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10 UNITED STATES DISTRICT COURT
11 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,
18 LLC; and SBC PORTFOLIO FUND, ~~LLC~~ LLC,

19 Defendants.
20

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

~~PROPOSED~~ **AMENDED** TEMPORARY
RESTRAINING ORDER AND ORDERS: (1)
FREEZING ASSETS; (2) PROHIBITING THE
DESTRUCTION OF DOCUMENTS; (3)
GRANTING EXPEDITED DISCOVERY; (4)
REQUIRING ACCOUNTINGS; AND (5)
APPOINTING A TEMPORARY RECEIVER;
AND ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION AND
APPOINTMENT OF A PERMANENT
RECEIVER

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~~PROPOSED~~ TEMPORARY
RESTRAINING ORDER AND ORDERS

1 This matter came to be heard upon the *Ex Parte* Application of Plaintiff Securities
2 and Exchange Commission (“Commission”) for a Temporary Restraining Order and Orders: (1)
3 Freezing Assets, (2) Prohibiting the Destruction of Documents, (3) Granting Expedited
4 Discovery, (4) Requiring Accountings, and (5) Appointing a Temporary Receiver; and Order to
5 Show Cause re Preliminary Injunction and Appointment of a Permanent Receiver (the
6 “Application”).

7 The Court, having considered the Commission’s Complaint, the Application, the
8 supporting Memorandum of Points and Authorities, Declarations and Exhibits, and other
9 evidence and argument presented regarding the Application, **including the recently submitted**
10 **supplemental declaration and supporting exhibits**, finds that:

11 A. This Court has jurisdiction over the parties to, and the subject matter of, this
12 action.

13 B. ~~Good cause exists to believe~~ **The SEC has made a prima facie case** that
14 defendants Mark Feathers, Small Business Capital Corp. (“SB Capital”), Investors Prime Fund,
15 LLC (“IPF”), and SBC Portfolio Fund, LLC (“SPF”), and each of them, have engaged in, are
16 engaging in, and are about to engage in transactions, acts, practices and courses of business that
17 constitute violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
18 §§ 77q(a), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §
19 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and Section 15(a) of the Exchange
20 Act, 15 U.S.C § 78o(a).

21 C. The Commission has demonstrated a probability of success on the merits in this
22 action and the possibility of dissipation of assets.

23 D. Good cause exists to believe that defendants will continue to engage in such
24 violations to the immediate and irreparable loss and damage to investors and to the general
25 public unless they are restrained and enjoined.

26 E. It is appropriate and the interests of justice require that the Commission’s
27 Application be granted without notice to the defendants as the Commission has set forth in its
28 Application the reasons supporting its claim that notice should not be required, and it appears

1 from specific facts shown by the declarations filed by the Commission that immediate and
2 irreparable injury, loss, or damage will result if notice to the defendants is given.

3 **I.**

4 IT IS HEREBY ORDERED that the Commission's Application for a Temporary
5 Restraining Order and Orders: (1) Freezing Assets, (2) Appointing a Temporary Receiver, (3)
6 Prohibiting the Destruction of Documents, (4) Granting Expedited Discovery, and (5) Requiring
7 Accountings; and Order to Show Cause Re Preliminary Injunction and Appointment of a
8 Permanent Receiver is GRANTED.

9 **II.**

10 IT IS FURTHER ORDERED that defendants Feathers, SB Capital, IPF, and SPF, and
11 their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those
12 persons in active concert or participation with any of them, who receive actual notice of this
13 Order, by personal service or otherwise, and each of them, be and hereby are temporarily
14 restrained and enjoined from, directly or indirectly, in the offer or sale of any securities, by the
15 use of any means or instruments of transportation or communication in interstate commerce or
16 by the use of the mails:

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

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

25 **III.**

26 IT IS FURTHER ORDERED that defendants Feathers, SB Capital, IPF, and SPF, and
27 their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those
28 persons in active concert or participation with any of them, who receive actual notice of this

1 Order, by personal service or otherwise, and each of them, be and hereby are temporarily
2 restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of
3 any security, by the use of any means or instrumentality of interstate commerce, or of the mails,
4 or of any facility of any national securities exchange:

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

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

13 **IV.**

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

22 **V.**

23 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, defendants
24 Feathers, SB Capital, IPF, and SPF, and their officers, agents, servants, employees, attorneys,
25 subsidiaries and affiliates, and those persons in active concert or participation with any of them,
26 who receive actual notice of this Order, by personal service or otherwise, and each of them, be
27 and hereby are temporarily restrained and enjoined from, directly or indirectly:

- 1 A. transferring, assigning, selling, hypothecating, changing, wasting, dissipating,
 2 converting, concealing, encumbering, or otherwise disposing of, in any manner,
 3 any funds, assets, securities, claims, or other real or personal property, wherever
 4 located, of defendants Feathers, SB Capital, IPF, and SPF, or their subsidiaries or
 5 affiliates, owned by, controlled by, managed by or in the possession or custody of
 6 any of them;
- 7 B. transferring, assigning, selling, hypothecating, encumbering, or otherwise
 8 disposing of any securities, including, but not limited to, any investment contracts
 9 or other securities of defendants Feathers, SB Capital, IPF, and SPF, or any of
 10 their subsidiaries or affiliates.

11 **VI.**

12 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, an
 13 immediate freeze shall be placed on all monies and assets (with an allowance for necessary and
 14 reasonable living expenses to be granted only upon good cause shown by application to the
 15 Court with notice to and an opportunity for the Commission to be heard) in all accounts at any
 16 bank, financial institution or brokerage firm, all certificates of deposit, and other funds or assets,
 17 held in the name of, for the benefit of, or over which account authority is held by defendants
 18 Feathers, SB Capital, IPF, and SPF, or any entity affiliated with any of them, including, but not
 19 limited to, the accounts set forth below:

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Defendant	Account Number Ending In	Bank Name
IPF	3596	Heritage Bank of Commerce
IPF	3513	Heritage Bank of Commerce
IPF	5437	Lighthouse Bank
IPF	1619	Bridge Bank
IPF	4468	Bridge Bank
IPF	4351	Bridge Bank
IPF	6093	Wells Fargo Bank
IPF	0023	Community Bank of the Bay
IPF	7590	Torrey Pines Bank
IPF	6440	Alta Alliance Bank

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1	IPF	1610	High Desert Bank
	IPF	0819	High Desert Bank
2	SPF	3695	Heritage Bank of Commerce
3	SPF	3554	Heritage Bank of Commerce
	SPF	8602	Wells Fargo Bank
4	SPF	2470	Torrey Pines Bank
5	SPF	7113	The Private Bank of the Peninsula
	SPF	4991	The Private Bank of the Peninsula
6	SB Capital, LLC	4172	Heritage Bank of Commerce
7	SB Capital, LLC	3984	Heritage Bank of Commerce
	SB Capital, LLC	5452	Lighthouse Bank
8	SB Capital, LLC	0149	California Business Bank
9	SB Capital, LLC	1238	Pan Pacific Bank
	SB Capital Corp.	4172	Heritage Bank of Commerce
10	SB Capital Corp.	3984	Heritage Bank of Commerce
	SB Capital Corp.	5452	Lighthouse Bank
11	SB Capital Corp.	0149	California Business Bank
12	SB Capital Corp.	1238	Pan Pacific Bank
	SBC Sr. Com'l Mtg. Fund	4354	Heritage Bank of Commerce
13	Feathers	<i>unknown</i>	Heritage Bank of Commerce
	Feathers	<i>unknown</i>	Lighthouse Bank
14	Feathers	<i>unknown</i>	California Business Bank
15	Feathers	<i>unknown</i>	Pan Pacific Bank
	Feathers	<i>unknown</i>	Bridge Bank
16	Feathers	<i>unknown</i>	Wells Fargo Bank
	Feathers	<i>unknown</i>	Community Bank of the Bay
17	Feathers	<i>unknown</i>	Torrey Pines Bank
18	Feathers	<i>unknown</i>	Alta Alliance Bank
	Feathers	<i>unknown</i>	High Desert Bank
19	Feathers	<i>unknown</i>	Private Bank of the Peninsula

VII.

IT IS FURTHER ORDERED that Thomas A. Seaman is appointed as temporary receiver of defendants SB Capital, IPF, and SPF, and their subsidiaries and affiliates, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), chooses in action, books, records, papers and other property belonging to, being managed by or in the possession of or control of SB Capital, IPF, and SPF, and their subsidiaries and affiliates, and that such receiver is immediately authorized, empowered and directed:

- 1 A. to have access to and to collect and take custody, control, possession, and charge
2 of all funds, assets, collateral, premises (whether owned, leased, occupied, or
3 otherwise controlled), choses in action, books, records, papers and other real or
4 personal property, wherever located, of or managed by SB Capital, IPF, and SPF,
5 and their subsidiaries and affiliates, with full power to sue, foreclose, marshal,
6 collect, receive, and take into possession all such property (including access to
7 and taking custody, control, and possession of all such SB Capital, IPF, and SPF
8 property, and that of their subsidiaries and affiliates;
- 9 B. to have control of, and to be added as the sole authorized signatory for, all
10 accounts of the entities in receivership, including all accounts at any bank, title
11 company, escrow agent, financial institution or brokerage firm (including any
12 futures commission merchant) which has possession, custody or control of any
13 assets or funds of SB Capital, IPF, and SPF, and their subsidiaries and affiliates,
14 or which maintains accounts over which SB Capital, IPF, and SPF, and their
15 subsidiaries and affiliates, and/or any of their employees or agents have signatory
16 authority;
- 17 C. to conduct such investigation and discovery as may be necessary to locate and
18 account for all of the assets of or managed by SB Capital, IPF, and SPF, and their
19 subsidiaries and affiliates, and to engage and employ attorneys, accountants and
20 other persons to assist in such investigation and discovery;
- 21 D. to take such action as is necessary and appropriate to preserve and take control of
22 and to prevent the dissipation, concealment, or disposition of any assets of or
23 managed by SB Capital, IPF, and SPF, and their subsidiaries and affiliates;
- 24 E. to make an accounting, as soon as practicable, to this Court and the Commission
25 of the assets and financial condition of SB Capital, IPF, and SPF, and to file the
26 accounting with the Court and deliver copies thereof to all parties;
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1 F. to make such payments and disbursements from the funds and assets taken into
2 custody, control, and possession or thereafter received by him or her, and to incur,
3 or authorize the making of, such agreements as may be necessary and advisable in
4 discharging his or her duties as temporary receiver;

5 G. to employ attorneys, accountants, and others to investigate and, where
6 appropriate, to institute, pursue, and prosecute all claims and causes of action of
7 whatever kind and nature which may now or hereafter exist as a result of the
8 activities of present or past employees or agents of SB Capital, IPF, and SPF, and
9 their subsidiaries and affiliates; and

10 H. to have access to and monitor all mail, electronic mail, and video phone of the
11 entities in receivership in order to review such mail, electronic mail, and video
12 phone which he or she deems relates to their business and the discharging of his
13 or her duties as temporary receiver.

14 **VIII.**

15 IT IS FURTHER ORDERED that defendants Feathers, SB Capital, IPF, and SPF, their
16 subsidiaries and affiliates, including all of the other entities in receivership, and their officers,
17 agents, servants, employees and attorneys, and any other persons who are in custody, possession
18 or control of any assets, collateral, books, records, papers or other property of or managed by any
19 of the entities in receivership, shall forthwith give access to and control of such property to the
20 temporary receiver.

21 **IX.**

22 IT IS FURTHER ORDERED that no officer, agent, servant, employee or attorney of
23 Feathers, SB Capital, IPF, and SPF shall take any action or purport to take any action, in the
24 name of or on behalf of SB Capital, IPF, and SPF, without the written consent of the temporary
25 receiver or order of this Court.

X.

IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency of this receivership, all clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors and all other persons or entities seeking relief of any kind, in law or in equity, from Feathers, SB Capital, IPF, and SPF, or their subsidiaries or affiliates, and all persons acting on behalf of any such investor, trust beneficiary, note holder, creditor, claimant, lessor, consultant group or other person, including sheriffs, marshals, servants, agents, employees and attorneys, are hereby restrained and enjoined from, directly or indirectly, with respect to these persons and entities:

- A. commencing, prosecuting, continuing or enforcing any suit or proceeding (other than the present action by the Commission or any other action by the government) against any of them;
- B. using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property or property interests owned by or in the possession of SB Capital, IPF, and SPF; and
- C. doing any act or thing whatsoever to interfere with taking control, possession or management by the temporary receiver appointed hereunder of the property and assets owned, controlled or managed by or in the possession of SB Capital, IPF, and SPF, or in any way to interfere with or harass the temporary receiver or his or her attorneys, accountants, employees, or agents or to interfere in any manner with the discharge of the temporary receiver's duties and responsibilities hereunder.

XI.

IT IS FURTHER ORDERED that defendants Feathers, SB Capital, IPF, and SPF, and their subsidiaries, affiliates, officers, agents, servants, employees and attorneys, shall cooperate

1 with and assist the temporary receiver and shall take no action, directly or indirectly, to hinder,
2 obstruct, or otherwise interfere with the temporary receiver or his or her attorneys, accountants,
3 employees or agents, in the conduct of the temporary receiver's duties or to interfere in any
4 manner, directly or indirectly, with the custody, possession, management, or control by the
5 temporary receiver of the funds, assets, collateral, premises, and choses in action described
6 above.

7 **XII.**

8 IT IS FURTHER ORDERED that defendants Feathers, SB Capital, IPF, and SPF, and
9 their subsidiaries and affiliates, shall pay the costs, fees and expenses of the temporary receiver
10 incurred in connection with the performance of his or her duties described in this Order,
11 including the costs and expenses of those persons who may be engaged or employed by the
12 temporary receiver to assist him or her in carrying out his or her duties and obligations. All
13 applications for costs, fees, and expenses for services rendered in connection with the
14 receivership other than routine and necessary business expenses in conducting the receivership,
15 such as salaries, rent, and any and all other reasonable operating expenses, shall be made by
16 application setting forth in reasonable detail the nature of the services and shall be heard by the
17 Court.

18 **XIII.**

19 IT IS FURTHER ORDERED that no bond shall be required in connection with the
20 appointment of the temporary receiver. Except for an act of gross negligence, the temporary
21 receiver shall not be liable for any loss or damage incurred by any of the defendants, their
22 officers, agents, servants, employees and attorneys or any other person, by reason of any act
23 performed or omitted to be performed by the temporary receiver in connection with the discharge
24 of his or her duties and responsibilities.

25 **XIV.**

26 IT IS FURTHER ORDERED that representatives of the Commission and any other
27 government agency are authorized to have continuing access to inspect or copy any or all of the
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1 corporate books and records and other documents of Feathers, SB Capital, IPF, and SPF, and the
2 other entities in receivership, and continuing access to inspect their funds, property, assets and
3 collateral, wherever located.

4 **XV.**

5 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, defendants
6 Feathers, SB Capital, IPF, and SPF, and their officers, agents, servants, employees, attorneys,
7 subsidiaries and affiliates, including any other entities in receivership, and those persons in
8 active concert or participation with any of them, who receive actual notice of this Order, by
9 personal service or otherwise, and each of them, be and hereby are temporarily restrained and
10 enjoined from, directly or indirectly: destroying, mutilating, concealing, transferring, altering, or
11 otherwise disposing of, in any manner, any documents, which includes all books, records,
12 computer programs, computer files, computer printouts, contracts, correspondence, memoranda,
13 brochures, or any other documents of any kind in their possession, custody or control, however
14 created, produced, or stored (manually, mechanically, electronically, or otherwise), pertaining in
15 any manner to defendants Feathers, SB Capital, IPF, and SPF, and their subsidiaries and
16 affiliates.

17 **XVI.**

18 IT IS FURTHER ORDERED that the Commission's application for expedited discovery
19 be and hereby is granted **in part** and that the Commission may take depositions of defendants
20 and non-parties upon oral examination subject to two calendar days' notice pursuant to Rules
21 30(a) and 45 of the Federal Rules of Civil Procedure, that the Commission may take more than
22 one deposition at the same time, that depositions of the defendants may be taken on any day,
23 including Saturdays, Sundays and holidays subject to two calendar days' notice, including notice
24 given personally, by facsimile or by electronic mail. ~~and the Commission may take more than ten~~
25 ~~depositions.~~ **Other requests to modify the discovery limits may be made by administrative**
26 **motion.**

XVII.

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2 IT IS FURTHER ORDERED that defendant Feathers shall, within five days of the
3 issuance of this Order, prepare and deliver to the Commission a detailed and complete schedule
4 of all of his personal assets, including all real and personal property exceeding \$5,000 in value,
5 and all bank, securities, futures and other accounts identified by institution, branch address and
6 account number. The accounting shall include a description of the source(s) of all such assets.
7 Such accounting shall be filed with the Court and a copy shall be delivered to the Commission's
8 Los Angeles Regional Office. After completion of the accounting, defendant Feathers shall
9 produce to the Commission's Los Angeles Regional Office, at a time agreeable to the
10 Commission, all books, records and other documents supporting or underlying their accounting.

XVIII.

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12 IT IS FURTHER ORDERED that defendants Feathers, SB Capital, IPF, and SPF, and
13 their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, including the
14 other entities in receivership, shall, within 24 hours of the issuance of this Order, cause to be
15 prepared and delivered to the temporary receiver, a detailed and complete schedule of all desk
16 top computers, laptop computers and/or personal digital assistants ("PDA") owned and/or used
17 by them in connection with their business. In the case of defendant Feathers, he shall, within 24
18 hours of the issuance of this Order, prepare and deliver to the temporary receiver, a detailed and
19 complete schedule of all desk top computers, laptop computers and/or PDA's owned, controlled
20 or used by him for any purpose. The schedules required by this section shall include at a
21 minimum the make, model and description of each computer and/or PDA, along with its
22 location, the name of the person primarily assigned to use the computer and/or PDA, all
23 passwords necessary to access the computer and/or PDA, and all passwords necessary to access
24 and use the software contained on the computer and/or PDA. The temporary receiver shall be
25 authorized to make an electronic, digital or hard copy of all of the data contained on the
26 computers and/or PDAs.

XIX.

1 IT IS FURTHER ORDERED that defendants Feathers, SB Capital, IPF, and SPF, and
2 their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, including the
3 other entities in receivership, shall, within 24 hours of the issuance of this Order, cause to be
4 prepared and delivered to the temporary receiver, a detailed and complete schedule of all
5 passwords, usernames, and identification numbers for all web sites, email accounts, and all
6 accounts at any bank, financial institution or brokerage firm operated by or to which SB Capital,
7 IPF, and SPF have access.

8 **XX.**

9 IT IS FURTHER ORDERED, that any person who receives actual notice of this Order by
10 personal service or otherwise, and who holds, possesses, or controls assets exceeding \$5,000 for
11 the account or benefit of any of the defendants, shall within 3 days of receiving actual notice of
12 this Order provide to counsel for the Commission a written statement identifying all such assets,
13 the value of the assets, or best approximation thereof, and any account number(s) or account
14 name(s) in which the assets are held.

15 **XXI.**

16 IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire at 1:00
17 o'clock p.m. on July 10, 2012, unless, for good cause shown, it is extended or unless the parties
18 against whom it is directed consent that it may be extended for a longer period.

19 **XXII.**

20 IT IS FURTHER ORDERED that at 10:00 o'clock a.m. on July 10, 2012, or as soon
21 thereafter as the parties can be heard, the defendants, and each of them, shall appear before the
22 Honorable Edward J. Davila, Judge of the United States District Court for the Northern District
23 of California, to show cause, if there be any, why a preliminary injunction should not be granted
24 and a permanent receiver not appointed in accordance with the prayer for relief contained in this
25 Complaint filed by the Commission. Any declarations, affidavits, points and authorities, or other
26 submissions in support of, or in opposition to, the issuance of such an Order shall be filed with
27 the Court and delivered to the Commission's Los Angeles office and the offices of the
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1 defendants and/or their attorneys no later than **5:00** o'clock **p.m.** on **July 3**, 2012. Any reply
2 papers shall be filed with the Court and delivered to opposing counsel no later than **10:00**
3 o'clock **a.m.** on **July 9**, 2012. Service of all such papers shall be by electronic mail, facsimile, or
4 personal service.

5 **XXIII.**

6 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for
7 the purpose of implementing and carrying out the terms of all orders and decrees which may be
8 entered herein and to entertain any suitable application or motion for additional relief within the
9 jurisdiction of this Court.

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11 IT IS SO ORDERED.

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13 DATED: June **26**, 2012

14 TIME: **3:20 p.m.**

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18 _____
EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

19 Presented by:

20 /s/ John B. Bulgozdy
21 John B. Bulgozdy
22 Susan F. Hannan
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION