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6 ATTORNEYS FOR DEFENDANT
MARK FEATHERS
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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 SECURITIES AND EXCHANGE)
14 COMMISSION,)
15 Plaintiff,)
16 vs.)
17 SMALL BUSINESS CAPITAL CORP.; MARK)
FEATHERS; INVESTORS PRIME FUND, LLC;)
18 and SBC PORTFOLIO FUND, LLC,)
19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

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

ANSWER TO COMPLAINT
DEMAND FOR JURY TRIAL

1 Mark Feathers, through his undersigned counsel, hereby answers the Complaint of plaintiff Securities and
2 Exchange Commission (“Plaintiff” or “SEC”) as follows. Paragraph numbers in this Answer correspond to the
3 paragraph numbers of the Complaint and respond to the allegations of that paragraph, up to the Affirmative Defenses
4 section. To the extent that the headings in the Complaint outside of the numbered allegations are intended to be
5 allegations as opposed to mere argument, Mr. Feathers denies them.

6 1. Mr. Feathers admits that Small Business Capital Corp. (“SB Capital”) was the Fund Manager for
7 Investors Prime Fund, LLC (“IPF”) and SBC Portfolio Fund, LLC (“SPF”) (jointly, the “Funds”). Feathers denies the
8 allegations in the second sentence of paragraph 1 on the basis that he lacks knowledge or information sufficient to form
9 a belief as to the truth or falsity thereof. The remaining allegations in paragraph 1 are legal conclusions to which no
10 response is required; to the extent a response is deemed necessary, Mr. Feathers denies the allegations.

11 2. Mr. Feathers lacks knowledge or information sufficient to form a belief as to the truth or falsity of
12 allegations in first sentence in paragraph 2, and on that basis denies them. Mr. Feathers denies the remaining
13 allegations in paragraph 2.

14 3. Mr. Feathers lacks knowledge or information sufficient to form a belief as to the truth or falsity of
15 allegations in first, second, third and fourth sentences in paragraph 3, and on that basis denies them. Mr. Feathers
16 denies the remaining allegations in paragraph 3.

17 4. Mr. Feathers admits that Operating Agreements for the Funds stated that SB Capital had a fiduciary
18 duty, as Fund Manager. Mr. Feathers also admits that SPF sold certain mortgages to IPF on terms similar to that paid
19 by third parties. Mr. Feathers otherwise denies the allegations in the first and third sentences of paragraph 4 on the
20 basis that he lacks knowledge or information sufficient to form a belief as to the truth or falsity thereof. Mr. Feathers
21 denies the remaining allegations in paragraph 4.

22 5. Mr. Feathers denies the allegations in paragraph 5.

23 6. Paragraph 6 states legal conclusions to which no response is required; to the extent a response is
24 deemed necessary, Mr. Feathers denies the allegations.

25 7. Mr. Feathers admits that this Court has jurisdiction over federal claims brought under 15 U.S.C.
26 §§77t(b), 77t(d)(1) and 77v(a) and 15 U.S.C. §§78u(d)(3)(A), 78u(e) and 78aa. Mr. Feathers otherwise denies the
27 allegations in paragraph 7.

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1 8. Mr. Feathers admits that he resides within the Northern District of California and that SB Capital,
2 IPF and SPF have their principal place of business in the Northern District of California. The remaining allegations in
3 paragraph 8 state legal conclusions to which no response is required; to the extent a response is deemed necessary, Mr.
4 Feathers denies the allegations on the basis that he lacks knowledge or information sufficient to form a belief as to the
5 truth or falsity thereof.

6 9. Mr. Feathers admits that SB Capital is a California corporation formed in 2004 with its principal
7 place of business in Los Altos, California, that SB Capital is the Manager of IPF and SPF, and that SB Capital is not
8 registered with the SEC. Mr. Feathers otherwise denies the allegations in paragraph 9 on the basis that he lacks
9 knowledge or information sufficient to form a belief as to the truth or falsity thereof.

10 10. Mr. Feathers admits that he is 48 years old, that he is the founder, CEO and a director of SB Capital,
11 that he is the managing member of IPF and SPF, that he is not registered with the SEC, and that he has never had a
12 securities license.

13 11. Mr. Feathers admits that IPF is a California limited liability company formed in 2005 with its
14 principal place of business in Los Altos, California, that SB Capital is the manager of IPF, and that IPF and its
15 securities are not registered with the SEC. Mr. Feathers otherwise denies the allegations in paragraph 11 on the basis
16 that he lacks knowledge or information sufficient to form a belief as to the truth or falsity thereof.

17 12. Mr. Feathers admits that SPF is a California limited liability company formed in 2007 with its
18 principal place of business in Los Altos, California, that SB Capital is the manager of SPF, and that SPF and its
19 securities are not registered with the SEC. Mr. Feathers otherwise denies the allegations in paragraph 12 on the basis
20 that he lacks knowledge or information sufficient to form a belief as to the truth or falsity thereof.

21 13. Mr. Feathers admits that IPF was formed in 2005, but otherwise denies the allegations in sentence 1
22 of paragraph 13. Mr. Feathers admits that in or around 2007 SB Capital became the Manager of IPF. The third
23 sentence of paragraph 13 purports to characterize the contents of documents. Mr. Feathers respectfully refers the Court
24 to IPF's offering documents for a complete and accurate description of their contents.

25 14. Mr. Feathers admits that SPF was formed in 2007, but otherwise denies the allegations in sentence 1
26 of paragraph 14. Mr. Feathers admits the second sentence of paragraph 14. The third sentence of paragraph 14
27 purports to characterize the contents of documents. Mr. Feathers respectfully refers the Court to SPF's offering
28 documents for a complete and accurate description of their contents.

1 15. Paragraph 15 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
2 Court to IPF's and SPF's operating agreements for a complete and accurate description of their contents.

3 16. Paragraph 16 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
4 Court to IPF's and SPF's operating agreements for a complete and accurate description of their contents.

5 17. Paragraph 17 states legal conclusions to which no response is required; to the extent a response is
6 deemed necessary, Mr. Feathers denies the allegations on the basis that he lacks knowledge or information sufficient to
7 form a belief as to the truth or falsity thereof.

8 18. Mr. Feathers admits that IPF advertised in California publications. Mr. Feathers otherwise denies the
9 allegations in paragraph 18 on the basis that he lacks knowledge or information sufficient to form a belief as to the
10 truth or falsity thereof.

11 19. Paragraph 19 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
12 Court to the monthly newsletters for a complete and accurate description of their contents.

13 20. Mr. Feathers admits that SB Capital, IPF and SPF raised money from investors. To the extent that
14 sentence 1 of paragraph 20 alleges that Mr. Feathers raised money from investors in his personal capacity, Mr. Feathers
15 denies this allegation. Mr. Feathers otherwise denies the allegations in paragraph 20 on the basis that he lacks
16 knowledge or information sufficient to form a belief as to the truth or falsity thereof.

17 21. Mr. Feathers denies the allegations in paragraph 21 on the basis that he lacks knowledge or
18 information sufficient to form a belief as to the truth or falsity thereof.

19 22. Mr. Feathers admits the allegations in paragraph 22.

20 23. Mr. Feathers admits that SB Capital employees met with prospective investors, responded to their
21 informational requests and provided them with offering documents. Mr. Feathers denies the remaining allegations in
22 paragraph 23 on the basis that he lacks knowledge or information sufficient to form a belief as to the truth or falsity
23 thereof.

24 24. Mr. Feathers denies the allegations in paragraph 24 on the basis that he lacks knowledge or
25 information sufficient to form a belief as to the truth or falsity thereof.

26 25. Paragraph 25 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
27 Court to the investor newsletters for a complete and accurate description of their contents. Mr. Feathers admits that
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1 beginning around February 2010, SB Capital and IPF started a “thank you referral program.” To the extent that
2 sentence 1 of paragraph 25 alleges that Mr. Feathers acted his personal capacity, Mr. Feathers denies this allegation.

3 26. Mr. Feathers denies the allegations in paragraph 26 on the basis that he lacks knowledge or
4 information sufficient to form a belief as to the truth or falsity thereof.

5 27. Mr. Feathers admits that IPF issued offering circulars on or around June 2009, June 2010, January
6 2011 and June 2011. To the extent that paragraph 27 alleges that these offering circulars were the only ones issued
7 during the 2009 – 2011 time period, Mr. Feathers denies this allegation. Mr. Feathers denies the remaining allegations
8 in paragraph 27.

9 28. Paragraph 28 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
10 Court to IPF’s Offering Circulars for a complete and accurate description of their contents.

11 29. Mr. Feathers denies the allegations in paragraph 29 on the basis that he lacks knowledge or
12 information sufficient to form a belief as to the truth or falsity thereof.

13 30. Mr. Feathers admits that SPF issued private placement memoranda on or around July 2007,
14 December 2009, and January 2011.

15 31. Paragraph 31 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
16 Court to SPF’s Private Placement Memoranda for a complete and accurate description of their contents.

17 32. Mr. Feathers denies the allegations in paragraph 32 on the basis that he lacks knowledge or
18 information sufficient to form a belief as to the truth or falsity thereof.

19 33. Paragraph 33 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
20 Court to SPF’s Private Placement Memoranda for a complete and accurate description of their contents.

21 34. Paragraph 34 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
22 Court to IPF’s Offering Circulars and financial statements for a complete and accurate description of their contents.

23 35. Paragraph 35 purports to characterize the contents of a document. Mr. Feathers respectfully refers
24 the Court to IPF’s Offering Circular for a complete and accurate description of its contents.

25 36. Mr. Feathers denies the allegations in paragraph 36.

26 37. Mr. Feathers denies the allegations in paragraph 37.

27 38. Mr. Feathers denies the allegations in paragraph 38 on the basis that he lacks knowledge or
28 information sufficient to form a belief as to the truth or falsity thereof.

1 39. Mr. Feathers denies the allegations in paragraph 39 on the basis that he lacks knowledge or
2 information sufficient to form a belief as to the truth or falsity thereof.

3 40. Mr. Feathers denies the allegations in paragraph 40 on the basis that he lacks knowledge or
4 information sufficient to form a belief as to the truth or falsity thereof.

5 41. Mr. Feathers denies the allegations in paragraph 41 on the basis that he lacks knowledge or
6 information sufficient to form a belief as to the truth or falsity thereof.

7 42. Mr. Feathers denies the allegations in paragraph 42 on the basis that he lacks knowledge or
8 information sufficient to form a belief as to the truth or falsity thereof.

9 43. Mr. Feathers denies the allegations in paragraph 43 on the basis that he lacks knowledge or
10 information sufficient to form a belief as to the truth or falsity thereof.

11 44. Mr. Feathers denies the allegations in paragraph 44 on the basis that he lacks knowledge or
12 information sufficient to form a belief as to the truth or falsity thereof.

13 45. Mr. Feathers admits that IPF purchased mortgage loans from SPF at rates similar to those paid by
14 third parties. Mr. Feathers otherwise denies the allegations in paragraph 45 on the basis that he lacks knowledge or
15 information sufficient to form a belief as to the truth or falsity thereof.

16 46. Mr. Feathers admits that IPF purchased mortgage loans from SPF at rates similar to those paid by
17 third parties. Mr. Feathers otherwise denies the allegations in paragraph 46 on the basis that he lacks knowledge or
18 information sufficient to form a belief as to the truth or falsity thereof.

19 47. Mr. Feathers denies the allegations in paragraph 47 on the basis that he lacks knowledge or
20 information sufficient to form a belief as to the truth or falsity thereof.

21 48. Mr. Feathers admits that SB Capital sought approval from IPF's investors to amend its operating
22 agreement. To the extent that paragraph 48 alleges that Mr. Feathers acted in his personal capacity, Mr. Feathers
23 denies this allegation. Mr. Feathers otherwise denies the allegations in paragraph 48.

24 49. Paragraph 49 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
25 Court to the letters to investors for a complete and accurate description of their contents. Mr. Feathers otherwise denies
26 the allegations in paragraph 49 on the basis that he lacks knowledge or information sufficient to form a belief as to the
27 truth or falsity thereof.

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1 50. Paragraph 50 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
2 Court to the letters to investors for a complete and accurate description of their contents.

3 51. Paragraph 51 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
4 Court to the Offering Documents for a complete and accurate description of their contents.

5 52. Mr. Feathers denies the allegations in paragraph 52 on the basis that he lacks knowledge or
6 information sufficient to form a belief as to the truth or falsity thereof.

7 53. Mr. Feathers denies the allegations in paragraph 53 on the basis that he lacks knowledge or
8 information sufficient to form a belief as to the truth or falsity thereof.

9 54. Mr. Feathers denies the allegations in paragraph 54 on the basis that he lacks knowledge or
10 information sufficient to form a belief as to the truth or falsity thereof.

11 55. Mr. Feathers denies the allegations in paragraph 55 on the basis that he lacks knowledge or
12 information sufficient to form a belief as to the truth or falsity thereof.

13 56. Mr. Feathers denies the allegations in paragraph 56 on the basis that he lacks knowledge or
14 information sufficient to form a belief as to the truth or falsity thereof.

15 57. Mr. Feathers denies the allegations in paragraph 57 on the basis that he lacks knowledge or
16 information sufficient to form a belief as to the truth or falsity thereof.

17 58. Mr. Feathers denies the allegations in paragraph 58 on the basis that he lacks knowledge or
18 information sufficient to form a belief as to the truth or falsity thereof.

19 59. Mr. Feathers denies the allegations in paragraph 59.

20 60. Paragraph 60 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
21 Court to IPF's offering circulars for a complete and accurate description of their contents.

22 61. Paragraph 61 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
23 Court to IPF's Offering Circulars for a complete and accurate description of their contents.

24 62. Paragraph 62 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
25 Court to IPF's Offering Circulars for a complete and accurate description of their contents. Mr. Feathers otherwise
26 denies the allegations in paragraph 62.

27 63. Paragraph 63 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
28 Court to the Offering Documents and the monthly newsletters for a complete and accurate description of their contents.

1 Mr. Feathers admits that SB Capital raised money for IPF and SPF in 2010 and 2011. To the extent that paragraph 63
2 alleges that Mr. Feathers raised money in his personal capacity, Mr. Feathers denies this allegation.

3 64. Paragraph 64 purports to characterize the contents of a document. Mr. Feathers respectfully refers
4 the Court to the January 5, 2010 newsletter for a complete and accurate description of its contents.

5 65. Paragraph 65 purports to characterize the contents of a document. Mr. Feathers respectfully refers
6 the Court to the February 17, 2010 newsletter for a complete and accurate description of its contents.

7 66. Paragraph 66 purports to characterize the contents of a document. Mr. Feathers respectfully refers
8 the Court to the September 9, 2010 newsletter for a complete and accurate description of its contents.

9 67. Paragraph 67 purports to characterize the contents of a document. Mr. Feathers respectfully refers
10 the Court to the February 2011 newsletter for a complete and accurate description of its contents.

11 68. Paragraph 68 purports to characterize the contents of a document. Mr. Feathers respectfully refers
12 the Court to the September 2011 newsletter for a complete and accurate description of its contents.

13 69. Mr. Feathers denies the allegations in paragraph 69.

14 70. Mr. Feathers denies the allegations in paragraph 70 on the basis that he lacks knowledge or
15 information sufficient to form a belief as to the truth or falsity thereof.

16 71. Mr. Feathers denies the allegations in paragraph 71 on the basis that he lacks knowledge or
17 information sufficient to form a belief as to the truth or falsity thereof.

18 72. Mr. Feathers denies the allegations in paragraph 72 on the basis that he lacks knowledge or
19 information sufficient to form a belief as to the truth or falsity thereof.

20 73. Mr. Feathers denies the allegations in paragraph 73.

21 74. Mr. Feathers denies the allegations in paragraph 74.

22 75. Mr. Feathers denies the allegations in paragraph 75.

23 76. Mr. Feathers denies the allegations in paragraph 76.

24 77. Mr. Feathers denies the allegations in paragraph 77 on the basis that he lacks knowledge or
25 information sufficient to form a belief as to the truth or falsity thereof.

26 78. Mr. Feathers denies the allegations in paragraph 78 on the basis that he lacks knowledge or
27 information sufficient to form a belief as to the truth or falsity thereof.

28 79. Mr. Feathers denies the allegations in paragraph 79.

1 80. Mr. Feathers denies the allegations in paragraph 80.

2 81. Mr. Feathers denies the allegations in paragraph 81.

3 82. Mr. Feathers denies the allegations in paragraph 82 on the basis that he lacks knowledge or
4 information sufficient to form a belief as to the truth or falsity thereof.

5 83. Mr. Feathers denies the allegations in paragraph 83.

6 84. Paragraph 84 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
7 Court to the Offering Documents for a complete and accurate description of their contents.

8 85. Paragraph 85 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
9 Court to the SPF Private Placement Memoranda for a complete and accurate description of their contents.

10 86. Paragraph 86 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
11 Court to the Offering Documents for a complete and accurate description of their contents.

12 87. Paragraph 87 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
13 Court to the SPF Private Placement Memoranda for a complete and accurate description of their contents.

14 88. Mr. Feathers denies the allegations in paragraph 88 on the basis that he lacks knowledge or
15 information sufficient to form a belief as to the truth or falsity thereof.

16 89. Mr. Feathers denies the allegations in paragraph 89 on the basis that he lacks knowledge or
17 information sufficient to form a belief as to the truth or falsity thereof.

18 90. Mr. Feathers denies the allegations in paragraph 90.

19 91. Mr. Feathers denies the allegations in paragraph 91.

20 92. Mr. Feathers denies the allegations in paragraph 92.

21 93. Mr. Feathers denies the allegations in paragraph 93.

22 94. Mr. Feathers denies the allegations in paragraph 94.

23 95. Paragraph 95 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
24 Court to the Offering Documents for a complete and accurate description of their contents.

25 96. Paragraph 96 purports to characterize the contents of documents. Mr. Feathers respectfully refers the
26 Court to the Offering Documents for a complete and accurate description of their contents.

27 97. Mr. Feathers denies the allegations in paragraph 97.

28 98. Mr. Feathers denies the allegations in paragraph 98.

1 99. Mr. Feathers denies the allegations in paragraph 99.

2 100. The first sentence of paragraph 100 purports to characterize the contents of documents. Mr. Feathers
3 respectfully refers the Court to the Offering Documents for a complete and accurate description of their contents. Mr.
4 Feathers denies the remaining allegations in paragraph 100.

5 101. Paragraph 101 purports to characterize the contents of documents. Mr. Feathers respectfully refers
6 the Court to the IPF Offering Circulars for a complete and accurate description of their contents.

7 102. Paragraph 102 purports to characterize the contents of documents. Mr. Feathers respectfully refers
8 the Court to the IPF Offering Circulars for a complete and accurate description of their contents.

9 103. Mr. Feathers denies the allegations in paragraph 103.

10 104. Paragraph 104 purports to characterize the contents of documents. Mr. Feathers respectfully refers
11 the Court to the newsletters for a complete and accurate description of their contents.

12 105. Paragraph 105 purports to characterize the contents of documents. Mr. Feathers respectfully refers
13 the Court to the newsletters for a complete and accurate description of their contents.

14 106. Mr. Feathers denies the allegations in paragraph 106.

15 107. Paragraph 107 purports to characterize the contents of documents. Mr. Feathers respectfully refers
16 the Court to the Offering Documents for a complete and accurate description of their contents.

17 108. Paragraph 108 purports to characterize the contents of documents. Mr. Feathers respectfully refers
18 the Court to IPF's Offering Circulars for a complete and accurate description of their contents.

19 109. Mr. Feathers denies the allegations in paragraph 109.

20 110. Paragraph 110 purports to characterize the contents of documents. Mr. Feathers respectfully refers
21 the Court to the SPF Private Placement Memoranda for a complete and accurate description of their contents.

22 111. Mr. Feathers denies the allegations in paragraph 111.

23 112. Paragraph 112 purports to characterize the contents of documents. Mr. Feathers respectfully refers
24 the Court to the Offering Documents for a complete and accurate description of their contents.

25 113. Paragraph 113 purports to characterize the contents of documents. Mr. Feathers respectfully refers
26 the Court to the Offering Documents for a complete and accurate description of their contents.

27 114. Mr. Feathers denies the allegations in paragraph 114.

28 115. Mr. Feathers denies the allegations in paragraph 115.

1 116. Mr. Feathers denies the allegations in paragraph 116.

2 117. Mr. Feathers denies the allegations in paragraph 117.

3 118. Mr. Feathers denies the allegations in paragraph 118.

4 119. Mr. Feathers incorporates by reference his responses to paragraphs 1 through 118 above.

5 120. Paragraph 120 states legal conclusions to which no response is required; to the extent a response is
6 deemed necessary, Mr. Feathers denies the allegations.

7 121. Paragraph 121 states legal conclusions to which no response is required; to the extent a response is
8 deemed necessary, Mr. Feathers denies the allegations.

9 122. Mr. Feathers incorporates by reference his responses to paragraphs 1 through 118 above.

10 123. Paragraph 123 states legal conclusions to which no response is required; to the extent a response is
11 deemed necessary, Mr. Feathers denies the allegations.

12 124. Paragraph 124 states legal conclusions to which no response is required; to the extent a response is
13 deemed necessary, Mr. Feathers denies the allegations.

14 125. Mr. Feathers incorporates by reference his responses to paragraphs 1 through 118 above.

15 126. Paragraph 126 states legal conclusions to which no response is required; to the extent a response is
16 deemed necessary, Mr. Feathers denies the allegations.

17 127. Paragraph 127 states legal conclusions to which no response is required; to the extent a response is
18 deemed necessary, Mr. Feathers denies the allegations.

19 128. Mr. Feathers incorporates by reference his responses to paragraphs 1 through 118 above.

20 129. Paragraph 129 states legal conclusions to which no response is required; to the extent a response is
21 deemed necessary, Mr. Feathers denies the allegations.

22 130. Paragraph 130 states legal conclusions to which no response is required; to the extent a response is
23 deemed necessary, Mr. Feathers denies the allegations.

24 131. Paragraph 131 states legal conclusions to which no response is required; to the extent a response is
25 deemed necessary, Mr. Feathers denies the allegations.

26 132. Paragraph 132 states legal conclusions to which no response is required; to the extent a response is
27 deemed necessary, Mr. Feathers denies the allegations.

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1 133. Paragraph 133 states legal conclusions to which no response is required; to the extent a response is
2 deemed necessary, Mr. Feathers denies the allegations.

3 **AFFIRMATIVE DEFENSES**

4 Mr. Feathers sets forth below his affirmative defenses. Each defense is asserted as to all causes of action
5 against him. By setting forth these affirmative defenses, Mr. Feathers does not assume the burden of proving any fact,
6 issue or element of a claim where such burden properly belongs to the SEC.

7 **FIRST AFFIRMATIVE DEFENSE**

8 The SEC's Complaint, and each of its purported claims, fails to state a claim upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Mr. Feathers reasonably relied upon the advice of SB Capital's legal counsel, including but not limited to
11 outside counsel and legal consultants.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Mr. Feathers relied in good faith on the advice, professional judgments and opinions of others, including but
14 not limited to internal and external accounting and legal professionals, concerning matters which he reasonably
15 believed to be within such persons' professional or expert competence.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 The SEC's claim for injunctive relief is barred because, *inter alia*, there has been no violation of the Securities
18 and Exchange Act and because there is no reasonable likelihood that any violation will be repeated. The SEC's claim
19 for injunctive relief is further barred because the adverse effects of an injunction far outweigh any benefit.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 The SEC's claim for penalties is barred because, *inter alia*, any violation was isolated and/or unintentional.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 The SEC's claim for disgorgement is barred because, *inter alia*, Mr. Feathers never received any ill-gotten
24 profits or economic gains as a result of any of the actions in the Complaint.

1 Mr. Feathers hereby gives notice that he intends to rely upon such other and further defenses as may become
2 available or apparent during pretrial proceedings in this action and hereby reserves all rights to amend this Answer and
3 all such defenses.

4 **PRAYER FOR RELIEF**

5 Wherefore, Mr. Feathers respectfully requests that the Court:

- 6 1. Enter judgment in favor of Mr. Feathers and against the SEC on all alleged claims for relief;
- 7 2. Dismiss the claims against Mr. Feathers with prejudice;
- 8 3. Award Mr. Feathers his attorney's fees and costs in defending this Action; and
- 9 4. Granting such other and further relief as the Court deems just and proper.

10 Dated: August 24, 2012

BRAUNHAGEY & BORDEN LLP

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13 By: _____
Mark P. Fickes

14 Attorneys for Defendant Mark Feathers

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16 **DEMAND FOR JURY TRIAL**

17 Mr. Feathers hereby requests a trial by jury.

18 Dated: August 24, 2012

BRAUNHAGEY & BORDEN LLP

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21 By: _____
Mark P. Fickes

22 Attorneys for Defendant Mark Feathers

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