

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MICHAEL J. QUILLING, RECEIVER  
FOR SARDUAKAR HOLDINGS, IBC  
and BRADLEY C. STARK,

Plaintiff,

v.

JOHN W. STARK, JR and  
BARBARA STARK,

Defendants.

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NO: 3-05CV-1976-L  
ECF

MOTION FOR PARTIAL RELIEF FROM SHOW CAUSE ORDER  
SETTING JUNE 16, 2006 HEARING

TO THE HONORABLE JUDGE JEFF KAPLAN:

Defendants John W. Stark, Jr. and Barbara Stark (together, the “Defendants”), by and through their attorneys, The Curtis Law Firm, PC, and, pursuant to Rule 60 of the Federal Rules of Civil Procedure, respectfully file this Motion for Partial Relief from Show Cause Order Setting June 16, 2006 Hearing, and in support hereof, show the following:

**Brief Background and Response to Show Cause Order**

1. On May 22, 2006 the Court entered its order setting a status conference for June 2, 2006 at 9:00 a.m. (the “Status Conference”). The undersigned counsel received such order through the Court’s email system; however, the undersigned incorrectly calendared the June 2, 2006 hearing for June 5, 2006. The undersigned inadvertently confused the date of the Status Conference with other hearings he had set for the week of June 5, 2006.

2. Counsel had every intention of attending the Status Conference, and was to attend in place of Mr. and Mrs. John and Barbara Stark due to the high costs of their travel from their home in

California. In fact, the undersigned counsel initiated contact with the Receiver's counsel to hold the parties' Rule 26(f) conference and discuss discovery matters, depositions, initial disclosures, trial expectations, and other matters required to be discussed at the Status Conference. The undersigned and Receiver counsel held such discussions on May 25 and May 26 so as to be prepared for the Status Conference. Again, due only to an inadvertent error by the undersigned, he expected to show on June 5th rather than as required on June 2nd.

3. After receipt of the Court's Show-Cause Order on the afternoon of June 2nd, the undersigned immediately called the Receiver's counsel, Mr. Rodine and Mr. Clark, and left voicemails with each counsel to discuss his error. Because Mr. Clark indicated that he did not attend the Status Conference, Mr. Castillo discussed the matter with Mr. Rodine. Mr. Castillo also attempted to immediately apologize to the Court by attending in person at his Honor's chambers late that afternoon.

4. After discussing this matter with Mr. John Stark, the undersigned was informed that Mr. John Stark and Mrs. Barbara Stark were scheduled to watch their grandchildren during the week of the Show-Cause Hearing set for June 16, 2006. The Court's Show-Cause Order requires the in-person attendance of Mr. and Mrs. John Stark, which will prove very difficult and costly if not impossible for both to attend due to the two-week notice and prior commitments. Of course, since the error is not of Mr. or Mrs. John Stark's doing, Mr. Castillo is ready and able to attend on their and his behalf.

#### **Relief Requested**

5. Accordingly, Defendants hereby respectfully move that the Court grant relief from its Show-Cause Order to remove the requirement for in-person attendance by Mr. John Stark and Mrs. Barbara Stark and allow their counsel to attend on their behalf.

6. Alternatively, should the relief requested above not be granted, Defendants hereby respectfully request that the Court allow Mr. John Stark to attend via teleconference on his behalf and on behalf of Mrs. Barbara Stark. Mr. Castillo would attend in person in either case.

**Grounds for Relief Requested**

7. Rule 60 of the Federal Rules of Civil Procedure allows a party to move the court to “relieve a party or a party’s legal representative from a final judgment, order, or proceeding” for various reasons, including “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. 60(b).

8. As stated above, the undersigned’s failure to appear at the Status Conference was not intentional or willful, but, rather, was merely an inadvertent mistake on his part. Due to the undersigned’s efforts to initiate and ensure the parties’ Rule 26(f) conference and discussions to prepare for the Status Conference, the Receiver’s counsel was able to inform the Court of the parties’ discussions regarding discovery, initial disclosures, depositions, settlement possibilities, documents, and trial settings. The cause of the mistaken non-appearance at the Status Conference also satisfies the standard for excusable neglect under Rule 60(b) to the extent it does not constitute mistake or inadvertence under the same.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, for the foregoing reasons, the Defendants respectfully request that the Court grant relief from the Show-Cause Order and allow the undersigned counsel to attend the Show-Cause Hearing on his behalf and on behalf of Mr. and Mrs. John and Barbara Stark. Alternatively, the Defendants request that Mr. John Stark be allowed to appear telephonically on his behalf and on behalf of Mrs. Barbara Stark. Of course, Mr. Castillo will

appear in person even if this relief is granted. Defendants also request all such other relief in law or equity.

Dated: June 9, 2006

Respectfully submitted,

**THE CURTIS LAW FIRM, PC**

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**COUNSEL FOR DEFENDANTS**

**CERTIFICATE OF CONFERENCE**

The undersigned fully understands that the Show-Cause Order is an order entered *sua sponte* by the Court and is an issue to be addressed directly with His Honor. However, pursuant to Local Rules and Orders of this Court, the undersigned hereby certifies that, on June 2, 2006, he discussed the foregoing matter with Mr. Brent Rodine, counsel for the Receiver, over the phone, and left a voicemail with Mr. Michael Clark, counsel for the Receiver regarding the same. The undersigned further certifies that, on June 8, 2006, he conferred with Mr. Rodine further regarding the matter over e-mail and that Mr. Rodine requested that the Receiver be quoted to have responded that: "The Receiver states that the Show Cause Order was issued *sua sponte* to remedy a transgression against the Court. Therefore, this is a matter left to the Court's discretion and the Receiver neither opposes nor agrees with the relief requested." No Joint Status Report or brief, pursuant to this Court's orders and L.R. 7.1(d), are attached hereto since this matter is not opposed.

Mark A. Castillo

Mark A. Castillo

**VERIFICATION**

The undersigned states, under penalty of perjury, that the foregoing statements are true and correct to the best of his personal knowledge and belief or from statements made to him from others with direct personal knowledge.

Mark A. Castillo

Mark A. Castillo

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 9, 2005, a true and correct copy of the foregoing document was served via electronic mail through the Court's electronic service, if available, by first-class United States mail, postage prepaid, and, by facsimile on the following:

Michael J. Quilling  
Brent Rodine  
Quilling Selander Cumiskey & Lownds, PC  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
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ATTORNEYS FOR RECEIVER

Mark A. Castillo  
Mark A. Castillo