Respondent's Response to Enforcement Motion for Summary Disposition, and Respondent's Request for the Court to Direct Enforcement Respond within two weeks, in Order to Get this Nonsense over with as Quickly as Possible, In the Matter of Feathers 3-15755

Respondent did not have the easiest upbringing. A military brat to a career senior chief quartermaster in the U.S. Navy, respondent moved state to state a dozen times by the time he was thirteen, when his father retired. Respondent's father then went back to school and got a college degree, so Respondent's family was pretty broke in his high school years, while the family subsisted mostly on Dad's GI Bill and a small retirement. Being picked on for being short, always the new kid, and Jewish to boot by red-necks and ignoramuses around the country was probably somewhat formative to Respondent's persona, as well. More specifically, Respondent has a fighting reaction when a federal agency acting as a bully, and also a thief in this instance, calls Respondent a Ponzi, especially when that heinous label is predicated on the lies of the agency's officers and employees.

Respondent stayed away from drugs growing up, and participated in sports like wrestling and weightlifting. Even though only 5' 6" and weighing 160 lbs., Respondent was easily benching 300 lbs. and squatting 350 lbs. for high reps shortly after graduating high school, which is a pretty good accomplishment for somebody that age. And Respondent did this without the assistance of steroids. He just ate a lot of protein and hit the gym six days a week.

By the time he was 19, Respondent was thinking about his future, so he quit his full time job, stopped lifting weights, enrolled at Penn State University, and earned a business degree in 3 ½ years while entirely paying his own way thru school by working and taking out student loans. Perhaps due to the call of sea sirens in his sub-conscience from his past youth and the smell of the ocean and piers while living in San Diego, Respondent then joined the Navy to serve his country. After graduating from Officer Candidate School, and then Naval Supply Corps School, Respondent served in the fleet for several years out of Oakland, CA. Respondent was medically discharged, unfortunately, with [redacted] which continues to plague him substantially through this day, but then earned his MBA and worked several more years in federal civil service as a senior commercial loan specialist with the U.S. Small Business Administration. Along the way with the Navy and with SBA, Respondent picked up a few achievements like an Armed Forces Expeditionary Medal for his naval service in hostile territories, and a Sustained Superior Performance award from SBA for recognition of the quality of his work efforts. Deciding that he liked helping small businesses and could leverage his abilities more greatly in the public sector, Respondent left SBA and worked for community banks for a decade, until starting his own investment company and obtaining, with his investor's consent, an SBA lending license so that he could help small businesses with their financial needs around the country, while also working in a field that he enjoyed very much. Within eighteen months of obtaining an SBA license, Respondent was in the top 20% of SBA lenders in the United States, and had assembled a top rate team, which helped him build, for investor's benefit, an SBA loan portfolio of some 72 loans with a value over $100,000,000.

And then, everything came crashing down for Respondent in 2012 when the Commission's Division of Enforcement initiated a civil action under seal, *ex parte*, and *prima facie*. It was bad enough that SEC initiated an action that had not a single valid factual assertion, because SEC's accountants added together the capital distributions and the capital investments of Respondent's funds together under seal (Commissioners – please stop for a moment and think about that, and what it means), and on

that basis doubled the appearance of Respondent's investment funds while under a sealed submission to federal court, and thereby caused Respondent's funds to be seized by employing false pretense. What was worse, is that SEC adhered the word Ponzi in scores of instances throughout their sealed complaint, and in that way, used a label based upon false pretense to destroy the reputation forever of Respondent, and did so by employing a heinous label.

Respondent, *pro se* in the civil action, fought back as best he could. He submitted an injunction request to civil court requesting that – on a nationwide basis – SEC be prohibited from using the word Ponzi. The civil court concurred that SEC should not use the word, for the protection of investors, but, despite that, Enforcement continued to employ the word in their civil filings regularly thereafter, and all while knowing that their own Enforcement CPA had conjured false information as the basis to take Respondent's companies and to destroy his reputation.

Finally, in 2016, criminal court (*United States v. Feathers*) approved funds for a forensic accounting of Respondent's investment funds. That report – the Stalker Report – which has been submitted to this court now, rebutted the findings of Enforcement which they had used as the pretext for their request to seize Respondent's companies, while using false pretense with manufactured, highly inflated, and grossly prejudicial sealed "fund distribution" figures and "Ponzi" labels from Enforcement accountants and prosecutors (Roger Boudreau, CPA, and John Bulgozdy, Esq., resp.).

During civil proceedings, the Office of the Federal Public Defender wrote in their pleadings that they had no experience with criminal litigation such as they were assigned by the Court on Respondent's behalf. Unqualified representation on his behalf was frustrating to Respondent, in addition to his marriage crumbling due to financial stress, the stress of years of civil and criminal litigation, the impact of the "Ponzi" label adversely impacting Respondent's spouses own reputation, career, and self-dignity in banking and with her family and friends, and – after years – a third party report not only attesting to the transparency in the way that Respondent managed his funds, but also drawing inferences of judicial deception on the part of Enforcement personnel, and their hand picked federal equity receiver as well.

One day, after many years of living a life that could be described, at best, as challenging, due to his situation, Respondent cracked at 4:30 in the morning, and sent out an email to SEC's accountants, prosecutors, their crony federal equity receiver who they falsely licensed as a CPA in Respondent's civil action, and the receiver's counsel. In that email, Respondent suggested at the upcoming criminal trial of Respondent, that if any of them used the word "Ponzi", he might bring harm onto them. For that reason, concerned for their own safety, and in that very same email, Respondent suggested that there be extra U.S. Marshalls at trial.

Of course, Enforcement's motion for summary disposition, submitted on 7-14-20, mentions none of these things. Their motion relies upon reference to an adverse summary judgement in 2013 against Respondent, and irrelevant references to Respondent's criminal proceedings.

Respondent did not ask for these proceedings, the Commission did. Now, whether it is this court, or it is the U.S. 9th Circuit Court of Appeals, some trier of fact must consider the findings of the Stalker Report, and, on that basis, consider that the employees of the Commission fabricated the basis of their civil action against Respondent, used false, material, and grossly prejudicial information under seal, adhering "pro forma" labels onto these to further obscure the fact that they were false, and have

now been called out on it by a qualified and licensed CPA/expert witness in a forensic accounting engaged not by Respondent, but by a federal criminal court.

Respondent should be allowed to go to trial, with all parties (including the Commission's court) be afforded the opportunity to question that expert witness on her findings and her conclusions as presented in that report to criminal and to civil court. Respondent is not employing these proceedings as a means to collaterally attack the summary judgement findings of civil court. Because, that court was never afforded the benefit of the Stalker Report. SEC's Enforcement personnel robbed Respondent of all Constitutional due process which he should have been afforded far back in 2012. It is now 2020, and time for administrative and civil courts of law to look closely at the 2012 actions of Enforcement personnel, still carrying on their activities in the post-Madoff atmosphere of Enforcement at that time.

Respondent should be afforded not only the Stalker Report, but this court should discontinue putting up barriers for Respondent to present independent findings about Respondent, and his companies, by other federal agencies including the Federal Deposit Insurance Corp., and the U.S. Small Business Administration. This court has used the normal panoply of denying Respondent's requests because they are "burdensome" to those agencies", or that Respondent has not "exhausted" other means of obtaining this information. The fact is that these are taxpayer funded agencies, and the public benefits when it is not restricted to seeing the transparency (or lack thereof) of decision made by officers and agents of federal agencies.

At Respondent's criminal sentencing hearing, the U.S. Department of Justice responded as to how pleased they were to have an 89.5% recovery to investors. Enforcement has attached snippets of that criminal sentencing hearing to its motion for summary disposition, but appears to have forgotten to attach that portion of the transcript. And the reports of the receiver in the civil action show that NOT A PENNY was lost to the government in Respondent's SBA loan portfolio, so high quality was the underwriting and loan servicing of Respondent and his employees, fully abiding by all federal regulations in effect and required under their SBA license. The 89.5% recovery to investors (a "recovery" of $45,000,000 on funds with a book value of some $50,000,000 at their seizure) was DESPITE payment from Respondent's investment funds of $5,000,000 to SEC's crony (and falsely CPA licensed) federal equity receiver. So a $5,000,000 shortfall to investors, but only AFTER payment to SEC's hand-picked receiver, and his attorneys, of $5,000,000 from Respondent's investment funds? Figure that one out.

There was never a Ponzi scheme, there were only Enforcement personnel acting with ***judicial deception***, rising to the level of criminal actions on their part. When is some party at SEC going to refer the past work of Enforcement to OIG, and OIG's accounting experts, for their independent review? Who the hell adds "capital distributions" to "capital investments", and on that basis creates a false illusion that Respondent's companies were distributing twice the amounts that they were? Roger Boudreau, CPA, of Enforcement, had 23 years experience as an accountant and with Enforcement at the time he produced his "pro forma" figures attached to SEC's civil action. This was no "good faith mistake", as described by John Bulgozdy in civil court, on Boudreau's part. Why is Bulgozdy even still involved in these matters? Respondent detests him. Does the SEC continue to require Bulgozdy's involvement because somebody superior to him has the attitude of "you created this mess, you are stuck with it".

Enforcement officers bought great Constitutional harm to Respondent and to his three hundred investors. At trial, and as part of his Steadman Factors defense (allowing for evidentiary materials which include the Stalker Report and responsive subpoena material from FDIC and SBA), Respondent will

present substantial evidence to the Court of how, almost without exception, Respondent's investors showed belief that their losses were caused by SEC, not by Respondent.

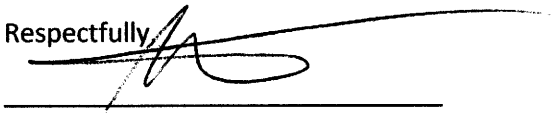
Maybe, just maybe, though, this Court and the Commission can't handle the truth about subornation of its own employees, and a culture at the Commission in 2012, which allowed this to happen in the first instance, and a culture in its own home court in 2020 which still refuses to see fire for the smoke that it creates itself.

Respondent appreciates the Court, the other day, extending the response deadline on his request to SEC's motion for summary disposition. However, Respondent is tired of involuntarily waking up somewhere between 2:00 a.m. and 4:00 a.m. every morning for more than six months now. I guess this is better than waking up in maximum security prisons around the country, or not getting proper medical treatment within the U.S. Bureau of Prisons, eating jail slop, and being involuntarily separated for his family for 28 months, wearing body shackles for some sixty days during that period, and all while the U.S. Dept. of Justice was threatening him with a 25 year prison term if he went to trial during his 14 month pre-trial period in maximum security county prison, deprived of sunlight for the most part, and talking to his minor children periodically through bullet proof glass while trying not to cry while seeing them cry.

Of course, in their summary disposition filing Enforcement paints quite a different picture. They have motivation to do so, having engaged in unconstitutional, and likely criminal, actions.

Now, though, Respondent, would like to get all of this over with. On that basis, Respondent penned out his thoughts over the past two hours. Here you have them.

Respectfully,



Mark Feathers, pro se, Respondent

Dated: 7-15-20