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FILED

MAY 13 2013

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 SECURITIES AND EXCHANGE)
COMMISSION,)

12 Plaintiff,)

13 vs.)

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

17 Defendants.)
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Case No. 12-cv-03237 EJD

**DEFENDANTS MOTION FOR
SUMMARY JUDGEMENT, OR FOR
PARTIAL SUMMARY JUDGMENT, OR
IN THE ALTERNATIVE FOR AN
ORDER TREATING SPECIFIED FACTS
AS ESTABLISHED**

Ctrm: 4 - 5th Floor
Date: June 28, 2013
Judge: Hon. Edward J. Davila

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, on June 28, 2013, at 9:00 a.m. or as soon thereafter as the matter may be heard, in Courtroom 4, Floor 5, of the United States District Court for the Northern District of California, 280 S. 1st St., San Jose, California, defendant Mark Feathers will, and hereby does, move the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment, or for partial summary judgment under Fed. R. Civ. P. 56(a), or to treat certain material facts as established in the case under Fed. R. Civ. P. 56(g) on Plaintiff's claims in the Complaint. The motion is made on the ground that, as to the issues set forth in the motion, there is no genuine issue as to any material fact.

The motion is based on this notice of motion, the accompanying brief in support of the motion, the declarations of Mark Feathers, and such other written or oral argument as may be presented at, or before, the time this Motion is taken under submission by the Court.

The documents and evidence to be relied upon for the requested relief are not conclusions. They are evidentiary facts from the offering documents and other exhibits of the defendants, which are attached as an exhibit to the Memorandum of Points and Understanding, and other exhibits referenced in the Memorandum and included as additional exhibits.

STATEMENT OF ISSUES

(Local Rule 7-2)

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1. Should the Court grant summary judgment on defendant’s claims that defendants have not violated the antifraud provisions of federal laws, specifically Section 17(a)(1)-(3) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. 77q(a)(1), 77q(a)(2) & 77(q)(a)(3), and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C.. 78j(b), and Rule 10b-5(a)-thereunder, 17 C.F.R. 240.10b-5(a), 240.10b-5(b) & 240.10b-5(c), and with respect to SB Capital, the broker-dealer registration provisions in Section 15(a) of the Exchange Act, 15 U.S.C. 78o(a). SEC states SB Capital and Feathers to be liable as control persons under Section 20(a) of the Exchange Act, 15 U.S.C. 78o(a) – Feathers for violations of Section 10(b) and 15(a) of the Exchange Act, and SB Capital for violations of Section Feathers and/or SB Capital should have been licensed as broker-dealers 10(b).

2. Summary judgment is appropriate because the defenses raised herein by defendant are all fact based, they are supported by direct citations from the offering documents of the funds. Defendant asserts that “no genuine dispute as to these material facts” (Fed. R. Civ. P. 56(a)) outlined in the Points of Memorandum and Understanding.