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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

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S NOTICE OF
MOTION AND MOTION FOR SUMMARY
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 **TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE** that Plaintiff Securities and Exchange Commission
24 (“Commission”) will, and hereby does, move for Summary Judgment pursuant to Rule 56 of the
25 Federal Rules of Civil Procedure and Local Rule 56-1 against Defendant Mark Feathers
26 (“Feathers”). This Motion, if granted, will dispose of the entirety of the case against Feathers.

27 By way of its motion, the Commission seeks entry of Final Judgment as to Feathers,
28 permanently enjoining him from violating Section 17(a) of the Securities Act of 1933

1 (“Securities Act”) [15 U.S.C. §§ 77q(a)], Section 10(b) of the Securities Exchange Act of 1934
2 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5],
3 and Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78t(a)]. The Commission also seeks an
4 Order requiring Feathers to pay disgorgement of \$12 million, plus prejudgment interest, and a
5 civil penalty of \$300,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)],
6 and Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)].

7 This Motion for Summary Judgment is based upon this Notice of Motion and Motion, the
8 accompanying Memorandum of Points and Authorities and [Proposed] Final Judgment, and the
9 Declarations of John B. Bulgozdy, Sarah Mitchell, Robert Morris, Barbara Bushee, David
10 Gruebele, and Jeffrey Spiegel, and the exhibits thereto, including excerpts from the Testimony
11 and Deposition of Mark Feathers, together with the files and records of this entire case and any
12 evidence and/or argument which may be adduced at the hearing on this Motion for Summary
13 Judgment.

14 DATED: May 23, 2013

Respectfully submitted,

15
16 /s/ John B. Bulgozdy
17 John B. Bulgozdy
18 Lynn M. Dean
19 Susan F. Hannan
20 Attorneys for Plaintiff
21 SECURITIES AND EXCHANGE COMMISSION
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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 **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S NOTICE OF MOTION AND MOTION FOR SUMMARY 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**
4 **Case No. 5:12-CV-03237-EJD**
5 **LA-4141**

6 **SERVICE LIST**

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17 ***Attorney for Receiver Thomas Seaman over Defendants Small Business Capital***
18 ***Corp.; Investors Prime Fund, LLC; And SBC Portfolio Fund, LLC***

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