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

13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

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

19 Defendants.

Case No. 5:12-CV-03237-EJD

**[PROPOSED] FINAL JUDGMENT
AGAINST DEFENDANT MARK
FEATHERS**

Date: June 28, 2013

Time: 9:00 a.m.

Place: Courtroom 4, 5th Floor
(Hon. Edward J. Davila)

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22 This matter came to be heard upon the Motion of Plaintiff Securities and Exchange
23 Commission (“Commission”) for Summary Judgment pursuant to Rule 56 of the Federal Rules
24 of Civil Procedure and Local Rule 56-1 against Defendant Mark Feathers (“Feathers”).

25 The Court, having considered the Commission’s Motion, the accompanying
26 Memorandum of Points and Authorities and [Proposed] Final Judgment, and the Declarations of
27 John B. Bulgozdy, Sarah Mitchell, Robert Morris, Barbara Bushee, David Gruebele, and Jeffrey
28 Spiegel, and the exhibits thereto, including excerpts from the Testimony and Deposition of

1 Mark Feathers, and other evidence and argument presented regarding the Motion, finds that the
2 Court finds there is no genuine issue of material fact and summary judgment is appropriate in
3 this matter.

4 Accordingly, **IT IS HEREBY ORDERED** that the Commission's motion for summary
5 judgment against Defendant Mark Feathers is **GRANTED** and final judgment is entered against
6 Defendant Mark Feathers in accordance herewith.

7 **I.**

8 Defendant Feathers and his officers, agents, servants, employees, attorneys, subsidiaries
9 and affiliates, and those persons in active concert or participation with any of them, who receive
10 actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are
11 permanently restrained and enjoined from, directly or indirectly, in the offer or sale of any
12 securities, by the use of any means or instruments of transportation or communication in
13 interstate commerce or by the use of the mails:

- 14 A. employing any device, scheme or artifice to defraud;
15 B. obtaining money or property by means of any untrue statement of a material fact
16 or any omission to state a material fact necessary in order to make the statements
17 made, in light of the circumstances under which they were made, not misleading;
18 or
19 C. engaging in any transaction, practice, or course of business which operates or
20 would operate as a fraud or deceit upon the purchaser;

21 in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

22 **II.**

23 **IT IS FURTHER ORDERED** that defendant Feathers and his officers, agents, servants,
24 employees, attorneys, subsidiaries and affiliates, and those persons in active concert or
25 participation with any of them, who receive actual notice of this Order, by personal service or
26 otherwise, and each of them, be and hereby are permanently restrained and enjoined from,
27 directly or indirectly, in connection with the purchase or sale of any security, by the use of any
28 means or instrumentality of interstate commerce, or of the mails, or of any facility of any
national securities exchange:

- 1 A. employing any device, scheme or artifice to defraud;
- 2 B. making any untrue statement of a material fact or omitting to state a material fact
- 3 necessary in order to make the statements made, in the light of the circumstances
- 4 under which they were made, not misleading; or
- 5 C. engaging in any act, practice, or course of business which operates or would
- 6 operate as a fraud or deceit upon any person;

7 in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
8 thereunder, 17 C.F.R. § 240.10b-5.

9 **III.**

10 IT IS FURTHER ORDERED that defendant Feathers, and his officers, agents, servants,
11 employees, attorneys, subsidiaries and affiliates, and those persons in active concert or
12 participation with them, who receive actual notice of this Order, by personal service or
13 otherwise, and each of them, be and hereby are permanently restrained and enjoined from
14 violating Section 15(a) of the Exchange Act, 15 U.S.C § 78o(a), by making use of the mails or
15 any means or instrumentality of interstate commerce to effect any transaction in, or to induce or
16 attempt to induce the purchase or sale of, any security, without being registered as a broker or
17 dealer in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

18 **IV.**

19 IT IS FURTHER ORDERED that defendant Feathers shall pay disgorgement of
20 \$12,000,000.00, representing losses to investors as a result of the conduct alleged in the
21 Complaint, together with prejudgment interest thereon in the amount of \$333,303.94, for a total
22 of \$12,333,303.94. Defendant shall satisfy this obligation by paying the total amount of
23 disgorgement and prejudgment interest owed, as set forth above, within 14 days after entry of
24 this Final Judgment by certified check, bank cashier's check, or United States postal money
25 order payable to "Thomas Seaman, Receiver for SB Capital." The payment shall be delivered or
26 mailed to Thomas Seaman Company, 3 Park Plaza, Suite 550, Irvine, California 92614, and shall
27 be accompanied by a letter identifying Feathers as a defendant in this action; setting forth the
28 title and civil action number of this action and the name of this Court; and specifying that

1 payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on
2 any delinquent amounts pursuant to 28 U.S.C. § 1961.

3 **V.**

4 IT IS FURTHER ORDERED that, pursuant to Section 20(d) of the Securities Act, 15
5 U.S.C. §77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), defendant
6 Feathers shall pay a civil penalty in the amount of \$300,000.00. Defendant shall make this
7 payment within 14 days after entry of this Final Judgment. Defendant may transmit payment
8 electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions
9 upon request. Payment may also be made directly from a bank account via Pay.gov through the
10 SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified
11 check, bank cashier's check, or United States postal money order payable to the Securities and
12 Exchange Commission, which shall be delivered or mailed to

13 Enterprise Services Center
14 Accounts Receivable Branch
15 6500 South MacArthur Boulevard
16 Oklahoma City, OK 73169

17 and shall be accompanied by a letter identifying the case title, civil action number, and name of
18 this Court; Mark Feathers as a defendant in this action; and specifying that payment is made
19 pursuant to this Final Judgment.

20 Defendant shall simultaneously transmit photocopies of evidence of payment and case
21 identifying information to the Commission's counsel in this action. By making this payment,
22 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part
23 of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant
24 to this Final Judgment to the United States Treasury. Defendant shall pay post-judgment interest
25 on any delinquent amounts pursuant to 28 USC § 1961.

26 **VI.**

27 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for
28 the purpose of implementing and carrying out the terms of all orders and decrees which may be

1 entered herein and to entertain any suitable application or motion for additional relief within the
2 jurisdiction of this Court.

3 IT IS SO ORDERED.

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6 HON. EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

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9 Presented by:

10 /s/ John B. Bulgozdy
11 John B. Bulgozdy
12 Lynn M. Dean
13 Susan F. Hannan
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648
Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On May 23, 2013 I caused to be served the document entitled **[PROPOSED] FINAL JUDGMENT AGAINST DEFENDANT MARK FEATHERS** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: May 23, 2013

/s/ Sarah A. Mitchell
Sarah A. Mitchell

1 **SEC v. SMALL BUSINESS CAPITAL CORP, et al.**
2 **United States District Court – Northern District of California**
3 **San Jose Division**
 Case No. 5:12-CV-03237-EJD
 LA-4141

4 **SERVICE LIST**

5
6 Mark Feathers (*via Messenger*)
7 1520 Grant Rd.
8 Los Altos, CA 94024
9 Email: *markfeathers@sbcglobal.net*
 Pro Se Defendant Mark Feathers

10 David Zaro, Esq. (*via ECF*)
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12 515 S. Figueroa Street, 9th Floor
13 Los Angeles, CA 90071
14 Email: *dzaro@allenmatkins.com*
15 ***Attorney for Receiver Thomas Seaman over Defendants Small Business Capital***
16 ***Corp.; Investors Prime Fund, LLC; And SBC Portfolio Fund, LLC***

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