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7 Attorneys for Receiver
 8 THOMAS A. SEAMAN

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

12 SECURITIES AND EXCHANGE
 COMMISSION,

13 Plaintiff,

14 vs.

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

18 Defendants.

Case No. CV12-03237

**DECLARATION OF THOMAS A. SEAMAN
 IN SUPPORT OF MOTION FOR
 ADMINISTRATIVE RELIEF UNDER
 LOCAL RULE 7-11; REQUEST FOR
 AUTHORITY TO PURSUE CLAIMS
 AGAINST CALIFORNIA BUSINESS BANK
 AND ITS DIRECTORS AND OFFICERS**

Ctrm: 4 - 5th Floor
 Judge: Hon. Edward J. Davila

1 I, Thomas A. Seaman, declare:

2 1. I am the permanent Court-appointed receiver for Small Business Capital Corp.
3 ("SB Capital"), Investors Prime Fund, LLC, and SBC Portfolio Fund, LLC ("SPF"), and their
4 subsidiaries and affiliates. I have personal knowledge of the facts stated herein, and if called upon
5 to do so, I could and would personally and competently testify to them.

6 2. With the assistance of counsel, I have analyzed the facts and the law and I believe
7 Investors Prime Fund, LLC and IPF Banc Servicing, LLC (collectively "IPF") have strong claims
8 against California Business Bank and its directors and officers ("Proposed Defendants") based on
9 the facts described the initial draft complaint, a true and correct copy of which is attached hereto
10 as Exhibit A. In light of the material misrepresentations and omissions by Proposed Defendants,
11 IPF has lost most, if not all, of its investment. In fact, within a month of IPF's purchase, the value
12 of CBB's stock dropped dramatically and currently is listed with a bid price of \$0.28 per share.

13 3. I have discussed the projected attorney fees for the case with Allen Matkins. Allen
14 Matkins will bill its time at the same discounted hourly rates at which it represents the Receiver in
15 this case. Depending if and when the case settles or is otherwise resolved, Allen Matkins
16 estimates that the attorney fees for the case could be as little as \$35,000 and as much as \$125,000.

17
18 I declare under penalty of perjury under the laws of the United States that the foregoing is
19 true and correct.

20 Executed this 29th day of March, 2013, at Irvine, California.

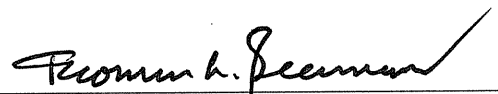
21
22 
23 _____
24 THOMAS A. SEAMAN

EXHIBIT A

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8 Attorneys for Plaintiff
 9 THOMAS A. SEAMAN, Receiver

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

13 THOMAS A. SEAMAN, in his capacity as
 Court-appointed Receiver for INVESTORS
 14 PRIME FUND, LLC and IPF BANC
 SERVICING, LLC,

15 Plaintiff,

16 v.

17 CALIFORNIA BUSINESS BANK; RAFFI D.
 18 KRIKORIAN; MICHAEL MALUCCIO;
 COLE W. MINNICK, JR.; JANE
 19 AUSERWALD; PEGGY HANSEN; MLADEN
 BUNTICH;
 20 STEVEN HONG; BIFF NAYLOR; KENNETH
 THOMPSON; GARY K. CROSS; ELLWOOD
 21 JOHNSTON; AND N. AARON
 YASHOUAFAR,

22 Defendants.
 23

Case No.

**COMPLAINT FOR VIOLATION OF
 FEDERAL AND CALIFORNIA
 SECURITIES LAWS, FRAUD & DECEIT,
 NEGLIGENT MISREPRESENTATION,
 UNFAIR COMPETITION, AND
 CONSTRUCTIVE TRUST**

INTRODUCTION

1
2 1. Investors Prime Fund, LLC and IPF Banc Servicing, LLC (collectively, "IPF")
3 purchased unregistered securities from Defendant California Business Bank ("CBB" or "Bank") on
4 or about June 28, 2011, in reliance on the representations and statements made in the Private
5 Placement Memorandum dated September 28, 2010 ("PPM") and issued by CBB in connection
6 with a Private Placement Offering that occurred between September 28, 2010 and June 28, 2011.

7 2. Commencing on or about September 28, 2010, and continuing through June 28,
8 2011, CBB, and its officers and directors, issued false and misleading statements in CBB's PPM,
9 in violation of federal and California securities laws, in connection with the Private Placement
10 Offering of up to 3,333,334 shares of CBB common stock. The PPM misrepresented and inflated
11 CBB's loan portfolio and thus overstated CBB's capital and book value by failing to disclose
12 problems with numerous loans, including loans CBB made to its directors.

JURISDICTION AND VENUE

13
14 3. The claims alleged herein arise under sections 10(b) and 20(a) of the Securities
15 Exchange Act of 1934 ("Exchange Act") (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5
16 promulgated by the Securities Exchange Commission ("SEC") (17 C.F.R. § 240.10b-5). In
17 addition, this action is related to a case pending before this Court entitled *SEC v. Small Business*
18 *Capital Corp., et al.*, Case No 5:12-cv-03237-EJD ("SEC Action"). Plaintiff Thomas Seaman
19 ("Receiver") was appointed permanent receiver for Small Business Capital Corp., IPF,
20 SBC Portfolio Fund, LLC, and their subsidiaries and affiliates in the SEC Action. In the SEC
21 Action, this Court authorized the Receiver to pursue the claims asserted herein.

22 4. This Court has subject matter jurisdiction over this action pursuant to section 27 of
23 the Exchange Act (15 U.S.C. § 77aa) and 28 U.S.C. section 1331 (federal question jurisdiction)
24 and has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C.
25 section 1367(a) because they are related to claims within this Court's original jurisdiction.

26 5. Venue is proper in this judicial district pursuant to section 27 of the Exchange Act
27 and 28 U.S.C. section 1391(b) because many of the acts and transactions giving rise to the
28 violations of law complained of herein, including the purchase of securities by IPF, occurred in

1 this judicial district; defendants used the instrumentalities of interstate commerce, including wire
2 and mail, in connection with the sale of unregistered securities in this district; the purchase of the
3 unregistered securities were solicited from this district; and IPF sent payments to the defendants
4 for the purchase of those unregistered securities from this district.

5 6. In connection with the acts, transactions and conduct alleged herein, defendants
6 used the means and instrumentalities of interstate commerce, including the United States mails,
7 and interstate wire and telephone communications.

8 **THE PARTIES**

9 7. Investors Prime Fund, LLC is a California limited liability company. IPF Banc
10 Servicing, LLC is a California limited liability company. IPF was put under the sole control and
11 management of the Receiver pursuant to orders entered in the SEC Action. IPF purchased shares
12 in CBB on or about June 28, 2011 and has been damaged as a result of Defendants' conduct as
13 alleged herein.

14 8. CBB is a California banking corporation headquartered in Los Angeles, California.
15 The Bank was originally incorporated under the laws of the State of California on April 28, 2005,
16 and commenced operations on November 1, 2005. The Bank is insured up to the maximum legal
17 limit under the Federal Deposit Insurance Act, but it is not a member of the Federal Reserve
18 System.

19 9. Defendant Raffi D. Krikorian ("Krikorian") was the Chairman of the Board for
20 CBB prior to, and during, the time the PPM and Private Placement Offering were pending.

21 10. Defendant Michael Maluccio ("Maluccio") was a Director of CBB prior to, and
22 during, the time the PPM and Private Placement Offering were pending.

23 11. Defendant Cole W. Minnick, Jr., ("Minnick"), was CBB's Chief Executive Officer
24 prior to, and during, the time the PPM and Private Placement Offering were pending.

25 12. Defendant Jane Auserwald ("Auserwald") was CBB's Chief Credit Officer prior to,
26 and during, the time the PPM and Private Placement Offering were pending.

27 13. Defendant Peggy Hansen ("Hansen") was CBB's Chief Financial Officer prior to,
28 and during, the time the PPM and Private Placement Offering were pending.

1 14. Defendant Mladen Buntich ("Buntich") was a Director of CBB prior to, and during,
2 the time the PPM and Private Placement Offering were pending.

3 15. Defendant Steven Hong ("Hong") was a Director of CBB prior to, and during, the
4 time the PPM and Private Placement Offering were pending.

5 16. Defendant Biff Naylor ("Naylor") was a Director of CBB prior to, and during, the
6 time the PPM and Private Placement Offering were pending.

7 17. Defendant Kenneth Thompson ("Thompson") was a Director of CBB prior to, and
8 during, the time the PPM and Private Placement Offering were pending.

9 18. Defendant Gary Cross ("Cross") was a Director of CBB prior to, and during, the
10 time the PPM and Private Placement Offering were pending.

11 19. Defendant Ellwood Johnston ("Johnston") was a Director of CBB prior to, and
12 during part of the time the PPM and Private Placement Offering were pending.

13 20. Defendant N. Aaron Yashouafar ("Yashouafar") was a Director of CBB prior to, and
14 during part of the time the PPM and Private Placement Offering were pending.

15 **SUBSTANTIVE ALLEGATIONS**

16 21. Consent Order: As of March 18, 2010, CBB entered into a Consent Order with
17 both the Commissioner of Financial Institutions and the Federal Deposit Insurance Corporation
18 ("FDIC"). The Consent Order requires CBB, among other items and within certain time frames,
19 to: (i) retain qualified management; (ii) maintain its Tier 1 capital leverage ratio to equal to or
20 exceed 9 percent, on or before December 31, 2010, (iii) increase Tier 1 capital by \$5 million and
21 develop and implement a capital plan; (iv) not pay cash dividends or make any other payment to
22 CBB's shareholders without the written consent of CBB's regulatory agencies; (v) reduce CBB's
23 assets classified "Substandard" to not more than \$7 million as of the FDIC visitation in the fourth
24 quarter of 2010; (vi) adopt revised lending and collection policies; (vii) adopt a revised policy for
25 determining adequacy of the ALLL; (viii) adopt a revised written liquidity and funds management
26 policy; (ix) implement a written plan addressing retention of profits, reducing overhead expense
27 and setting forth a comprehensive budget covering the period 2010 to 2012; (x) provide a written
28 plan for eliminating CBB's reliance on brokered deposits; (xi) not establish any new branches or

1 other office without the prior written consent of the regulatory agencies; (xii) provide periodic
2 reports to the regulatory agencies; and (xiii) provide CBB's shareholders with a description of the
3 Consent Order.

4 22. Recent Regulatory Examination: Following an examination that occurred in the
5 second quarter of 2010, the FDIC noted several areas of concern at CBB. As a result of that
6 examination, the FDIC required CBB to raise additional capital. The FDIC also informed CBB
7 that it might become subject to additional enforcement actions by regulatory agencies.

8 23. Private Placement Offering: On or about September 28, 2010, CBB began offering
9 for sale a minimum of 1,666,667 shares, up to a maximum of 3,333,334 shares, of its common
10 stock, no par value, at a price of \$3.00 per share ("Private Placement Offering"). CBB reserved
11 the right, in its sole discretion, to accept subscriptions for less than 3,333,334 shares, which was
12 the maximum number of shares offered. Subscribers were required to purchase a minimum of
13 6,667 shares.

14 24. CBB made the Private Placement Offering for the purpose of raising capital for
15 growth, enhancing CBB's capital position, complying with the provisions of the Consent Order,
16 increasing lending limits, and for general corporate purposes. The Private Placement Offering was
17 closed on or about June 28, 2011. On or about June 28, 2011, IPF purchased 330,000 shares of
18 CBB common stock at \$3.00 dollars per share for a total purchase price of \$990,000. As an
19 integral part of the Private Placement Offering, CBB prepared the PPM with the express intent
20 that potential investors, including IPF, would rely on the PPM to provide full disclosure of the
21 financial state of CBB and its loan portfolio as well as the risks entailed in buying CBB's stock.

22 25. Loan Loss Reserve: More specifically, during the first and second calendar year
23 quarters of 2011, while the Private Placement Offering was pending and CBB was trying to raise
24 capital, Defendants falsely represented in the PPM that CBB had \$8,300,000 in Tier-1 capital. In
25 making this representation, Defendants failed, among other things, to properly reserve for
26 approximately \$5,000,000 in loans that had been made primarily to three borrowers – the Maturin
27 Group, Tom Dean, and CBB Director, N. Aaron Yashouafar. The collectability of these loans was
28 highly questionable during the pendency of the Private Placement Offering and while the PPM

1 was available to potential investors. Yet CBB did not disclose this risk in the PPM. IPF learned,
2 after the fact, that in many instances, CBB had not updated the loan files, the asset appraisals,
3 and/or the financial statements for some or all of these borrowers for several years. Had
4 Defendants properly recognized and adequately disclosed the problems with these loans, the PPM
5 would have stated a loan portfolio that was at least \$5,000,000 less than what was actually stated,
6 and CBB would not have represented that it had \$8,300,000 in Tier-1 capital.

7 26. For example, one loan to Maturin Group for \$1,000,000 had matured and not been
8 paid off prior to CBB's issuance of the PPM. Two other loans to Maturin Group matured in
9 December 2010 and were not paid off. Maturin Group filed bankruptcy in January 2011. The
10 PPM made no reference to these loans or the defaults associated with them and was never updated
11 to reflect the defaults that occurred in December 2010 or the bankruptcy.

12 27. Tom Dean, who died in a plane crash in March 2011, had some \$3 million in loans
13 supported by unconventional collateral of questionable value, stale appraisals, and whose
14 borrowers' financials and/or appraisals had not been updated for many years. The PPM made no
15 reference to these loans, made no mention of the questionable collateral or the stale financials, and
16 was never updated to reflect that Mr. Dean had died.

17 28. Yashouafar, who resigned from the CBB Board effective March 31, 2011, had
18 loans with CBB that were not properly collateralized (no updated or recent appraisals on property
19 that CBB had made loans on in second position). One of Yashouafar's loans, on which he owed
20 \$1,900,000, matured in April 2011, but was not paid off. Yashoafar and a related entity's loans
21 were extended or renewed without updated financials, credit information or appraisals on the
22 collateral. CBB was also aware that the first position lender on the collateral properties recorded a
23 notice of default against the properties, thus endangering CBB's collateral, which stood in a
24 second position to the first position lender. The PPM made no reference to these loans or the
25 defaults associated with them, made no mention that a Director of CBB had taken insider loans of
26 almost \$2,000,000 then defaulted on them, and was never updated to reflect that Yashouafar had
27 resigned from the Board of Directors or that the \$1,900,000 loan had matured but was not paid off.

28

1 29. In addition to the loans to Yashouafar, CBB made loans to Directors Cross and
2 Maluccio. Approximately \$830,000 was outstanding on these loans at the time IPF made its stock
3 purchase. The PPM made no reference to these loans or the fact that they were made to insiders.

4 30. CBB also held a loan issued to D'Carillo's Ornamental in the amount of \$330,000.
5 CBB filed a notice of default against this borrower in December 2010. The PPM made no
6 reference to this loan or the default, and no loan loss reserve for the loan was included in the
7 financial statements attached to the PPM.

8 31. CBB also held a loan issued to David Shalom in the amount of \$830,000. The loan
9 matured in 2009. In September 2010, CBB obtained an appraisal of the collateral (a second
10 position deed of trust on two multi-unit industrial buildings). The appraisal showed a loan-to-
11 value ratio of over 95%. Accordingly, the Financial Accounting Standards Board standards
12 (FAS 114) required CBB to implement a loan loss reserve of \$236,141. CBB did not implement
13 the reserve until June 30, 2011, *after* IPF's stock purchase. The PPM made no reference to this
14 loan or the default, and no loan loss reserve for the loan was included in the financial statements
15 attached to the PPM.

16 32. Although the events described above relating to the Maturin and Dean loans took
17 place before IPF's purchase of its stock, CCB, operating through the individual Defendants,
18 delayed in recognizing the charge-offs related to these loans until after IPF purchased its shares.
19 CBB and the individual defendants did so in order to induce IPF to complete its purchase. In July
20 2011, retroactive to June 30, 2011, CBB implemented a charge-off of \$1,000,000 directly against
21 CBB's capital accounts for the Maturin Group and Tom Dean loans. The facts that lead to this
22 charge-off were known by the individual Defendants prior to June 28, 2011, and before IPF made
23 its stock purchase. This \$1,000,000 charge-off resulted in a direct reduction in CBB's tangible
24 book value of approximately \$0.75 per share, less than a month after the close of the Private
25 Placement Offering.

26 33. Defendants failed to disclose that it had made insider loans to Directors
27 Yashouafar, Cross and Maluccio, and in particular that Yashouafar had defaulted on a \$1,900,000
28 loan and resigned from the Board of Directors. Defendants also failed to disclose the problems

1 associated with the D'Carillo's Ornamental and Shalom loans, or to include a loan loss reserve for
2 these loans. Had these loans and the problems associated with them been disclosed and an
3 appropriate reserve for them included in the financial statements attached to the PPM, the value of
4 CBB's assets would have been materially reduced and CBB's Tier-1 capital would have been
5 recognized at substantially and materially below the \$8,300,000 million represented in the PPM,
6 and CBB's book value would have been reduced to an amount substantially and materially below
7 the \$3.00 per share that IPF paid.

8 34. As a result of the examination of CBB's financial records conducted by CBB's
9 regulators after June 2011, CBB was forced by its regulators to recognize approximately
10 \$3 million in losses on its loan portfolio; losses that Defendants should have recognized and
11 disclosed to IPF prior to its stock purchase, pursuant to banking and accounting regulations
12 applicable to CBB. These loan losses were the result of facts known by CBB and the individual
13 Defendants, but not disclosed by them prior to June 28, 2011.

14 **THE SAFE HARBOR PROVISION IS INAPPLICABLE**

15 35. The statutory safe harbor provides for forward-looking statements under certain
16 circumstances, but that safe harbor does not apply to any of the false statements alleged herein.
17 The statements in the PPM were not identified as "forward-looking statements" when made. To
18 the extent there were any forward-looking statements, there were no meaningful cautionary
19 statements identifying important factors that could cause actual results to differ materially from
20 those in the purportedly forward-looking statements.

21 36. Alternatively, to the extent that the statutory safe harbor does apply to any forward-
22 looking statements made, CBB is liable for those false forward-looking statements because at the
23 time CBB made each of those forward looking statements, CBB knew that the particular forward-
24 looking statement was false and/or the forward-looking statement was authorized and/or approved
25 by an executive officer of CBB who knew that the statement was false when made or who
26 concealed material facts regarding the falsity of the forward-looking statement.

27
28

FIRST CLAIM FOR RELIEF

**For Violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5
(Against All Defendants)**

37. Plaintiff repeats and realleges every allegation in each of the foregoing paragraphs.

38. Defendants knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon IPF and made various untrue and deceptive statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to IPF.

39. Each of the Defendants knew or recklessly disregarded the fact that the above acts and practices, misleading statements, and omissions would adversely affect the integrity of the market in shares in CBB.

40. IPF has suffered substantial damages as a result of the wrongs alleged herein.

41. Defendants Krikorian, Maluccio, Minnick, Auserwald, Hansen, Buntich, Hong, Naylor, Thompson, Cross, Johnston and Yashouafar acted as control persons within the meaning of Section 20(a) of the Exchange Act, as alleged above.

42. Defendants Krikorian, Maluccio, Minnick, Auserwald, Hansen, Buntich, Hong, Naylor, Thompson, Cross, Johnston and Yashouafar had the power to influence and control, and did influence and control, directly or indirectly, the decision-making by CBB, including the content and dissemination of the various statements in the PPM that the Receiver contends were misleading.

43. By reason of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

44. By virtue of their positions as controlling persons, Defendants Krikorian, Maluccio, Minnick, Auserwald, Hansen, Buntich, Hong, Naylor, Thompson, Cross, Johnston and Yashouafar are liable pursuant to Section 20(a) of the Exchange Act.

1 45. As a direct and proximate result of Defendants' wrongful conduct, IPF suffered
2 money damages of at least \$990,000, the exact amount of which will be proven at trial, in
3 connection with IPF's purchase of unregistered securities from Defendant CBB.

4 **SECOND CLAIM FOR RELIEF**

5 **For Material Misrepresentation in Violation of**
6 **California Corporations Code Section 25401**
7 **(Against All Defendants)**

8 46. Plaintiff repeats and realleges every allegation in each of the foregoing paragraphs.

9 47. As a result of the material misrepresentations, the Receiver is entitled, pursuant to
10 California Code Section 25501, to rescind the above-described stock purchases and to have the
11 \$990,000 purchase price reimbursed.

12 48. Before entry of judgment, the Receiver will tender the 330,000 shares of the above-
13 described securities as purchased from CBB and on which to date IPF has received no income.

14 **THIRD CLAIM FOR RELIEF**

15 **For Joint and Several Liability of Management Principals under**
16 **California Corporations Code Sections 25401, 25501, and 25504**
17 **(Against Defendants Krikorian, Maluccio, Minnick, Auserwald,**

18 **Hansen, Buntich, Hong, Naylor Thompson, Cross, Johnston, and Yashouafar)**

19 49. Plaintiff repeats and realleges every allegation in each of the foregoing paragraphs.

20 50. Defendant Krikorian was, at the time of the acts alleged herein, a principal member
21 of the management of CBB in that he was the Chairman of the Board for CBB.

22 51. Defendant Maluccio was, at the time of the acts alleged herein, a principal member
23 of the management of CBB in that he was Member of the Board of Directors for CBB and
24 Chairman of CBB's Loan Committee, and he replaced Krikorian as CBB's Chairman of the
25 Board, a position that he currently holds as of the date of this Complaint.

26 52. Defendant Minnick was, at the time of the acts alleged herein, a principal member
27 of the management of CBB in that he was CBB's President and Chief Executive Officer.
28

1 53. Defendant Auserwald was, at the time of the acts alleged herein, a principal
2 member of the management of CBB in that she was CBB's Chief Credit Officer.

3 54. Defendant Hansen was, at the time of the acts alleged herein, a principal member of
4 the management of CBB in that she was CBB's Chief Financial Officer until in or about
5 May 2011.

6 55. Defendant Buntich was, at the time of the acts alleged herein, a principal member
7 of the management of CBB in that he was a Member of the CBB Board of Directors.

8 56. Defendant Hong was, at the time of the acts alleged herein, a principal member of
9 the management of CBB in that he was a Member of the CBB Board of Directors.

10 57. Defendant Naylor was, at the time of the acts alleged herein, a principal member of
11 the management of CBB in that he was a Member of the CBB Board of Directors.

12 58. Defendant Thompson was, at the time of the acts alleged herein, a principal
13 member of the management of CBB in that he was a Member of the CBB Board of Directors.

14 59. Defendant Cross was, at the time of the acts alleged herein, a principal member of
15 the management of CBB in that he was a Member of the CBB Board of Directors.

16 60. Defendant Johnston was, at the time of the acts alleged herein, a principal member
17 of the management of CBB in that he was a Member of the CBB Board of Directors.

18 61. Defendant Yashouafar was, at the time of the acts alleged herein, a principal
19 member of the management of CBB in that he was a Member of the CBB Board of Directors.

20 **FOURTH CLAIM FOR RELIEF**

21 **Fraud and Deceit**

22 **(Against All Defendants)**

23 62. Plaintiff repeats and realleges every allegation in each of the foregoing paragraphs.

24 **Misrepresentations of Material Facts.**

25 63. As alleged above, Defendants made representations and/or omissions of material
26 fact to IPF before IPF purchased the unregistered securities of CBB.

27 64. Those representations were false.

28

1 65. The Receiver is informed and believes that Defendants knew that the
2 representations and/or omissions were false when they made them or they made those
3 representations or omissions recklessly without knowing whether they were true or false.

4 66. The Receiver is informed and believes that Defendants made those representations
5 or omissions with an intent to defraud and deceive IPF, and Defendants made those
6 representations or omissions to induce IPF to rely on them and to act in reliance on them.

7 67. When CBB made the representations and omissions, IPF was ignorant that the
8 representations and omissions were false and believed them to be true.

9 68. IPF relied on these representations and omissions and as a result of those
10 misrepresentations and omissions expended substantial sums of money.

11 69. Had IPF known the true facts, it would not have purchased unregistered securities
12 from Defendants or invested in CBB.

13 **Suppression of Material Facts.**

14 70. The Receiver is informed and believes CBB knew the true, material facts
15 concerning the investment and knew they were material to IPF, among other investors.

16 71. The Receiver is informed and believes CBB willfully and intentionally concealed
17 and suppressed those material facts.

18 72. The Receiver is informed and believes CBB knew IPF did not know and could not
19 reasonably discover these concealed and suppressed facts.

20 73. The Receiver is informed and believes Defendants intentionally concealed and
21 suppressed these facts with the intent to defraud IPF, among other investors.

22 74. IPF was unaware of these concealed and suppressed facts and would not have acted
23 as they did if they had known the concealed and suppressed facts.

24 75. Because of Defendants' superior position, and their possession of material facts
25 which only they knew and which they knew IPF did not know, and their knowledge that these
26 facts were material to IPF, Defendants had a duty to disclose these facts to IPF and to any other
27 investors.

28

1 76. By virtue of their intentional misrepresentation and by virtue of their intentional
2 concealment and suppression of material facts, Defendants fraudulently induced IPF to purchase
3 securities.

4 **Damages.**

5 77. Defendants committed fraud on IPF, as a direct and proximate result of which IPF
6 has suffered money damages in an amount which exceeds \$990,000, the exact amount of which
7 will be proven at trial.

8 78. The conduct of CBB, and the conduct of Krikorian, Maluccio, Minnick,
9 Auserwald, Hansen, Buntich, Hong, Naylor, Thompson, Cross, Johnston and Yashouafar, who
10 were, at all relevant times, managing agents of CBB, constitute intentional misrepresentations,
11 false promises, deceit and suppression of facts known to Defendants, all with the intention of
12 causing injury to IPF, and was oppressive, fraudulent, malicious, and despicable conduct as
13 defined in California Civil Code section 3294, on the basis of which the Receiver should recover,
14 in addition to actual damages exemplary and punitive damages according to proof at trial.

15 **FIFTH CLAIM FOR RELIEF**

16 **Fraud and Deceit-For Rescission and Restitution Damages**

17 **(Against All Defendants)**

18 79. Plaintiff repeats and realleges every allegation in each of the foregoing paragraphs.

19 80. As a direct and proximate result of CBB's fraud and deceit, as set forth above, the
20 Receiver is entitled to rescission and restitution damages, according to proof at trial, but no less
21 than \$990,000.00.

22 81. The conduct of CBB, and the conduct of Krikorian, Maluccio, Minnick,
23 Auserwald, Hansen, Buntich, Hong, Naylor, Thompson, Cross, Johnston and Yashouafar, who
24 were, at all relevant times, managing agents of CBB, constitute intentional misrepresentations,
25 false promises, deceit and suppression of facts known to Defendants, all with the intention of
26 causing injury to IPF, and was oppressive, fraudulent, malicious, and despicable conduct as
27 defined in California Civil Code section 3294, on the basis of which the Receiver should recover,
28 in addition to actual damages, exemplary and punitive damages according to proof at trial.

SIXTH CLAIM FOR RELIEF

Negligent Misrepresentation

(Against All Defendants)

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2
3
4 82. Plaintiff repeats and realleges paragraphs 1 through 56 and every allegation in each
5 of these foregoing paragraphs.

6 83. CBB made representations to IPF about existing material facts.

7 84. The Receiver is informed and believes that those representations were false.

8 85. The Receiver is informed and believes that Defendants made those representations
9 without a reasonable ground for believing them to be true.

10 86. The Receiver is informed and believes that Defendants made those representations
11 with the intent to induce IPF to rely on them.

12 87. IPF was unaware of the falsity of the representations and acted in reliance on the
13 truth of the representations and were justified in acting and relying on those representations.

14 88. As a result of its reliance on the truth of those representations, IPF has sustained
15 and continues to sustain money damages according to proof at trial.

16 89. In engaging in the conduct alleged, Defendants made representations and
17 statements of material facts and omitted to state material facts necessary to make statements that
18 they made, in light of the circumstances in which they were made, not misleading and necessary to
19 be stated in order that IPF would be informed of all material facts necessary for IPF's decision to
20 purchase the shares. Defendants made such representations and statements with the intent to
21 induce IPF to rely on them.

22 90. In making the representations and statements and omitting to state material facts,
23 Defendants acted negligently in that they made those representations and statements without a
24 reasonable ground for believing them to be true and did not exercise due care in investigating to
25 determine the existence of the material facts omitted.

26 91. At the time of the representations, statements, and omissions, IPF was unaware that
27 they were false and misleading and was unaware that there had been omissions of material facts.
28 IPF justifiably relied on these representations and statements and justifiably believed that there

1 were no omissions of material facts. As a result, IPF was induced to purchase the unregistered
2 securities described above.

3 92. As a direct and proximate result of the misrepresentations and omissions alleged,
4 IPF has suffered money damages in excess of \$990,000.00 the exact amount of which will be
5 proven at trial.

6 93. The conduct of CBB, and the conduct of Krikorian, Maluccio, Minnick,
7 Auserwald, Hansen, Buntich, Hong, Naylor, Thompson, Cross, Johnston and Yashouafar, who
8 were, at all relevant times, managing agents of CBB, constitute intentional misrepresentations,
9 false promises, deceit and suppression of facts known to Defendants, all with the intention of
10 causing injury to IPF, and was oppressive, fraudulent, malicious, and despicable conduct as
11 defined in California Civil Code section 3294, on the basis of which the Receiver should recover,
12 in addition to actual damages exemplary and punitive damages according to proof at trial.

13 **SEVENTH CLAIM FOR RELIEF**

14 **Unfair Competition under Business & Professions Code Section 17200**

15 **(Against All Defendants)**

16 94. Plaintiff repeats and realleges every allegation in each of the foregoing paragraphs.

17 95. By their wrongful conduct, Defendants engaged in unfair competition within the
18 meaning of California Business & Professions Code section 17200.

19 96. As a direct and proximate result of Defendants' unfair competition, the Receiver is
20 entitled to restitution damages according to proof at trial, but no less than \$990,000.00.

21 **EIGHTH CLAIM FOR RELIEF**

22 **Imposition of Constructive Trust**

23 **(Against All Defendants)**

24 97. Plaintiff repeats and realleges every allegation in each of the foregoing paragraphs.

25 98. The Receiver is informed and believes that Defendants have received moneys that
26 rightfully belong to IPF as a result of their purchase of the unregistered securities of CBB.

27 99. By virtue of its investment in CBB, and through their purchase of unregistered
28 securities, IPF acquired a lien and security interest in any proceeds Defendants received from any

1 sales or transfers of any of the consideration paid by IPF for the unregistered securities, or in any
2 other of CBB's assets or securities.

3 100. The Receiver is informed and believes that Defendants have wrongfully, unfairly,
4 unjustly, and inequitably received, disbursed, and retained such proceeds for themselves.

5 101. Under the circumstances alleged, it is unfair, unjust, and inequitable to allow
6 Defendants to retain any such proceeds.

7 102. In the interests of fairness, justice, and equity, this Court can and should issue an
8 order and enter judgment:

9 a. Imposing a constructive trust over all such proceeds;

10 b. Decreeing that Defendants hold such funds in trust for the benefit of the
11 Receiver; and

12 c. Requiring Defendants to disgorge those funds and to restore those funds to
13 the Receiver.

14 **WHEREFORE**, the Receiver prays for judgment as follows:

15 For the First Claim for Relief:

16 1. For compensatory damages in an amount to be proven at trial, but no less than
17 \$990,000.00;

18 2. For rescission of IPF's purchase of CBB stock and restitution in an amount to be
19 proven at trial, but no less than \$990,000.00 as the original consideration paid for the securities;

20 3. For pre-judgment interest on the original consideration at the legal rate from each
21 date of purchase;

22 4. For imposition of a constructive trust on all moneys paid to CBB by IPF and on any
23 and all proceeds received by any Defendants from any sale or transfer of the consideration paid by
24 IPF or from any other sale or transfer of CBB's assets or securities after the dates of IPF's purchase
25 of securities;

26 5. For costs and expenses incurred in this litigation, including reasonable attorneys'
27 fees and other disbursements; and

28 6. For whatever further relief this Court deems to be just and proper.

1 For the Second Claim for Relief:

- 2 1. For rescission of IPF's purchases of CBB stock and restitution in an amount to be
3 proven at trial, but no less than \$990,000.00 as the original consideration paid for the securities;
4 2. For pre-judgment interest on the original consideration at the legal rate from each
5 date of purchase;
6 3. For imposition of a constructive trust on all moneys paid to CBB by IPF and on any
7 and all proceeds received by any Defendants from any sale or transfer of the consideration paid by
8 IPF or from any other sale or transfer of CBB's assets or securities after the dates of IPF's purchase
9 of securities;
10 4. For costs and expenses incurred in this litigation, including reasonable attorneys'
11 fees and other disbursements; and
12 5. For whatever further relief this Court deems to be just and proper.

13 For the Third Claim for Relief:

- 14 1. For compensatory damages in an amount to be proven at trial but no less than
15 \$990,000.00;
16 2. For restitution in an amount to be proven at trial but no less than \$990,000.00 as the
17 original consideration paid for the securities;
18 3. For pre-judgment interest on the original consideration at the legal rate from each
19 date of purchase;
20 4. For imposition of a constructive trust on all moneys paid to CBB by IPF and on any
21 and all proceeds received by any Defendants from any sale or transfer of the consideration paid by
22 IPF or from any other sale or transfer of CBB's assets or securities after the dates of IPF's purchase
23 of securities;
24 5. For costs and expenses incurred in this litigation, including reasonable attorneys'
25 fees and other disbursements; and
26 6. For whatever further relief this Court deems to be just and proper.

1 For the Fourth and Fifth Claims for Relief:

- 2 1. For compensatory damages in an amount to be proven at trial, but no less than
3 \$990,000.00;
- 4 2. For rescission of IPF's purchase of CBB stock and restitution in an amount to be
5 proven at trial, but no less than \$990,000.00 as the original consideration paid for the securities;
- 6 3. For pre-judgment interest on the original consideration at the legal rate from each
7 date of purchase;
- 8 4. For imposition of a constructive trust on all moneys paid to CBB by IPF and on any
9 and all proceeds received by any Defendants from any sale or transfer of the consideration paid by
10 IPF or from any other sale or transfer of CBB' s assets or securities after the dates of IPF's
11 purchase of securities;
- 12 5. For exemplary or punitive damages in an amount to be proven at trial;
- 13 6. For costs and expenses incurred in this litigation; and
- 14 7. For whatever further relief this Court deems to be just and proper.

15 For the Sixth Claim for Relief:

- 16 1. For compensatory damages in an amount to be proven at trial, but no less than
17 \$990,000.00;
- 18 2. For rescission of IPF's purchase of CBB stock and restitution in an amount to be
19 proven at trial, but no less than \$990,000.00 as the original consideration paid for the securities;
- 20 3. For pre-judgment interest on the original consideration at the legal rate from each
21 date of purchase;
- 22 4. For exemplary or punitive damages in an amount to be proven at trial;
- 23 5. For costs and expenses incurred in this litigation; and
- 24 6. For whatever further relief this Court deems to be just and proper.

25 For the Seventh Claim for Relief:

- 26 1. For rescission of IPF's purchase of CBB stock and restitution or disgorgement in an
27 amount to be proven at trial, but no less than \$990,000.00 as the original consideration paid for the
28 securities;

1 2. For pre-judgment interest on the original consideration at the legal rate from each
2 date of purchase;

3 3. For imposition of a constructive trust on all moneys paid to CBB by IPF and on any
4 and all proceeds received by any of the Defendants from any sale or transfer of the consideration
5 paid by IPF or from any other sale or transfer of CBB's assets or securities after the dates of IPF's
6 purchase of securities;

7 4. For costs and expenses incurred in this litigation, including reasonable attorneys'
8 fees and other disbursements; and

9 5. For whatever further relief this Court deems to be just and proper.

10 For the Eighth Claim for Relief:

11 1. For imposition of a constructive trust on all moneys paid to CBB by IPF and on any
12 and all proceeds received by any Defendants from any sale or transfer of the consideration paid by
13 IPF or from any other sale or transfer of CBB' s assets or securities after the dates of IPF's
14 purchase of securities;

15 2. For costs and expenses incurred in this litigation; and

16 3. For whatever further relief this Court deems to be just and proper.

17
18 Dated: March _____, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

19
20 By: _____
21 TED FATES
22 Attorneys for Plaintiff
23 THOMAS A. SEAMAN, Receiver
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