciplinary action.

## CALIFORNIA STATE BAR RULES OF PROFESSIONAL CONDUCT

California Rules of Professional Conduct 1-100 indicates "Members are also bound by applicable law...". Petitioner takes that to mean all California laws and Business & Professions Codes. Rule 3-110 (B) "Failing to Act Competently" is relevant here. This includes not noticing, or correcting, wrongful and misleading licensing descriptions in consecutive lawsuit pleadings requesting the appointment of their client.

## THE BAR ERRS BY ACCEPTING ZARO AND FATES EXCUSE FOR THEIR FAILURE TO CORRECT

On the basis that they failed to read and to notice SEC's wrongful licensing description, if accepted as true, Zaro and Fates have failed have shown negligence in failing to reading not just one, but two court appointment requests for their client. The State Bar claims in the opening paragraph of their denial letter to Petitioner to have reviewed "on-line court records" of Petitioner's lawsuit. There were many filings in Petitioner's lawsuit. The State Bar may have missed Petitioner's court dockets 123, 138, 180, and 959, as well as court docket 182, filed by Petitioner's spouse, which all made reference to Zaro's and Fates' client as a CPA or accountant. All told, seven court documents in two lawsuits (five in Petitioner's lawsuit) presented licensing red flags which were not noticed by Zaro and their client.

The most critical of these documents, clearly, were plaintiff's two requests for their client's appointment. These were short documents, easy to follow, and which both referenced their client as a "licensed CPA". Failure to closely read federal agency documents requesting engagement of their client would appear either a direct violation of Rules of Conduct, or demonstrate Zaro's and Fates' failure to meet basic competency requirements to hold their Bar licenses, or both.

The State Bar offers: "***there is no evidence that they noticed the typographical error***". The California State Bar should have concluded that Zaro and Fates have failed to read with requisite care critical appointment documents on multiple occasions.

If the California Supreme Court rejects Petitioner's failure-to-correct accusation and chooses to accept the Bars' argument that there is no evidence Zaro and Fates "noticed" their client's wrongful licensing description, then instead of sanctioning these two attorneys for their failure-to-correct, the California Supreme Court should sanction these two for failing to meet professional Rules of Conduct with a requisite proper reading of court appointment pleadings.

## HARM COMES TO THE PUBLIC FROM FAILURES OF CALIFORNIA BAR LICENSED ATTORNEYS TO NOTICE OR CORRECT WRONGFUL AND MISLEADING PROFESSIONAL LICENSING DESCRIPTIONS, WHEN THEY CAN DO SO, AND SHOULD DO SO

Scores of persons, as well as Petitioners, feel harmed by the wrongful, inaccurate, and very misleading licensing description of Zaro's and Fates' client, as evidenced by the scores of sworn court pleadings from third party defendant fund investors on this matter; see CV12-03237-EJD, Northern District of California, dockets 752-1, 752-2, and 752.3. The California State Bar was afforded opportunity to review these pleadings.

In the Bar's review and denial to re-open the Complaint, the Bar makes reference that Zaro's and Fates' client submitted a copy of his CV which showed he was a "CFA". That argument of the California State Bar fails, too, as those attachments were never provided to Petitioner by any party. Nor did the Court include those pleadings on PACER; Zaro's and Fate's client's "CV" could never have been reviewed by Petitioner (see Petitioner's Court Docket 297, page 8, Section XIII). Even if Zaro's and Fates' client "is" a CFA, that would not remedy a wrongful, inaccurate, and misleading description by plaintiff that their client was a "licensed CPA". It would only indicate that their client "was" a CFA.

## THE CALIFORNIA SUPREME COURT SHOULD UPHOLD PUBLIC BELIEF IN THE VALUE OF A CPA LICENSE, ESPECIALLY AS IT IS ONE WHICH IS A LICENSE REGULATED BY FEDERAL AND STATE AGENCIES

The very first passage of Dictionary.com defines a license in the following way:

> noun
>
> 1. formal permission from a governmental or other constituted authority to do something, as to carry on some business or profession.

Petitioner's belief included a reasonable expectation that Zaro's and Fates' client had "formal permission from a governmental....authority" to do "something". Petitioner held reasonable reliance and belief that Zaro's and Fate's client held licensed authority to practice within the profession of a certified public accountant. This included Petitioner's reasonable reliance and belief that, only as a licensed CPA himself, and not as an unlicensed analyst, Zaro's and Fate's client would be reviewing another CPA's audited financial statements defendant's companies. There can be no doubt Petitioner, third party investors in his investment funds, and the public, suffers harm when state licensed attorneys allow a wrongful licensing representation to continue in two federal courts of law for forty three consecutive months, by way of their failure to notice these wrongful licensing descriptions.

## PETITIONER'S SECURITIES LAWSUIT IN HIS UNDERLYING CIVIL ACTION SHOULD HAVE NO BEARING HERE – THE ISSUE HERE SHOULD BE FOCUSED ON THE CONDUCT OF ZARO AND FATES

The focus here should not be on certain elements of legal malpractice theory such as balancing-of-factors, or the extent to which the failure of Zaro and Fates affected Petitioner, or the foreseeability of harm to Petitioner, the degree of certainty that Petitioner suffered injury, the closeness of the connection between the Zaro's' and Fates' conduct and Petitioner's injury. *Lucas v. Hamm*,56 Cal. 2d 583, 15 Cal. Rptr. 821 (1961). Here, the focus should be on Zaro's and Fate's failure to read with requisite care expected in their profession many legal documents which held misled licensing references to their client, and the policy of preventing future harm to a party such as Petitioner who may not have direct contractual privity with attorneys such as Zaro and Fates, yet has the potential for direct injuries which may be suffered. There is no doubt that the appointment of Zaro's and Fates' client's appointment was intended to be of benefit to all parties in the lawsuit, including Petitioner, in the way that trustees and receivers - in concept - are to benefit parties. There can be no doubt that Petitioner consented to the appointment of Zaro's and Fate's client on his belief in those benefits, yet while also consenting on his misled basis of the belief their client was a licensed CPA.

## CLOSING

Here, the California Supreme Court should agree that Zaro and Fates hold a level of responsibility for failing to notice, or to correct, the licensing misrepresentation of their client and which spanned more than three years' time and which should have been apparent on at least seven instances to them from seven court pleadings where his licensing was referenced. Both attorneys know, or should have known, that their failure to read, with care, court pleadings could cause harm.

Petitioner preys the Honorable Justices of the California Supreme Court look closely at the merit of Petitioner's arguments, and for concurrence that Zaro and Fates hold moral blame in failing to recognize one, if not both wrongful licensing descriptions of their client over a period of more than three years.

The nexus in this situation is Petitioner's dependence on requisite care of Zaro and Fates in the performance of their duties, and their failure to see the foreseeable harm to Petitioner should they feel to meet their requisite responsibilities such as closely reading legal documents. Zaro and Fates knew, or should have known, that Petitioner would hold justifiable reliance upon them in these matters. If he had held awareness about this licensing misrepresentation early on of Zaro's and Fates' client, he would have protested the appointment of their client on that occasion, and where it may have impacted the course of the lawsuit in ways favorable to Petitioner on a timely basis.

Failures to correct licensing descriptions by California licensed bar attorneys harms the public's trust and confidence in the legal profession, and in the judiciary process itself. California State Bar attorneys' failures-to-correct wrongful licensing descriptions, or not reading pleadings with requisite care, is therefor of substantial public importance. Such action of the California Supreme Court to sanction Zaro and Fates, or to remand this issue back to the California State Bar, may help to prevent future harm from similar lapses of professionals to closely read licensing descriptions about their clients in appointment pleading requests. Although the situation in this lawsuit is perhaps unique, for guidance, the California Supreme Court might consider *Roberts v. Ball, Hunt, Hart, Brown & Baerwitz*, 57 Cal. App. 3d 104:

> In Roberts v. Ball, Hunt, Hart, Brown & Baerwitz,[13] a claim for negligent misrepresentation was asserted by a lender against a borrower's attorney for a legal opinion that the lender claimed was negligently prepared. The opinion, addressed to the plaintiff lender and delivered to him by the borrower, confirmed that the borrower was a duly organized partnership and was used by the borrower to induce the plaintiff to lend money to the borrower. Indeed, the plaintiff, relying on the legal opinion, made the loan. The legal opinion, however, failed to disclose that the borrower's general partners had met and agreed to dissolve the partnership. The plaintiff lender sued the partnership's attorney for negligent misrepresentation, alleging that if he had been aware of the dissolution, he never would have made the loan.
>
> Relying on a Biakanja analysis, the court of appeal held that the law firm could be sued for negligent misrepresentation by the plaintiff, even though the plaintiff was a third party and was never the firm's client. The legal opinion had been drafted for the purpose of influencing the plaintiff's conduct-making a loan-and that conduct was foreseeable. The court stated that:
>
> We have no difficulty, therefore, in determining that the issuance of a legal opinion intended to secure benefit for the client, either monetary or otherwise, must be issued with due care, or the attorneys who do not act carefully will have breached a duty owed to those they attempted or expected to influence on behalf of their clients.[14]

Here, with this Petitioner's accusation against Zaro and Fates, the Petitioner is not asking that the California Supreme Court hold Zaro and Fates liable to Petitioner for their negligence. Petitioner is simply asking that Zaro and Fates be held accountable on general principal for their negligence by the California State Bar, and, or, by the California Supreme Court, for Zaro's and Fates' failures to meet the requisite licensing standards of the California State Bar, and any California civil codes and Business and Professions codes that may apply in these circumstances, but which Petitioner has not outlined for lack of knowledge of these other possible violations.

A finding in Petitioner's favor by the California Supreme Court should not harm the legal profession, it should only help to increase the favorable standing of the profession and of the California Supreme Court with the public, by way of maintaining respect by the public in the independent, and neutral, fact finding ability of the California Supreme Court.

Dated: 4-2-15

Mark Feathers, Petitioner, *pro se*

**Exhibits**

"A" Petitioner's Accusation Form Submitted to California State Bar and Supporting Attachments

"B" California State Bar Reply to Accusation

"C" Petitioner's Response(s) to California State Bar Reply and Request to Re-open investigation

"D" California State Bar Denial of Petitioner's Request to Reconsider

"E" Petitioner's Response to California State Bar Denial of Petitioner's Request to Re-open investigation