UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15755

In the Matter of

MARK FEATHERS,

Respondent.

DIVISION OF ENFORCEMENT'S
RENEWED MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

The Division of Enforcement ("Division") moves pursuant to Rule 250 of the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice for summary disposition in this follow-on proceeding against Mark Feathers ("Feathers" or "Respondent"). There is no genuine issue of material fact that Feathers has been enjoined from violating the antifraud and broker-dealer registration provisions of the federal securities laws, and that it is in the public interest to bar Feathers. The Division requests an order barring Feathers from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization, and from participating in any offering of penny stock.

This motion is supported by the Statement of Material Facts in Support of Division of Enforcement's Motion for Summary Disposition ("SMF"), and the Declaration of John B. Bulgozdy ("Bulgozdy Dec.").

II. PROCEDURAL BACKGROUND

The Commission instituted this follow-on proceeding on February 18, 2014, with an Order Instituting Proceedings ("OIP") pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), based on the district court's findings and injunction in *SEC v. Small Business Capital Corp.*, *et al.* ("*SEC v. SBCC*"), Case No. 5:12-cv-3237-EJD (N.D. Cal.).[1] The district court made extensive factual findings in deciding cross-motions for summary judgment. (*See* SMF No. 2; Bulgozdy Dec., Exhibit 2; *see also SEC v. SBCC*, 2013 WL 4455850 (N.D. Cal. Aug. 16, 2013).) Thereafter, the court permanently enjoined Feathers from future violations of the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) the Securities Act of 1933 ("Securities Act"), and the broker-dealer registration provisions of Section 15(a)(1) of the Exchange Act. (SMF Nos. 3, 4; Bulgozdy Dec., Exhibit 1; *see also SEC v. SBCC*, 2013 WL 5955669 (N.D. Cal. Nov. 6, 2013).)

Feathers was served with the OIP on February 24, 2014. On October 4, 2019, the Commission remanded this proceeding to provide Respondent with a new hearing before an administrative law judge who did not previously participate in the matter.[2] On January 27, 2020, Respondent served his Answer and Defenses, which incorporated by reference his March 12, 2014 Answer. On February 28, 2014, and again on January 29, 2020, the Division produced all

[1] After the OIP was instituted, the Ninth Circuit affirmed in all respects the district court's findings in *SEC v. SBCC*. *See SEC v. Feathers*, 774 Fed. App'x 354 (9th Cir. 2019), *amended as to costs*, 773 Fed. App'x 929 (Mem) (9th Cir. 2019). (*See* SMF No. 10.)
[2] Release No. 87226 (Oct. 4, 2019).

responsive, non-privileged documents to Respondent pursuant to Rule 230 of the Commission's Rules of Practice. (Bulgozdy Dec. at ¶ 13.)

On October 29, 2014, Feathers was named in a 29-count indictment based upon the same conduct that gave rise to the Commission's allegations in *SEC v. SBCC. (*SMF No. 5.) On March 7, 2017, while out on bond, Feathers sent a threatening email to eight individuals with the subject line: "you will need to ask the court for extra marshals to my jury trial," and in consequence the prosecutors sought revocation of Feathers' bond. (SMF No. 6.) Feathers' bond was revoked on March 23, 2017. (SMF No. 7.) Feathers subsequently entered a plea of guilty to one count of the indictment and was sentenced on March 7, 2018.[3] (SMF Nos. 8, 9.)

III. LEGAL ARGUMENT

A. Summary Disposition is Appropriate Based on the District Court's Findings

Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, provides that a party may move for summary disposition of any or all allegations of the OIP, after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying. A hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. Rule of Practice 250(b).

[3] Feathers explicitly refers to the criminal case and plea in his Answer and concedes the relevance of the sentencing hearing transcript to this proceeding, noting that a "full copy of the sentencing hearing transcript will be presented to this court." Respondent's Answer and Defenses to OIAP, dated January 23, 2020, at p. 2, & p. 3 n.5.

Summary disposition is appropriate here because the facts have been litigated and determined in an earlier judicial proceeding, an injunction has been entered by the district court, and the sole determination concerns the appropriate sanction.[4]

B. There Is No Genuine Issue With Regard To Any Material Fact That Feathers Should Be Barred From The Securities Industry

To prevail on this motion for summary disposition, the Division must establish that: (1) Feathers has been enjoined from violating the federal securities laws, and (2) it is in the public interest to impose a bar against Feathers.

1. Feathers is subject to a permanent injunction

On November 6, 2013, the district court permanently enjoined Feathers from violations of the antifraud provisions of the federal securities laws – Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act – and the broker-dealer registration provisions of Section 15(a)(1) of the Exchange Act. (SMF Nos. 3, 4.) The injunction provides the statutory basis for this administrative proceeding.[5]

An antifraud injunction is considered to be particularly serious. *See Marshall E. Melton*, 56 S.E.C. 695, 710, 713 (2003). The public interest requires a severe sanction when a respondent's past misconduct involves fraud, because opportunities for dishonesty recur constantly in the securities business. *See Richard C. Spangler, Inc.*, 46 S.E.C. 238,252 (1976).

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[4] *See, e.g. Omar Ali Rizvi*, Initial Dec. Rel. No. 479 (Jan. 7, 2013), 2013 WL 64626 ("Commission has repeatedly upheld use of summary disposition in cases where the respondent has been enjoined and the sole determination concerns the appropriate sanction."), *notice of finality*, Release No. 69019, 2013 WL 772514 (Mar. 1, 2013).

[5] *See, e.g.*, *Douglas G. Frederick*, Initial Dec. Rel. No. 356 (Sept. 9, 2008), 94 S.E.C. Docket 212, 2008 WL 4146090, *notice of finality*, 94 S.E.C. Docket 977, 2008 WL 4500336 (Oct. 8, 2008).

2. The public interest factors support a permanent bar

The criteria for assessing the public interest are found in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Jason A. Halek*, Release No. 1376, 2019 WL 2071396, at *3 (May 9, 2019). The public interest factors include:

> The egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

Id. "The existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Michael V. Lipkin*, *supra*, 2006 WL 2422652 at *4.

a. Respondent's violations of the antifraud provisions were egregious, recurrent, and involved a high level of scienter

The first three factors are established by the court's extensive findings in *SEC v. SBCC*. (See SMF Nos. 2, 3, 4.) Feathers managed two mortgage investment funds that he established in 2007: Investors Prime Fund, LLC ("IPF"), and SBC Portfolio Fund, LLC ("SPF") (collectively the "Funds"). (SMF No. 2.) According to the offering documents of IPF and SPF issued in 2007, the manager of the Funds was Feathers' company, Small Business Capital Corporation ("SBCC"). (*Id*.)

Beginning in 2009 through 2012, Feathers made several material misstatements, misrepresentations, and omissions to the Funds' investors about fund loans and money transfers, conservative lending standards, and returns to investors. First, Feathers caused the Funds to represent to investors that there would be no loans from the Funds to the manager SBCC other than loans secured by real property, but contrary to that representation, Feathers caused the Funds to

transfer over $7 million in cash to SBCC under the guise of a "manager's note" or "due from" SBCC. (SMF No. 2.) Feathers used the money he transferred from the Funds to SBCC to pay SBCC's expenses and to manage the yield of the Funds. (*Id*.) Feathers made these transfers under the guise of a "due from" SBCC to the Funds. This provided a mechanism for the Funds to transfer money to SBCC, which was not earning any net management fees from the Funds under the terms of the offering documents. In addition, recording expenses as a "due from" effectively converted the excess expenses into an "asset" of the Funds rather than a liability, which allowed the Funds to give the misleading appearance that they were generating net income necessary to pay the target yield of returns to investors. (*Id.*)

Second, Feathers caused the Funds to represent that they adhered to conservative lending standards by only making secured loans, but contrary to that representation, Feathers caused the Funds to make unsecured loans to SBCC, which had no ability to repay the loans. The Funds' disclosures stated that all loans made by the Funds were to be secured by deeds of trust and the Funds would use conservative 65% or 75% loan-to-value guidelines. (*Id*.) These representations were materially false and misleading, because the loans and money transfers Feathers caused the Funds to make to SBCC were not secured by any real property, and there was no loan-to-value ratio for these unsecured loans. (*Id*.) Third, Feathers caused the Funds to represent that member returns would be paid from profits generated by the Funds' investments, but in fact the Funds were not profitable and Feathers used investors' money to make "Ponzi-like payments" of returns to investors. (*Id*.)

The court found that there was "abundant evidence demonstrating that Feathers acted intentionally and recklessly in carrying out the misrepresentations and misstatements . . . ." (*Id*.) For example, Feathers prepared and distributed the IPF and SPF offering circulars from at least

2009 to 2011 that clearly prohibited loans to SBCC, yet at the same time Feathers caused the Funds to transfer over $7 million to SBCC. (*Id.*) In addition, "Feathers' creation and utilization of 'due from' and 'manager's note' accounting evinces Feathers' intent to deceive the investors as to the true amount of cash in the Funds . . . . the 'due from' device actively disguised the true financial performance of the Funds." (*Id.*) Feathers' "interaction with the auditor of the Funds further evinces an intent to deceive or recklessness in his management of the Funds and representations made to investors." (*Id.*) Feathers was advised by his auditor and his lawyer that transferring money from the Funds to SBCC as loans violated the offering documents, yet continued with his unlawful conduct and rejected the advice of these professionals. (*Id.*)

Thus, Feathers made multiple misstatements and omissions, over a period of years, with a high degree of scienter, in violation of the antifraud provisions of the federal securities laws. (SMF No. 2.)[6]

b. Feathers operated an unregistered broker-dealer

Feathers also violated the broker-dealer registration provisions of the Exchange Act. Feathers and SBCC actively solicited new investments in IPF and SPF, and Feathers and SBCC employed investor representatives who were paid a salary and commission for sales of securities of IPF and SPF. Feathers and SBCC had been selling IPF and SPF securities regularly for years, with sales of at least $46 million of securities in these Funds. (SMF No. 2.)

[6] At the sentencing hearing in the criminal case, the Judge recited that Feathers' guilty plea in that case meant Feathers agreed he knowingly participated in a scheme to defraud, that he knew his statements were false when made and that the statements or promises were material, and that he acted with intent to defraud. (SMF No. 9.)

c. Feathers has neither recognized the wrongful nature of his conduct, nor provided credible assurances against future violations

Feathers refuses to recognize that he did anything wrong, although the district court made explicit findings which were affirmed in all respects by the Ninth Circuit. (SMF No. 10; *see also SEC v. Feathers*, 774 Fed. App'x 354 (9th Cir. 2019), *amended as to costs*, 773 Fed. App'x 929 (Mem) (9th Cir. 2019). In 2013, the district court found that there was "no evidence" that Feathers recognized the wrongful nature of his conduct. (SMF Nos. 3, 4.). Feathers' refusal to acknowledge the wrongful nature of his conduct has persisted to the present. In his Answer dated January 23, 2020, Feathers argues that since "June 2012 there has been a cascade of injustices against" him, that he "eventually took a plea in criminal court to a single government-manufactured count of mail fraud," that he "operated legitimate business enterprises," and that he is "*not guilty of charges* outlined in the OIPA of 2014."[7] In subsequent filings in this matter, Feathers defiantly refuses to recognize that he did anything wrong. For example, in an April 7, 2020 filing, Feathers requested an investigation of the Commission's staff in connection with the filing of the injunctive action *SEC v. SBCC*.[8] In an April 17, 2020 filing, Feathers argued that the Funds' securities offerings made in 2009 through 2012 were "ostensibly exempt from federal securities laws . . . ."[9] In a May 1, 2020 filing, Feathers claimed that various federal agencies operating as a "cabal" had engaged in unconstitutional and occasionally criminal actions and methods . . . ."[10] Feathers' continued argument that his conduct did not amount to violations of the securities laws demonstrates that he has not meaningfully recognized the wrongful nature of his

[7] *See* Respondent's Answer at pp. 2, 3 (emphasis in original).
[8] *See* Respondent's Motion Request dated April 7, 2020 at p. 1.
[9] *See* Respondent's Answer to Court's 4-17-20 Order and Request to Modify Subpoena, at p. 1 n.2 (sent April 17, 2020).
[10] *See* Respondent's Request to Stay SEC Administrative Proceedings While Pursuing Subpoenas dated May 1, 2020 at p.1.

conduct, and he has not provided any assurances against future misconduct. *See, e.g., Peter Siris*, S.E.C. Release No. 71068, 2013 WL 6528874, at *7 (Dec. 12, 2013), *pet. for review denied*, *Siris v. SEC*, 773 F.3d 89 (D.C. Cir. 2015); *Jose P. Zollino*, Release No. 2579, 2007 WL 98919, at *6 (Jan. 16, 2007).

d. Likelihood of future violations

In issuing its injunction, the district court found: "As to the fourth factor, Feathers did not show that he would not re-enter the brokerage industry if he were able, and in his Response indicated that in the future he would hire a securities attorney so as not to violate securities law." (SMF No. 4; *see also* Bulgozdy Dec., Exhibit 1*; SEC v. SBCC*, 2013 WL 5955669, at * 2.) Feathers' failure to acknowledge his guilt or show remorse demonstrates there is a significant risk, given the opportunity, that Feathers would commit future misconduct. Absent a bar, Feathers could seek to engage in the sale of securities, acting as an unregistered broker-dealer. *See, e.g., Jose Zollino*, 2007 WL 989919, at *6, *Peter Siris*, 2013 WL 6528874, at *6-7.[11]

IV. CONCLUSION

Based on the undisputed facts, it is in the public interest to bar Respondent from the securities industry. Respondent has been enjoined against future violations of the antifraud and broker-dealer registration provisions of the federal securities laws. There is no genuine issue with regard to any material fact that Respondent's conduct was egregious, recurrent, and involved a high degree of scienter. Respondent has neither acknowledged his wrongdoing nor provided assurances against future violations, and his previous occupation presents opportunities for future

[11] During Feathers' criminal sentencing, the court expressed concern about how long Feathers would be out of the securities industry. In response to a question about Feathers' future ability to work in the securities industry, Feathers' counsel stated: "I think there would be a lifetime bar by the SEC, your Honor." (SMF No. 9.)

violations. Accordingly, the Division's motion for summary disposition should be granted, and Feathers should be barred from the securities industry.

Dated: July 31, 2020

Respectfully submitted,

/s/ John B. Bulgozdy

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IN THE MATTER OF MARK FEATHERS
ADMINISTRATIVE PROCEEDING FILE NO. [3-15755]

SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S RENEWED MOTION FOR SUMMARY DISPOSITION

was served on July 31, 2020 upon the following parties as follows:

By Email
Vanessa Countryman, Secretary
Securities and Exchange Commission
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By Email and U.S. Mail
Mark Feathers
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Menlo Park, CA 94025
Email: [redacted]
Pro Se Respondent

Dated: July 31, 2020

/s/ Sarah Mitchell
Sarah Mitchell

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15755

In the Matter of

MARK FEATHERS,

Respondent.

STATEMENT OF MATERIAL FACTS TO WHICH THERE IS NO GENUINE ISSUE IN SUPPORT OF DIVISION OF ENFORCEMENT'S RENEWED MOTION FOR SUMMARY DISPOSITION

No.	Fact	Supporting Evidence
1	On June 21, 2012, the Securities and Exchange Commission ("Commission" or "SEC") filed a Complaint in the case captioned *SEC v. Small Business Capital Corp.; Mark Feathers; Investors Prime Fund, LLC; and SBC Portfolio Fund, LLC* ("*SEC v. SBCC*"), Case No. 12-cv-03237-EJD (N.D. Cal.)	Declaration of John Bulgozdy ("Bulgozdy Dec.") at ¶ 2; *see also SEC v. SBCC*, Docket No. 591, 2013 WL 445850, at * 1 (N.D. Cal. Aug. 16, 2013).
2	In an order dated August 16, 2013 in *SEC v. SBCC*, reported at 2013 WL 4455850 (which is used for the page citations below), the district court made the following factual findings: • "Defendant Mark Feathers ("Feathers") managed two mortgage investment funds which he established in 2007: Investors Prime Fund, LLC ("IPF") and SBC Portfolio Fund, LLC ("SPF") (collectively, the "Funds")." [2013 WL 4455850 at *1 (citations omitted).] • "According to the offering documents, the Manager of the	Bulgozdy Dec. at ¶¶ 4, 5; Exhibit 2; *see also SEC v. SBCC*, Docket No. 591, 2013 WL 4455850 (N.D. Cal. Aug. 16, 2013).

	Funds was Feathers' company, Small Business Capital Corporation ("SBCC")." [*Id*. (citations omitted).] • "The IPF and SPF offering documents identified SBCC as the 'sole manager' of the Funds with the 'sole authority' to manage the affairs of the Funds." [*Id*. (citations omitted).] • "In addition, Feathers has conceded that he approved the offering documents before they were provided to investors, and that he was the 'final authority on the approval of the offering documents.'" [*Id*. (citations omitted).] • "**Misstatements Regarding Fund Loans and Money Transfers**. The first of the misrepresentations the SEC identifies is the representation that Feathers made to investors and potential investors in the Funds that there would be 'No Loans to Manager' other than certain loans secured by real property." [*Id*. at *4 (citations omitted) (emphasis in original).] • "From as early as 2009 through the date of the Receivership, a total of at least $7,497,402.51 in cash was transferred from the Funds to SBCC." [*Id*. at *5 (citations omitted).] • "The SEC asserts and has provided evidence establishing that Feathers used the money he transferred from the Funds to SBCC to pay SBCC's expenses and to manage the yields of the Funds. Feathers was able to do this under the guise of 'due from' or 'manager's note' accounting on the Funds' financial statements to supposedly account for these cash transfers." [*Id*. at *6.] • "[T]he 'due from manager' or 'manager's note' labeling had a twofold effect. First, this provided a mechanism for the Funds to pay SBCC's 'management fees' since SBCC was not earning any net management fees from the Funds under the terms of the offering documents. . . . Second, recording the transfers as 'due from' or 'manager's note' had the effect of converting the excess expenses into an 'asset' of the Funds rather than a liability. . . . This allowed the Funds to give the misleading appearance that they were still generating a net income necessary to pay the target yield of returns to investors." [*Id*. at *6 (citations omitted).] • "The SEC has also established that Feathers did not disclose to the investors that, contrary to the representations from the offering documents, cash from the Funds was being transferred to SBCC. As noted, these transfers had been	

	occurring with regard to IPF and SPF since 2009." [*Id*. at *7 (citations omitted).] • "The SEC also contends, and the Court agrees, that these misrepresentations were material. The loans and money transfers between the Funds and from the Funds to SBCC allowed Feathers to conceal or misrepresent the true net income, performance, and yield of the Funds. In that vein, the 'due from' and 'manager's note' accounting practice removed expenses and liabilities from the Funds' financial statements by virtually converting them to assets of the Funds. As such, and applying the 'reasonable investor' standard articulated by the Ninth Circuit to test materiality, the Court finds that there is a substantial likelihood that a reasonable investor would have viewed the disclosure of the truth about these loans and money transfers as altering the total mix of information made available and important information in making the decisions to invest with IPF or SPF." [*Id*. at *7 (citations omitted).] • "**Misstatements Regarding Conservative Lending Standards**. The SEC next asserts that Feathers made material misrepresentations in the Funds' offering documents that the Funds would be managed under conservative lending standards. Specifically, the Funds' disclosures stated that all loans made by the Funds would be secured by deeds of trust and the Funds have and would continue to use conservative 65% or 75% loan-to-value guidelines." [*Id*. at 7 (emphasis in original).] • "As shown in the preceding section, these representations were materially false and misleading because the loans and money transfers Feathers caused the Funds to make to SBCC were not secured by any real property, and there was no loan-to-value ratio for these unsecured loans." [*Id*. at *7.] • "Other material misrepresentations and omissions concerned the Funds' 'Operations to Date' sections in the offering documents. The documents omitted material information concerning the unsecured receivable that SBCC owed to the Funds." [*Id*. at *8.] • "Misstatements Regarding Returns to Investors. The SEC also contends, and supports those contentions with voluminous evidence, that Feathers caused the Funds to make misrepresentations regarding the returns Fund members would receive on their investments." [*Id*. at *8.] • "The SEC has provided evidence showing that despite these	

	representations, the Funds were not profitable and that the returns on members' investments were not being derived from the Funds' profits. Essentially, the SEC has shown that Feathers was not using the Fund profits to pay out returns, but rather other member investments – contrary to the representations of the Funds' offering documents – as 'Ponzi-like payments.'" [*Id*. at *8 (citations omitted).] • "The misrepresentations about the source of member returns were material for similar reasons as stated above. A reasonable investor would consider the true source of returns as important when making a decision to invest. There is a material difference between returns on an investment being derived from profits of the investment fund – as Feathers represented they would be – and those being derived from other members' investments, which is ultimately unsustainable." [*Id*. at *9 (citations omitted).] • "**Requisite Mental State**. . . . The SEC has presented abundant evidence demonstrating that Feathers acted intentionally or recklessly in carrying out the misrepresentations and misstatements presented in the preceding section. As an initial matter, it is beyond dispute that Feathers prepared and distributed the IPF and SPF offering circulars from at least 2009 to 2011, which clearly prohibited certain loans and money transfers. Rather than refraining from this prohibited conduct, Feathers continued to cause the Funds to transfer cash to SBCC and make other unsecured loans and transfers since 2009. Feathers' creation and utilization of 'due from' and 'manager's note' accounting evinces Feathers intent to deceive the investors as to the true amount of cash in the Funds, or, at the least, an extreme recklessness in his management of the Funds. In other words, Feathers' usage of the 'due from' device actively disguised the true financial performance of the Funds." [*Id*. at *9-10 (citations omitted).] • "The true effect of the 'due from' accounting device allowed Feathers to pay SBCC's management expenses (in violation of the offering documents) while deceptively making it seem the Funds were properly capitalized and yielding the target net income." [*Id*. at *10.] • "Feathers' interaction with the auditor of the Funds further evinces an intent to deceive or recklessness in his management of the Funds and representations made to investors." [*Id*.]	

	• "The SEC has presented several more communications that evince that Feathers knew that his representations to investors in his letters and offering documents were false and misleading." [*Id*.] • "For example, with regard to the 'due from' manager, in an email dated April 3, 2012, Spiegel wrote to Feathers the following: > Just because it shows a loan to the manager does not make it compliant with the OC or operating agreement. I believe we did and will again indicate in the audit report and financials, it violates the OC and operating agreement. Dennis [Doss, attorney of SBCC] and I agree that your communications to the investors are misleading. Besides the loan itself, your communication indicates the purpose of the loan which also is not consistent with the actual use of proceeds. May I suggest you get some counsel on what a proper communication to your investors should include so they are fully disclosed on all fund issues. [*Id*. *11.] • "Moreover, Feathers' decision to have the auditor issue a qualified opinion for the 2010 financial statements of the IPF and SPF serves as further circumstantial evidence demonstrating Feathers' scienter. After discovering the sizeable amounts of the 'due from' SBCC to the Funds, Spiegel informed Feathers that he could not issue an unqualified audit opinion." [*Id*. at *11 (citations omitted).] • "Feathers elected to have the Funds' outside auditor issue qualified audit opinions on the 2010 financial statements rather than rectifying the questionable accounting, paying back the money that was transferred to SBCC, or making proper disclosure to investors." [*Id*. at *11.] • "[T]he Court finds that the SEC has presented sufficient evidence to establish the elements of its securities fraud causes of action: that Feathers made material misstatements, misrepresentations, or omissions of fact to investors regarding his and SBCC's management of the Funds; that such misrepresentations were made in connection with the offer or sale of a security – specifically, the investment securities in the Funds – by means of interstate commerce; and that the misrepresentations were made with the intent to deceive investors and other parties or with extreme recklessness." [*Id*.	

	at *14.] • "Here, it is not disputed that Feathers and SBCC are the sole managers of the Funds, which technically were the issuers of the securities. Feathers and SBCC employed investor representatives who were paid a salary and a commission for the sales of securities of IPF and SPF. Feathers and SBCC actively solicited new investments in IPF and SPF. Moreover, Feathers and SBCC have been selling IPF and SPF securities regularly for years, with sales of at least $46 million of securities in these Funds. As such, the Court finds that Feathers and SBCC fall under the definition of 'brokers' under Section 15(a) of the Exchange Act." [*Id*. at *15 (citations omitted).] • "For the foregoing reasons, the Court finds as a matter of law that Defendants committed securities fraud in violation of Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act as well as Section 10(b) of the Exchange Act and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder; that SBCC operated as an unregistered broker-dealer in violation of Section 15(a) of the Exchange Act; and that Feathers and SBCC are liable as control persons under Section 20(a) of the Exchange Act." [*Id*. at *15.]	
3	In an order dated November 6, 2013, the court in SEC v. SBCC entered final judgment permanently enjoining Feathers from future violations of Section 10(b) and Rule 10b-5 thereunder of the Exchange Act, Section 15(a) of the Exchange Act, and Section 17(a) of the Securities Act; ordering Feathers to disgorge a total of $7,782,961.07 including prejudgment interest; and assessing a $10,000 second-tier civil penalty.	Bulgozdy Dec. at ¶ 3; Exhibit 1; *see also SEC v. SBCC*, Docket No. 622, 2013 WL 5955669 (N.D. Cal. Nov. 6, 2013).
4	In the court's order issuing the injunction, the Court made the following findings: • "In the Order previously issued by this Court, the Court found that Feathers violated the antitrust [sic] provisions of the federal securities laws in the past. The Court further found that the SEC produced substantial evidence of Feathers' scienter and there were multiple instances of misrepresentation, thus satisfying the first two factors. There is no evidence presented in the pleadings or in the hearing that Feathers recognizes the wrongful nature of his conduct, thus meeting the third factor. As to the fourth factor, Feathers did not show that he would not re-enter the brokerage industry if he were able, and in his Responses	Bulgozdy Dec. at ¶ 3; Exhibit 1; *see also SEC v. SBCC*, Docket No. 622, 2013 WL 5955669 (N.D. Cal. Nov. 6, 2013).

	indicated that in the future he would hire a securities attorney so as not to violate the securities law. For the fifth factor, while not recognizing his past wrongs, Feathers claims that as he has done in the past, he will continue to follow rules in the future. As a result of the Court's careful balancing of the Murphy factors and the conclusion that the SEC has met its burden to predict the likelihood of a future violation, the injunction should issue." [2013 WL 5955669 at *2.]	
5	On October 29, 2014, an indictment issued in *United States v. Mark Feathers*, 14-cr-00531-RMW (N.D. Cal.) that charged Feathers with 17 counts of securities fraud and 12 counts of mail fraud. The indictment involves Feathers' operation and management of Small Business Capital Corporation ("SBCC"), and three funds Feathers and SBCC managed: Investors Prime Fund, LLC ("IPF"), SBC Portfolio Fund, LLC ("SPF"), and SBC Senior Commercial Mortgage Fund, LLC ("SCMF").	Bulgozdy Dec. at ¶¶ 6, 7; *see also United States v. Mark Feathers*, 14-cr-00531-LHK, Docket No. 1 (N.D. Cal. Oct. 29, 2014).
6	On March 22, 2017, in *United States v. Mark Feathers*, 14-cr-00531-LHK (N.D. Cal.), the United States Attorney moved to revoke Feathers's bail pending trial and for contempt of court, based on a March 7, 2017 email that Feathers sent to eight individuals, including the court-appointed receiver, his counsel, and SEC counsel. The subject line of the message was: "you will need to ask the court for extra marshals to my jury trial." The message read: I am putting you on notice now that if the word Ponzi is used at trial, or the word swindler, or similar, I will rise out of my seat and attempt to bring injury to any party that uses the word. To and through this date you have been able to introduce prejudice with the use of the word Ponzi in public and in hidden court pleadings. You won't get away with it again (with me at least). Feathers	Bulgozdy Dec. at ¶ 8; *see also United States v. Mark Feathers*, 14-cr-00531-LHK, Docket No. 108 (N.D. Cal. Mar. 22, 2017).
7	In a Minute Order filed March 23, 2017, Feathers's bond was revoked in the criminal case *United States v. Mark Feathers*, Case No. 5-14-cr-00531-LHK.	Bulgozdy Dec. at ¶ 9; *see also United States v. Mark Feathers*, 14-cr-00531-LHK, Docket No. 109 (N.D. Cal. Mar. 23, 2017).
8	On December 20, 2017, Feathers entered a change of plea in the criminal case *United States v. Mark Feathers*, Case No. 5-14-cr-00531-LHK, and entered a plea of guilty as to Count Twenty	Bulgozdy Dec. at ¶ 10; *see also United States v. Mark Feathers*, 14-cr-00531-

	(20) of the Indictment. The Court accepted the plea and found the Defendant made a knowing, intelligent, free, and voluntary waiver of rights and entry of a guilty plea and each count was supported by an independent factual basis.	LHK, Docket No. 161 (N.D. Cal. Dec. 20, 2017).
9	On March 7, 2018, Feathers was sentenced in the criminal case *United States v. Mark Feathers*, Case No. 5-14-cr-00531-LHK. The following are partial excerpts from the transcript: • At pages 27-28: THE COURT: SO I HAVE A QUESTION ABOUT HOW LONG MR. FEATHERS IS NOT ALLOWED TO PERFORM FINANCIAL OFFERINGS. IS IT JUST FOR THE THREE-YEAR PERIOD OF SUPERVISED RELEASE? IS HE EVEN PROHIBITED? THE ONLY REASON I RAISE THIS IS ONE OF THE VICTIMS, WILLARD PHEE, SAYS THAT MR. FEATHERS SHOULD BE BARRED FOR AT LEAST 25 YEARS. I DON'T KNOW IF THAT'S AN OUTLANDISH REQUEST OR WHAT. IS HE AT ALL? IS THERE ANY RESTRICTION ON HIS ABILITY TO - - * * * THE COURT: I ASSUME THAT'S HANDLED BY THE CIVIL CASE. THE CRIMINAL CASE JUST HAS HIM NOT EMPLOYED AS A SECURITIES BROKER FOR HIS TERM OF THREE YEARS OF SUPERVISED RELEASE. AND I DON'T THINK WE WOULD HAVE JURISDICTION BEYOND THE SUPERVISED RELEASE TERM ANYWAY, SO THAT WOULD BE SOMETHING THAT'S UP TO THE SEC. MR. ILLOVSKY [FEATHERS' DEFENSE ATTORNEY]: I THINK THERE WOULD BE A LIFETIME BAR BY THE SEC, YOUR HONOR. • At pages 45-46: THE COURT: . . . . BUT, I MEAN, MR. FEATHERS HAS PLED GUILTY TO COUNT 20 OF THE INDICTMENT, AND HE HAS, BY PLEADING GUILTY, AGREED THAT HE KNOWINGLY PARTICIPATED IN THE SCHEME TO DEFRAUD, IN A SCHEME OR PLAN FOR OBTAINING MONEY OR	Bulgozdy Dec. at ¶ 11, Exhibit 4; *see also United States v. Mark Feathers*, 14-cr-00531-LHK, Docket No. 192 (N.D. Cal. Jan. 15, 2020).

	PROPERTY BY MAKING FALSE PROMISES OR STATEMENTS, THAT HE KNEW THAT THE PROMISES OR STATEMENTS WERE FALSE WHEN MADE, THAT THE PROMISES OR STATEMENTS WERE MATERIAL, THAT IS THEY WOULD REASONABLY INFLUENCE A PERSON TO PART WITH MONEY OR PROPERTY, THAT HE ACTED WITH INTENT TO DEFRAUD, AND THAT AN ESSENTIAL PART OF HIS SCHEME WAS IN CONNECTION WITH AND INVOLVING THE USE OF THE MAIL.	
10	Feathers appealed the district court's orders in *SEC v. SBCC* to the Ninth Circuit. The Ninth Circuit affirmed the district court's decisions in all respects. *SEC v. Feathers*, 774 Fed. App'x 354 (9th Cir. 2019), *amended as to costs*, 773 Fed. App'x 929 (Mem) (9th Cir. 2019). The Ninth Circuit appointed counsel to represent Feathers in his appeal.	Bulgozdy Dec. at ¶ 12.

Dated: July 31, 2020

Respectfully submitted,

/s/ John B. Bulgozdy

John B. Bulgozdy
Lynn Dean
Senior Trial Counsel
Division of Enforcement
Los Angeles Regional Office
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036
(323) 965-3322 (telephone)
(323) 965-3908 (facsimile)
Email: bulgozdyj@sec.gov
Email: deanl@sec.gov

IN THE MATTER OF MARK FEATHERS
ADMINISTRATIVE PROCEEDING FILE NO. [3-15755]

SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

STATEMENT OF MATERIAL FACTS TO WHICH THERE IS NO GENUINE ISSUE IN SUPPORT OF DIVISION OF ENFORCEMENT'S RENEWED MOTION FOR SUMMARY DISPOSITION

was served on July 31, 2020 upon the following parties as follows:

By Email
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Honorable James E Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
Email: alj@sec.gov

By Email and U.S. Mail
Mark Feathers
[redacted]
Menlo Park, CA 94025
Email: [redacted]
Pro Se Respondent

Dated: July 31, 2020

/s/ Sarah Mitchell
Sarah Mitchell

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15755

In the Matter of

MARK FEATHERS,

Respondent.

DECLARATION OF JOHN B. BULGOZDY IN SUPPORT OF RENEWED MOTION FOR SUMMARY DISPOSITION AND REQUEST FOR OFFICIAL NOTICE

I, John B. Bulgozdy, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am one of the attorneys representing the Division of Enforcement in this action. I have personal knowledge of the following facts and, if called as a witness, would testify competently thereto.

2. On June 21, 2012, the Securities and Exchange Commission ("Commission" or "SEC") filed a Complaint in the case captioned *SEC v. Small Business Capital Corp.; Mark Feathers; Investors Prime Fund, LLC; and SBC Portfolio Fund, LLC* ("*SEC v. SBCC*"), Case No. 12-cv-03237-EJD (N.D. Cal.)

3. Attached hereto as Exhibit 1 is a certified copy of the Order Granting in Part and Denying in Part Plaintiff's Motion for Injunctive Relief and Monetary Remedies entered on November 6, 2013 in *SEC v. Small Business Capital Corp., et al.*, Civil Action No. 5:12-cv-03237-

EJD, Docket No. 622 (N.D. Cal. Nov. 6. 2013). This decision is reported at 2013 WL 5955669 (N.D. Cal. Nov. 6, 2013).

4. Attached hereto as Exhibit 2 is a certified copy of the Order Granting Plaintiff's Motion for Summary Judgment; Denying Defendants' Motion for Summary Judgment, entered on August 16, 2013 in *SEC v. Small Business Capital Corp., et al.*, Civil Action No. 5:12-cv-03237-EJD, Docket No. 591 (N.D. Cal. Aug. 16, 2013). This decision is reported at 2013 WL 4455850 (N.D. Cal. Aug. 16, 2013).

5. In the Statement of Material Facts to Which There is No Genuine Issue in Support of Division of Enforcement's Motion for Summary Disposition ("SMF"), Fact 2, the excerpts set forth are true and accurate excerpts from Exhibit 2 hereto, the Order Granting Plaintiff's Motion for Summary Judgment; Denying Defendants' Motion for Summary Judgment, entered on August 16, 2013 in *SEC v. Small Business Capital Corp., et al.*, Civil Action No. 5:12-cv-03237-EJD, Docket No. 591 (N.D. Cal. Aug. 16, 2013), reported at 2013 WL 4455850.

6. The Division requests that official notice be taken, pursuant to Rule 323 of the Commission's Rules of Practice, of the proceedings in *United States v. Mark Feathers*, 14-cr-00531-LHK (N.D. Cal.).

7. According to the docket for the case *United States v. Mark Feathers*, 14-cr-00531-LHK (N.D. Cal.), on October 29, 2014, an indictment was issued that charged Feathers with 17 counts of securities fraud and 12 counts of mail fraud. The indictment involves Feathers' operation and management of Small Business Capital Corporation ("SBCC"), and three funds Feathers and SBCC managed: Investors Prime Fund, LLC ("IPF"), SBC Portfolio Fund, LLC ("SPF"), and SBC Senior Commercial Mortgage Fund, LLC ("SCMF"). The indictment is Docket No. 1 in that

proceeding. The Division requests that official notice be taken, pursuant to Rule 323 of the Commission's Rules of Practice, of Docket No. 1 in the criminal proceedings.

8. Attached hereto as Exhibit 3 is a true and correct copy of the United States' Motion for Revocation of Release Pending Trial and for Contempt of Court, Docket No. 108, filed March 22, 2017, in *United States v. Mark Feathers*, 14-cr-00531-LHK (N.D. Cal.). Paragraph 6 of the motion states:

> On March 7, 2017, the defendant sent an email to eight individuals. *See* Exhibit 1, attached hereto in redacted form. The subject line of the message was captioned "you will need to ask the court for extra marshals to my jury trial" and the full text of the message read as follows:
>
> > I am putting you on notice now that if the word Ponzi is used at trial, or the word swindler, or similar, I will rise out of my seat and attempt to bring injury to any party that uses the word.
> > To and through this date you have been able to introduce prejudice with the use of the word Ponzi in public and in hidden court pleadings. You won't get away with it again (with me at least).
> > Feathers.

Paragraph 7 of the motion states:

> Of the eight individuals whose addresses were included on the "to line" of the email, six have now been interviewed by the Federal Bureau of Investigation ("FBI"). *See* Exhibit 2, Declaration of Christine White, attached hereto. Four of those six are attorneys for the SEC; another is the receiver appointed by the Court in the *Small Business Capital* matter; the sixth individual is an attorney representing the receiver in that same case. The other two individuals listed on the "to line" of the email message are the defendant's current and immediately prior counsel of record.

9. The Division requests that official notice be taken, pursuant to Rule 323 of the Commission's Rules of Practice, of Docket No. 109, filed March 23, 2017, in *United States v. Mark Feathers*, 14-cr-00531-LHK (N.D. Cal.). Docket No. 109 is a Minute Order which revoked Feathers' bond, stating in pertinent part: "Conditions of Release are REVOKED. Defendant is

REMANDED. Defendant to self-surrender to Marshals by 3/24/17 no later than 2:00pm." (emphasis in original).

10. The Division requests that official notice be taken, pursuant to Rule 323 of the Commission's Rules of Practice, of the Docket No. 161, filed December 20, 2017, in *United States v. Mark Feathers*, 14-cr-00531-LHK (N.D. Cal.). Docket No. 161, captioned "Criminal Minutes," provides in pertinent part: "A Plea Agreement was executed in open court. Defendant entered a plea of guilty as to County Twenty (20) of the Indictment. ECF No. 1. The Court **ACCEPTED** the plea and found the Defendant made a knowing, intelligent, free, and voluntary waiver of rights and entry of a guilty plea and each count was supported by an independent factual basis." (emphasis in original).

11. Attached hereto as Exhibit 4 is a true and correct copy of the Transcript of Proceedings Before the Honorable Lucy H. Koh, United States District Judge, dated March 7, 2018, filed January 15, 2020, Docket No. 192, in *United States v. Mark Feathers*, 14-cr-00531-LHK (N.D. Cal.). The following is a true and correct excerpt of portions of the transcript found at pages 27-28:

> THE COURT: SO I HAVE A QUESTION ABOUTY HOW LONG MR. FEATHERS IS NOT ALLOWED TO PERFORM FINANCIAL OFFERINGS. IS IT JUST FOR THE THREE-YEAR PERIOD OF SUPERVISED RELEASE? IS HE EVEN PROHIBITED?
>
> THE ONLY REASON I RAISE THIS IS ONE OF THE VICTIMS, WILLARD PHEE, SAYS THAT MR. FEATHERS SHOULD BE BARRED FOR AT LEAST 25 YEARS. I DON'T KNOW IF THAT'S AN OUTLANDISH REQUEST OR WHAT. IS HE AT ALL? IS THERE ANY RESTRICTION ON HIS ABILITY TO - -
>
> * * *
>
> THE COURT: I ASSUME THAT'S HANDLED BY THE CIVIL CASE. THE CRIMINAL CASE JUST HAS HIM NOT EMPLOYED AS A SECURITIES BROKER FOR HIS TERM OF THREE YEARS OF SUPERVISED RELEASE. AND I DON'T THINK WE WOULD HAVE JURISDICTION BEYOND THE SUPERVISED RELEASE TERM ANYWAY, SO THAT WOULD BE SOMEHITNG THAT'S UP TO THE SEC.

> MR. ILLOVSKY [FEATHERS' DEFENSE ATTORNEY]: I THINK THERE WOULD BE A LIFETIME BAR BY THE SEC, YOUR HONOR.

The following is a true and correct excerpt of the transcript at pages 45-46:

> THE COURT: . . . . BUT, I MEAN, MR. FEATHERS HAS PLED GUILTY TO COUNT 20 OF THE INDICTMENT, AND HE HAS, BY PLEADING GUILTY, AGREED THAT HE KNOWINGLY PARTICIPATED IN THE SCHEME TO DEFRAUD, IN A SCHEME OR PLAN FOR OBTAINING MONEY OR PROPERTY BY MAKING FALSE PROMISES OR STATEMENTS, THAT HE KNEW THAT THE PROMISES OR STATEMENTS WERE FALSE WHEN MADE, THAT THE PROMISES OR STATEMENTS WERE MATERIAL, THAT IS THEY WOULD REASONABLY INFLUENCE A PERSON TO PART WITH MONEY OR PROPERTY, THAT HE ACTED WITH INTENT TO DEFRAUD, AND THAT AN ESSENTIAL PART OF HIS SCHEME WAS IN CONNECTION WITH AND INVOLVING THE USE OF THE MAIL.

12. Feathers appealed the district court's orders in *SEC v. SBCC* to the Ninth Circuit. The Ninth Circuit affirmed the district court's decisions in all respects. *SEC v. Feathers*, 774 Fed. App'x 354 (9th Cir. 2019), *amended as to costs*, 773 Fed. App'x 929 (Mem) (9th Cir. 2019). The Ninth Circuit appointed counsel to represent Feathers in his appeal.

13. On February 28, 2014, and again on January 29, 2020, the Division produced all responsive, non-privileged documents to Respondent pursuant to Rule 230 of the Commission's Rules of Practice.

14. On July 31, 2020, the Division served on Feathers a Notice to Pro Se Defendant, a true and correct copy of which is attached hereto as Exhibit 5.

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

Executed on July 31, 2020 in Los Angeles, California.

/s/ John B. Bulgozdy
John B. Bulgozdy

IN THE MATTER OF MARK FEATHERS
ADMINISTRATIVE PROCEEDING FILE NO. [3-15755]

SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

DECLARATION OF JOHN B. BULGOZDY IN SUPPORT OF RENEWED MOTION FOR SUMMARY DISPOSITION AND REQUEST FOR OFFICIAL NOTICE

was served on July 31, 2020 upon the following parties as follows:

By Email
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Honorable James E Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
Email: alj@sec.gov

By Email and U.S. Mail
Mark Feathers
[redacted]
Menlo Park, CA 94025
Email: [redacted]
Pro Se Respondent

Dated: July 31, 2020

/s/ Sarah Mitchell
Sarah Mitchell

EXHIBIT 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. SMALL BUSINESS CAPITAL CORP.; MARK FEATHERS; INVESTORS PRIME FUND, LLC; and SBC PORTFOLIO FUND, LLC, Defendants.	Case No.: 5:12-CV-03237-EJD **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF AND MONETARY REMEDIES** **[Re: Docket Item No. 602]**

In this civil enforcement action brought under several federal securities laws, presently before the Court is Plaintiff Securities and Exchange Commission's ("SEC" or "Plaintiff") Motion for Injunctive Relief and Monetary Remedies against Defendant Mark Feathers ("Feathers" or "Defendant") for violations of the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). Plaintiff requests a three-pronged remedy, which includes a permanent injunction against violations of specific provisions of federal securities law, disgorgement of a total amount of $7,782,961.07, and a civil penalty in the amount of $300,000.

The Court, having entered Summary judgment against Defendant Feathers on August

16, 2013, and having fully reviewed and considered the SEC's Motion, along with all other pleadings and exhibits submitted by the parties, and heard oral arguments presented by both parties at the hearing on October 22, 2013, and good cause appearing, orders that the SEC's Motion for Injunctive Relief and Monetary Remedies against Defendant Mark Feathers is GRANTED in part and DENIED in part.

I. Permanent Injunction

In the hearing, the SEC presented its arguments in support of the permanent injunction against Defendant from future violations of Section 17(a) of the Securities Act, 15. U.S.C. §77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10-b thereunder, 17 C.F.R. §240.10b-5, and Section 15(a)(1) of the Exchange Act, 15 U.S.C. §78o(a)(1). The Securities Act and Exchange Act provide for injunctive relief upon a proper showing that there is a reasonable likelihood of future violations of the securities law. In its argument supporting an injunction, the SEC included the factors articulated by the Ninth Circuit Court of Appeals in SEC v. Murphy, 626 F.2d 633 (9th Cir. 1980), which the Court can use to assess the likelihood of future violations. In Murphy, the Ninth Circuit noted that the existence of past violations may give rise to an inference that there will be future violations, but the Court must assess the totality of the circumstances surrounding the defendant and his violations to predict the likelihood of future violations, which include factors such as: (1) the degree of scienter involved; (2) the isolated or recurrent nature of the infraction; (3) the defendant's recognition of the wrongful nature of his conduct; (4) the likelihood, because of defendant's professional occupation, that future violations might occur; and (5) the sincerity of his assurances against future violations. Id. at 655.

During the hearing, the Court provided Defendant Feathers with the opportunity to respond to the Murphy elements presented by the SEC. Defendant Feathers addressed only the two last factors listed above. Feathers expressed to the Court that in his career he has always followed the rules, and will continue to do so in the future. Feathers further presented to the Court that he is currently employed at a printing company.

The Court weighed all the factors and found that Feathers did not meet his burden to rebut the SEC's presentation. In the Order previously issued by this Court, the Court found that Feathers violated the antitrust provisions of the federal securities laws in the past. The Court further found that the SEC produced substantial evidence of Feathers' scienter and there were multiple instances of misrepresentation, thus satisfying the first two factors. There is no evidence presented in the pleadings or in the hearing that Feathers recognizes the wrongful nature of his conduct, thus meeting the third factor. As to the fourth factor, Feathers did not show that he would not re-enter the brokerage industry if he were able, and in his Response indicated that in the future he would hire a securities attorney so as not to violate securities law. For the fifth factor, while not recognizing his past wrongs, Feathers claims that as he has done in the past, he will continue to follow rules in the future. As a result of the Court's careful balancing of the Murphy factors and the conclusion that the SEC has met its burden to predict the likelihood of a future violation, the injunction should issue.

IT IS HEREBY ORDERED that Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS HEREBY FURTHER ORDERED that Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

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

II. Disgorgement of Ill-Gotten Gains

The SEC requests that the Court order Feathers to disgorge ill-gotten gains of $7,497,402.51, which is the total amount of cash that Feathers caused the funds to transfer to his company, SBCC, plus prejudgment interest from the date of the Receivership, totaling $285,558.56, for a total disgorgement amount of $7,782,961.07. These transfers were used to pay SBCC expenses and manage the yield of the fund, which allowed the funds to give the misleading appearance that they were generating a net income sufficient to pay the target yield returns, and

was both contrary to the representations in the offering documents and not disclosed to investors. The Court found that these misrepresentations were material.

"[A] district court has broad equity powers to order the disgorgement of ill-gotten gains obtained through the violation of the securities laws. Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable." SEC v. Platforms Wireless, 617 F.3d 1072, 1096 (9th Cir. 2010) (quoting SEC v. First Pac. Bancorp, 142 F.3d 1186, 1191 (9th Cir. 1998)). To establish an appropriate disgorgement amount, the SEC need only show a "reasonable approximation" of profits or investor losses causally connected to the violations. Id. Then, the burden shifts to defendant to demonstrate that the figure is not reasonable. Id. The Court finds that the amount of $7,497,402.51 is proper, as it is directly related to the misrepresentations, the misrepresentations associated with it were material, and Feathers has not demonstrated that the figure is unreasonable.

The court has noted, "[t]he ill-gotten gains include prejudgment interest to ensure that the wrongdoer does not profit from the illegal activity." SEC v. Cross Fin. Services, Inc., 908 F. Supp. 718, 734 (C.D. Cal. 1995). The decision regarding whether to grant prejudgment interest is subject to the court's broad discretion, taking into account the need to compensate the wronged parties for actual damages, considerations of fairness and the relative equities of the award, the remedial purposes of the statute involved, and such other principles the Court finds relevant. SEC v. Olins, 762 F. Supp. 2d 1193, 1198 (N.D. Cal. 2011). Here, the Court determines that it is appropriate to order Feathers to pay prejudgment interest, calculated pursuant to 26 U.S.C. §6621, on the cash that he transferred from the Funds to pay SBCC's expenses and target yield returns.

IT IS HEREBY FURTHER ORDERED that Defendant is liable for disgorgement of $7,497,402.51, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $285,558.56, for a total of $7,782,961.07. Defendant shall satisfy this obligation by paying $7,782,961.07 to the SEC within 90 days after entry of this Final Judgment.[1]

[1] Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from

III. Civil Penalty

Sections 20(d) of the Securities Act and 21(d)(3)(A) of the Exchange Act provide the district court with authority to impose civil penalties for violations of the Acts. There are three tiers of penalties possible and the amount of the penalty is to be determined by the court. SEC v. Olins, 762 F. Supp. 2d at 1199. While the Court may order a "first-tier" penalty "in light of the facts and circumstances" of the case, a higher, "second-tier," penalty is only warranted for a violation "involv[ing] fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," and a "third-tier" penalty is only warranted where there is a further showing that "such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." Id. (quoting 15 U.S.C. § 77t(d)). To assess the appropriate amount of civil penalty, courts look to the Murphy factors. See SEC v. Abacus Intern. Holding Corp., No. C 99-02191, 2001 WL 940913, *5 (N.D. Cal. August 16, 2001).

Here, the SEC requests the Court impose as a "third-tier" civil penalty in the amount of $150,000 for each fund, totaling $300,000. For the reasons articulated earlier in regards to the Murphy factors, the Court finds it appropriate to order a "second-tier" civil penalty, because the

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a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

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

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall hold the funds (collectively, the "Fund") and may propose a plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 90 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

violation involved misrepresentation, and in its discretion orders a civil penalty in the amount of $10,000 against Defendant.

IT IS FURTHER ORDERED that Defendant shall pay a civil penalty in the amount of $10,000 to the SEC pursuant to Section 20(d) of the Securities Act, 15 U.S.C. §77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant shall make this payment within 90 days after entry of this Final Judgment.

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

IT IS SO ORDERED

Dated: Nov. 6, 2013

EDWARD J. DAVILA
United States District Judge

MIME-Version:1.0
From:ECF-CAND@cand.uscourts.gov
To:efiling
Bcc:
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California Northern District

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Case Name: Securities and Exchange Commission v. Small Business Capital Corp. et al
Case Number: 5:12-cv-03237-EJD
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Document Number: 622

Docket Text:
Order granting in part and denying in part [602] Motion for Permanent Injunction and Monetary Remedies. Signed by Hon. Edward J. Davila.(ejdlc3, COURT STAFF) (Filed on 11/6/2013)

5:12-cv-03237-EJD Notice has been electronically mailed to:

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EXHIBIT 2

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. SMALL BUSINESS CAPITAL CORP.; MARK FEATHERS; INVESTORS PRIME FUND, LLC; and SBC PORTFOLIO FUND, LLC, Defendants.	Case No.: 5:12-CV-3237 EJD **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** **[Re: Docket Nos. 459, 477]**

The above captioned lawsuit is a civil enforcement action filed by the Securities Exchange Commission (the "SEC" or "Plaintiff") against Defendants Mark Feathers, Small Business Capital Corp., Investors Prime Fund, LLC, and SBC Portfolio Fund, LLC (collectively, "Defendants"). The SEC has brought forth causes of action related to allegations of fraud and misrepresentation in the offer and sale of investment fund securities in violation of several federal securities laws.

Presently before the Court are the parties' cross motions for summary judgment. Oral argument on these motions was presented before the Court at a hearing on June 28, 2013. Having fully reviewed the parties' papers and after hearing oral argument, the Court will GRANT the

SEC's Motion for Summary Judgment and DENY Defendant Feathers' Motion for Summary Judgment.

I. Background

Defendant Mark Feathers ("Feathers") managed two mortgage investment funds which he established in 2007: Investors Prime Fund, LLC ("IPF") and SBC Portfolio Fund, LLC ("SPF") (collectively, the "Funds"). Decl. of Mark Feathers dated May 16, 2013 ¶ 2, Docket Item No. 466. According to the offering documents of IPF and SPF issued in 2007, the Manager of the Funds was Feathers' company, Small Business Capital Corporation ("SBCC"). See, e.g., Investors Prime Fund Offering Circular dated June 11, 2009 ("2009 IPF Offering Circular") p. 21, Decl. of John Bulgozdy ISO of Pl.'s Mot. for Summ. J. Ex. 173, Docket Item No. 483; SBC Portfolio Fund Private Placement Memorandum ("PPM") dated Dec. 28, 2009 p. 9, Bulgozdy Decl. Ex. 184. Feathers founded SBCC to manage the two Funds. See Feathers Decl. dated May 16, 2013 ¶ 2. The IPF and SPF offering documents identified SBCC as the "sole manager" of the Funds with the "sole authority" to manage the affairs of the Funds. See, e.g., 2009 IPF Offering Circular, p. 16; 2009 SPF Private Placement Memo, p. i.

Consistent with that "sole authority," Feathers and his spouse, Natalie Taaffe Feathers, were the only signatories on the bank accounts of SBCC, IPF, and SPF. Dep. of Mark Feathers 35:20–37:7, Bulgozdy Decl. Ex. 218. In addition, Feathers has conceded that he approved the offering documents before they were provided to investors, and that he was "the final authority on the approval of offering documents." Dep. of Mark Feathers 401:20–23, Bulgozdy Decl. Ex. 219.

The SEC contends that beginning in 2009, Feathers caused the Funds to transfer millions of dollars to SBCC. The purpose of these transfers, the SEC contends, was to pay SBCC's operating expenses, to generate management fees, as well as to make cash distributions to investors in excess of the income and profits the Funds generated. The SEC argues that these loans, transfers, and distributions were in violation of the Funds' offering documents, circulars, and other

representations made to investors. This notion underlies the SEC's claims of fraud and misrepresentation.

On June 21, 2012, the SEC initiated the present lawsuit by filing a Complaint naming as Defendants Feathers, SBCC, IPF, and SPF. See Docket Item No. 1. The Complaint alleges the following four causes of action: (1) fraud in the offer or sale of securities in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); (2) fraud in connection with the purchase or sale of securities in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder; (3) violation of Section 15(a) of the Exchange Act (unregistered broker-dealer); and (4) controlling person liability under Section 20(a) of the Exchange Act. Id.

On July 10, 2012, the Court issued a Preliminary Injunction and Order (1) Freezing Assets; (2) Prohibiting Destruction of Documents; (3) Requiring Accountings; and (4) Appointing a Permanent Receiver ("PI Order"). See Docket No. 34. In the PI Order, the Court ordered an immediate freeze on the assets of IPF, SPF, SBCC, and Feathers. See id. This Order also appointed Thomas A. Seaman (the "Receiver") as permanent receiver of the funds and granted him "full power over all funds, assets, collateral, premises" as equity receiver of the defendant companies SBCC, IPF, and SPF. Id. The Receiver was authorized to employ the law firm of Allen Matkins, Leck, Gamble, Mallory & Natsis, LLP as his general counsel on July 10, 2012. See Docket Item No. 36.

II. Legal Standard for Motion for Summary Judgment

A motion for summary judgment should be granted if "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000). The moving party bears the initial burden of informing the court of the basis for the motion and identifying the portions of the

pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

If the moving party meets this initial burden, the burden then shifts to the non-moving party to go beyond the pleadings and designate "specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324; Fed. R. Civ. P. 56(e). The court must regard as true the opposing party's evidence, if supported by affidavits or other evidentiary material. Celotex, 477 U.S. at 324. However, the mere suggestion that facts are in controversy, as well as conclusory or speculative testimony in affidavits and moving papers, is not sufficient to defeat summary judgment. See Thornhill Publ'g Co. v. GTE Corp., 594 F.2d 730, 738 (9th Cir. 1979). Instead, the non-moving party must come forward with admissible evidence to satisfy the burden. Fed. R. Civ. P. 56(c); see also Hal Roach Studios, Inc. v. Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1990). The "adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(e); see also Hansen v. United States, 7 F.3d 137, 138 (9th Cir. 1993) ("When the nonmoving party relies only on its own affidavits to oppose summary judgment, it cannot rely on conclusory allegations unsupported by factual data to create an issue of material fact."). "The mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for [the opposing party]." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

A genuine issue for trial exists if the non-moving party presents evidence from which a reasonable jury, viewing the evidence in the light most favorable to that party, could resolve the material issue in his or her favor. Anderson, 477 U.S. at 248–49; Barlow v. Ground, 943 F.2d 1132, 1134–36 (9th Cir. 1991). Conversely, summary judgment must be granted where a party

"fails to make a showing sufficient to establish the existence of an element essential to that party's case, on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322;

The Court also notes that Defendant Feathers is proceeding in this litigation pro se and on behalf of all Defendant companies. As such, the Court has liberally construed his written submissions. See Abassi v. Immigration & Naturalization Serv., 305 F.3d 1028, 1032 (9th Cir. 2002). However, liberal construction is not a substitute for Defendants' burden of production in response to a motion for summary judgment. See Bias v. Moynihan, 508 F.3d 1212, 1218–19 (9th Cir. 2007) ("A district court does not have a duty to search for evidence that would create a factual dispute . . . . A district court lacks the power to act as a party's lawyer, even for pro se litigants.").

III. Discussion

A. Securities Fraud

The SEC's first cause of action is for violations of Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1), 77q(a)(2), & 77q(a)(3). Section 17(a) prohibits fraud in the offer or sale of securities:

> It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly
>
> (1) to employ any device, scheme, or artifice to defraud, or
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
>
> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. §§ 77q(a)(1), 77q(a)(2), & 77q(a)(3). The SEC's second cause of action is for violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a), 10b-5(b), and 10b-

5(c) thereunder, 17 C.F.R. § 240.10b-5. Section 10(b) prohibits fraud in connection with the purchase or sale of any security:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b). Rule 10b-5 seeks to enforce these statutes by making the following acts in connection with the purchase or sale of any security unlawful:

> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

17 C.F.R. § 240.10b-5.

For the allegations relevant to this case, violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, consist of the same elements. See SEC v. Dain Rauscher, Inc., 254 F.3d 852, 855–56 (9th Cir. 2001); SEC v. TLC Invs. & Trade Co., 179 F. Supp. 2d 1149, 1153 (C.D. Cal. 2001). Violations of these provisions require a showing that Defendants made a material misstatement, misrepresentation, or omission or fact in connection with the offer or sale of a security by means of interstate commerce with the requisite mental state. See SEC v. Phan, 500 F.3d 895, 908 (9th Cir. 2007); Dain Rauscher, 254 F.3d at 855–56; SEC v. Rana Research, Inc., 8 F.3d 1358, 1364 (9th Cir. 1993); SEC v. Rogers, 790 F.2d 1450, 1458–59 (9th Cir. 1986). While securities antifraud enforcement actions often involve questions of fact,

district courts can resolve such cases on summary judgment as long as there is no genuine issue of material fact. See, e.g., TLC Invs., 179 F. Supp. 2d 1149; SEC v. Aqua Vie Beverage Corp., CV 04-414-S-EJL, 2007 WL 2025231 (D. Idaho July 9, 2007), aff'd sub nom., SEC v. Gillespie, 349 F. App'x 129 (9th Cir. 2009); SEC v. Smart, No. 2:09CV00224 DAK, 2011 WL 2297659 (D. Utah June 8, 2011), aff'd, 678 F.3d 850 (10th Cir. 2012); SEC v. Kenton Capital, Ltd., 69 F. Supp. 2d 1 (D.D.C. 1998).

For the reasons explained below, the Court finds that the SEC has met its burden of establishing its antifraud causes of action, and that Feathers has failed to present specific facts and evidence that introduce a genuine issue of material fact. The Court will address each element in turn, followed by a discussion of Feathers' objections and oppositions to the SEC's summary judgment motion and evidentiary support.

1. Misrepresentations, Misstatements, and Omissions

Violations of the securities antifraud provisions require that a defendant's misstatements and omissions concern facts material to the investment in or sale of securities. Basic, Inc. v. Levinson, 485 U.S. 224, 231–32 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976). "An omitted fact is material 'if there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.'" SEC v. Platforms Wireless Int'l Corp., 617 F.3d 1072, 1092 (9th Cir. 2010) (quoting Phan, 500 F.3d at 908). In other words, a misrepresentation, misstatement, or omission is material if there is a substantial likelihood that a reasonable investor would consider the true or complete information important in making an investment decision. See id. As such, the antifraud provisions of the securities statutes and regulations impose a "'duty to disclose material facts that are necessary to make disclosed statements, whether mandatory or volunteered, not misleading.'" SEC v. Fehn, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996) (quoting Hanon v. Dataproducts Corp., 976 F.2d 497, 504 (9th Cir. 1992)). Such a duty "arises whenever a

disclosed statement would be 'misleading' in the absence of the 'disclos[ure] of [additional] material facts' needed to make it not misleading." Id. (quoting Hanon, 976 F.2d at 504).

The SEC identifies several statements, representations, and omissions made by Feathers and Defendant companies to the Fund investors that satisfy the "material misrepresentation" element of the securities antifraud provisions. These statements were made in the Funds' offering circulars, private placement memoranda, and other documents that were distributed to the investors. The SEC asserts that these documents contained false or otherwise misrepresentative assertions about how the Funds were managed and capitalized by SBCC, how Funds' assets would and would not be transferred, and how returns on investments would be distributed to Fund members.

a. Misstatements Regarding Fund Loans and Money Transfers

The first of the misrepresentations the SEC identifies is the representation that Feathers made to investors and potential investors in the Funds that there would be "No Loans to Manager" other than certain loans secured by real property. See Pl.'s Mot. for Summ. J. 16–17, Docket Item No. 477. As an example, IPF's 2008 Offering Circular contains the following provision:

> **No Loans to Manager**. No loans will be made by the Fund to the Manager or to any of its affiliates, except for any financing extended as part of a sale of real estate owned or loans purchased as a result of foreclosure. (See "Conflicts of Interest – Sale of Real Estate Owned to Affiliates.")

Bulgozdy Decl. Ex. 172, at p. 8. This representation also appears in IPF's 2009 Offering Circular (id. Ex. 173, at p. 15), IPF's 2010 Offering Circular (id., Ex. 175, at p. 15), and IPF's Jan. 2011 Offering Circular (id. Ex. 177 at p.18), SPF's 2007 PPM (id. Ex. 182 at p. 7), SPF's 2009 PPM (id., Ex. 184 at p. 7), SPF's January 2011 PPM (id. Ex. 185 at p. 8), and SPF's August 2011 PPM (id., Ex. 188 at p. 8).

Additionally, the offering circulars, PPMs, and other documents expressly limited the expenses that would be paid by the Funds, at least with regard to IPF. IPF's Offering Circulars contain the following representation regarding Fund expenses:

> The Fund will pay for its own annual audit, LLC tax, tax return preparation, protective advances and the costs to own and maintain real property, if any is acquired in foreclosure. All other expenses will be borne by the Manager, including rent, salaries, business insurance, utilities, marketing, and other similar operational expenses[.]

See, e.g., IPF's 2010 Offering Circular, Bulgozdy Decl. Ex. 175, at p.1; IPF's Jan. 2011 Offering Circular, id. Ex. 177 at p.1; IPF's June 2011 Offering Circular, id. Ex. 177, at p.1.

The SEC argues these representations were false or misleading because Feathers was in fact causing the Funds to loan money to himself and SBCC where that financing was not part of a sale of real estate, purchased as a result of foreclosure, or otherwise secured by real property. From as early as 2009 through the date of the Receivership, a total of at least $7,497,402.51 in cash was transferred from the Funds to SBCC. See Decl. of Sarah Mitchell ISO Pl.'s Mot. for Summ. J. ¶ 4, Ex. 220 at A-00789-90, A-00882-3, Ex. 221 at A-01212-3, Docket Item No. 479. The following table summarizes the cash transfers—many of which were in large, round number amounts—from the Funds to SBCC:

Gross Cash Transfers From Funds to SBCC from January 1, 2009 through Date of Receivership

Year	Fund	Ledger Acct. No.	Ledger Acct. Name	Cash Paid to SBCC	Source
2009	IPF	1770	Syndication Expense (2009)	$100,000.00	A-00624
2009	IPF	1725-22	Loan 65	$100,000.00	A-00626
2009	IPF	1725-20	Loan 300001	$152,148.37	A-00627
2009	IPF	1780-4	Organizational Expenses	$200,000.00	A-00632
2009	IPF	6550-2	Management Fees – SB Capital	$439,500.00	A-00789-90
2009	SPF	6550	Management Fees	$63,780.00	A-01212-3
2009	SPF	2050	Capitalization of Contract	$540,000.00	A-01169
2010	IPF	1250	LT Rec – Fund Mgrs Organ Invt	$1,374,047.14	A-00882
2010	SPF	1220	Due From Manager	$175,000.00	A-01273-4
2011	IPF	5020	Fund Management Fees	$100,000.00	A-00959-60
2011	IPF	1250	LT Rec – Fund Mgrs Organ Invt	$2,930,000.00	A-00882-3

2012	IPF	1250	LT Rec – Fund Mgrs Organ Invt	$400,000.00	A-00882-3
2012	SPF	5020	Fund Management Fee	$922,927.00	A-01322
Total				**$7,497,402.51**	

Id. ¶ 4. This summary of the transfers was derived from IPF's and SPF's general ledgers, which were produced to the SEC and Feathers by the Receiver. Id.

Several other documents submitted by the SEC in support of its summary judgment motion, confirm that large sums of cash were transferred from IPF to SBCC. The audit report of the financial statements of IPF for 2010 and 2009, prepared by Spiegel Accountancy Group, shows that SBCC owed $1.85 million to IPF as of December 31, 2010. See Decl. of Jeffrey Spiegel ISO of Pl.'s Mot. for Summ. J. Exs. 27, 44, Docket Item No. 480. The draft audited financial statements for IPF for 2011 show that SBCC owed $4,863,479 to IPF as of December 31, 2011. Id. Ex. 46 at p. 15. This report also notes that these loans were unsecured. Id. As noted, IPF's general ledger shows additional cash transfers from the bank accounts of IPF to SBCC in the amount of at least $400,000 in early 2012. See Mitchell Decl. Ex. 220 at A-00882-3.

The SEC has also submitted several documents that confirm the transfers from SPF to SBCC. The audit report of the financial statements of SPF for 2010 and 2009, prepared by Spiegel Accountancy Group, shows that SBCC owed $707,464 to SPF as of December 31, 2010. See Spiegel Decl. Ex. 28. The draft audited financial statements for SPF for 2011 show that SBCC owed $690,868 as of December 31, 2011. Id. Ex. 47. Like with the reports for IPF, this report notes that these loans were unsecured. Id. at p.18. SPF's general ledger records additional cash transfers from SPF's bank accounts to SBCC totaling $922,927 in the first five months of 2012 for management fees. See Mitchell Decl. Ex. 221 at A-01322.

The SEC asserts and has provided evidence establishing that Feathers used the money he transferred from the Funds to SBCC to pay SBCC's expenses and to manage the yield of the Funds. Feathers was able to do this under the guise of "due from" or "manager's note" accounting on the Funds' financial statements to supposedly account for these cash transfers. Some of the

evidence the SEC has presented in support of its claims was obtained from David Gruebele, a management consultant employed by Feathers from 2009 through 2012. See Decl. or David Gruebele ISO of Pl.'s Mot. for Summ. J., Docket Item No. 482. According to Gruebele, the "due from manager" or "manager's note" labeling had a twofold effect. First, this provided a mechanism for the Funds to pay SBCC's "management fees" since SBCC was not earning any net management fees from the Funds under the terms of the offering documents. Id. ¶ 9. Second, recording the transfers as "due from" or "manager's note" had the effect of converting the excess expenses into an "asset" of the Funds rather than a liability. Id. This allowed the Funds to give the misleading appearance that they were still generating a net income necessary to pay the target yield of returns to investors. Id.

The SEC provides numerous documents in support of these assertions. See Pl.'s Mot. for Summ. J. 3–4. For example, a September 2011 email exchange between Feathers and Gruebele states that SBCC needed approximately $225,000 in cash to pay its September 2011 expenses, and lists nine items. The first four items are obligations of SBCC: (1) interest on the "due from" SBCC to SPF, (2) interest on the "due from" SBCC to IPF, (3) interest on Loan 300001—a loan from IPF to SBCC; and (4) interest on Loan 65—another loan from IPF to SBCC. See Gruebele Decl., ¶¶ 14–17, Exs. 56, 73. The remaining items—payroll, Amex, Citibank, rents, and "misc"—were also expenses incurred by SBCC. Id., ¶ 16. The SEC has provided additional emails evincing the "due from" or "manager's note" labeling of the cash transfers. See, e.g., Gruebele Decl. Exs. 69, 74. Additionally, Feathers communicated in an email in December 2010 to Gruebele about using the "due-from-manager fund asset" to "ensure hitting our yield target to investors of 7.5% (compounded)." Id. ¶ 19, Ex. 112.

The Funds' auditor has also confirmed this organization of the Funds' expenses. See Spiegel Decl. ¶¶ 16, 34, Ex. 49. For example, a work paper from the audit of IPF's 2009 financial statements on "Due from Manager LS" notes that the balance "represents money that the Fund advanced to the Fund Manager," that "the Fund Manager is not allowed to take out loans/advances

against the Fund," and that Feathers had assured the auditor that the amount would be "repaid during the 2010 year." Id. ¶¶ 34, 35, Ex. 49. When the IPF auditor determined that IPF needed to restate its 2009 financial statements to reverse the $300,000 that had been capitalized as a syndication expense, Feathers stated that he preferred that the restatement reclassify these costs as "due from manager." Id. ¶¶ 32, 39–41, Exs. 13, 14. The SPF auditors, similarly, required SBCC and SPF to reclassify over $500,000 in cash expenditure in the 2009 financial statements, and required SPF to disclose that the "due from" listing was in violation of the SPF offering documents. Id. ¶¶ 43, 44, Exs. 16, 53. Spiegel has also asserted that by the end of 2010, the amount that IPF had loaned to SBCC under the "due from" had grown to over $1 million. Id. ¶ 49, Ex. 19. The alleged note receivable from SBCC became an issue between Feathers and the Funds' auditor during the audit of the 2011 financial statements. See id. ¶¶ 75–80, Exs. 38–43. For example, on or about April 24, 2012, the Funds' independent outside auditor received a letter addressed to Feathers from the Fund's outside counsel which stated that Feathers' failure to disclose SBCC's borrowing from IPF was "highly misleading" and did "not comply with the offering documents." Id. ¶ 81, Ex. 44; see also Bulgozdy Decl. Ex. 192; id. Ex. 218 (Feathers Dep. 415:16–453:6).

The SEC has also established that Feathers did not disclose to the investors that, contrary to the representations from the offering documents, cash from the Funds was being transferred to SBCC. As noted, these transfers had been occurring with regard to IPF and SPF since 2009. The subsequent offering documents—e.g., the 2010 IPF Offering Circular, 2011 IPF Offering Circular, SPF's January 2011 PPM, and SPF's August 2011 PPM—all contained the same "No Loans to Manager" language and limitations on the Funds' payment of manager fees and expenses. In addition, Feathers sent several communications to the investors in the Funds requesting amendments to the offering circulars and the operating agreements. On or around May 24, 2010, Feathers sent a letter to IPF investors proposing to, among other things, "Increase permissible syndication expenses to two percent of fund capital." See Decl. of Robert Morris ISO Pl.'s Mot. for Summ. J. Ex. 136, Docket Item No. 481. Nothing in this letter disclosed that Feathers and SBCC

had been previously engaged in borrowing or planning on borrowing cash from IPF in an unsecured loan, in violation of the representations of the offering circulars. On or around August 15, 2010, Feathers sent a letter to IPF investors asking for "concurrence" in a modification of the IPF operating agreement "to initiate beneficial financial and tax planning for the fund." See id. Ex. 130. Like the May 2010 letter, this communication did not disclose the unsecured loans from IPF to SBCC nor request approval or ratification of these loans.

The SEC also contends, and the Court agrees, that these misrepresentations were material. The loans and money transfers between the Funds and from the Funds to SBCC allowed Feathers to conceal or misrepresent the true net income, performance, and yield of the Funds. In that vein, the "due from" and "manager's note" accounting practice removed expenses and liabilities from the Funds' financial statements by virtually converting them to assets of the Funds. As such, and applying the "reasonable investor" standard articulated by the Ninth Circuit to test materiality, the Court finds that there is a substantial likelihood that a reasonable investor would have viewed the disclosure of the truth about these loans and money transfers as altering the total mix of information made available and important information in making the decisions to invest with IPF or SPF. See Platforms Wireless, 617 F.3d at 1092. This is confirmed by declarations from at least two investors who have asserted that had they been fully aware that Feathers was causing the Funds to lend money to SBCC they would have considered that information important and likely would have withdrawn their investments. See Morris Decl. ¶¶ 17–20; Decl. of Barbara Bushee ISO Pl.'s Mot. for Summ. J. ¶ 8, Docket Item No. 478.

b. Misstatements Regarding Conservative Lending Standards

The SEC next asserts that Feathers made material misrepresentations in the Funds' offering documents that the Funds would be managed under conservative lending standards. Specifically, the Funds' disclosures stated that all loans made by the Funds would be secured by deeds of trust and the Funds have and would continue to use conservative 65% or 75% loan-to-value guidelines.

The IPF Offering Circulars represented that IPF would invest in "loans secured by first deed of trust encumbering commercial and income producing residential real estate." See, e.g., IPF's 2008 Offering Circular, Bulgozdy Decl. Ex. 172, at cover page, p. 7; IPF's 2009 Offering Circular, id. Ex. 173, at pp. 1, 13, 15; IPF's 2010 Offering Circular, id., Ex. 175, at pp. 1, 13, 14; IPF's Jan. 2011 Offering Circular, id. Ex. 177 at pp. 1, 16. Similarly, the SPF offering documents represented that SPF would invest in loans "secured by first and second deeds of trust." See, e.g., SPF's 2007 PPM, id. Ex. 182, at cover page, p. 7; SPF's 2009 PPM, id. Ex. 184. SPF represented that it would invest in loans where the "loan-to-value" ratio would not exceed 75% of the value of the security property, see, e.g., id., Ex. 184 at p. 6; IPF represented that it used a more conservative 65% (or less) loan-to-value ratio, see, e.g., id., Ex. 175 at p. 14. The offering documents also represented that the Funds were and would continue to be managed—by SBCC and Feathers—in accordance with generally accepted accounting principles ("GAAP"). See, e.g., IPF's 2009 Offering Circular, id. Ex. 173, at pp. 17; SPF's January 2011 PPM, id. Ex. 185 at p. 25. As shown in the preceding section, these representations were materially false and misleading because the loans and money transfers Feathers caused the Funds to make to SBCC were not secured by any real property, and there was no loan-to-value ratio for these unsecured loans.

Other material misrepresentations and omissions concern the Funds' "Operations to Date" sections in the offering documents. The documents omit material information concerning the unsecured receivable that SBCC owed to the Funds. As an example, the January 2011 IPF Offering Circular represents that 100% of IPF's loans were secured by "First Trust Deeds," as required by the terms of the offering. See Bulgozdy Decl. Ex. 177, at p. 22. This was materially false because, as shown above, by December 31, 2010, IPF had loaned at least $1.85 million to SBCC in an unsecured loan, which represented over 11% of IPF's total assets. See Spiegel Decl. Exs. 27, 44. Similarly, SPF's January 2011 PPM represents, in a chart titled "Portfolio Characteristics as of December 31, 2010," that "0%" of loans by dollar amount were outstanding to the Manager or Affiliates. Id. Ex. 185 at p. 9. This was materially false and misleading because, as shown in the

preceding section, by December 31, 2010, SBCC owed SPF $707,464, which represented over 18% of SPF's total assets. See Spiegel Decl. Ex. 28.

c. Misstatements Regarding Returns to Investors

The SEC also contends, and supports those contentions with voluminous evidence, that Feathers caused the Funds to make misrepresentations regarding the returns Fund members would receive on their investments. The offering documents of both Funds represented that member returns would be based on a proportionate share of the profits generated by the Funds' investments. The IPF offering documents represented that investors would be paid a "Member Preferred Return" allocated from "Fund profits." See, e.g., Bulgozdy Decl. Ex. 173 at p. 1. The IPF offering documents explicitly stated that "Monthly profits will be allocated among the Members as of the last day of each month in accordance with their respective capital account balances as of such date. Each month, profits will be allocated entirely to Members . . . ." Id. at p. 31. Similarly, the SPF offering documents represented that investors would be "allocated a proportionate share of Fund income during any month." See, e.g., id. Ex. 184 at pp. 5, 24. The SEC has also provided statements and declarations from investors that they believed the returns on their investment would be derived from the Funds' profits and that the Funds were profitable. See Morris Decl.; Bushee Decl.

The SEC has provided evidence showing that despite these representations, the Funds were not profitable and that the returns on members' investments were not being derived from the Funds' profits. Essentially, the SEC has shown that Feathers was not using Fund profits to pay out returns, but rather other member investments—contrary to the representations of the Funds' offering documents—as "Ponzi-like payments." See Pl.'s Reply ISO of Mot. for Summ. J. As explained above, Feathers had instructed his employees to maintain monthly payments to investors in IPF and SPF at a return of 7.5% per annum and 9–10% per annum, respectively, without taking into consideration the Funds' net income or actual profitability. See Gruebele Decl. ¶ 11. Gruebele

has also asserted that he advised Feathers that these distributions were greater than the net income of the Funds. Id. Gruebele avers that, in response, Feathers stated that additional income was going to be generated in the near future from new transactions that would balance the over-distribution. Id. In October 2010, as but one example, Feathers was informed by Gruebele that IPF had distributed $300,000 more to investors than net income to date. Id. ¶ 12, Ex. 76. In early 2011, Feathers was informed that IPF and SPF had each paid more to investors in returns than net income year-to-date. Id. ¶ 13, Ex. 80. This over-distribution was even reflected in SBCC internal reports. See id. ¶ 10, Ex. 79.

Feathers directed the over-distribution of the Funds' "income" to investors by means of his "due from" and "manager's note" recording. According to Feathers, during the period from 2009 to 2011 IPF reported a combined net income of $2,597,784. During that same period, Feathers caused at least $4,863,479 of expenses of IPF to be recorded as an "asset" in the form of the Note Receivable from Fund Manager. See Spiegel Decl. Exs. 27, 46 at p. 15. In reality, this amount reflected money transfers and loans from IPF to SBCC. Similarly, SPF reported a combined net income of $852,827, while over the same period Feathers caused at least $690,868 of expenses of SPF to be recorded as an "asset." Id. Exs. 28, 47. This too was perpetuated using the "due from" accounting to manage the yield of the Funds. Gruebele Decl. ¶ 9. In fact, Feathers instructed his staff on how to use the "due-from-manager fund asset" to manage earnings; in an email sent to Gruebele, Feathers stated, "As necessary we may have to use up much or all of this amount as necessary to ensure hitting our yield target to investors of 7.5% (compounded). I want to have everything buttoned up for Spiegel ahead of time." Id. Ex. 112.

The misrepresentations about the source of member returns were material for similar reasons as stated above. A reasonable investor would consider the true source of returns as important when making the decision to invest. See Platforms Wireless, 617 F.3d at 1092. There is a material difference between returns on an investment being derived from profits of the investment fund—as Feathers represented they would be—and those being derived from other members'

investments, which is ultimately unsustainable. Information regarding a company's financial condition is material to investment. United States v. Reyes, 577 F.3d 1069, 1076 (9th Cir. 2009); see also SEC v. Murphy, 626 F.2d 633, 653 (9th Cir. 1980) ("Surely the materiality of information relating to financial condition, solvency and profitability is not subject to serious challenge."). A reasonable investor "would consider it important to know [his] funds were being misappropriated and used for purposes other than those stated when solicited." SEC v. Merrill Scott & Assocs., Ltd., No. 2:02-CV-39-TC, 2011 WL 5834271, at *11 (D. Utah Nov. 21, 2011) (citing TLC Invs., 179 F. Supp. 2d at 1153).

2. Requisite Mental State

Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 require scienter. Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976); see also Aaron v. SEC, 446 U.S. 680, 701–02 (1980). Scienter for violations of these provisions can be satisfied by a showing of recklessness. Nelson v. Serwold, 576 F.2d 1332 (9th Cir. 1984), cert. denied, 439 U.S. 970 (1978); Dain Rauscher, 254 F.3d at 855–56; Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568–69 (9th Cir. 1990) (en banc). "In the absence of further guidance from the Supreme Court, the Ninth Circuit has held that recklessness will satisfy the scienter requirement." Wright v. Schock, 571 F. Supp. 642, 660 & n.9 (N.D. Cal. 1983), aff'd, 742 F.2d 541 (9th Cir. 1984) (citing Nelson, 576 F.2d 1332). "Reckless conduct is conduct that consists of a highly unreasonable act, or omission, that is an 'extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" Dain Rauscher, 254 F.3d at 856 (quoting Hollinger, 914 F.2d at 1569). Violations of Section 17(a)(2) and (3) of the Securities Act require a showing of negligence. Dain Rauscher, 254 F.3d at 856; SEC v. Hughes Capital Corp., 124 F.3d 449, 453–54 (3d Cir. 1997).

Establishing scienter is typically a question of fact; however, courts can and have decided the issue of scienter on summary judgment in cases where defendants have failed to introduce particular facts or pieces of evidence showing that there exists a genuine issue of material fact with regard to the defendant's state of mind. See Platforms Wireless, 2007 WL 1238707 (explaining that defendant's good faith belief is not enough to create a genuine issue of fact as to whether he was reckless), aff'd in part and rev'd in part, 617 F.3d 1072 (9th Cir. 2010) (affirming summary judgment on claims brought under Section 10(b) of the Exchange Act and Rule 10b-5); SEC v Wilde, No. SACV 11-0315, 2012 WL 6621747 (C.D. Cal. Dec. 17, 2012) (granting summary judgment because evidence of defendants' scienter was "clear"); Aqua Vie Beverage, 2007 WL 2025231 (finding no genuine issue of material fact that the defendants acted with extreme recklessness); TLC Invs., 179 F. Supp. 2d 1149 (granting summary judgment on scienter because plaintiff had submitted "uncontroverted evidence"). Proof of scienter can be based on inferences from circumstantial evidence. SEC v. Burns, 816 F.2d 471, 474 (9th Cir. 1987); Shad v. Dean Witter Reynolds, 799 F.2d 525, 530 (9th Cir. 1986); see also SEC v. Yuen, No. CV 03-4376MRP(PLAX), 2006 WL 1390828, at *38 (C.D. Cal. Mar. 16, 2006) ("The Ninth Circuit has held that the recklessness standard can be established by demonstrating (1) a defendant's motive and opportunity to engage in securities fraud; and (2) red flags casting doubt on the truthfulness or accuracy of representations." (citing Howard v. Everex Systems, Inc., 228 F.3d 1057, 1063–65 (9th Cir. 2000))).

The SEC has presented abundant evidence demonstrating that Feathers acted intentionally or recklessly in carrying out the misrepresentations and misstatements presented in the preceding section. As an initial matter, it is beyond dispute that Feathers prepared and distributed the IPF and SPF offering circulars from at least 2009 to 2011, which clearly prohibited certain loans and money transfers. Rather than refraining from this prohibited conduct, Feathers continued to cause the Funds to transfer cash to SBCC and make other unsecured loans and transfers since 2009.

Feathers' creation and utilization of "due from" and "manager's note" accounting evinces Feathers' intent to deceive the investors as to the true amount of cash in the Funds, or, at the least, an extreme recklessness in his management of the Funds. In other words, Feathers' usage of the "due from" device actively disguised the true financial performances of the Funds. In an email to Gruebele dated December 16, 2010, Feathers explained that he sought to use the "due-from-manager fund asset" to absorb Fund expenses so as to "ensure hitting our yield." Spiegel Decl. Ex. 112. As such, the loans and money transfers that were recorded as "due from" manager created the false impression that they were assets of the Funds rather than expenses. The true effect of the "due from" accounting device allowed Feathers to pay SBCC's management expenses (in violation of the offering documents) while deceptively making it seem the Funds were properly capitalized and yielding the target net income. Id. ¶ 9. Had Feathers properly recorded the money transfers in accordance with GAAP, he would have had to establish an allowance equal to the full value of the receivables, which, as noted, would have created expenses or liabilities against the Funds' income. See Pl.'s Mot. for Summ. J. 20–21. The effect of this would have been a reported loss of the Funds since the financial statements and audit reports show that the Funds had made payments in excess of net income and returned capital. See id.

Feathers' interaction with the auditor of the Funds further evinces an intent to deceive or recklessness in his management of the Funds and representations made to investors. The SPF auditors notified Feathers that the "due from" classification was in violation of the SPF offering documents. Id. ¶¶ 43, 44, Exs. 16, 53. Similarly, the IPF auditor required the restatement of the cash transfers that had been capitalized as a syndication expense in the 2009 financial statements. Id. ¶ 32. In response, Feathers stated that he preferred that the restatement reclassify the syndication costs to the "due from manager." Id. In addition, while preparing a quarterly compilation for IPF after 2009, Spiegel learned that at least $170,000 had been added to the organizational costs of IPF. Id. ¶ 48, Ex. 18. After being notified of this, Feathers responded that he had "[taken] it upon myself to send a motion to investors to change the operating agreement to re-

categorize up to $1 MM FY 2010 accrued syndication/organizational expenses into a receivable from Fund Manager. This would be paid back over a period of 5 years, and would also have an interest rate paid to fund members of 7.5%." See Spiegel Decl. ¶ 49, Ex. 19. In response, IPF's outside auditor told Feathers, "I am not sure getting approval after the fact is proper. Generally, that should be done prior to taking money." Id.

The SEC has presented several more communications that evince that Feathers knew that his representations to investors in his letters and offering documents were false or misleading. For example, with regard to the "due from" manager, in an email dated April 3, 2012, Spiegel wrote to Feathers the following:

> Just because it shows a loan to the manager does not make it compliant with the OC or operating agreement. I believe we did and will again indicate in the audit report and financials, it violates the OC and operating agreement. Dennis [Doss, attorney of SBCC] and I agree that your communications to the investors are misleading. Besides the loan itself: your communication indicates the purpose of the loan which also is not consistent with the actual use of the proceeds. May I suggest you get some counsel on what a proper communication to your investors should include so they are fully disclosed of all fund issues.

See Bulgozdy Decl. Ex. 192. As another example of Feathers' scienter, Doss wrote to Feathers in an email on the same date, "I know you don't want to hear this but the letter is misleading. You have obtained unauthorized loans from the fund of $5M and for the past two fiscal years the fund earned less than the 7.5% it distributed to investors." Id.

Moreover, Feathers' decision to have the auditor issue a qualified opinion for the 2010 financial statements of the IPF and SPF serves as further circumstantial evidence demonstrating Feathers' scienter. After discovering the sizeable amounts of the "due from" SBCC to the Funds, Spiegel informed Feathers that he could not issue an unqualified audit opinion. Id. ¶ 49, Ex. 19. As such, Spiegel presented Feathers with three options: (1) Feathers and SBCC could pay the "due from" in full before the audit was completed; (2) Feathers and SBCC could provide a documented assessment of the collectability of the "due from" so that an appropriate loss allowance could be established for the note; or (3) the outside auditor would have to issue a qualified opinion. Id. ¶ 61.

Feathers elected to have the Funds' outside auditor issue qualified audit opinions on the 2010 financial statements rather than rectifying the questionable accounting, paying back the money that was transferred to SBCC, or making the proper disclosure to investors. Id. ¶¶ 61–62. As a result, the Funds' auditors issued qualified opinions for both IPF's and SPF's audited financial statements. See, e.g., id. Exs. 27, 28.

3. Remaining Elements: Sale of Securities by Means of Interstate Commerce

The remaining elements of the antifraud provisions are that the misrepresentations were made in connection with the offer or sale of a security by means of interstate commerce. See Phan, 500 F.3d at 908. There is no question of fact that the misrepresentations in the Funds' offering documents were connected to the sale of securities (investment in the Funds) by means of interstate commerce. These elements are not in dispute among the parties.

4. Feathers' Opposition

The Court now turns to Feathers' opposition to the SEC's summary judgment motion, his objections to the evidentiary support provided therein, and his attempts to demonstrate the existence of a genuine issue of material fact. As the non-moving party, Feathers cannot create a genuine issue of material fact simply by making assertions in his legal papers. S.A. Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co., 690 F.2d 1235, 1238 (9th Cir. 1982); Wilde, 2012 WL 6621747, at *3. "When the nonmoving party relies only on its own affidavits to oppose summary judgment, it cannot rely on conclusory allegations unsupported by factual data to create an issue of material fact." Hansen, 7 F.3d at 138. Rather, he must introduce and present specific, admissible evidence that a reasonable trier could find in his favor. Anderson, 477 U.S. at 248–49. As such, the non-movant must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus., Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In that regard, the Court is "'not required to comb the record to find some reason to deny a

motion for summary judgment.'" Carmen v. S.F. Unified Sch. Dist., 237 F.3d 1026, 1029 (9th Cir. 2001) (quoting Forsberg v. Pac. N.W. Bell Tel. Co., 840 F.2d 1409, 1418 (9th Cir.1988)); see also Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996) ("[I]t is not our task, or that of the district court, to scour the record in search of a genuine issue of triable fact." (quoting Richards v. Combined Ins. Co., 55 F.3d 247, 251 (7th Cir. 1995)). "If a party wishes the court to consider an affidavit for more than one issue, the party should bring that desire to the attention of the court." Id.

Thus, Feathers "has the responsibility to identify with reasonable particularity the evidence which precludes summary judgment." SEC v. Leslie, No. C 07-3444, 2010 WL 2991038, at *17 (N.D. Cal. July 29, 2010), clarified on denial of reconsideration, No. 5:07-CV-03444-JF, 2010 WL 3259375 (N.D. Cal. Aug. 18, 2010) (citing Keenan, 91 F.3d at 1279); see also Fed. R. Civ. P. 56(c)(1). It is not enough to establish a genuine issue of material fact for Feathers to simply state that he disputes the evidence or arguments the SEC has presented because "[s]ummary judgment requires facts, not simply unsupported denials or rank speculation." McSherry v. City of Long Beach, 584 F.3d 1129, 1138 (9th Cir. 2009). Also, the moving party—in this case the SEC—can meet its burden by pointing out that the nonmoving party has failed to present any genuine issue of material fact. Musick v. Burke, 913 F.2d 1390, 1394 (9th Cir. 1990).

The Court also reiterates that Feathers' status as a pro se litigant does not relieve him of this burden or the standards of defeating a summary judgment motion. See Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir. 1986) ("[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record."). The notion that "a district court does not have a duty to search for evidence that would create a factual dispute" in a motion for summary judgment extends to a situation where the non-moving party is pro se. Bias, 508 F.3d at 1219 (citing Jacobsen, 790 F.2d at 1365 & n.5).

In his Opposition to the SEC's Motion for Summary Judgment as well as in his own Motion for Summary Judgment, Feathers offers several arguments attempting to demonstrate that genuine issues of material fact exist with regard to the SEC's allegations. For the reasons explained below

the Court rejects these arguments and finds that Feathers' assertions fail to introduce a question of fact.

First, Feathers appears to contend that the Funds were properly capitalized and disputes the SEC's arguments that the returns paid to members were actually from other members' investments rather than the net income and profits generated by the Funds. The Court rejects this argument as Feathers fails to sufficiently point to particular and specific evidence that would raise a question of fact in light of the evidence that the SEC has provided in support of its position. For example, Feathers argues that the SEC has overstated funds distributions by more than 50%, which, he argues, created the "illusory [sic] of the [Funds'] needing new member capital for distributions, when they never did." Def.'s Opp'n to Pl.'s Mot. for Summ. J. ("Def's Opp'n") 3–4, Docket Item No. 511. In support of this assertion, Feathers only points to Exhibit 2 of his Evidentiary Objections to SEC's Motion For Summary Judgment and Related Submissions ("Feathers' Evidentiary Objections") (Docket Item No. 509), which appears to be a general description of the SEC's Enforcement Division's duties. As another example, Feathers argues that by June 2012, the Funds had approximately $14 million in cash on hand and near cash from loan sales scheduled. In support of this assertion, Feathers offers a two-page spreadsheet titled "Loan Pipeline 2012." See Feathers' Evidentiary Objections, Docket Item No. 509, Ex. 3. Aside from this document being unsupported by a declaration or other assertion establishing foundation, Feathers fails to demonstrate how it supports his position that the Funds were sufficiently and properly capitalized.

Feathers raises several arguments against the SEC's establishment of the scienter element. He initially argues that scienter can only be established at trial, not at the summary judgment phase of a litigation. Pl.'s Opp'n at 10–11. This is an incorrect statement of law; as explained above, a court's determination about a defendant's state of mind in SEC enforcement actions can be established at the summary judgment phase of a litigation. See, e.g., Platforms Wireless, 2007 WL 1238707 (affirming summary judgment on claims brought under Section 10(b) of the Exchange Act and Rule 10b-5); Wilde, 2012 WL 6621747 (granting summary judgment because evidence of

defendants' scienter was "clear"); Aqua Vie Beverage, 2007 WL 2025231 (finding no genuine issue of material fact that the defendants acted with extreme recklessness); TLC Invs., 179 F. Supp. 2d 1149 (granting summary judgment on scienter based on plaintiff's "uncontroverted evidence").

Feathers' attempts to demonstrate a genuine issue of material fact as to his scienter also fails. Feathers appears to assert that the SEC's evidence that Feathers used the "due from" to manage the Funds' yields is false. See Def.'s Opp'n at 10–11. However, he does not support this contention with particularized facts and submitted evidence. He does argue that—with regard to loan transfers being in large round numbers—Gruebele "asked for these 'rounded' transfers to ease his burden of bookkeeping and bill paying." Id. at 11. Not only is this claim unsupported by documentary evidence on the record, it is also irrelevant and non-material to Feathers' state of mind.

Feathers also appears to argue that scienter has not been sufficiently established by the SEC because SBCC had the "good faith intentions to honor the terms of the note" and "retire part, or all, of the fund's note receivables" in early 2012. Id. at 13. The evidence Feathers provides in support of this is an email chain suggesting that SBCC "engaged counsel of Foley Lardner Law" to assist with the repayment and retirement of the notes receivable. Id.; Feathers' Evidentiary Objections Ex. 7. However, this unfounded assertion that only possibly shows an intent to repay the misappropriated funds and loans is insufficient to establish a question of fact in light of the specific, particular, and abundant evidence the SEC has provided establishing Feathers' scienter. As explained in great detail, the SEC has provided sufficient evidence of Feathers' scienter with regard to all of the following contentions: that Feathers reviewed and approved the Funds' offering documents that prohibited unsecured loans to SBCC; that Feathers had caused the Funds to make unsecured and loans and cash transfers to SBCC; that Feathers failed to disclose this to past and future investors; that Feathers did not account for the "notes receivable" of the Funds financial statements in accordance with GAAP; that Feathers explained how the "due from" recording would be deceptively used to absorb the Funds' expenses; and that Feathers disregarded advice from the

Funds' auditors and attorneys to cease selling loans between the Funds and readjust the "due from" accounting to be in accordance with GAAP.

Feathers also contends that he relied on the advice of professionals when drafting the offering documents as well as in executing the fund transfers, and that this reliance disproves the SEC's argument as to his scienter. Def.'s Opp'n at 16. In order to establish the affirmative defense of reliance on professional assistance, a defendant "must show that [he] (1) made a complete disclosure to [the professional]; (2) requested [the professional]'s advice as to the legality of the contemplated action; (3) received advice that it was legal; and (4) relied in good faith on that advice." SEC v. Goldfield Deep Mines of Nev., 758 F.2d 459, 467 (9th Cir. 1985) (citation omitted). Feathers neither points to nor provides any evidence to establish any of these elements. He only offers an unsupported assertion that he "acted with his professionals in good faith, and does not believe there were omissions of material information to these professionals, nor misrepresentations." Def.'s Opp'n at 16. As such, the Court rejects this argument.

Next, Feathers argues that he had obtained approval from investors to engage in the conduct the SEC contends underlies the securities fraud causes of action. First, Feathers asserts that SBCC "sought, and gained, consent from investors in May of 2012 for a change from GAAP basis accounting to tax basis accounting for the [F]unds." Def.'s Opp'n at 13. The only piece of documentary evidence Feathers provides and relies on in support of this contention is a letter purportedly to two IPF investors requesting this approval. See Feathers' Evidentiary Objections Ex. 10. However, this request fails to establish that Feathers actually received the approval from these and other investors to make this change. Furthermore, the letter fails to disclose that Feathers was actually causing IPF to make cash transfers and loans to SBCC in violation of the offering documents, as has been established by the SEC. Feathers also contends that SBCC had the "express authority to sell loans between the Funds, or to others and was doing so well before 2012." Def.'s Opp'n. at 19. Whether this authority was derived from the investors or the fund offering documents is unclear, as Feathers points to no specific and particular evidence confirming this

assertion. Feathers also asserts that "distributions to members, if they did occur in excess of fund profits, were not prohibited." Again, Feathers points to no evidence supporting this, and the Court has explained why the excess distributions were prohibited by the Fund documents.

Feathers also attempts to discredit several of the SEC's declarants. He argues that the "declarations of Jeff Spiegel and David Gruebele cannot have credibility" and that "[t]heir declarations, also, like those of Barbara Bushee and Robert Morris, appear to be heavily assisted by SEC." Def.'s Opp'n, at 7. Feathers also complains of not being able to depose them, arguing that only a jury can judge the credibility of declarations. Id. at 7–9, 15–16. However, "once the movant for summary judgment has supported his or her motion, the opponent must affirmatively show that a material issue of fact remains in dispute and may not simply rest on the hope of discrediting movant's evidence at trial." Frederick S. Wyle Prof'l Corp. v. Texaco, Inc., 764 F.2d 604, 608 (9th Cir. 1985). "Neither a desire to cross-examine affiant nor an unspecified hope of undermining his or her credibility suffices to avert summary judgment, unless other evidence about an affiant's credibility raises a genuine issue of material fact." Id.; see also Nat. Union Fire Ins. Co. v. Argonaut Ins. Co., 701 F.2d 95, 97 (9th Cir. 1983); cf. Vaughn v. Teledyne, Inc., 628 F.2d 1214, 1220 (9th Cir. 1980). Here, Feathers offers no direct and incontrovertible evidence that the SEC's declarants are not credible; he only offers unsupported conjectures such as, for example, the assertion that Spiegel's and Gruebele's declarations are "very suspect" and that they are "suddenly seeing things very differently now." Def.'s Opp'n at 7. Accordingly, the Court rejects Feathers' arguments regarding the character and credibility of the SEC's witnesses who have signed and sworn their declarations under penalty of perjury.

Feathers brings forth several other arguments in opposition to the SEC's summary judgment motion. The Court disposes of these arguments by noting that Feathers has not supported them with a presentation of specific and particular evidence that demonstrates that there exists a genuine issue of material fact. See Keenan, 91 F.3d at 1279. Feathers has provided hundreds of pages of exhibits in support of his opposition as well as in support of his own summary judgment

motion; many of these exhibits include the Funds' offering documents, lengthy email conversations without any context, the same audit reports the SEC provided, and magazine clippings. Feathers fails, however, to indicate which specific pieces support his assertions that there exist questions of material fact with regard to the SEC's contentions. See id. To reiterate, it is not the task of the Court to comb through the record in search of genuine issue of triable fact. Id.; Carmen, 237 F.3d at 1029; Forsberg, 840 F.2d at 1417–18.

5. Securities Fraud Claims Conclusion

For the foregoing reasons, the Court finds that the SEC has presented sufficient evidence to establish the elements of its securities fraud causes of action: that Feathers made material misstatements, misrepresentations, or omissions of fact to investors regarding his and SBCC's management of the Funds; that such misrepresentations were made in connection with the offer or sale of a security—specifically, the investment securities in the Funds—by means of interstate commerce; and that the misrepresentations were made with the intent to deceive the investors and other parties or with extreme recklessness. The Court also finds that Feathers has not met his burden of demonstrating, with the support of specific and particular documentary evidence, that there exist genuine issues of material fact with regard to these elements. Accordingly, the Court GRANTS the SEC's Motion for Summary Judgment with regard to its allegations of securities fraud.

B. Broker-Dealer Registration

Section 15(a) of the Exchange Act makes it unlawful for brokers to offer securities without registering themselves with the SEC. See 15 U.S.C. § 78o(a)(1). The Act defines a "broker" to include "any person engaged in the business of effecting transactions in securities for the account of others." Id. § 78c(a)(4). Courts considering this definition have required a showing that there was a "certain regularity of participation in securities transactions at key points in the chain of

distribution." SEC v. Hansen, No. 83 CIV. 3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984); see also SEC v. Interlink Data Network of Los Angeles, Inc., No. CIV. A. 93-3073 R, 1993 WL 603274, at *10 (C.D. Cal. Nov. 15, 1993). Activities that may indicate that a person is a broker include, inter alia, that the person "1) is an employee of the issuer; 2) received commissions as opposed to a salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice; and 6) is an active rather than passive finder of investors." Hansen, 1984 WL 2413, at *10.

Here, it is not disputed that Feathers and SBCC are the sole managers of the Funds, which technically were the issuers of the securities. Feathers and SBCC employed investor representatives who were paid a salary and a commission for sales of securities of IPF and SPF. See, e.g., Bulgozdy Decl. Ex. 175 at p. ii. Feathers and SBCC actively solicited new investments in IPF and SPF. See Morris Decl. ¶¶ 2–5, Ex. 131; Bulgozdy Decl. Exs. 215, 216. Moreover, Feathers and SBCC have been selling IPF and SPF securities regularly for years, with sales of at least $46 million of securities of these Funds. See Receiver's Preliminary Forensic Accounting Report, Docket Item No. 171, at pp. 2, 5. As such, the Court finds that Feathers and SBCC fall under the definition of "brokers" under Section 15(a) of the Exchange Act. Feathers has not presented evidence to the contrary nor evidence that introduces a genuine issue of material fact. As such, the Court GRANTS the SEC's Motion for Summary Judgment with regard to the claim of violation of the Exchange Act's broker-dealer registration provisions.

C. Control Person Liability

The Court also finds that the SEC has established that Feathers and SBCC are liable as control persons under Section 20(a) of the Exchange Act, which provides, "Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as

such controlled person to any person to whom such controlled person is liable . . . ." 15 U.S.C. § 78t(a). A defendant may be liable for securities violation if (1) there is a violation of the Exchange Act and (2) the defendant directly or indirectly controls any person liable for the violation. SEC v. Todd, 642 F.3d 1207, 1223 (9th Cir. 2011). The SEC defines "control" as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise." 17 C.F.R. § 230.405; Todd, 642 F.3d at 1223 n.4. The definition of "person" under the Act encompasses a "company." Id. at 1223 (citing 15 U.S.C. § 78c(a)(9)). As the SEC has established, and Feathers has admitted, that Feathers controlled SBCC, IPF, and SPF, the Court finds that the elements for control person liability for securities violation have been met beyond a genuine issue of material fact. As such, the Court GRANTS the SEC's Motion for Summary Judgment with regard to this cause of action.

IV. Conclusion and Order

For the foregoing reasons, the Court finds as a matter of law that Defendants committed securities fraud in violation of Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act as well as Section 10(b) of the Exchange Act and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder; that SBCC operated as an unregistered broker-dealer in violation of Section 15(a) of the Exchange Act; and that Feathers and SBCC are liable as control persons under Section 20(a) of the Exchange Act. As such, the SEC's Motion for Summary Judgment is GRANTED.

Defendant Feathers' Motion for Summary Judgment is DENIED.

The SEC seeks the following relief against Feathers and Defendant companies: (1) permanent injunction prohibiting future violations of the federal securities laws; (2) disgorgement of ill-gotten gains (plus prejudgment interest) from the conduct at issue here; and (3) payment of civil penalties. Based on the findings of fact and law contained herein, the Court is prepared to grant appropriate relief to the SEC and will hear and consider argument from the SEC and

Defendants as to what remedies are to be granted and in what amounts. This hearing will be set for **October 22, 2013 at 1:30 p.m.** The SEC is ordered to file opening briefings on this matter by September 9, 2013; Defendants are ordered to file any opposition by September 20, 2013; the SEC is ordered to file its reply by October 11, 2013.

IT IS SO ORDERED.

Dated: August 16, 2013

EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SEC,

Plaintiff,

v.

SMALL BUSINESS CAPITAL CORP. ET AL

Defendant.
_____/

Case Number: CV12-03237 EJD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 16, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mark Feathers
[redacted]
Los Altos, CA 94024

Dated: August 16, 2013

Richard W. Wieking, Clerk
/s /By: Elizabeth Garcia, Deputy Clerk

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Subject:Activity in Case 5:12-cv-03237-EJD Securities and Exchange Commission v. Small Business Capital Corp. et al Order on Motion for Summary Judgment
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U.S. District Court

California Northern District

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Case Name: Securities and Exchange Commission v. Small Business Capital Corp. et al
Case Number: 5:12-cv-03237-EJD
Filer:
Document Number: 591

Docket Text:
ORDER denying [459] Defendants' Motion for Summary Judgment; denying [459] Defendants' Motion for Partial Summary Judgment; denying [459] Defendants' Motion for Miscellaneous Relief; granting [477] Plaintiff Securities and Exchange Commission's Motion for Summary Judgment. Signed by Judge Edward J. Davila on 8/16/2013. (ejdlc3, COURT STAFF) (Filed on 8/16/2013)

5:12-cv-03237-EJD Notice has been electronically mailed to:

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3f09725fc844baa16cf0b60bba019c27b15efcfca09279cdd281b05aadc]]

EXHIBIT 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MARK FEATHERS, Defendant.	NO. CR 14 – 0531 LHK UNITED STATES' MOTION FOR REVOCATION OF RELEASE PENDING TRIAL AND FOR CONTEMPT OF COURT Hearing Date: March 23, 2017 Time: 1:30 p.m. Judge: Hon. Howard R. Lloyd

The United States of America, by and through Assistant United States Attorney Timothy J. Lucey, hereby moves the Court for revocation of defendant MARK FEATHERS' ("Feathers") release pending trial, pursuant to 18 U.S.C. § 3148(b)(1)(A), and for contempt, pursuant to 18 U.S.C. § 3148(c), and requests the hearing be conducted before the duty magistrate on Thursday, March 23, 2017, at 1:30 p.m., or as soon thereafter as the matter may be heard.

In support of this motion, the United States submits:

1. On October 29, 2014, the defendant Feathers was indicted on 29 felony counts, specifically seventeen counts of securities fraud, in violation of 15 U.S.C. §§ 17j(b) and 78ff and 17

C.F.R. § 240.10b-5 as well as twelve counts of mail fraud, in violation of 18 U.S.C. §1341. *See* Dkt. 1.

2. On November 12, 2014, the defendant appeared before United States Magistrate Judge Paul S. Grewal for his Rule 5 hearing, at which time, United States Magistrate Judge Paul S. Grewal set the conditions of the defendant's release on an unsecured bond in the amount of $250,000, pending a full bail study by Pretrial Services. One of the standard conditions of release is that the defendant "shall not commit any federal, state or local offense. " *See* Dkt. No. 4. Another standard condition requires that he "shall not harass, threaten, intimidate, injure, tamper with, or retaliate against any witness, victim, informant, juror, or officer of the Court, or obstruct any criminal investigation." *Id.*

3. On November 19, 2014, the defendant again appeared before Magistrate Judge Grewal, who modified the conditions of his bond to include his spouse as a surety, such that both the defendant and his wife were thereafter liable for up to $250,000, if the defendant were found to have violated the conditions of the bond. The amended bond continued to include the aforesaid standard conditions of release and added the special condition that the defendant not possess any firearm, gun or other dangerous weapon. *See* Dkt. No. 8.

4. The Court thereafter modified those conditions on several occasions to permit greater movement by the defendant but always retained the original standard condition of releases.

5. On March 1, 2017, the Court, in the person of the Honorable Lucy H. Koh, denied, among other motions, the defendant's motion to stay these criminal proceedings while he appealed the Court's grant of summary judgment in favor of the Securities and Exchange Commission ("SEC") in its civil enforcement action encaptioned *SEC v. Small Business Capital, et al,* No. 12 – 3237 EJD, Northern District of California. *See* Dkt. No. 103.

6. On March 7, 2017, the defendant sent an email to eight individuals. *See* Exhibit 1, attached hereto in redacted form. The subject line of the message was captioned "you will need to ask the court for extra marshals to my jury trial" and the full text of the message read as follows:

> I am putting you on notice now that if the word Ponzi is used at trial, or the word swindler, or similar, I will rise out of my seat and attempt to bring injury to any party that uses the word.
> To and through this date you have been able to introduce prejudice with the use of the word Ponzi in public and in hidden court pleadings. You won't get away with it again (with me at least).
> Feathers

7. Of the eight individuals whose addresses were included on the "to line" of the email message, six have now been interviewed by the Federal Bureau of Investigation ("FBI"). *See* Exhibit 2, Declaration of Christine White, attached hereto. Four of those six are attorneys for the SEC; another is the receiver appointed by the Court in the *Small Business Capital* matter; the sixth individual is an attorney representing the receiver in that same case. The other two individuals listed on the "to line" of the email message are the defendant's current and immediately prior counsel of record.

8. The six individuals interviewed by the FBI all received and viewed the subject email message. All but one of the six felt threatened by the message. Certain victims expressed manifest concern about their ability to testify, if called as witnesses in this criminal case. While some had been sued by Feathers, and at least one had been verbally assaulted in court prior to the Indictment, none had ever before been threatened with physical violence. *See* Exhibit 2, ¶¶5-23.

9. Because the defendant continues to flout the law cavalierly, the United States contends that he is unlikely to abide by any condition or combination of conditions of release. *See* 18 U.S.C. § 3148(b)(2)(B). In the wake of this Court's refusal to stay his criminal trial, the defendant has now lashed out at potential witnesses and officers of the court in an effort to prevent, alter, or otherwise tamper with future testimony in the criminal trial.

10. Among other pertinent statutes, 18 U.S.C. § 1512(a)(2)(A) provides:

> Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to . . .
>
> (A) influence, delay, or prevent the testimony of any person in an official proceeding ... shall be punished as provided in paragraph (3).

The referenced paragraph (3) provides that a violation of section 1512(a)(2)(A) consisting only of a threat of physical force, without more, against any person shall be punished by "imprisonment for not more than 20 years."

11. In addition to the maximum of twenty years' imprisonment the defendant faces under the securities and mail fraud charges contained in the pending Indictment, the defendant could face a mandatory consecutive sentence of up to ten years' imprisonment for committing additional felonies while on release pending trial, should any charges be filed based on this email. *See* 18 U.S.C. § 3147(1).

12. Because the defendant has committed another federal felony offense while on release

pending trial, there arises a rebuttable presumption against his release. As section 3148(b) states: "If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community."

13. According to the Senate Report on the 1984 Bail Reform Act, one of the Act's purposes was to address "the alarming problem of crimes committed by persons on release," by ensuring that courts are given "adequate authority to make release decisions that give appropriate recognition to the danger a person may pose to others if released." S. Rep. No. 225, 98th Cong., 1st Sess., at 3 (1983), reprinted in 1984 U.S. Code Cong. & Admin. News 3182, 3185. The statute's reference to "safety of any other person or the community" refers to the danger of a defendant continuing to engage in criminal conduct to the community's detriment. *See United States v. Cook*, 880 F.2d 1158, 1161 (10th Cir. 1989). "Dangers posed to others" include more than the risk of physical violence. *See, e.g., United States v. King*, 849 F.2d 485, 487 n.2 (11th Cir. 1988).

14. For the Court to find probable cause under Section 3148(b)(1)(A), the "facts available to the judicial officer must 'warrant a man of reasonable caution in the belief' that the defendant has committed a crime while on bail." *Cook*, 880 F.2d at 1160 (citation omitted); *accord, United States v. Aron*, 904 F.2d 221, 224 (5th Cir. 1990) (defendant intimidated witness while on bail); *United States v. Gotti*, 794 F.2d 773, 777 (2d Cir. 1986)(same); *United States v. Wilson*, 820 F. Supp. 1031, 1033 (N.D. Tex. 1993)(same). In the case at bar, this Court can readily make the determination of probable cause based on the email itself and the summary of victim statements prepared by the FBI Special Agent.

15. Accordingly, the rebuttable presumption applies to the defendant, and it is now incumbent on him to come forward with some evidence to rebut the presumption. *See Cook*, 880 F.2d at 1162. Even when the defendant meets the burden of production, "the presumption does not disappear, but rather remains as a factor for consideration in the ultimate release or detention determination." *Id.*; *accord*, Wilson, 820 F. Supp. at 1034. To defeat the rebuttable presumption, the defendant must do more than attack the credibility of the evidence, or rely on family ties, community ties, or a record of having reported to the pretrial services officer when required. *See, e.g., Wilson*, 820 F. Supp. at 1034.

16. The defendant's commission of a federal felony, and especially one that threatens

violence against potential witnesses, officers of the Court, and attorneys for the SEC, makes his continued release unwarranted and unjustified. His conduct also merits a finding of contempt and an appropriate sanction of either a fine or imprisonment. *See* 18 U.S.C. § 401(3); *see also United States v. Twitty*, 44 F.3d 410, 413 (6th Cir. 1995).

CONCLUSION

For the above-stated reasons, the United States requests that the defendant's release pending trial be revoked and that he be held in contempt of court.

Respectfully submitted,

BRIAN J. STRETCH
United States Attorney

/s/

TIMOTHY J. LUCEY
Assistant United States Attorney

From: Mark Feathers [redacted]
Sent: Tuesday, March 07, 2017 05:32 AM
To: [redacted]
Subject: you will need to ask the court for extra marshals to my jury trial

I am putting you on notice now that if the word Ponzi is used at trial, or the word swindler, or similar, I will rise out of my seat and attempt to bring injury to any party that uses the word.

To and through this date you have been able to introduce prejudice with the use of the word Ponzi in public and in hidden court pleadings. You won't get away with it again (with me at least).

Feathers

DECLARATION OF CHRISTINE WHITE

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been so employed since March 2016. I am currently assigned to the San Francisco Division, San Jose Resident Agency, where I investigate complex financial crimes, including, but not limited to: bankruptcy fraud, investment fraud, mortgage fraud, commodities fraud, money laundering, and corporate fraud. I successfully completed the 21 weeks of New Agent Training at the FBI Academy in Quantico, Virginia in July 2016. During that time, I received training in physical surveillance, legal statutes and procedures, financial investigations, money laundering techniques, asset identification, forfeiture and seizure, confidential source management, and electronic surveillance techniques, including Title III monitoring. Prior to my employment with the FBI, I worked as both a quality assurance engineer and a technology consultant for six years. I received a bachelor's degree in finance from Indiana University.

2. The contents of this affidavit are based on my personal knowledge, information provided to me by Special Agents of the Federal Bureau of Investigation ("FBI") and witnesses, as well as my experience and background as a Special Agent of the FBI.

3. The matter of *United States vs. Feathers*, case number CR 14 – 0531 LHK, is currently set for trial to begin on January 19, 2018.

4. FBI agents have determined that on or around March 7, 2017, Mark Feathers (Feathers) sent an email to eight individuals with subject line: "you will need to ask the court for extra marshals to my jury trial." The body of the email contained the following text:

> "I am putting you on notice now that if the word Ponzi is used at trial, or the word swindler, or similar, I will rise out of my seat and attempt to bring injury to any party that uses the word.

> To and through this date you have been able to introduce prejudice with the use of the word Ponzi in public and in hidden court pleadings. You won't get away with it again (with me at least)."

The email was signed by Feathers. FBI agents reached out to six of the eight recipients of the email regarding the email's content. These six recipients are identified below as Victim 1 through Victim 6.

VICTIM 1

5. Victim 1 (V1) was interviewed on March 13, 2017, via telephone regarding the content of the aforementioned email dated March 7, 2017. V1 had just arrived at work when he read the email on an office computer. V1 was taken back and perplexed by the email as it seemed out of the blue. This made the email more alarming.

6. V1 had personal interactions with Feathers in the past both inside and outside the courtroom. V1 had received threatening emails from Feathers previously, but V1 was usually included on the "cc: line" of the email and not the "to: line" of the email. For the email dated March 7, 2017, V1 was included on the to: line of the email.

7. V1 noted that the email dated March 7, 2017, was the first time that Feathers had threatened violence in an email. There were times in court when Feathers had become so angry that V1 had been concerned for V1's safety. V1 was stunned that Feathers would make the statements that he made. This most recent email made V1 concerned for V1's safety again.

8. V1 and V1's client, Victim 2 (V2), had made it a point to be very careful in how they communicated with Feathers in order to avoid saying anything that might provoke him. V1

was concerned for V2's safety because it was possible V2 would have to testify in Feathers' criminal trial.

VICTIM 2

9. Victim 2 (V2) was interviewed on March 10, 2017, via telephone regarding the content of the aforementioned email dated March 7, 2017. V2 first read the email at home on a mobile phone. V2 had received hundreds of emails from Feathers in the past, some of which threatened V2's career. The email dated March 7, 2017 was the first email in which Feathers made physically threatening statements.

10. V2 believed that the phrase "Ponzi scheme" was an accurate description of Feathers' actions, as Feathers deceptively created liquidity. Despite the email threat, V2 believed he would continue to use the phrase "Ponzi-like behavior" as part of his testimony, were he called to testify. V2 anticipated having this email threat on V2's mind in the future specifically because the matter was unfinished; V2 could be called to testify in the upcoming criminal trial.

11. Even though V2 felt sorry for Feathers, this email caused him alarm and V2 felt unsettled and intimidated. V2 found the email disturbing and it caused him stress. V2 went on to note that V2 felt both harassed and badgered by Feathers. Feathers was ex-military and V2 was not sure if Feathers owned any weapons. *Note: Following the interview with V2, the FBI verified that Feathers was previously an active member of the Navy between the dates of November 21, 1986 to December 28, 1989, and received an honorable discharge.*

VICTIM 3

12. Victim 3 (V3) was interviewed on March 10, 2017, via telephone regarding the content of the aforementioned email dated March 7, 2017. V3 first read the email at home on a mobile phone. V3 had previously heard Feathers make inflammatory comments in open court. In

previous civil court proceedings, Feathers had vowed revenge against the Securities and Exchange Commission (SEC) team and had been upset by the use of the word "Ponzi." The email dated March 7, 2017, however, was the first time that Feathers had threatened V3 with physical injury.

13. V3 had been concerned by some of the statements that Feathers had made in the past. Specifically, when V3 would walk V3's dog at night, V3 would worry about V3's safety. After reading the subject email, V3 played different scenarios through V3's mind of what could potentially happen in the future between Feathers and V3. It was possible that V3 would have to testify in the criminal trial. If he were called to testify, V3 believed he would have to use the word "Ponzi" in order to testify truthfully. V3 believed that if someone, including V3, used the word "Ponzi" in court, Feathers would likely try to cause physical harm to the individual.

14. V3 noted that the statements that Feathers made in the email dated March 7, 2017, were new and should be taken seriously. V3 believed that Feathers meant what he said. V3 would like to think that this email will have no impact on V3's future life. V3 was aware that V3's personal address was readily available online and hoped that it was unlikely that Feathers will visit V3's home and cause V3 harm. V3 noted that this situation was very sad. As a human being this latest email worried V3, but that being said, V3 pledged to still do V3's job.

VICTIM 4

15. Victim 4 (V4) was interviewed on March 10, 2017, via telephone regarding the content of the aforementioned email dated March 7, 2017. V4 first read the email at home on a mobile phone. V4 noted that Feathers had sent early morning and late night inflammatory emails in the past, but this was the first one that included a physical threat.

16. V4 had never met Feathers and does not anticipate meeting Feathers in the future. Therefore, the statements contained in the email did not have a direct impact on V4. V4 was

considering what precautions needed to be taken for V4's co-worker, V3, who would have contact with Feathers in future court hearings.

VICTIM 5

17. Victim 5 (V5) was interviewed on March 10, 2017, via telephone regarding the content of the aforemention email dated March 7, 2017. V5 first heard about the email after seeing communications between other recipients of the email. V5 noted that Feathers had sent early morning and late night inflammatory emails in the past, but this was the first one that included physically threatening statements.

18. V5 believed that the email was specifically directed at V5 as well as the other individuals that received the email. V5 believed that Feathers was capable of violence and carrying out his threat and took the email seriously. V5 understood the threat in the email not only to apply to the upcoming criminal trial, but also to include any future court filings. V5 believed that Feathers ran a Ponzi-like scheme and that, despite the email threat, V5 would continue to use the word Ponzi if needed.

19. V5 had threatening encounters with Feathers in the past. On one occasion that occurred prior to the filing of the Indictment, Feathers had had an over-the-top reaction to something V5 said in the courtroom. Feathers began screaming at V5 calling V5 "indecent." On another occasion, Feathers had placed himself between V5 and the exit of the courtroom, and stated that Feathers would "see her [V5] in hell" and called her, to the best of V5's recollection, a "lying piece of shit" or "lying bitch." The scheduling clerk apparently overheard the comment and notified the court marshals, who proceeded to escort V5 out after Feathers left the courtroom.

20. As a trial attorney, V5 was generally not a person who was easily intimidated or afraid of confrontation; however, Feathers was stressful to be around. V5 was not afraid of

Feathers, but being around him required hyper alertness and vigilance. V5 would not want to be alone in a confined space with Feathers, but was willing to be in a courtroom with him.

VICTIM 6

21. Victim 6 (V6) was interviewed on March 10, 2017, via telephone regarding the content of the aforementioned email dated March 7, 2017. V6 first heard about the email when V6 viewed it at home on a mobile device. V6 noted that this email was different than prior emails because it included a threat of bodily injury.

22. Feathers has sued V6 personally in the past, because he apparently blamed V6 for the downfall of Feathers' entity. In 2014, V6 changed the online publicly viewable address associated with V6's professional license from V6's home address to V6's work address because V6 was concerned Feathers would show up on V6's front porch; V6 was worried about what Feathers might do. Feathers made V6 feel uncomfortable. V6 noted that the email dated March 7, 2017, furthered V6's concern that Feathers may show up at V6's residence. V6 also took note of the fact that V6 was listed first on the "to: line" of the email.

23. V6 was not sure if Feathers was serious about what he said in the email, but noted that it would be foolish not to take Feathers at his word. The language in the email made V6 concerned for V6's own personal safety, the safety of V6's family, and the security of V6's property. As a result of the email dated March 7, 2017, V6 was looking into purchasing security cameras for V6's home.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Signed and dated on March 21, 2017, in San Jose, California.

Special Agent Christine White
Federal Bureau of Investigation

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, VS. FEATHERS, DEFENDANT	CR-14-00531-LHK SAN JOSE, CALIFORNIA MARCH 7, 2018 PAGES 1-62

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: BY: MARISSA HARRIS
U.S. ATTORNEYS OFFICE
NORTHERN DISTRICT CALIFORNIA
150 ALMADEN BLVD., STE. 900
SAN JOSE, CA 95113

FOR THE DEFENDANT: BY: EUGENE G. ILLOVSKY
MATTHEW CARTER DIRKES
BOERSCH & ILLOVSKY LLP
1611 TELEGRAPH AVENUE, SUITE 806
OAKLAND, CA 94612

PROBATION:

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

SAN JOSE, CALIFORNIA MARCH 7, 2018

P R O C E E D I N G S

(COURT CONVENED AT 9:46 A.M.)

THE CLERK: YOUR HONOR, THE NEXT MATTER WILL ALSO BE THE IN CUSTODY MATTER.

CASE 14-CR-00531. UNITED STATES OF AMERICA VERSUS MARK FEATHERS.

PLEASE STATE YOUR APPEARANCES.

MS. HARRIS: GOOD MORNING, YOUR HONOR.

MARISSA HARRIS FOR THE UNITED STATES.

MR. ILLOVSKY: GOOD MORNING, YOUR HONOR.

EUGENE ILLOVSKY WITH MATTHEW DIRKES. WE ARE BY APPOINTMENT FOR MR. FEATHERS WHO IS PRESENT AND IN CUSTODY.

PROBATION OFFICER: GOOD MORNING, YOUR HONOR.

BRIAN CASAI FROM PROBATION.

THE COURT: ALL RIGHT. GOOD MORNING AND WELCOME TO EVERYONE.

LET ME ASK MR. FEATHERS, HAVE YOU READ AND DISCUSSED THE PRESENTENCE REPORT WITH YOUR ATTORNEY?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: I GUESS I SHOULD SAY, YOUR ATTORNEYS.

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

I HAVE SOME QUESTIONS TO ASK, BUT IF ANYONE WANTS TO SPEAK FIRST, THAT'S FINE TOO.

LET ME FIRST ASK, DO YOU HAVE -- AND I KNOW MS. HARRIS, THIS WAS MR. LUCEY'S CASE; IS THAT RIGHT?

MS. HARRIS: YES, YOUR HONOR.

THE COURT: SO I DON'T KNOW, HOW LONG HAVE YOU BEEN ON THIS CASE?

MS. HARRIS: FOR PROBABLY ABOUT A MONTH, YOUR HONOR.

I JUST LITERALLY I GOT IT. HE WAS WALKING OUT THE DOOR, AND I GOT IT AND WAS ASKED TO WRITE THE SENTENCING SUBMISSION IN TWO WEEKS.

THE COURT: OH, OKAY.

MS. HARRIS: IT'S BEEN A BIT OF A TRIAL BY FIRE, YOUR HONOR.

THE COURT: OH, I'M SURE. THIS IS A HEAVILY DOCUMENT-INTENSIVE CASE, SO I DON'T EVEN KNOW IF YOU ARE FAMILIAR ENOUGH WITH IT TO ANSWER SOME OF MY QUESTIONS.

DO YOU HAVE A RESPONSE TO THE DEFENSE SENTENCING MEMO? BECAUSE I FELT LIKE THE SENTENCING MEMOS OF THE PARTIES WERE KIND OF TWO SHIPS PASSING IN THE NIGHT.

DO YOU HAVE A RESPONSE OR NOT? AND I WILL UNDERSTAND IF YOU ARE JUST NOT FAMILIAR ENOUGH WITH THE CASE NOW THAT MR. LUCEY HAS LEFT.

MS. HARRIS: WELL, A RESPONSE IN WHAT WAY, YOUR HONOR?

SO I NOTE THAT WITH REGARDS TO THE RESTITUTION, I HAVE ASKED THE RECEIVER TO BE AVAILABLE TODAY IN CASE THE COURT HAS

ANY QUESTIONS FOR HIM. AND SO I GAVE THE COURT CLERK THAT NUMBER. BUT IN TERMS OF A RESPONSE, I MEAN, YOUR HONOR, MY UNDERSTANDING --

THE COURT: I MEAN, THEY BASICALLY ARE SAYING HE'S NOT GUILTY, HE MADE ALL THE REQUIRED DISCLOSURES, THAT'S THE WAY I READ THEIR MEMO.

MS. HARRIS: RIGHT.

THE COURT: IT'S LIKE HE REALLY DIDN'T DO ANYTHING WRONG, HE DID EVERYTHING RIGHT.

MS. HARRIS: YOUR HONOR --

THE COURT: WHAT'S YOUR ANSWER ON ALL OF THESE?

MS. HARRIS: YOUR HONOR, TO THAT, I WOULD SAY THE PLEA AGREEMENT SPEAKS FOR ITSELF.

THE DEFENDANT MADE ADMISSIONS IN THE PLEA AGREEMENT, SPECIFICALLY HE ADMITTED TO A COUNT OF MAIL FRAUD, WHICH BY ITS VERY NATURE REQUIRES HIM TO ADMIT TO MISSTATEMENTS THAT HE MADE IN CONNECTION WITH THESE FUNDS, AND IN RELATION TO THE TRANSFERS THAT WERE MADE BETWEEN THE FUNDS AND SBCC. THOSE FACTS WERE LITERALLY IN THE PLEA AGREEMENT. WE AGREED TO THEM. MR. LUCEY AND MR. ILLOVSKY HAMMERED OUT THIS AGREEMENT ON THE EVE OF TRIAL. IT WAS A FINE TUNED AGREEMENT, FROM MY UNDERSTANDING, AND THESE ARE THE FACTS THAT WERE AGREED TO, AND THAT'S IT.

SO I MEAN, I DON'T REALLY UNDERSTAND TO WHAT EXTENT THERE IS ANY ATTEMPT HERE TO WALK BACK FROM THE FACTS IN THE PLEA

AGREEMENT. BUT TO THE EXTENT THAT THERE IS ONE, IT'S -- I THINK IT'S NONSENSE BECAUSE THAT'S LITERALLY WHAT HE AGREED TO, IT'S IN WRITING, AND THAT'S THE END OF IT.

THE COURT: LET ME ASK, YOU KNOW, I HAVE SOME FAMILIARITY JUST BECAUSE I HAD TO WRITE TWO SUBSTANTIVE ORDERS IN THIS CASE BECAUSE HE WANTED THE RELEASE OF FUNDS, AND SO I HAD TO FAMILIARIZE MYSELF WITH THE SEC CASE THAT'S BEFORE JUDGE DAVILA.

I ISSUED MY FIRST ORDER ON DECEMBER 19TH OF 2016, AND THEN THEY EFFECTIVELY MOVED FOR RECONSIDERATION AND I HAD TO ISSUE ANOTHER ORDER ON MARCH 1ST OF 2017. AND THERE HAVE BEEN SO MANY APPEALS, CERTAINLY IN THE CIVIL CASE.

I GUESS WHAT I DON'T UNDERSTAND IS THE CIVIL CASE HAS BEEN LITIGATED FOR QUITE SOME TIME, AND YOU'VE HAD A RECEIVER WHO WAS BASICALLY APPOINTED EARLY ON TO SEIZE THE FUNDS AND TRY TO DISTRIBUTE THEM TO THE INVESTORS VERY EARLY ON.

AND YOU HAVE, YOU KNOW, ACCOUNTANTS THAT HAVE BEEN WORKING ON FIGURING OUT THE MONEYS, WE HAVE THESE VERY SPECIFIC NUMBERS, AND SO I DON'T UNDERSTAND WHY THE POSITION IS THAT LOSS CANNOT REASONABLY BE DETERMINED, INVESTOR LOSS. THAT'S WHAT I DON'T UNDERSTAND.

I MEAN, JUDGE DAVILA HAS DONE CROSS SUMMARY JUDGEMENT MOTIONS IN THE CIVIL CASE. I'VE READ HIS SUMMARY JUDGEMENT ORDER. I MEAN, THERE'S BEEN A LOT OF FIGURING OUT WHAT THAT NUMBER IS. SO WHY IS IT THAT, OH, WE CAN'T REALLY DETERMINE IT

AND WE HAVE TO JUST GO WITH GAIN?

MS. HARRIS: WELL, YOUR HONOR, THE DIFFERENCE BETWEEN THE CIVIL AND THE CRIMINAL CASE OBVIOUSLY IS THE BURDEN, THE GOVERNMENT'S BURDEN OF PROOF.

AND HERE, IN THIS PARTICULAR CASE, THERE WERE SOME CHALLENGES IN TERMS OF PROVING THE DEFENDANT'S CONTINUING INTENT TO DEFRAUD AFTER HE SENT OUT LETTERS REGARDING THE NATURE OF ASKING FOR BASICALLY RETROACTIVE APPROVAL OF THESE TRANSFERS.

THE COURT: THE LOANS.

MS. HARRIS: YES, THE LOANS AND THE NATURE OF THEM AND DISCLOSING THAT TO SOME EXTENT TO THE INVESTORS, AND INDICATING THAT HE NEEDED THEIR APPROVAL TO RECLASSIFY THESE LOANS AS RECEIVABLES.

THE COURT: OKAY.

MS. HARRIS: SO AGAIN, THE GAIN NUMBER THAT WE ARE USING IS BECAUSE THIS IS THE GAIN THAT THE GOVERNMENT BELIEVES THAT IT COULD HAVE PROVED AT TRIAL.

YOU KNOW, I NOTE THAT YOU ARE CORRECT TO BRING UP THE IDEA THAT JUDGE DAVILA ORDERED DISGORGEMENT OF OVER $7 MILLION IN THE CIVIL CASE.

THE COURT: $7,782,951.07, TO BE EXACT.

MS. HARRIS: YES, YOUR HONOR.

AND AGAIN, THE COUNT THAT MR. FEATHERS PLED TO WAS A VERY SPECIFIC SET OF FACTS DEALING WITH ONE OF THE FUNDS, AND WITH

THE MISSTATEMENTS THAT HE MADE IN RELATION TO THAT FUND.

AND SO THE WAY THAT THE GOVERNMENT AND THE DEFENDANT ARRIVED AT THIS PARTICULAR NUMBER WAS BY LOOKING AT THE GAIN TO FEATHERS AS OF JANUARY 2009, THROUGH ROUGHLY AUGUST OF 2010. AND THAT'S THE NUMBER, THE GAINS THAT WOULD HAVE BEEN RELEVANT TO THAT PARTICULAR FUND, WHICH IS THE SUBSTANCE OF THE COUNT THAT HE PLED TO. BASICALLY, THAT'S HOW WE CAME TO THE NUMBER THAT WE AGREED TO IN THE PLEA AGREEMENT FOR THE ENHANCEMENT UNDER 2(B)1.1.

THE COURT: NOW CAN I ASK YOU A QUESTION, THE PERMANENT INJUNCTION IN THE SEC CASE BEFORE JUDGE DAVILA WAS THE $7.7 MILLION NUMBER?

MS. HARRIS: YES, YOUR HONOR.

THE COURT: SO WHY ARE YOU REQUESTING RESTITUTION OF $5.7? HAS OVER $2 MILLION BEEN PAID OUT? WHAT'S -- JUST EXPLAIN THE DIFFERENCE.

MS. HARRIS: SURE.

SO YOUR HONOR, THE SEC ACTION, THERE WERE A NUMBER OF THINGS THAT HAPPENED. AS YOUR HONOR IS AWARE, THE COURT GRANTED SUMMARY JUDGEMENT AGAINST FEATHERS IN AUGUST 2013. AND SHORTLY THEREAFTER IT ISSUED THE PERMANENT INJUNCTION AGAINST FEATHERS AND HIS CO-DEFENDANTS IN THAT CASE, SBCC, IPF, SPF, AND ORDERED DISGORGEMENT IN THE AMOUNT THE COURT SPECIFIED, AND THEN ASKED, IN ADDITION TO PREJUDGMENT INTEREST, AND IMPOSED A CIVIL PENALTY.

NOW THE COURT -- IN FEBRUARY OF 2014, THE COURT GRANTED THE RECEIVER'S PROPOSED DISTRIBUTION PLAN WHICH BASICALLY ALLOWED THE RECEIVER TO LIQUIDATE THE ASSETS OF THESE COMPANIES THAT WERE HELD IN RECEIVERSHIP AND DISTRIBUTE THEM AMONG ALL OF THE DEFENDANT CLAIMANTS WHO WERE THE INVESTORS IN THE FUNDS, THE VARIOUS FUNDS.

THIS WAS DONE PURSUANT TO WHAT'S CALLED THE "RISING TIDE METHOD." AND BASICALLY SOME CLAIMANTS WERE PRIORITIZED WHO HAD NOT HAD A CHANCE TO RECOVER PRIOR TO THE APPOINTMENT OF THE RECEIVER. AND ONCE THEY WERE MADE WHOLE TO A CERTAIN AMOUNT, THAT'S WHEN THEY THEN -- EVERYBODY STARTED TO RECEIVE ADDITIONAL DISTRIBUTIONS OF THE RECEIVERSHIP'S ASSETS.

SO THERE WERE FOUR DISTRIBUTIONS TOTAL. AND OF THE ROUGHLY 40 MILLION SOME ODD ALLOWED CLAIMS THAT ALL OF THESE GROUPS OF INVESTORS HAD, 35 MILLION WAS PAID OUT BY THE RECEIVER OVER FOUR DISTRIBUTIONS.

SO THIS IS WHY WE GET THE NUMBER, THE $5 MILLION -- $5.6 MILLION NUMBER THAT THE GOVERNMENT HAS ASKED FOR IN RESTITUTION BECAUSE THAT IS --

THE COURT: $5,724,667.54.

MS. HARRIS: CORRECT. THAT'S THE UNPAID REMAINDER OF THE ALLOWED CLAIMS FROM THE CIVIL CASE. THAT'S WHY WE ARE ASKING FOR THAT IN RESTITUTION.

AND I WILL NOTE, YOUR HONOR, THAT THIS NUMBER, THE ALLOWED CLAIMS IN THE CIVIL CASE COVERS A MUCH BROADER SCOPE OF

VICTIMS, IT COVERS A MUCH BROADER TIME PERIOD THAN WAS PURSUED IN THE CRIMINAL MATTER.

AGAIN, THIS IS FOR THE ENTIRE UNIVERSE OF PEOPLE POSSIBLY AFFECTED. AND THAT'S WHY I WROTE IN MY SENTENCING MEMO THAT THIS RESULT IS A VERY POSITIVE ONE. I MEAN, IT'S VERY RARE THAT YOU HAVE A FRAUD CASE WHERE ALL OF THE VICTIMS END UP MADE WHOLE, THAT THERE'S MONEY TO GIVE TO THEM, THAT THEY ARE REIMBURSED FOR THE FRAUDS -- WELL --

THE COURT: THEY ARE NOT ONE HUNDRED PERCENT.

MS. HARRIS: NOT ONE HUNDRED PERCENT, BUT EIGHTY-EIGHT PERCENT, TO BE EXACT.

SO, YOU KNOW, IN TERMS OF THE GOVERNMENT'S CIVIL AND CRIMINAL ENFORCEMENT ARMS WORKING TOGETHER TO RECEIVE A POSITIVE RESULT FOR ALL OF THE POTENTIAL PEOPLE IMPACTED BY THIS CASE, I ACTUALLY THINK IT'S A VERY POSITIVE OUTCOME.

I MEAN, I'VE HAD SEVERAL FRAUD CASES WHERE THIS IS NOT THE OUTCOME, WHERE THE VICTIMS DON'T GET ANYTHING, WHERE THE MONEY HAS ALREADY BEEN SPENT. AND IN FACT, I HAVE A SEVEN-DEFENDANT ONE COMING YOUR WAY, YOUR HONOR, WHERE THAT VERY WELL MAY BE THE CASE.

SO, YOU KNOW, AGAIN, THAT'S WHY AT THE END OF THE DAY WHEN WE CONSIDERED THE BEST WAY TO RESOLVE THIS MATTER, WE ALSO CONSIDERED THE ACTIONS THAT HAVE BEEN TAKEN BY THE SEC IN THE CIVIL CASE TO GET THE DISGORGEMENT, TO GET THE ASSETS LIQUIDATED AND THE ENTIRE UNIVERSE OF INVESTORS REPAID THE

MONEYS THAT WERE OWED TO THEM, AND THEN CONSIDERED AFTER ALL OF THAT WAS TAKEN INTO ACCOUNT, WHAT THE GOVERNMENT'S REMAINING INTEREST IS IN THE CIVIL CASE -- EXCUSE ME, IN THE CRIMINAL CASE, AND THAT'S HOW WE ARRIVED AT THIS AGREEMENT.

AND WE DO BELIEVE THAT THE SENTENCE THAT WE RECOMMENDED, THE 33 MONTHS IN PRISON, ALONG WITH RESTITUTION AS CALCULATED HERE, THE SUPERVISED RELEASE AND THE HUNDRED DOLLAR SPECIAL ASSESSMENT FEE, IS A FAIR SENTENCE WHEN TAKEN IN TOTALITY WITH THE GOVERNMENT'S CIVIL ENFORCEMENT EFFORTS.

AGAIN, THIS IS A VERY POSITIVE RESULT, IN MY VIEW.

THE COURT: SO LET ME ASK YOU ABOUT THE TIME PERIOD IN THE PLEA AGREEMENT.

IT SAYS "BEGINNING APPROXIMATELY 2009 AND CONTINUING THROUGH AT LEAST AUGUST 2010, AND FOR SOME PERIOD THEREAFTER, NO LATER THAN APPROXIMATELY JUNE 2012." I JUST FOUND THAT VERY CONFUSING. DOES THAT MEAN THAT THERE WAS NO CRIMINAL ACTIVITY BETWEEN AUGUST 2010 AND JUNE 12TH, OR WHY IS IT WRITTEN THIS WAY SUCH THAT THERE'S A BREAK AROUND AUGUST 2010? IS THAT WHEN THE LETTER WENT OUT YOU JUST REFERENCED EARLIER AFTER THE APPROVAL?

MS. HARRIS: YES, YOUR HONOR. IT WAS SENT OUT ROUGHLY, I BELIEVE ON AUGUST 15TH OF 2010 IS WHEN THE LETTER WAS SENT TO THE IPF INVESTORS ASKING FOR THEIR RETROACTIVE APPROVAL.

THE COURT: OKAY. SO THEN WHY IS THERE ANY CRIMINAL

ACTIVITY AFTER THAT LETTER THEN? WHY ARE YOU SAYING NO LATER THAN APPROXIMATELY JUNE 2012?

MS. HARRIS: SO JUNE 2012 WAS WHEN THE RECEIVER WAS APPOINTED. SO TO THE EXTENT THAT THE POTENTIAL UNIVERSE OF TIME FOR THE FRAUDS TO HAVE OCCURRED -- FOR THE FRAUDS TO HAVE HAPPENED, THEY COULDN'T HAVE HAPPENED AFTER THE TIME OF THE SEC'S TEMPORARY INJUNCTION AND THEIR APPOINTMENT OF THE RECEIVERSHIP WHICH TOOK OVER ALL OF THE ASSETS AND BUSINESS CONTROL OF THE DEFENDANT COMPANIES.

MR. ILLOVSKY: YOUR HONOR, COULD I --

THE COURT: LET ME --

MR. ILLOVSKY: I'M SORRY.

THE COURT: YES. I HAVE A TON OF QUESTIONS, BUT IF YOU WOULD LIKE TO --

MR. ILLOVSKY: I'M JUST GOING TO PITCH IN ON THE TWO ISSUES.

THE ONE, JUST TO ADD TO IT WHAT THE GOVERNMENT SAID, THE LETTER THAT WAS SENT IN AUGUST OF 2010 WAS NOT USED TO SOLICIT INVESTORS, IT WAS SENT TO CURRENT INVESTORS. SO THE NUMBER OF VICTIMS THAT GOES INTO THE GUIDELINE CALCULATION IS BASED ON A NUMBER OF INVESTORS CURRENTLY AT THE TIME.

THE COURT: AT THE TIME OF AUGUST 2010?

MR. ILLOVSKY: YES.

THE COURT: OKAY.

MR. ILLOVSKY: AND BECAUSE THAT LETTER WAS NOT USED

TO SOLICIT INVESTORS, A PROXY CALCULATION WAS NEEDED TO CALCULATE THE LOSS. AND WHAT'S REFLECTED IN THE PLEA AGREEMENT IS ROUGHLY WHAT THE ACCOUNTING ENTRY WAS AT THE TIME, WHICH WAS A NUMBER BETWEEN 250 AND 550.

SECOND POINT IS ON THE TIME LIMIT. THE COURT WILL SEE IN THE PLEA AGREEMENT THAT THE LANGUAGE ABOUT THE TIMING, THE COURT HAD A QUESTION ABOUT IT. BASICALLY --

THE COURT: IT'S JUST ODD WORDING, THAT'S WHY I WANTED TO ASK.

MR. ILLOVSKY: YES. PRETTY CAREFULLY CRAFTED WORDING, YOUR HONOR.

IF THE COURT LOOKS TO PARAGRAPH 1-F, BOTTOM OF PAGE 3. "AFTER AUGUST 2010, I FAILED TO ADEQUATELY DISCLOSE TO INVESTORS THE MATERIAL OMISSION CONTAINED IN MY AUGUST 2010 LETTER."

SO IN OTHER WORDS, THE IDEA IS THAT -- THE INFORMATION WAS LEFT OUT OF THAT LETTER FOR THE REAL REASON FOR THE ACCOUNTING CHANGE. AND THEN THE PLEA AGREEMENT SAYS THAT MR. FEATHERS, UP UNTIL THE TIME OF THE RECEIVER, DIDN'T TELL THE PEOPLE THAT HE HAD SENT IT TO, HEY, I SENT THAT LETTER AND IT DIDN'T CONTAIN THIS INFORMATION.

SO JUST TO HELP ON THOSE TWO ISSUES.

THE COURT: OKAY. ALL RIGHT. THANK YOU.

LET ME ALSO ASK ABOUT JUST SOME OF THE ASSETS, JUST SO I UNDERSTAND WHAT MIGHT BE AVAILABLE FOR RESTITUTION.

SO I LOOKED BACK AT THE NOVEMBER 12, 2014 AFFIDAVIT AND A COUPLE OF QUESTIONS. IT SAYS THE [redacted]

I GUESS THAT'S THE CASE. BUT WHAT'S THE DIFFERENCE BETWEEN -- [redacted]

MR. ILLOVSKY: IF I MAY, YOUR HONOR.

I BELIEVE THAT WHAT'S BEHIND THAT IS THAT [redacted]

THE COURT: OH, I SEE. OKAY. ALL RIGHT.

MR. ILLOVSKY: SO IN OTHER WORDS, [redacted]

THE COURT: I SEE. OKAY. AND THAT MUST HAVE HAPPENED IN THAT TIME FRAME.

MR. ILLOVSKY: YES.

THE COURT: OKAY. ALL RIGHT. THANK YOU FOR THE

CLARIFICATION.

LET ME ASK, THE 2014 AFFIDAVIT ALSO LISTS A BUNCH OF ASSETS, AND I WAS JUST WONDERING, WERE THOSE NOT AVAILABLE? THEY MUST HAVE MAYBE BEEN [redacted]

DO THOSE ASSETS NOT EXIST ANYMORE?

MR. ILLOVSKY: YOUR HONOR, THOSE WERE, [redacted] MR. FEATHERS WAS UNEMPLOYED DURING THAT PERIOD WHEN I THINK THE CHARGES WERE FIRST PENDING.

THE COURT: ALL RIGHT. WELL, THIS WAS IN HIS NOVEMBER AFFIDAVIT.

MS. HARRIS: SEE. [redacted].

MR. ILLOVSKY: YES.

THE COURT: OKAY. ALL RIGHT.

SO I WAS INTERESTED TO SEE THAT MR. FEATHERS HAS [redacted] I'M JUST WONDERING WITH ALL THESE ASSETS, HOW DOES HE QUALIFY FOR APPOINTED COUNSEL ALL THESE YEARS?

MR. ILLOVSKY: I THINK I CAN HELP THE COURT ON THAT, YOUR HONOR.

THE COURT: OKAY. SURE.

MR. ILLOVSKY: [redacted]

JUDGE COUSINS PUT US ON CALENDAR, ASKED ABOUT THE SALE WHEN IT WAS PENDING, ASKED US TO MAKE A REPORT TO THE COURT WHEN THE SALE WAS COMPLETED, WHICH WE DID. AND I BELIEVE JUDGE COUSINS MADE A DETERMINATION THAT THERE WASN'T ANY NECESSITY FOR MR. FEATHERS TO MAKE ANY CONTRIBUTIONS TO HIS DEFENSE AT THAT TIME.

THE COURT: I SEE. OKAY.

[redacted] AND YOU ARE OBJECTING TO ANY OF THAT GOING TO RESTITUTION; IS THAT RIGHT? THAT'S YOUR POSITION?

MR. ILLOVSKY: THE FOCUS IN THE SENTENCING MEMO WAS ON THE [redacted] THAT THE PROBATION OFFICE SUGGESTED, AND I THINK WE LAID OUT OUR ARGUMENTS IN THE SENTENCING MEMO THAT TO THE EXTENT THAT IT HINDERS MR. FEATHERS'S REENTRY AND PROBABLY

WORKS AGAINST THE INTEREST OF THE INVESTORS TO --

THE COURT: SO NO MONEY IS GOING TO GO TO RESTITUTION, THEN YOU ARE SAYING HE SHOULD HAVE ALL THIS 114 FOR HIM FOR REENTRY.

MR. ILLOVSKY: I DIDN'T ADDRESS THE 114, I WAS FACING THE NUMBER IN THE PROBATION REPORT, YES.

THE COURT: YEAH.

LET ME ASK MS. HARRIS, DO YOU THINK THE DEFENDANTS ARE RENEGING ON THE BINDING PLEA AGREEMENT CONDITION THAT THE DEFENDANT PAY THE SEC RESTITUTION BY ASKING IN THEIR DEFENSE MEMO NOT TO BE ORDERED TO PAY THE $5,724,667.54 THAT'S BEEN DEEMED BY THE RECEIVER AS CURRENTLY OWED IN THAT SEC CASE?

MS. HARRIS: YOUR HONOR, THE COURT CAN ORDER THE AMOUNT -- HE AGREED TO PAY RESTITUTION IN AN AMOUNT TO BE SET BY THE COURT. HE ALSO AGREED TO --

THE COURT: NO, NO, NO, NO. THAT SPECIFICALLY REFERENCES THE SEC CASE.

MS. HARRIS: RIGHT. AND I'M GOING TO SAY, INCLUDING THE AMOUNT THAT WAS ORDERED BY JUDGE DAVILA IN THE SEC CASE.

THE COURT: IT SAYS IN PARAGRAPH 6, LINE 16 THROUGH 19, "I SPECIFICALLY AGREE THAT RESTITUTION SHALL INCLUDE THE JUDGMENT NOW PENDING AGAINST ME IN THE CASE OF SECURITIES AND EXCHANGE COMMISSION VERSUS SMALL BUSINESS CAPITAL, ET AL., CV 12-3237-EJD, NORTHERN DISTRICT OF CALIFORNIA."

SO TO ME, THAT DOESN'T SAY OH, I'M JUST AGREEING TO SOME FUTURE AMOUNT AGREED BY THE COURT, IT'S GOING TO SPECIFICALLY INCLUDE THAT SEC JUDGMENT.

AND SO I GUESS I'M CLEAR, I READ THAT, AND THEN I SEE, YEAH, BUT DON'T ORDER WHAT THE RECEIVER IN THE SEC CASE IS ACTUALLY OWED.

MS. HARRIS: YOUR HONOR, I AGREE.

I MEAN, AGAIN, HE SAID IN HIS PLEA AGREEMENT THAT HE WOULD ADOPT THIS JUDGMENT, THAT IT HAD BEEN ORDERED AGAINST HIM. HE PLED TO A VERY SPECIFIC SET OF FACTS THAT FORMED THE BASIS FOR HIS GUILT.

I MEAN, I GUESS THE REASON WHY I'M NOT SO MUCH RESPONDING IT IS BECAUSE, LOOK, I MEAN, HIS LAWYER IS ALLOWED TO ADVOCATE FOR HIM IN WHATEVER WAY THE LAWYER SEES FIT. AND I DON'T REALLY TAKE THESE ARGUMENTS THAT ARE SORT OF WALKING BACK ON THE GUILT OR WALKING BACK ON THE PAYMENT FOR RESTITUTION VERY SERIOUSLY. BECAUSE AGAIN, THERE IS A BINDING PLEA AGREEMENT, THE COURT HAS ALREADY CONVICTED HIM AND THE COURT CAN ORDER RESTITUTION.

SO HE CAN SAY WHATEVER HE WANTS TO, YOUR HONOR, BUT AT THE END OF THE DAY, THE POWER RESIDES WITH THE COURT TO ORDER RESTITUTION AND SENTENCE HIM. SO I VIEW THIS AS ADVOCACY, NOT ANY SORT OF, LIKE, I WANT TO WITHDRAW MY PLEA, OR ANYTHING LIKE THAT.

I JUST DON'T -- I'M SORRY, I JUST DIDN'T TAKE THESE CLAIMS

BEING MADE IN HIS SENTENCING MEMO VERY SERIOUSLY, CONSIDERING THAT HE AGREED TO ENTER INTO A BINDING PLEA AGREEMENT WITH THE GOVERNMENT AND THE COURT HAS FOUND -- HAS ORDERED HIM CONVICTED AS A BASIS OF THAT PLEA AND NOW HAS THE POWER TO ORDER THE RESTITUTION.

MR. ILLOVSKY: CAN I JUST --

THE COURT: LET ME ASK OUR PROBATION OFFICER -- YES.

MR. ILLOVSKY: I JUST WANTED TO JUMP IN AND DEFEND MYSELF A LITTLE BIT.

THE COURT: OH, I'M GOING TO GIVE YOU AN OPPORTUNITY TO SPEAK. THE DEFENSE COUNSEL ALWAYS GETS THE OPPORTUNITY AT THE END, BUT GO AHEAD. IN ADDITION TO DURING, BUT GO AHEAD.

MR. ILLOVSKY: JUST TO BRING FORWARD THAT IN THE SENTENCING MEMORANDUM, WE WERE NOT CONTENDING THAT THERE SHOULD BE NO RESTITUTION OBLIGATION, IN FACT THAT WAS SOMETHING THAT WAS AGREED TO IN THE PLEA AGREEMENT, AND IN FACT IT'S BROADER. IT'S BROADER THAN WHAT'S MERITED BY THE ACTUAL CONDUCT.

WHAT WE WERE JUST PROPOSING TO THE COURT IS THAT IF THE COURT ENTERS A NUMBER CERTAIN BUT THEN THE RECEIVER'S NUMBER CHANGES, WE HAVE TO RUN BACK TO THE COURT TO GET THE ORDER FIXED.

WE POINTED TO A COUPLE OF EXAMPLES WHERE THAT JUST SEEMED TO BE SOME DISCREPANCY BETWEEN THE RECEIVER'S ACCOUNTING AND WHAT VICTIMS IN THEIR -- A COUPLE OF VICTIMS IN THEIR STATEMENTS HAD SAID THEY WERE OWED.

SO WE WERE JUST TRYING TO HELP THE COURT, BUT IF THE COURT THINKS THAT AN AMOUNT CERTAIN SHOULD BE ENTERED AS A RESTITUTION, THAT'S CERTAINLY THE COURT'S DECISION. WE WERE JUST TRYING TO AVOID COMING BACK.

MS. HARRIS: AND AGAIN, IF THE COURT HAS ANY QUESTIONS ABOUT HOW THE REMAINING AMOUNTS OWED -- OF UNPAID CLAIMS OWED TO THE VICTIMS HAVE BEEN CALCULATED, THE RECEIVER IS AVAILABLE TO ANSWER THEM.

AGAIN, THIS WAS -- I DESCRIBED VERY BRIEFLY THE METHOD THAT HE USED. YOU KNOW, THIS METHOD DID NOT TAKE INTO ACCOUNT ANY PRINCIPLE OR INTEREST THAT HAD BEEN REPAID TO THE VICTIMS PRIOR TO THE APPOINTMENT OF THE RECEIVER. SO THAT COULD BE THE REASON FOR THE DISCREPANCY IN SOME OF THE CLAIMS THAT SOME OF THESE VICTIMS MADE AND WHAT THE RECEIVER HAS PROVIDED TO THEM AND STATES THAT THEY ARE STILL OWED.

THE COURT: WELL, I DON'T LEAVE RESTITUTION OPEN ENDED AND SAY, I ORDER RESTITUTION IN AN AMOUNT TO BE DETERMINED AT SOME FUTURE DATE. I MEAN, I'M NOT GOING TO DO THAT.

MS. HARRIS: YES.

AND AGAIN, THE GOVERNMENT HAS PROVIDED TO THE COURT, THE RECEIVER'S SPREADSHEET AS TO HOW MUCH MONEY THE RECEIVER BELIEVES THAT EACH INDIVIDUAL IS OWED. AND AGAIN, THAT IS AN AMOUNT CERTAIN. EVEN TO THE EXTENT THAT THERE IS SOME SMALL DISCREPANCY, AGAIN, I NOTE THAT OVER 88 PERCENT OF THE

PRINCIPLE OF THE CLAIM HAS BEEN PAID AT THIS POINT. SO THESE ARE MINOR DISPUTES, YOUR HONOR, AND I DON'T THINK THE COURT SHOULD BECOME OVERWHELMED BY THEM IN THE WAY THAT THE DEFENSE SUGGESTS.

THE COURT: OH, I'M NOT GOING TO. I MEAN, I HAVE LOOKED AT THE SEC CASE.

LET ME JUST -- OKAY. THIS WAS A FOOTNOTE THAT WAS IN MY SECOND DRAFT OF THE ORDER THAT I FILED IN WHAT, NOVEMBER 2017. I ACTUALLY TOOK THE FOOTNOTE OUT. BUT I MEAN, JUDGING BY HOW THAT CASE WAS LITIGATED, I DO NOT WANT TO LEAVE THIS OPEN TO EXTEND FURTHER THE -- LET ME JUST READ, THIS WAS IN MY SECOND DRAFT THAT DIDN'T GET FILED.

"MR. FEATHERS SOUGHT LEAVE TO SUE THE RECEIVER ON SEVERAL OCCASIONS, ALL OF WHICH WERE REJECTED BY THE COURT, FILED A COMPLAINT AGAINST THE RECEIVER'S COUNSEL WITH THE STATE BAR OF CALIFORNIA, WHICH WAS DETERMINED TO HAVE NO MERIT. LODGED A COMPLAINT AGAINST THE RECEIVER WITH THE CHARTER FINANCIAL ANALYST INSTITUTE WHICH WAS DETERMINED TO HAVE NO MERIT AND SOUGHT TO INTERVENE IN AN UNRELATED COMMISSION CASE IN THE CENTRAL DISTRICT OF CALIFORNIA IN WHICH THE RECEIVER WAS APPOINTED RECEIVER.

MR. FEATHERS'S REQUEST WAS SUMMARILY REJECTED BY THE APPOINTING DISTRICT COURT."

I MEAN, THERE HAS BEEN SO MUCH UNNECESSARY LITIGATION IN THAT CASE, AND TO INVITE AND SAY, LET'S JUST KEEP THAT FIGHT

GOING, LET'S HAVE MR. FEATHERS CONTINUE TO FIGHT EXACTLY WHAT THE RECEIVER THINKS THE RESTITUTION SHOULD BE, I'M NOT GOING TO DO THAT. I'M NOT GOING TO DO THAT.

I CAN GO INTO MORE OF HOW MUCH UNNECESSARY LITIGATION THERE WAS IN THAT CASE, HOW MANY UNNECESSARY APPEALS THERE WERE IN THAT CASE.

AND SO THAT'S WHY I WAS INTERESTED BY PROBATION SAYING OH, WELL MR. FEATHERS WAS JUST GROUND DOWN BY THAT CIVIL CASE, THAT'S WHY HE SENT THE THREATENING E-MAILS TO THE RECEIVER, TO THE FOUR SEC ATTORNEYS, TO THE ATTORNEY FOR THE RECEIVER, FOR HIS CURRENT COUNSEL IN THE CRIMINAL CASE, FOR HIS PRIOR COUNSEL IN THE CRIMINAL CASE.

DID YOU TAKE A LOOK AT HOW THAT SEC CASE WAS LITIGATED? A LOT OF THAT BURDEN WAS SELF-INFLICTED BY MR. FEATHERS. I MEAN, I WILL JUST GO THROUGH MY OWN ORDER. HE APPEALED EVERYTHING, EVEN THINGS THAT WERE NOT APPEALABLE, AND THEN HE WOULD MOVE FOR RECONSIDERATION.

I MEAN, A LOT OF THE GRINDING DOWN WAS MR. FEATHERS DOING THE GRINDING. DID YOU THINK ABOUT THAT?

PROBATION OFFICER: I CAN UNDERSTAND THAT, YOUR HONOR, BUT THAT'S NOT NECESSARILY SOMETHING I TOOK INTO ACCOUNT WHEN MAKING THE STATEMENTS I DID.

THE COURT: WELL YOU TOOK INTO ACCOUNT TO SAY THE E-MAILS WERE REALLY JUST BECAUSE HE WAS GROUND DOWN BY THE LITIGATION.

PROBATION OFFICER: THOSE WERE HIS OWN WORDS THAT WERE KIND OF CORROBORATED BY HIS FAMILY, AND THAT'S WHAT I WENT BY. BUT I UNDERSTAND THE COURT'S POINT.

THE COURT: I MEAN, I WILL GO THROUGH MY ORDER.

HE APPEALED EVERYTHING OVER AND OVER AGAIN. A LOT OF THE PROTRACTED NATURE OF THAT LAWSUIT WAS SELF-INFLICTED BY MR. FEATHERS.

I MEAN, I HAD A TASTE OF IT MYSELF WITH THIS MOTION TO RELEASE FUNDS AND THEN THE MOTION FOR RECONSIDERATION OF MY ORDER DENYING THE MOTION FOR RELEASE OF FUNDS, MOTION FOR STAY OF PROCEEDINGS. I MEAN, A LOT OF THE LITIGIOUSNESS WAS MR. FEATHERS. SO IF HE'S GROUND DOWN, HE WAS DOING THE GRINDING.

I MEAN, IT'S NOT TYPICAL THAT RECEIVERS HAVE TO DEAL WITH THIS.

THIS IS THE RECEIVER'S DECLARATION, JUNE 23RD, 2016. "MR. FEATHERS HAS SENT ME AND MY COUNSEL MORE THAN THREE HUNDRED E-MAIL MESSAGES. THESE E-MAILS GENERALLY INCLUDED FALSE ACCUSATIONS, PERSONAL ATTACKS, THREATS TO SUE OR THREATS TO BRING LEGAL ACTION AGAINST ME IN SOME MANNER. MR. FEATHERS HAS THREATENED TO SUE OR BRING LEGAL ACTION AGAINST ME IN WRITING, APPROXIMATELY 35 TIMES, AND HAS STATED HIS INTENTION TO CONTINUE TO LITIGATE FOR YEARS TO COME."

I MEAN, ANYWAY, SO YOU DIDN'T SPEAK TO THE RECEIVER ABOUT WHY THE SEC LITIGATION WAS LONG AND GROUND DOWN MR. FEATHERS,

YOU JUST SPOKE TO MR. FEATHERS AND HIS WIFE?

PROBATION OFFICER: CORRECT, YOUR HONOR. I UNDERSTAND THE COURT'S POINT.

MS. HARRIS: YOUR HONOR, I DID SPEAK -- I HAVE SPOKEN TO HIM MANY TIMES, AND IN FACT YESTERDAY I ASKED HIM WHETHER OR NOT HE WISHED TO MAKE ANY SORT OF VICTIM STATEMENT AS A RESULT OF ALL OF THIS.

I DID CITE TO HIS DECLARATION IN MY SENTENCING MEMO. I ALSO REVIEWED SOME PARTS OF IT AND FOUND IT TO BE VERY UNFORTUNATE. BUT HE SAID THAT, YOU KNOW, HE'S REALLY BEEN THROUGH THE RINGER ON THIS ONE. SO HE'S AVAILABLE TO ANSWER THE COURT'S QUESTIONS ABOUT THE RESTITUTION, TO THE EXTENT THAT THERE'S -- THE COURT CONTINUES TO HAVE ANY QUESTIONS ABOUT IT.

BUT, YOU KNOW, HE'S BASICALLY SAID ALL THAT HE HAS TO SAY, AND JUST DIDN'T WANT TO CONTINUE ON THIS PATH OF, YOU KNOW, ACCUSATORY RECRIMINATIONS, HE JUST DIDN'T WANT TO DO THAT.

SO I ADMIRE HIM AND RESPECT HIM FOR BEING PROFESSIONAL AND FOR BEING AVAILABLE TO THE COURT, BUT IT'S JUST AT THE END OF THE DAY, HE THOUGHT THAT IT WOULD NOT BE PRODUCTIVE.

THE COURT: OH, I DON'T THINK HE NEEDS TO BE HERE.

I WAS JUST SAYING I WAS INTERESTED IN THE FACT THAT THE PSR DISMISSES THE THREATS THAT MR. FEATHERS MADE AGAINST THE FOUR SEC ATTORNEYS, THE RECEIVER, THE ATTORNEY FOR THE RECEIVER, THE CURRENT COUNSEL IN HIS CRIMINAL CASE, HIS THEN CURRENT COUNSEL, THAT WAS RITA BOSWORTH, THE PUBLIC DEFENDER,

AND HIS PRIOR COUNSEL, AND JUST DISMISSES THAT AND SAYS, WELL HE WAS JUST GROUND DOWN BY THE LITIGATION.

AND YOU KNOW, I DID LOOK INTO THAT CASE BECAUSE I HAD ISSUED TWO SUBSTANTIVE ORDERS, AND THE GRINDING WAS DONE BY MR. FEATHERS.

AND SO I JUST, I DON'T KNOW, I THINK IT'S UNFORTUNATE THE PSR DOESN'T TALK TO ANYONE OTHER THAN JUST THE DEFENDANT AND THE DEFENDANT'S WIFE. IF YOU ARE GOING TO MAKE REPRESENTATIONS ABOUT THAT LAWSUIT, I THINK IT WOULD BE GOOD TO GET -- I MEAN, YOU DIDN'T TALK TO ANY OF THE VICTIMS WHO WERE RECEIVING THE THREATENING E-MAILS.

PROBATION OFFICER: I THINK MR. LUCEY AT THE TIME, WHO I DID SPEAK WITH, DIDN'T SEEM TO TAKE THE THREATS AS SERIOUS THREATS WHEN HE ACTUALLY INTENDED TO HURT PEOPLE. AND THAT WAS KIND OF MY UNDERSTANDING AT THE TIME. I DIDN'T INTEND TO BE DISMISSIVE, I JUST THOUGHT HE DIDN'T INTEND TO PHYSICALLY HURT PEOPLE.

THE COURT: ALL RIGHT. BUT IF YOU THINK YOU ARE APPOINTED BY THE COURT AS A RECEIVER, YOU SHOULD BE SUBJECT TO THIS? LAWSUITS AND HAVING YOUR LICENSE REVOKED, HAVING YOUR LAWYER SUED, HAVING TO GET THREE HUNDRED E-MAILS WITH PERSONAL ATTACKS.

I MEAN, YOU KNOW, WHETHER YOU FEAR FOR YOUR LIFE OR NOT, WORKING AS A RECEIVER FOR THE COURT SHOULD NOT INVOLVE THIS LEVEL OF HARASSMENT OVER THIS LENGTH OF TIME. DO YOU AGREE

WITH THAT, OR NOT?

PROBATION OFFICER: CERTAINLY, YOUR HONOR.

THE COURT: HOW ARE WE, AS A COURT, GOING TO GET PEOPLE TO SERVE AS RECEIVERS IF THIS IS THE TREATMENT THEY GET, RIGHT? THAT HINDERS OUR ABILITY TO RECRUIT RECEIVERS AND APPOINT RECEIVERS IN THE FUTURE.

ANYWAY, LET ME ASK, IN PARAGRAPH 62, YOU SAY THAT MR. FEATHERS SUBMITTED INCOMPLETE FORMS WHICH REFLECT THAT FROM 2017 AND 2018, HE [redacted]. HOW ARE THE FORMS INCOMPLETE AND WHAT DO YOU MEAN BY "IT REFLECTS THAT" -- I'M JUST WONDERING, WHERE IS HE GETTING ALL THIS CASH? [redacted]. BETWEEN 2017 AND 2018 MUST BE LIKE, I MEAN, IT'S ONLY MARCH 7TH OF 2018, SO THIS MUST HAVE BEEN VERY RECENTLY. HOW WERE THE FORMS INCOMPLETE?

PROBATION OFFICER: I DON'T HAVE THE FORMS WITH ME, YOUR HONOR, BUT I THINK THAT THE [redacted] WASN'T BROKEN DOWN AS FAR AS WHO IT WENT TO, IT WAS JUST KIND OF A GENERAL AMOUNT. THAT'S MY RECOLLECTION.

THE COURT: YOU KNOW, I'M JUST CONCERNED THAT THERE'S, LIKE, [redacted], AND WE ARE BEING TOLD NOT TO ORDER THAT THE [redacted] SITTING IN A SAVINGS ACCOUNT BE USED TO PAY RESTITUTION.

SO OF THE -- SINCE WE'RE NOT DOING IT BY INVESTOR LOSS AND

ONLY DOING THE SENTENCING GUIDELINE CALCULATION BY GAIN TO MR. FEATHERS, NOW ONE OF THE VICTIMS, BARBARA BUSHY, SAYS THAT THE INVESTOR MONEY WAS USED TO PAY FOR MR. FEATHERS'S NANNY AND THAT HIS YOUNG CHILDREN, I ASSUME [redacted] IS THAT CORRECT? WHAT WERE THE INVESTOR FUNDS USED FOR? NOBODY KNOWS?

GO AHEAD, PLEASE.

MR. ILLOVSKY: YOUR HONOR, I THINK THAT THERE WERE -- I THINK THAT THERE WAS EVIDENCE THAT THERE WERE TRANSFERS FROM THE MANAGEMENT COMPANY TO THE NANNY WHO WAS WORKING AT THE MANAGEMENT COMPANY, AND [redacted] OF THE MANAGEMENT COMPANY.

THE COURT: AND HOW OLD WERE THE BOYS AT THE TIME?

MR. ILLOVSKY: I WANT TO SAY [redacted]

THE REASON WHY THOSE TRANSFERS, WHICH YOU KNOW WERE ALLEGED AS A DIVERSION IN THE INDICTMENT, ARE NOT IN THE PLEA AGREEMENT IS BECAUSE THE MONEY THAT WENT TO THE MANAGEMENT COMPANY WAS DISCLOSED AND JUSTIFIED. AND AGAIN, ONCE THE MONEY GOES INTO THE MANAGEMENT COMPANY, HOW THE MANAGEMENT COMPANY RUNS ITSELF WAS AN ISSUE FOR THE MANAGEMENT COMPANY AND FOR ITS OWNERSHIP.

SO THE GOVERNMENT WASN'T TRYING TO -- BY THE TIME THE PLEA AGREEMENT -- THE GOVERNMENT WASN'T RAISING ISSUES ABOUT MONEY. IN OTHER WORDS, IF IT GOES TO THE MANAGEMENT COMPANY PROPERLY, THEN HOW THE MANAGEMENT COMPANY SPENDS IT IS NOT RELEVANT TO

THE GOVERNMENT.

THE COURT: BUT THE [redacted] WERE ON THE PAYROLL AS EMPLOYEES, THEY WERE NOT ON THE PAYROLL AS --

MR. ILLOVSKY: MAY HAVE BEEN. MAY HAVE BEEN. THERE WEREN'T ANY DISCLOSURES ABOUT THAT THAT WERE VIOLATED.

THE COURT: SO I HAVE A QUESTION ABOUT HOW LONG MR. FEATHERS IS NOT ALLOWED TO PERFORM FINANCIAL OFFERINGS. IS IT JUST FOR THE THREE-YEAR PERIOD OF SUPERVISED RELEASE? IS HE EVEN PROHIBITED?

THE ONLY REASON I RAISE THIS IS ONE OF THE VICTIMS, WILLARD PHEE, SAYS THAT MR. FEATHERS SHOULD BE BARRED FOR AT LEAST 25 YEARS. I DON'T KNOW IF THAT'S AN OUTLANDISH REQUEST OR WHAT. IS HE AT ALL? IS THERE ANY RESTRICTION ON HIS ABILITY TO --

MS. HARRIS: YOUR HONOR, I KNOW THAT IN THE CIVIL CASE AN INJUNCTION WAS PLACED AGAINST HIM. YOU PRESUMED, AND I DON'T KNOW WHETHER IT WAS RIGHT OR WRONG TO PRESUME THAT THAT WOULD HAVE INCLUDED A DISBARMENT FROM ANY INVOLVEMENT WITH OFFERINGS OF SECURITIES. IT WOULD HAVE BEEN INHERENT IN THAT TYPE OF AN ACTION BY THE SEC.

I CAN FIND OUT THAT INFORMATION. I MEAN, I WOULD THINK THAT HE SHOULD BE DISBARRED FROM EVER HANDLING THESE TYPES OF FINANCIAL INSTRUMENTS EVER AGAIN.

THE COURT: I ASSUME THAT'S HANDLED BY THE CIVIL CASE. THE CRIMINAL CASE JUST HAS HIM NOT EMPLOYED AS A

SECURITIES BROKER FOR HIS TERM OF THREE YEARS OF SUPERVISED RELEASE. AND I DON'T THINK WE WOULD HAVE JURISDICTION BEYOND THE SUPERVISED RELEASE TERM ANYWAY, SO THAT WOULD BE SOMETHING THAT'S UP TO THE SEC.

MR. ILLOVSKY: I THINK THERE WOULD BE A LIFETIME BAR BY THE SEC, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT.

AND AS I SAID, I DON'T KNOW IF THAT WAS AN OUTLANDISH REQUEST BY MR. PHEE, I WAS JUST CURIOUS BECAUSE HE PUT IT IN HIS LETTER.

ALL RIGHT. WELL, THIS IS AN 11(C)(1)(C), THAT'S A BINDING PLEA AGREEMENT. IF I DON'T SENTENCE ACCORDING TO THIS PLEA AGREEMENT, MR. FEATHERS CAN WITHDRAW HIS GUILTY PLEA AND THE GOVERNMENT CAN WITHDRAW ITS SENTENCING OFFER.

I AM GOING TO SENTENCE WITHIN THE PARTY'S AGREED UPON SENTENCE. SO LET ME HEAR FROM ANYONE WHO WANTS TO SPEAK.

MS. HARRIS: FIRST, LET ME JUST CONFIRM, ARE THERE ANY VICTIMS IN THE AUDIENCE THAT WISH TO BE HEARD? YES, SIR.

MR. RAINERI: I DON'T HAVE A LOT TO ADD BECAUSE I'M NOT AN ATTORNEY.

THE COURT: OKAY. CAN YOU PLEASE STATE AND SPELL YOUR NAME.

MR. RAINERI: YES. MY NAME IS SYD. THAT'S S-Y-D. LAST NAME IS RAINERI, R-A-I-N-E-R-I.

THE COURT: OKAY. GO AHEAD, PLEASE.

MR. RAINERI: AND I JUST WANTED TO ADD POSSIBLY A LITTLE CLARITY FOR THE JUDGE.

PART OF THE REASON WHY YOU ARE HAVING SUCH A DIFFICULT TIME UNRAVELLING THIS CASE, WHICH I SEE, IS FIRST OFF, I BELIEVE THAT THE MAN WAS WRONGLY ACCUSED TO BEGIN WITH.

THE COURT: OKAY. SO LET ME ASK YOU, WERE YOU ONE OF THE EARLY INVESTORS WHO GOT FULLY PAID OFF BY THE FUNDS OF THE LATER INVESTORS? BECAUSE I UNDERSTAND THE EARLY INVESTORS GOT PAID BACK IN FULL AND GOT THE PERCENTAGE YOU WANTED AND YOU ARE ALL VERY SUPPORTIVE OF MR. FEATHERS.

SO WHEN WAS YOUR TIME PERIOD THAT YOU INVESTED?

MR. RAINERI: I INVESTED, I BELIEVE IT STARTED WHEN IT BEGAN, 2008.

THE COURT: OKAY. 2008. WHEN WAS THE LAST TIME YOU INVESTED?

MR. RAINERI: JUST BEFORE THE RECEIVER TOOK OVER IN 2012.

THE COURT: OKAY. ALL RIGHT. AND THEN DID YOU RECEIVE THE FULL --

MR. RAINERI: NO.

THE COURT: OKAY. SO HOW MUCH DID YOU GET BACK?

MR. RAINERI: WHAT THEY DID WAS THEY DEDUCTED ANY GAIN ON THE INVESTMENT FROM THE TIME THAT I STARTED INVESTING.

THE COURT: OKAY.

MR. RAINERI: TO THE --

THE COURT: WHAT DID YOU GET BETWEEN 2008 AND 2012 WHILE IT WAS STILL IN OPERATION?

MR. RAINERI: I DON'T HAVE THAT FIGURE IN FRONT OF ME, BUT JUST THE GUESS OFF THE TOP OF MY HEAD, PROBABLY $35,000.

THE COURT: AND HOW MUCH DID YOU INVEST?

MR. RAINERI: I, AT THAT TIME TO 2012, I HAD ABOUT $224,000 IN.

THE COURT: OKAY. AND THEN -- BUT IN TERMS OF THAT FOUR-YEAR WINDOW, WHEN DID YOU -- DO YOU RECALL WHEN YOU -- DID YOU INVEST IT ALL AT ONCE, OR IT SOUNDS LIKE YOU INVESTED IN 2008.

MR. RAINERI: NO, I STARTED WITH A $50,000 INVESTMENT INITIALLY AND ADDED TO IT EVERY -- ON A PERIOD OF A COUPLE OF YEARS.

THE COURT: ALL RIGHT. SO YOU STARTED WITH $50,000 IN 2008, AND THEN YOU CONTINUED TO INVEST THROUGH ABOUT 2010, YOU THINK?

MR. RAINERI: 2012 WHEN THE RECEIVER TOOK OVER.

THE COURT: OH, YOU KEPT PUTTING MONEY IN?

MR. RAINERI: YES. I ALSO WAS RECEIVING DIVIDENDS ON PART OF THAT. I HAD TWO ACCOUNTS. I HAD MY FAMILY ACCOUNT AND THEN I HAD MY IRA ACCOUNT. PART OF MY IRA ACCOUNT --

THE COURT: AND THEN DID YOU GET ALL THE DIVIDENDS IN 2008, 2009, 2010, 2011 AS WELL?

MR. RAINERI: THEY STOPPED AS SOON AS THE RECEIVER TOOK OVER, WHATEVER THAT DATE WAS.

THE COURT: I THINK IT WAS ABOUT JUNE 2012 ROUGHLY.

OKAY. ALL RIGHT. I DO UNDERSTAND THAT THE EARLY INVESTORS RECEIVED THEIR DIVIDENDS, THAT WAS MOSTLY MONEY FROM THE LATER INVESTORS, SO THE EARLY INVESTORS ARE HAPPY BECAUSE THEY --

MR. RAINERI: SEE, THAT'S WHERE I DISAGREE.

THE COURT: OKAY. GO AHEAD, PLEASE.

MR. RAINERI: THE NUMBERS I THINK SPEAK FOR THEMSELVES. IF YOU LOOK AT THE TIME PERIOD THAT THE BUSINESS WAS IN RECEIVERSHIP, WHICH WAS FIVE YEARS, DURING THAT PERIOD OF TIME, ESPECIALLY FOR THE FIRST FOUR YEARS, THE BUSINESS CONTINUED TO GENERATE OVER $250,000 A MONTH IN INCOME WHEN THEY WERE NOT ABLE TO SOLICIT ONE DIME. MOST OF THIS MONEY WAS ATE UP BY THE RECEIVERSHIP.

I BELIEVE IF YOU WERE TO DEDUCT THE AMOUNT THAT IT COSTS FOR THE RECEIVERSHIP, DURING THAT PERIOD OF TIME, AND THE ATTORNEY FEES, THAT THE FUNDS WERE BASICALLY SOLVENT, THAT THEY WOULD HAVE PAID OFF ONE HUNDRED PERCENT IF THEY WOULD HAVE HAD TO LIQUIDATE THOSE FUNDS THEMSELVES WITHOUT PAYING A RECEIVER.

I DON'T HAVE THE EXACT FIGURES BECAUSE I'M NOT AN ACCOUNTANT, BUT JUST OFF THE TOP OF MY HEAD, WE RECEIVED ALMOST 87 PERCENT OF THE ASSETS OF THE COMPANY -- I SHOULD SAY OF OUR INVESTMENTS, AND THAT LEAVES ABOUT 13 PERCENT. AND I THINK IF

YOU LOOK AT WHAT THE RECEIVER RECEIVED, IT PROBABLY AMOUNTED TO PRETTY CLOSE TO THAT AMOUNT OVER FIVE YEARS. SO IF YOU ADD THOSE TWO TOGETHER, THE COMPANY WAS BASICALLY SOLVENT.

I THINK THAT THE GOVERNMENT OVERSTEPPED THEIR AUTHORITY IN 2012 MAINLY BECAUSE OF THE MADOFF SITUATION THAT THE SECURITIES AND EXCHANGE COMMISSION LOOKED SO BAD THAT THEY WENT OUT AFTER EVERY SMALL COMPANY THAT WAS INVOLVED IN INVESTMENT. AND THAT ADDED TO THE PROBLEM.

I FELT THAT THEY COULD HAVE COME IN, IF THERE WAS A PROBLEM WHEN THEY --

THE COURT: DO YOU THINK THAT MR. FEATHERS SHOULD NOT PLEAD GUILTY TO THIS FEDERAL FELONY? DO YOU THINK THAT'S WRONG?

MR. RAINERI: I THINK THAT --

THE COURT: YOU THINK NO CRIME HAS BEEN COMMITTED?

MR. RAINERI: I DON'T BELIEVE THAT THERE WAS ANY INTENTIONAL CRIME COMMITTED. INADVERTENT CRIME. I'M NOT -- HERE, AGAIN, I'M NOT ASTUTE IN ALL OF THE RAMIFICATIONS OF THE SECURITIES LAW, INADVERTENTLY HE MAY HAVE.

THE COURT: ALL RIGHT. WELL, THE ELEMENTS OF THE CRIME TO WHICH HE PLED GUILTY REQUIRE KNOWING PARTICIPATION IN A SCHEME TO DEFRAUD, KNOWING THAT THE PROMISES OR STATEMENTS WERE FALSE WHEN MADE, KNOWING THAT THE PROMISES OR STATEMENTS WERE MATERIAL AND ACTING WITH THE INTENT TO DEFRAUD.

M R. RAINERI: ALL I CAN ADD TO THAT IS DURING THE

TIME THAT I DEALT WITH MR. FEATHERS'S FIRM, I WAS NEVER MISLEAD ANY TIME, THAT I AM AWARE OF. AND I READ EVERY PERSPECTIVE THAT HE EVER SENT OUT. HE WAS IN ACTIVE PURSUIT OF BUSINESS AND BUSINESS RETURN, VERY MUCH SIMILAR TO WHAT ANYBODY WOULD DO.

LIKE I SAID, IN THE BEGINNING, IF HE GOT CAUGHT UP IN THIS AFTER ALL THIS TIME, I'M SURE THAT HE WANTED TO GET IT OVER WITH, AND THAT'S PART OF THE REASON WHY HE PLED.

THE FACT THAT HE HAD SO MANY LITIGATED MATTERS THROUGHOUT THE PROCEEDINGS WAS JUST, I BELIEVE, A FRUSTRATED MAN THAT COULDN'T AFFORD AN ATTORNEY BECAUSE THEY TIED UP ALL HIS MONEY RIGHT AT THE BEGINNING AND HE WAS NOT ABLE TO DEFEND HIMSELF. OVER TIME, IT WEARS YOU DOWN.

NOW, I NOTICED YOUR HONOR CONSIDERED THIS IS HIS PROBLEM, IT VERY POSSIBLY WAS A GOOD PORTION OF IT, BUT I THINK IT WAS MORE OUT OF FRUSTRATION THAN ANYTHING ELSE.

I DON'T REALLY HAVE ANYTHING ELSE TO ADD TO THAT OTHER THAN THE FACT THAT IN MY CASE, I LOST ABOUT $80,000 THROUGHOUT THIS PROCEEDING, AND THAT DOESN'T INCLUDE THE INTEREST THAT WAS PAID TO ME IN THE PERIOD BEFORE THE RECEIVER TOOK OVER. THAT WOULD HAVE TO BE ADDED TO IT, AND IT WOULD BE WELL OVER PROBABLY $150,000.

THE COURT: I'M NOT SURE I UNDERSTAND. IF IT DOESN'T INCLUDE THE INTEREST THAT WAS OWED TO YOU IN THE PERIOD BEFORE THE --

MR. RAINERI: NO, THE INTEREST THAT I HAD ALREADY COLLECTED BECAUSE I WAS ONE OF THE ORIGINAL INVESTORS.

THE COURT: WAIT, SO YOU COLLECTED INTEREST?

MR. RAINERI: YES.

THE COURT: AND YOU ARE SAYING THAT YOU LOST IT AND THAT SHOULD BE INCLUDED IN YOUR LOSS?

MR. RAINERI: THAT'S RIGHT. BECAUSE THE RECEIVER DEDUCTED ANY PAYMENTS THAT WERE MADE TO THE INVESTORS PRIOR TO THE RECEIVERSHIP.

THE COURT: RIGHT.

MR. RAINERI: SO IN OTHER WORDS, IF YOU INVESTED $100,000 AND YOU HAD RECEIVED $10,000 IN RETURNS BEFORE THE RECEIVER CAME IN, THEY DEDUCTED THAT $10,000 FROM YOUR ORIGINAL INVESTMENT WHICH WAS $100,000, AND THEY MADE RESTITUTION ON THE REMAINING $90,000. AND OF THAT, THEY RETURNED APPROXIMATELY 87 PERCENT.

THE COURT: ALL RIGHT. THANK YOU.

MR. RAINERI: I HOPE THAT HELPS YOU.

THE COURT: ALL RIGHT. THANK YOU.

MR. RAINERI: YOU'RE WELCOME.

THE COURT: ANY OTHER INVESTORS, OR ANYONE ELSE WHO IS HERE? NO? OKAY. ALL RIGHT. I DON'T SEE ANYBODY.

ALL RIGHT. LET ME THEN -- FIRST, DOES MR. FEATHERS WISH TO SPEAK?

THE DEFENDANT: NO, YOUR HONOR. THANK YOU.

THE COURT: ALL RIGHT. GO AHEAD, IT'S ALL YOURS.

MR. ILLOVSKY: THANK YOU, YOUR HONOR.

WE TOOK A LOT OF THE COURT'S TIME IN OUR SENTENCING MEMO, WHICH I KNOW THE COURT READ, SO I WON'T BEAT A LOT OF THAT INTO THE GROUND.

THE COURT DID DISCUSS A LITTLE BIT THE LITIGATION CONDUCT FROM THE SEC CASE WHICH WASN'T IN THE PSR, SO WE DIDN'T GET TO ADDRESS IT, SO I WILL TALK ABOUT IT.

THE COURT: HE MENTIONED, HE SAYS THAT WAS THE REASON THAT MR. FEATHERS SENT THE THREATENING E-MAILS, WHICH IS THE REASON FOR THE OBSTRUCTION OF JUSTICE, SO IT IS INTERWOVEN.

HE SAID IT WAS THE LITIGATION THAT WORE HIM DOWN AND THAT'S WHY HE SENT IT. SO I THINK THAT DOES RAISE THE ISSUE OF WELL, WHAT WAS THE CAUSE OF ALL THAT EXTRA LITIGATION IN THE SEC CASE?

BUT GO AHEAD, PLEASE.

MR. ILLOVSKY: IT WAS UNFORTUNATE. IT WAS NOT GREAT CONDUCT. MR. FEATHERS HAS ACKNOWLEDGED THAT CERTAINLY BY, YOU KNOW, DISMISSING THE TWO APPEALS THAT WERE AGAINST THE INDIVIDUALS.

THE COURT: AGAINST THE RECEIVER.

MR. ILLOVSKY: YEAH.

THE COURT: AND WHO ELSE?

MR. ILLOVSKY: AND I THINK THE ACCOUNTANT.

THE COURT: OKAY.

MR. ILLOVSKY: SO THOSE APPEALS ARE DISMISSED.

I DO THINK THAT IT DID BECOME A FAIRLY CONTENTIOUS CIVIL LITIGATION MATTER, I'M NOT THOROUGHLY FAMILIAR WITH IT, I HAVE SEEN SOME OF THE FILES, SOME OF THE E-MAIL EXCHANGES, SOME OF THE EXCHANGES WITH THE SEC LAWYERS. IF MR. FEATHERS HAD HAD SEC COUNSEL, I THINK, YOU KNOW, NONE OF -- I DON'T THINK ANY OF THAT WOULD HAVE HAPPENED.

THE COURT: SO HE SENT THE THREATENING E-MAILS WHEN HE WAS REPRESENTED BY RITA BOSWORTH OF THE FEDERAL PUBLIC DEFENDER'S OFFICE, SO HE HAD COUNSEL IN THIS CASE.

MR. ILLOVSKY: YEAH, BUT THE CIVIL CASE WENT ON FOR A FEW YEARS WITH THE SEC LAWYERS, AND SO IT WAS A LOT OF UNMEDIATED INTERACTIONS WITH THE GOVERNMENT. NOT THAT IT EXCUSES THE CONDUCT, BUT MAYBE PUTS A LITTLE CONTEXT AROUND IT THAT IF HE HAD HAD A LAWYER, OF COURSE A LAWYER WOULD HAVE PREVENTED THAT.

SO JUST FOR THE COURT TO CONSIDER THAT, PLUS MR. FEATHERS, AS THE PROBATION OFFICER POINTED OUT, DID SEND IN AN APOLOGY. AND AS THE COURT KNOWS, BECAUSE THERE'S NOT GOING TO BE A TRIAL, IT DOESN'T -- NOBODY REALLY SEEMS TO THINK THAT THE THREAT THERE IS ANYTHING REAL, IT WAS JUST VENTING FRUSTRATION. POORLY DONE. SHOULDN'T BE DONE IN AN E-MAIL TO GOVERNMENT OFFICERS, BUT SO BE IT.

AS FAR AS THE INVESTORS, I THINK IF YOU LOOK AT THE RECEIVER REPORT, THERE WERE ABOUT 365 INVESTORS WHO STILL HAVE

CLAIMS. AGAIN, MANY OF THEM ARE OUTSIDE OF -- THEY PUT IN MONEY AFTER 2010. YOU GOT EIGHT INVESTORS WRITING INTO THE COURT, AGAIN, SO THAT'S ABOUT TWO PERCENT. I THINK SIX OF THOSE, IT LOOKS LIKE, PUT MONEY IN AFTER THE CRIME, THE FACT OF THE CRIME. THE OTHER TWO, I CAN'T TELL.

YOU GOT THREE INVESTORS SUPPORTING MR. FEATHERS, TWO WROTE TO THE COURT AND ONE ADDRESSED THE COURT, SO THAT'S ABOUT ONE PERCENT.

SO JUST TO CONVEY TO THE COURT MAYBE THAT THE UNDERLYING CASE, WHICH UNFORTUNATELY WAS TAINTED BY MR. FEATHERS'S LITIGATION CONDUCT, THAT THE UNDERLYING CASE WAS MAYBE A LITTLE BIT CLOSER -- WOULD HAVE BEEN A LITTLE BIT CLOSER HAD MR. FEATHERS BEEN REPRESENTED. AND AGAIN, IN OUR MEMORANDUM WHICH WAS WRITTEN FOR THE COURT TO PROVIDE CONTEXT, NOT TO --

THE COURT: NOW, HE WAS INITIALLY REPRESENTED. HOW LONG DID HE HAVE COUNSEL? DO YOU KNOW?

MR. ILLOVSKY: THAT'S A GOOD QUESTION.

THE COURT: AND IT'S NOT EVEN THAT IMPORTANT. GO AHEAD, PLEASE, I'M SORRY TO INTERRUPT YOU.

MR. ILLOVSKY: IT WAS ABOUT THREE MONTHS, 90 DAYS.

THE COURT: SO A VERY SHORT PERIOD.

MR. ILLOVSKY: YEAH. MY UNDERSTANDING.

AND I JUST THINK THAT THERE WERE A LOT OF COMPLEXITIES IN THE DISCLOSURE DOCUMENTS THAT WOULD HAVE BEEN FLESHED OUT FOR JUDGE DAVILA.

AND AGAIN, NOT TO GO INTO IT ENOUGH TO TRY TO RELITIGATE THE CIVIL SEC CASE, BUT IF YOU READ THE SEC'S PRESS RELEASE, IT HIGHLIGHTS THAT THERE WAS A GUARANTEE THAT THE FUNDS PROMISED INVESTORS A GUARANTEED RETURN. IT TURNS OUT THAT'S NOT THE CASE, THERE'S NO GUARANTEED RETURN. BUT THAT BECAME PART OF THE SEC PRESS RELEASE, IT BECAME PART OF THE REASON IT WOULD GO TO THE JUDGE. AND I THINK IT JUST SPIRALED OUT OF CONTROL FOR THIS MAN.

AND AGAIN, NOT TO WALK BACK ON THE GUILT IN THIS CASE, BUT JUST TO ASK THE COURT TO CONSIDER, YOU KNOW, THE FULL CONTEXT OF THE CASE WITH THE SEC AND SOME OF THE COMPLEXITIES, AND I THINK WE TRIED TO POINT OUT IN OUR BRIEF THAT THE EXTENT TO WHICH THE INDICTMENT HAD PICKED UP ON THINGS IN THE CIVIL CASE, THEY ARE NOT PART OF THE PLEA AGREEMENT BECAUSE AS WE SHOWED THE COURT, THEY ARE ACTUALLY WRONG.

SO AS FAR AS THE PERSONAL INFORMATION, I WON'T REPEAT IT, BUT WE DID BRING FORWARD TO THE COURT THE PEOPLE WHO WROTE IN SUPPORT OF MR. FEATHERS, FORMER COLLEAGUES, FORMER EMPLOYEES, BORROWERS, PEOPLE WHO GOT SMALL BUSINESS LOANS. MR. FEATHERS HAD DEDICATED HIS LIFE TO LENDING MONEY TO SMALL BUSINESSES AND CREATING WHATEVER SOCIAL GOOD THAT WOULD CREATE.

AND SO, YOU KNOW, WE ARE ASKING THE COURT TO GO TO THE LOWER END OF THE AGREED UPON RANGE THAT THE PARTIES HAVE SET, WE ARE ASKING THE COURT TO TAKE ALL OF THAT STUFF INTO ACCOUNT.

MS. HARRIS: I ACTUALLY DO HAVE JUST A COUPLE SMALL

POINTS, IF THE COURT WILL HEAR ME.

THE COURT: OKAY. GO AHEAD, PLEASE.

MS. HARRIS: THANK YOU.

AS I SAID BEFORE YOUR HONOR, THE GOVERNMENT IS RECOMMENDING A SENTENCE OF 33 MONTHS PRISON, THREE YEARS OF SUPERVISED RELEASE, THE RESTITUTION THAT WE SPOKE OF BEFORE AND THE SPECIAL ASSESSMENT FEE.

THIS ULTIMATELY ISN'T THE LOW END OF THE DEFENDANT'S GUIDELINE RANGE -- RESULTING GUIDELINE RANGE BASED ON THE RANGE AGREED TO IN THE PLEA.

AS I SAID BEFORE, THIS IS A RARE FRAUD CASE WITH A POSITIVE OUTCOME. YOU KNOW, I REALLY JUST DO WANT TO RESTATE THAT IT IS JUST SO RARE TO HAVE A CASE WHERE THE VICTIMS RECEIVE EVEN SOME PORTION OF THEIR MONEY BACK, THAT THAT WAS TAINTED BY THE DEFENDANT'S CONDUCT.

I DO JUST NOTE THAT, YOU KNOW, THE GOVERNMENT HAS EVERY INTEREST IN MAKING CERTAIN THAT THE TRADING THAT HAPPENS ON THE STOCK MARKET, THAT SECURITIES, THAT FINANCIAL INSTRUMENTS ARE DONE -- THAT INDIVIDUALS WHO INVEST IN THOSE THINGS DO THAT FREELY AND UNDER NO MISREPRESENTATION ABOUT WHAT IT IS THAT THEY ARE DOING AND WHAT THEY CAN EXPECT TO RECEIVE IN RETURN FOR THEIR INVESTMENTS.

IT IS OFTEN A THANKLESS JOB THAT THE SEC DOES, AND EVEN THAT THE U.S. ATTORNEY'S OFFICE DOES IN PURSUING THESE TYPES OF CASES. OBVIOUSLY EVERYBODY CAN HAVE A DIFFERENT EXPERIENCE

WITH THEIR INVESTMENT, AND WE SEE THAT HERE WITH THE INDIVIDUAL WHO TESTIFIED TODAY AND SOME OF THE STATEMENTS THAT WERE MADE IN THE VICTIM IMPACT STATEMENTS SUBMITTED TO THE COURT.

OBVIOUSLY THERE WERE DEFINITELY SOME PEOPLE WHO DID FEEL THAT MR. FEATHERS MISLEAD THEM, THEY MADE THAT CLEAR. THAT WAS THE BASIS FOR THE GOVERNMENT'S INDICTMENT, THAT WAS THE BASIS FOR HIS CONVICTION.

I JUST -- YOU KNOW, AT THE END OF THE DAY, WHAT I REALLY CAN'T ABIDE BY IS THIS SORT OF LESSENING ACCOUNTABILITY FOR HIS CONDUCT. I TEND TO TAKE THE COURT'S POSITION THAT THE CONDUCT DURING THE CIVIL CASE WAS OUTRAGEOUS. UNDER ANY OTHER CIRCUMSTANCE, THIS INDIVIDUAL MIGHT HAVE BEEN DECLARED A VEXATIOUS LITIGANT AND THAT HIS CONDUCT IS WHAT WOULD CAUSE THAT CASE TO LAST FOR AS LONG AS IT DID.

HIS CONDUCT IS WHAT CAUSED THE RECEIVER TO HAVE TO GET COUNSEL AND FOR THE ATTORNEY'S FEES FOR THAT COUNSEL. AND THE COURT SHOULD KEEP THAT IN MIND, THAT WAS A GOVERNMENT-INITIATED ACTION. SO TO THE EXTENT THAT IT LASTED FOR LONGER THAN IT SHOULD HAVE, THAT IS A DELAY, AN OBSTRUCTION OF THE GOVERNMENT'S FUNCTIONING BECAUSE THIS INDIVIDUAL DECIDED TO ENGAGE IN THAT CONDUCT.

NONETHELESS, I DO THINK THAT THE RESOLUTION REACHED HERE IS A FAIR ONE, AND IT SHOULD BE TAKEN IN CONTEXT WITH ALL OF THE GOVERNMENT'S CIVIL ENFORCEMENT EFFORTS DONE TO DATE. THIS IS A VERY SUCCESSFUL OUTCOME AND THE GOVERNMENT STANDS BY IT

AND WE HOPE THAT THE COURT ACCEPTS IT.

THANK YOU.

THE COURT: ALL RIGHT. IS THERE ANYTHING PROBATION WANTS TO STATE?

PROBATION OFFICER: NO, YOUR HONOR. THANK YOU.

THE COURT: ALL RIGHT. LET ME END WITH DEFENSE COUNSEL. IS THERE ANYTHING ELSE THAT YOU WOULD LIKE TO ADD?

I MEAN, CERTAINLY HE'S ONLY PLEADING TO 1 OF 29 COUNTS. THE SCOPE OF WHAT HE'S PLEADING TO IS MUCH MORE NARROW THAN WHAT WAS CHARGED IN THE INDICTMENT. AND I THINK THAT IS A CREDIT TO ALL THE WORK THAT YOU HAVE DONE SINCE YOU WERE APPOINTED. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD?

MR. ILLOVSKY: JUST TO SAY, YOUR HONOR, I UNDERSTAND THE COURT'S FRUSTRATION WITH MR. FEATHERS AS A LITIGANT, IT WAS NOT MODEL BEHAVIOR. I DO NOT --

THE COURT: OH, I'M NOT FRUSTRATED. I DID NOT HAVE THE SEC CASE. SO I'M JUST SAYING I GOT A GLIMPSE OF IT AND I DO THINK SOME OF THE LENGTH AND BURDEN WAS SELF-INFLICTED, THAT'S ALL. THAT WAS MY ONLY POINT. I ONLY HAD TO DO TWO WRITTEN ORDERS. HAD IT GOTTEN REALLY EXTENSIVE, THEN I MAY HAVE JOINED IN FEELING MORE FRUSTRATED, BUT I'M JUST COMMENTING ON WHAT I SEE FROM THE SEC CASE.

MR. ILLOVSKY: I THINK IT'S TOTALLY TRUE. I THINK A LOT OF IT WAS SELF-INFLICTED, SADLY.

I WILL ALSO SAY THAT I REALLY DO BELIEVE THAT THE

PROBATION OFFICE DID A VERY GOOD EXAMINATION OF THE CASE AND GRAPPLED WITH A DIFFICULT AND COMPLEX CASE IN A VERY SHORT PERIOD OF TIME.

AND IT WAS -- THE DEFENSE'S REQUEST, THE COURT WAS NICE ENOUGH TO TRUNCATE THE SCHEDULE A LITTLE BIT, BUT IT HAD THE PROBATION OFFICE SCRAMBLING. AND I DO THINK THE PROBATION OFFICE DID A GOOD JOB. I DO THINK THAT THE PROBATION OFFICE FAIRLY CONSIDERED THE CIRCUMSTANCES OF MR. FEATHERS. IN FACT, I DON'T THINK THEY ARE UNDULY MINIMIZING HIS BEHAVIOR IN RECOMMENDING TO THE COURT THAT THERE SHOULD BE -- THAT THE VARIANCE WOULD BE FAIR, AND WE JOIN WITH THAT.

AND WITH THAT, WE WILL LEAVE IT ALONE.

THE COURT: ALL RIGHT.

WELL, THE COURT HAS TO CONSIDER THE SENTENCING GUIDELINES AS AN INITIAL MATTER, THEY ARE CERTAINLY NOT BINDING. AND LET ME JUST START OFF BY CALCULATING THE BASE OFFENSE LEVEL PURSUANT TO 2(B)1.1(A)(1) IS 7.

NOW THE PARTIES HAVE AGREED IN THEIR BINDING PLEA AGREEMENT TO CALCULATE THE LOSS BY THE GAIN TO MR. FEATHERS INSTEAD OF BY INVESTOR LOSS. AND DOING THE CALCULATION THAT WAY, PURSUANT TO 2(B)1.1(B)(1)(G), BECAUSE THE LOSS EXCEEDED $250,000, THERE'S A 12 LEVEL INCREASE.

PURSUANT TO 2(B)1.1(B)(2)(A)(1), THERE'S A TWO LEVEL INCREASE FOR MORE THAN ONE VICTIM, THERE'S A TWO LEVEL INCREASE FOR OBSTRUCTION OF JUSTICE; THERE'S A THREE LEVEL REDUCTION FOR

ACCEPTANCE OF RESPONSIBILITY PURSUANT TO 3(E)1.1. SO THE FINAL OFFENSE LEVEL IS 20, AND THAT IS IN THE 33 TO 41 MONTH SENTENCING GUIDELINE RANGE; IS THAT CORRECT?

MR. ILLOVSKY: YES, YOUR HONOR.

PROBATION OFFICER: THAT'S CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT.

NOW I WOULD JUST NOTE, AND THE PARTIES HAVE AGREED NOT TO DO IT THIS WAY FOR REASONS OF DIFFICULTY OF CALCULATION, IF YOU WERE TO LOOK AT WHAT THE INVESTOR LOSS WAS, JUDGE DAVILA, WHO HAD THE CIVIL CASE, ISSUED A PERMANENT INJUNCTION, AS I SAID BEFORE, IN THE AMOUNT OF $7,782,961.07. BOTH THE RECEIVER IN THAT SEC CASE AND THE GOVERNMENT ARE REQUESTING RESTITUTION OF $5,724,667.54.

AND IN THE BINDING PLEA AGREEMENT, IN PARAGRAPH 10 ON PAGE 6, MR. FEATHERS HAS SPECIFICALLY AGREED THAT RESTITUTION IN THE CRIMINAL CASE SHALL INCLUDE THE JUDGMENT NOW PENDING AGAINST HIM IN THE SEC CASE BEFORE JUDGE DAVILA.

SO IF YOU WERE TO LOOK AT WHAT THE INVESTOR WAS LOSING, AND USE THAT TO DO THE CALCULATION INSTEAD OF THE GAIN, IT WOULD ACTUALLY BE A PLUS 18 INSTEAD OF A PLUS 12 BECAUSE IT EXCEEDS 3.5 MILLION AND IT'S LESS THAN 9.5 MILLION.

AND IF YOU WERE TO DO THE CALCULATION BASED ON INVESTOR LOSS, IT WOULD BE 63 TO 78 MONTHS BECAUSE THE FINAL OFFENSE LEVEL WOULD BE 26.

BUT THE PARTIES HAVE A BINDING PLEA AGREEMENT TO DO THE

GUIDELINE CALCULATION BASED ON THE LOSS BECAUSE OF THE DIFFICULTY, THEY SAY, IN CALCULATING WHAT THAT INVESTOR LOSS WOULD BE.

I AM SOMEWHAT SKEPTICAL THAT IT WOULD BE AS DIFFICULT AS THE PARTIES SAY, BUT I DO UNDERSTAND IT TO BE EXTREMELY COMPLEX.

MR. ILLOVSKY: PLUS IT'S A DIFFERENT TIME PERIOD.

MS. HARRIS: DIFFERENT SET OF CIRCUMSTANCES.

THE COURT: I UNDERSTAND. I UNDERSTAND. IT WOULDN'T NECESSARILY BE COMPLETE OVERLAP, BUT I AM NOT AS CONVINCED THAT EVEN IF YOU LOOKED AT THE NARROWER SCOPE OF TIME, NARROWER NUMBER OF VICTIMS, THAT YOU COULDN'T DETERMINE LOSS.

BUT IT'S FINE. I'M GOING TO ACCEPT THE BINDING PLEA AGREEMENT OF THE PARTIES TO DO THE CALCULATION USING A LOSS AMOUNT OF OVER 250,000 INSTEAD OF SOMETHING OVER 3.5 MILLION. SO THAT'S FINE.

NOW THAT IS THE CALCULATION.

MR. ILLOVSKY: THOSE WOULD HAVE BEEN THE EARLY INVESTORS, RIGHT, SO THERE WOULD HAVE BEEN LOWER LOSS, PROBABLY.

THE COURT: WELL, I DON'T THINK YOU WOULD GET IT DOWN TO 250,000.

MR. ILLOVSKY: 94 HAD NO LOSS.

THE COURT: I STILL DON'T THINK YOU WOULD GET IT DOWN TO 250,000, BUT IT'S FINE, I'M GOING TO ACCEPT THE PARTY'S

SENTENCING GUIDELINE CALCULATION THAT'S IN YOUR BINDING PLEA AGREEMENT.

I WILL JUST SAY THAT WHAT IS MITIGATING IS THAT MR. FEATHERS HAS PLED GUILTY, IT WOULD HAVE BEEN AN EXTREMELY COMPLICATED TRIAL, AND THAT HE HAS SUFFERED A GREAT LOSS AS A RESULT OF BOTH CASES.

HE'S NOT ABLE TO SEE HIS TWO SONS AND HIS STEPSON, HIS WIFE IS DIVORCING HIM, THEY HAVE [redacted] AND THIS HAS TAKEN A HUGE TOLL ON HIM, AND I DO RECOGNIZE THE DIFFICULTY OF HIM BEING PRO SE IN HIS SEC CASE, AND IT EXTENDED FOR A LONG PERIOD OF TIME, AND I CERTAINLY UNDERSTAND THE DRAIN.

AND I APPLAUD THE FACT THAT SO MUCH HAS BEEN REPAID TO THE INVESTORS AT SUCH A HIGH RATE OF REIMBURSEMENT. AND I RECOGNIZE THAT SOME OF THE INVESTORS ARE VERY HAPPY, ESPECIALLY THE EARLY ONES WHO DID GET PAYMENT, ALTHOUGH I SUGGEST THAT SOME OF THE PAYMENT THEY RECEIVED WERE JUST THE INVESTMENTS FROM THE LATER INVESTORS.

BUT I DO UNDERSTAND MANY OF THEM ARE SATISFIED, AS WAS THE GENTLEMAN MR. SYD RAINERI WHO TESTIFIED TODAY AND THE LETTERS THAT I READ FROM VICTIMS.

BUT, I MEAN, MR. FEATHERS HAS PLED GUILTY TO COUNT 20 OF THE INDICTMENT, AND HE HAS, BY PLEADING GUILTY, AGREED THAT HE

KNOWINGLY PARTICIPATED IN THE SCHEME TO DEFRAUD, IN A SCHEME OR PLAN FOR OBTAINING MONEY OR PROPERTY BY MAKING FALSE PROMISES OR STATEMENTS, THAT HE KNEW THAT THE PROMISES OR STATEMENTS WERE FALSE WHEN MADE, THAT THE PROMISES OR STATEMENTS WERE MATERIAL, THAT IS THEY WOULD REASONABLY INFLUENCE A PERSON TO PART WITH MONEY OR PROPERTY, THAT HE ACTED WITH INTENT TO DEFRAUD, AND THAT AN ESSENTIAL PART OF HIS SCHEME WAS IN CONNECTION WITH AND INVOLVING USE OF THE MAIL.

THAT IS WHAT HE HAS PLED TO, THAT IS WHAT HE HAS STIPULATED TO, SO I BEAR THAT IN MIND AS WELL.

WITH REGARD TO THE OBSTRUCTION OF JUSTICE, LET ME JUST GET TO THAT POINT. UNFORTUNATELY MR. FEATHERS, WHILE HE WAS IN THIS CRIMINAL CASE BEING REPRESENTED BY RITA BOSWORTH OF THE FEDERAL PUBLIC DEFENDER'S OFFICE, SENT THREATENING E-MAIL TO HER, TO HIS PRIOR LAWYER IN THE CRIMINAL CASE, TO THE RECEIVER, TO THE ATTORNEY FOR THE RECEIVER, AND TO FOUR SEC ATTORNEYS.

YOU KNOW, SOME OF THESE PEOPLE HAD ALREADY BEEN SUED BY MR. FEATHERS, ONE WAS VERBALLY ASSAULTED IN COURT BY MR. FEATHERS PRIOR TO INDICTMENT IN THE CRIMINAL CASE. AND YOU KNOW, THE PSR KIND OF MINIMIZES THE E-MAILS BY SAYING OH, BUT THE LITIGATION, HE, YOU KNOW, IT GROUND HIM DOWN.

BUT I JUST WANT TO REPEAT, THIS WAS THE FOOTNOTE IN AN EARLIER DRAFT OF THE ORDER I ISSUED, YOU KNOW, THAT HE SOUGHT LEAVE TO SUE THE RECEIVER ON SEVERAL OCCASIONS, HE FILED A COMPLAINT AGAINST THE RECEIVER'S COUNSEL WITH THE STATE BAR TO

TRY TO GET THAT PERSON, TO HAVE THEIR LICENSE REVOKED OR SUSPENDED. THAT WAS DETERMINED TO HAVE NO MERIT.

HE LODGED A COMPLAINT AGAINST THE RECEIVER WITH THE CHARTER FINANCIAL ANALYST INSTITUTE, WHICH WAS DETERMINED TO HAVE NO MERIT. HE SOUGHT TO INTERVENE IN AN UNRELATED COMMISSION CASE IN THE CENTRAL DISTRICT OF CALIFORNIA IN WHICH THE RECEIVER WAS APPOINTED RECEIVER, THAT WAS SUMMARILY REJECTED BY THE DISTRICT COURT.

SO I HEAR MR. RAINERI, I'M SURE THE LEGAL FEES WERE HIGH FOR THE RECEIVER, BUT A LOT OF THAT WAS SPENT TRYING TO DEFEND HIMSELF FROM THE LAWSUITS AND FROM THE ACTIONS OF MR. FEATHERS. SO IF ANYONE INCREASED THE COST OF THE RECEIVER -- IT TAKES TIME TO RESPOND TO ALL OF THIS.

LOOK AT THE RECEIVER'S DECLARATION FROM JUNE 23RD, 2016. "MR. FEATHERS HAS SENT ME AND MY COUNSEL MORE THAN THREE HUNDRED E-MAIL MESSAGES. THESE E-MAILS GENERALLY INCLUDE FALSE ACCUSATIONS, PERSONAL ATTACKS, THREATS TO SUE OR BRING LEGAL ACTION AGAINST ME IN SOME MANNER. MR. FEATHERS HAS THREATENED TO SUE ME OR BRING LEGAL ACTION AGAINST ME IN WRITING APPROXIMATELY 35 TIMES, AND HAS STATED HIS INTENTION TO CONTINUE THE LITIGATION FOR YEARS TO COME."

LOOK AT WHAT THE -- YOU KNOW, I JUST WANT TO SHARE WHAT THE VICTIMS WHO RECEIVED THESE THREATENING E-MAIL E-MAILS SAID. THIS IS VICTIM ONE. "VICTIM ONE HAS RECEIVED THREATENING E-MAILS FROM MR. FEATHERS PREVIOUSLY." THIS IS IN ADDITION TO

THE ONE THAT GOT MR. FEATHERS REMANDED IN THIS CASE AND IS THE OBSTRUCTION OF JUSTICE INCIDENT.

IT SAYS "V1 WAS USUALLY INCLUDED ON THE CC LINE OF THE E-MAILS AND NOT ON THE TO LINE." THIS WAS THE FIRST TIME HE WAS ON THE TO LINE. "THERE WERE TIMES IN COURT WHERE MR. FEATHERS HAS BECOME SO ANGRY THAT V1 HAS BECOME CONCERNED FOR V1'S SAFETY. V1 WAS STUNNED THAT FEATHERS WOULD MAKE THE STATEMENTS THAT HE MADE. THE MOST RECENT E-MAIL MADE V1 CONCERNED FOR V1'S SAFETY. V1 WAS CONCERNED FOR V2'S SAFETY BECAUSE IT WAS POSSIBLE V2 WOULD HAVE TO TESTIFY IN MR. FEATHERS'S CRIMINAL TRIAL."

LET'S GO TO V2. "V2 HAS RECEIVED HUNDREDS OF E-MAILS FROM MR. FEATHERS IN THE PAST, SOME OF WHICH THREATENED V2'S CAREER. EVEN THOUGH V2 FELT SORRY FOR MR. FEATHERS, THIS E-MAIL CAUSED HIM ALARM AND V2 FELT UNSETTLED AND INTIMIDATED. V2 FOUND THE E-MAIL DISTURBING AND IT CAUSED HIM STRESS." V2 WENT ON TO NOTE THAT "V2 FELT BOTH HARASSED AND BADGERED BY FEATHERS."

I ASSUME YOU DIDN'T READ THIS; IS THAT CORRECT? BECAUSE IT WASN'T IN YOUR PSR.

PROBATION OFFICER: I CAN'T RECALL AT THIS POINT. I DON'T THINK SO.

THE COURT: OKAY. THIS IS V3. THIS IS BASICALLY THE MOTION FOR REVOCATION OF RELEASE PENDING TRIAL.

OKAY. THIS WAS ECF NUMBER 108 ON THIS DOCKET, THE CRIMINAL CASE WAS FILED MARCH 22, 2017.

LET'S GO TO VICTIM THREE. "V3 HAD PREVIOUSLY HEARD FEATHERS MAKE INFLAMMATORY COMMENTS IN OPEN COURT. IN PREVIOUS CIVIL COURT PROCEEDINGS, FEATHERS HAD VOWED REVENGE AGAINST THE SECURITIES AND EXCHANGE COMMISSION TEAM AND HAD BEEN UPSET BY THE USE OF THE WORD PONZI."

THIS IS VICTIM FOUR. "VICTIM 4 NOTED THAT FEATHERS HAS SENT EARLY MORNING AND LATE NIGHT INFLAMMATORY E-MAILS IN THE PAST, BUT THIS WAS THE FIRST ONE THAT INCLUDED A PHYSICAL THREAT."

THIS IS VICTIM 5. "V5 NOTED THAT FEATHERS HAD SENT EARLY MORNING AND LATE INFLAMMATORY E-MAILS IN THE PAST, BUT THIS WAS THE ONE FIRST THAT INCLUDED PHYSICALLY THREATENING STATEMENTS. V5 HAD THREATENING ENCOUNTERS WITH FEATHERS IN THE PAST. ON ONE OCCASION, THAT OCCURRED PRIOR TO THE FILING OF THE CRIMINAL INDICTMENT. FEATHERS HAD HAD AN OVER-THE-TOP REACTION TO SOMETHING V5 SAID IN COURT. FEATHERS BEGAN SCREAMING AT V5, CALLING V5 INDECENT.

ON ANOTHER OCCASION, FEATHERS HAD PLACED HIMSELF BETWEEN V5 AND THE EXIT OF THE COURTROOM AND STATED THAT FEATHERS WOULD SEE V5 IN HELL AND CALLED HER, TO THE BEST OF V5'S RECOLLECTION, A LYING PIECE OF SHIT OR A LYING BITCH.

THE SCHEDULING CLERK APPARENTLY OVERHEARD THE COMMENT, NOTIFIED THE COURT MARSHALS WHO PROCEEDED TO ESCORT V5 OUT AFTER FEATHERS LEFT THE COURTROOM.

V5 WAS GENERALLY NOT A PERSON WHO WAS EASILY INTIMIDATED

OR AFRAID OF CONFRONTATION, HOWEVER FEATHERS WAS STRESSFUL TO BE AROUND.

V5 WAS NOT AFRAID OF FEATHERS, BUT BEING AROUND HIM REQUIRED HYPER-ALTERTNESS AND V5 DID NOT WANT TO BE ALONE IN A CONFINED SPACE WITH FEATHERS, BUT WAS WILLING TO BE IN A COURTROOM WITH HIM."

THIS IS V6. "THE LANGUAGE IN THE E-MAIL MADE V6 CONCERNED FOR V6'S OWN PERSONAL SAFETY, THE SAFETY OF V6'S FAMILY AND THE SECURITY OF V6'S PROPERTY."

SO I MEAN, YOU JUST SAID THAT MR. LUCEY SAID THAT NONE OF THESE VICTIMS FELT THAT ANY OF THESE THREATS WERE REAL? WHAT EXACTLY DID MR. LUCEY SAY, BECAUSE THIS DOCUMENT WAS FILED BY MR. LUCEY.

PROBATION OFFICER: I CAN'T RECALL THAT EXACT CONVERSATION, YOUR HONOR. IT JUST SEEMED THAT HE WASN'T CONCERNED, IN OUR TALK, THAT MR. FEATHERS HAD ACTUALLY INTENDED TO PHYSICALLY HARM SOMEONE. I THINK THAT WAS THE GIST OUR CONVERSATION, AS BEST I REMEMBER.

THE COURT: ALL RIGHT. BUT YOU DIDN'T BOTHER TO READ THIS MOTION, THE SUBJECT OF THE E-MAIL.

PROBATION OFFICER: I CAN'T RECALL THAT I HAD. I BELIEVE I WOULD HAVE, BUT IT'S BEEN A COUPLE OF MONTHS SINCE THE CASE STARTED IN MY HANDS, SO I CAN'T RECALL.

I UNDERSTAND THE COURT'S POINT, YOUR HONOR.

THE COURT: YEAH. IF YOU ARE GOING TO MAKE

REPRESENTATION ABOUT THINGS, IT SHOULD INCLUDE ALL PERSPECTIVES.

PROBATION OFFICER: UNDERSTOOD.

THE COURT: IT MAKES IT MORE PERSUASIVE THAT WAY.

ALL RIGHT. AND THEN I JUST HAVE MY OWN, FROM MY OWN ORDERS IN THIS CRIMINAL CASE OF GOING THROUGH THE NUMBER OF TIMES, OCTOBER 23RD 2013 NINTH CIRCUIT DISMISSED FOR LACK OF JURISDICTION.

THEN HE APPEALED AGAIN NOVEMBER 7, 2013, THAT GETS ANOTHER NINTH CIRCUIT NUMBER. THEN THERE'S ANOTHER APPEAL TO THE NINTH CIRCUIT ON FEBRUARY 27, 2017, THAT GETS ANOTHER NUMBER. THEN THERE'S ANOTHER APPEAL TO THE NINTH CIRCUIT NOVEMBER 10TH OF 2014.

I MEAN, JUST -- YOU KNOW, I UNDERSTAND MR. FEATHERS WAS SELF-REPRESENTED, AND I THINK THAT'S UNFORTUNATE IN OUR CIVIL JUSTICE SYSTEM THAT WE DON'T HAVE APPOINTED COUNSEL IN ALL OF THOSE CASES. BUT I DO WANT TO SAY THAT THE LENGTH OF THE CIVIL CASE AND HOW BURDENSOME IT WAS, IN MANY RESPECTS, CAUSED BY MR. FEATHERS.

AND I WOULD SAY THAT A LOT OF THE RECEIVER FEES THAT MR. RAINERI COMPLAINS ABOUT AND COUNSEL FOR MR. SEIMEN, THE RECEIVER, WAS BECAUSE OF ALL OF THIS LITIGATION AND E-MAILS AND APPEALS. THIS MAKES IT MORE EXPENSIVE. THIS IS WHAT MAKES THE FEES HIGHER. AND A LOT OF THAT WAS CAUSED BY MR. FEATHERS.

I MEAN, I JUST LOOK THROUGH HOW MANY TIMES -- YOU LOOK

THROUGH SO MANY -- MR. FEATHERS FILED SANCTIONS MOTIONS AGAINST THE SEC LAWYERS. HE FILED AGAIN AND AGAIN, MULTIPLE REQUESTS THAT THE RECEIVER BE DISCHARGED. ALL OF THAT IS WHAT INCREASES THE FEES FOR LITIGATION.

YOU KNOW, EVERY TIME THESE LAWSUITS ARE FILED, THE RECEIVER HAS TO FILE A DECLARATION. THIS IS EXTREMELY TIME INTENSIVE. EXPENSIVE, BURDENSOME, AND A LOT OF THAT WAS SELF-INFLICTED.

SO ANYWAY, I DO APPRECIATE THAT MR. FEATHERS SERVED IN THE NAVY FROM 1986 TO 1989. HE CONTINUES TO GET DISABILITY PAYMENTS EVERY MONTH FOR THAT THREE-YEAR SERVICE, AS MUCH AS $3,300 A MONTH EVERY MONTH.

I ASSUME FOR THE REST OF HIS LIFE, CORRECT?

MR. ILLOVSKY: I DON'T KNOW THE ANSWER, YOUR HONOR.

THE COURT: I MEAN, HE SERVED '86 TO '89, SO THAT'S WHAT, 31 YEARS AGO.

MR. ILLOVSKY: SORRY, I DON'T KNOW THE DISABILITY RULES.

THE COURT: YEAH, 32 YEARS AGO. SO FOR THREE YEARS OF SERVICE, HE'S STILL GETTING MONTHLY PAYMENTS, 32 YEARS LATER.

ALL RIGHT. THE COURT, IN IMPOSING THE SENTENCE, HAS CONSIDERED THE FACTORS SET FORTH IN 3553(A), THE NATURE AND CIRCUMSTANCES OF THE OFFENSE, THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT, THE NEED FOR THE SENTENCE TO REFLECT THE

SERIOUSNESS OF THE OFFENSE, TO PROMOTE RESPECT FOR THE LAW, TO PROVIDE JUST PUNISHMENT FOR THE OFFENSE, TO AFFORD ADEQUATE DETERRENCE TO CRIMINAL PRODUCT, TO PROTECT THE PUBLIC FROM FURTHER CRIMES OF THE DEFENDANT.

I DON'T BELIEVE THE DEFENDANT NEEDS ANY VOCATIONAL TRAINING OR MEDICAL CARE, CORRECT?

MR. ILLOVSKY: CORRECT.

THE COURT: BUT TO AVOID UNWARRANTED SENTENCE DISPARITIES AMONG DEFENDANTS WITH SIMILAR RECORDS WHO HAVE BEEN FOUND GUILTY OF SIMILAR CONDUCT AND THE NEED TO PROVIDE RESTITUTION TO ANY VICTIMS OF THE OFFENSE.

I WILL NOTE THAT PURSUANT TO THE PERMANENT INJUNCTION IN THE SEC CASE, JUDGE DAVILA ORDERED THAT $7,782,961.07 BE DISGORGED, AND THAT WAS A DISGORGEMENT OF PROFITS AGAINST THE DEFENDANT AS CO-DEFENDANTS. THE PLAN APPROVED 40 MILLION AND ALLOWED CLAIMS FROM INVESTORS. THE RECEIVER DISTRIBUTED NEARLY 35 MILLION TO INVESTORS IN FOUR DISTRIBUTIONS WHICH ALLOWED INVESTORS TO RECOVER AT LEAST 88 PERCENT OF THE PRINCIPLE.

THE GOVERNMENT REQUESTS RESTITUTION IN THE AMOUNT OF $5,724,667.54 WHICH IS THE UNPAID REMAINDER OF CLAIMS AGAINST MR. FEATHERS AND SBCC.

THERE ARE NO OBJECTIONS TO THE PSR THAT I HAVE TO RESOLVE.

SO PURSUANT TO THE SENTENCING REFORM ACT OF 1984, IT IS THE JUDGMENT OF THE COURT THAT MR. MARK FEATHERS IS HEREBY COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS TO BE

IMPRISONED FOR A TERM OF 33 MONTHS.

THE COURT RECOMMENDS THAT THE DEFENDANT PARTICIPATE IN COGNITIVE BEHAVIORAL TREATMENT IN THE BUREAU OF PRISONS.

UPON RELEASE FROM IMPRISONMENT, MR. FEATHERS SHALL BE PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE YEARS.

WITHIN 72 HOURS OF RELEASE FROM THE CUSTODY OF THE BUREAU OF PRISONS, THE MR. FEATHERS SHALL REPORT IN PERSON TO THE PROBATION OFFICE IN THE DISTRICT TO WHICH HE IS RELEASED.

WHILE ON SUPERVISED RELEASE, HE SHALL NOT COMMIT ANOTHER FEDERAL, STATE OR LOCAL CRIME; SHALL COMPLY WITH THE STANDARD CONDITIONS THAT HAVE BEEN ADOPTED BY THIS COURT, EXCEPT THAT THE MANDATORY DRUG TESTING PROVISION IS SUSPENDED, AND SHALL COMPLY WITH THE FOLLOWING ADDITIONAL CONDITIONS:

MR. FEATHERS, YOU SHALL PAY ANY RESTITUTION AND SPECIAL ASSESSMENT THAT IS IMPOSED BY THIS JUDGMENT AND THAT REMAINS UNPAID AT THE COMMENCEMENT OF THE TERM OF SUPERVISED RELEASE.

YOU SHALL NOT OPEN ANY NEW LINES OF CREDIT AND/OR INCUR NEW DEBT WITHOUT THE PRIOR PERMISSION OF THE PROBATION OFFICER.

YOU SHALL PROVIDE THE PROBATION OFFICER WITH ACCESS TO ANY FINANCIAL INFORMATION, INCLUDING TAX RETURNS, AND SHALL AUTHORIZE THE PROBATION OFFICER TO CONDUCT CREDIT CHECKS AND OBTAIN COPIES OF INCOME TAX RETURNS.

I WILL SAY I AM A LITTLE BIT CONCERNED THAT WITHOUT ANY RESTITUTION BEING PAID, YOU KNOW, [redacted] BETWEEN 2017 AND 2018. HE HAS [redacted]

[redacted]. I DO HOPE THAT SOME OF THIS WILL GO TO RESTITUTION.

YOU SHALL COOPERATE IN THE COLLECTION OF DNA AS DIRECTED BY THE PROBATION OFFICER.

YOU SHALL SUBMIT YOUR PERSON, RESIDENCE, OFFICE, VEHICLE, ELECTRONIC DEVICES AND THEIR DATA, INCLUDING CELL PHONES, COMPUTERS AND ELECTRONIC STORAGE MEDIA, OR ANY PROPERTY UNDER YOUR CONTROL TO A SEARCH. SUCH A SEARCH SHALL BE CONDUCTED BY A U.S. PROBATION OFFICER OR ANY FEDERAL, STATE OR LOCAL LAW ENFORCEMENT OFFICER AT ANY TIME, WITH OR WITHOUT SUSPICION.

FAILURE TO SUBMIT TO SUCH A SEARCH MAY BE GROUNDS FOR REVOCATION. THE DEFENDANT SHALL WARN ANY RESIDENCE THAT THE PREMISES MAY BE SUBJECT TO SEARCHES.

YOU SHALL NOT BE EMPLOYED -- I THINK WE NEED THE WORD "AS" AS A SECURITIES BROKER OR ANY OTHER EMPLOYMENT RELATED TO THE INSTANT OFFENSE AS DIRECTED BY THE PROBATION OFFICER.

WILL YOU MAKE THAT CHANGE IN THE JUDGMENT, PLEASE. THANK YOU.

PROBATION OFFICER: I WILL, YOUR HONOR.

THE COURT: IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY TO THE U.S. A SPECIAL ASSESSMENT OF $100. PAYMENT SHALL BE MADE TO:

THE CLERK OF U.S. DISTRICT COURT.

450 GOLDEN GATE AVENUE, BOX 36060.

SAN FRANCISCO, CA 94102

DURING IMPRISONMENT, PAYMENTS OF CRIMINAL MONETARY PENALTIES ARE DUE AT THE RATE OF NOT LESS THAN $25 PER QUARTER AND PAYMENT SHALL BE THROUGH THE BUREAU OF PRISONS INMATE FINANCIAL RESPONSIBILITY PROGRAM.

NOW, I ACTUALLY THINK THAT THE DEFENDANT DOES HAVE THE ABILITY TO PAY THE FINE. I HAVE JUST GONE THROUGH, HE'S GOT LIKE [redacted]. SO WHY ARE WE SAYING THAT HE DOESN'T HAVE THE ABILITY TO PAY THE FINE? NOW GRANTED I WOULD WANT THE MONEY TO GO TO RESTITUTION TOWARDS THE VICTIMS ANYWAY.

YOU ARE THE ONE THAT JUST SAID HE'S GOT [redacted] I MEAN, 2018, THE LAST WEEKS OR MONTHS, SO WHY ARE WE FINDING THAT HE HAS NO ABILITY TO PAY A FINE?

PROBATION OFFICER: MY THINKING, YOUR HONOR, WAS THE ASSETS THAT HE HAS LEFT AGAINST THE RESTITUTION STILL OWING, IT JUST DIDN'T MAKE SENSE TO ME.

THE COURT: YEAH.

WELL, I MEAN, I FIND THAT HE DOES HAVE THE ABILITY TO PAY A FINE BUT I ORDER IT WAIVED BECAUSE I WANT THE MONEY TO GO TO RESTITUTION, IF THERE IS ANY.

I JUST DON'T THINK I CAN MAKE A FACTUAL FINDING THAT HE DOESN'T HAVE THE ABILITY TO PAY THE FINE WHEN HE'S GOT THAT

MUCH CASH.

IT IS FURTHER ORDERED THAT MR. FEATHERS SHALL PAY RESTITUTION TO THE VICTIMS. NOW I GUESS YOUR ATTACHMENT A IS THIS LIST, CORRECT?

PROBATION OFFICER: THAT'S CORRECT, YOUR HONOR.

THE COURT: TO THIS REPORT. AND THE TOTAL AMOUNT OF $5,724,667.54.

IT IS RECOMMENDED THAT $[redacted] CURRENTLY SITTING IN DEFENDANT'S SAVINGS ACCOUNT BE PAID TOWARD RESTITUTION FORTHWITH.

DURING IMPRISONMENT, PAYMENT OF RESTITUTION IS DUE AT THE RATE OF NOT LESS THAN $25 PER QUARTER, AND PAYMENT SHALL BE THROUGH THE BUREAU OF PRISONS INMATE RESPONSIBILITY PROGRAM.

ONCE THE DEFENDANT IS ON SUPERVISED RELEASE, RESTITUTION MUST BE PAID IN MONTHLY PAYMENTS OF NOT LESS THAN $500.00, OR AT LEAST TEN PERCENT OF EARNINGS, WHICHEVER IS GREATER, TO COMMENCE NO LATER THAN 60 DAYS FROM PLACEMENT ON SUPERVISION.

ANY ESTABLISHED PAYMENT PLAN DOES NOT PRECLUDE ENFORCEMENT EFFORTS BY THE U.S. ATTORNEY'S OFFICE IF THE DEFENDANT HAS THE ABILITY PAY MORE THAN THE MINIMUM DUE.

THE RESTITUTION PAYMENTS SHALL BE MADE TO:

THE CLERK OF U.S. DISTRICT COURT.

ATTENTION FINANCIAL UNIT.

450 GOLDEN GATE AVENUE, BOX 36060

SAN FRANCISCO, CA 94102

NOW, MR. ILLOVSKY, YOU WANT ME TO READ ATTACHMENT A, ALL OF THE VICTIMS AND THEIR CLAIM BALANCES?

MR. ILLOVSKY: I DON'T THINK THAT'S NECESSARY. CAN THAT JUST BE ATTACHED AS PART --

THE COURT: WE CAN JUST MAKE IT PART OF THE JUDGMENT, BUT I DO WANT TO OFFER TO READ ALL OF THIS, WHAT ABOUT YOU?

MS. HARRIS: NO, YOUR HONOR. THE COURT CAN JUST ATTACH THE LIST SUBMITTED BY PROBATION AND I THINK THAT WOULD BE SUFFICIENT BY REFERENCE.

THE COURT: OKAY. ALL RIGHT.

AND MR. FEATHERS DOES HAVE A COPY OF THIS LIST, CORRECT?

MR. ILLOVSKY: YES, YOUR HONOR.

THE COURT: WITH ALL THE VICTIMS' NAMES AND NUMBERS; IS THAT CORRECT, MR. FEATHERS?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: OKAY. DO YOU WANT ME TO READ ALL THESE NAMES AND AMOUNTS IN COURT?

THE DEFENDANT: THAT'S NOT NECESSARY, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT. AND SAME FOR YOU, OFFICER?

PROBATION OFFICER: CORRECT, YOUR HONOR.

THE COURT: OKAY. THEN I WON'T READ THAT.

NOW I DO THINK THAT WE HAVE TO DISMISS THE COUNTS, AT LEAST 2 THROUGH 29, CORRECT?

MS. HARRIS: YES, YOUR HONOR.

THE COURT: ALL RIGHT. THAT MOTION TO DISMISS COUNTS 2 THROUGH 29 IS GRANTED.

THE CLERK: MY APOLOGIES, YOUR HONOR, I BELIEVE IT'S 1 THROUGH 19 AND 21 THROUGH 29.

MS. HARRIS: CORRECT, CORRECT.

THE COURT: OH, I'M SORRY. HE PLED TO COUNT 20. MY MISTAKE. THAT'S CORRECT. MY MISTAKE. THANK YOU FOR CORRECTING ME.

ALL RIGHT. SO THE GOVERNMENT'S MOTION TO DISMISS COUNTS 1 THROUGH 19, AND 21 THROUGH 29 IS GRANTED. THOSE COUNTS ARE DISMISSED.

I AM WAIVING INTEREST ON THE RESTITUTION AMOUNT.

ALL RIGHT. NOW IN THE PLEA AGREEMENT, IN PARAGRAPH 4, MR. FEATHERS, YOU'VE GIVEN UP YOUR RIGHT TO APPEAL THE CONVICTION, THE JUDGMENT AND ORDERS OF THE COURT AS WELL AS ANY ASPECT OF YOUR SENTENCE, INCLUDING ANY ORDERS RELATING TO FORFEITURE OR RESTITUTION, BUT YOU HAVE KEPT THE RIGHT TO CLAIM THAT YOUR COUNSEL WAS NOT EFFECTIVE.

NOW IF YOU WISH TO FILE A NOTICE OF APPEAL FOR INEFFECTIVE ASSISTANCE OF COUNSEL, YOU MUST DO SO IN WRITING WITHIN 14 DAYS OF TODAY'S DATE. YOU ALSO HAVE THE RIGHT TO APPLY TO PROCEED IN FORMA PAUPERIS TO HAVE THE FEES WAIVED IF YOU DON'T HAVE THE MONEY TO PAY YOUR FILING FEE.

I WOULD ALSO NOTE THAT IN PARAGRAPH 5 OF YOUR PLEA AGREEMENT YOU HAVE AGREED NOT TO FILE ANY COLLATERAL ATTACK ON

YOUR CONVICTION OR SENTENCE, INCLUDING A PETITION UNDER 28 USC SECTION 2255, OR 28 USC SECTION 2241, BUT YOU HAVE KEPT THE RIGHT TO CLAIM THAT YOUR COUNSEL WAS NOT EFFECTIVE.

YOU HAVE ALSO AGREED IN PARAGRAPH 5 OF YOUR PLEA AGREEMENT NOT TO SEEK RELIEF UNDER 18 USC SECTION 3582.

IS THERE ANYTHING FURTHER FOR MR. FEATHERS?

MS. HARRIS: NO, YOUR HONOR. I DON'T THINK SO.

MR. ILLOVSKY: TWO SMALL THINGS, YOUR HONOR.

THE COURT: YES.

MR. ILLOVSKY: ONE, COULD WE ASK THE COURT TO RECOMMEND DESIGNATION TO A CALIFORNIA INSTITUTION? YOU KNOW, CONSISTENT WITH BOP'S POLICY AND SECURITY REQUIREMENTS?

THE COURT: ABSOLUTELY. NOW DO YOU WANT ME TO MAKE IT AS CLOSE AS POSSIBLE TO LOS ALTOS OR -- BECAUSE CALIFORNIA IS BIG. DO YOU WANT A SPECIFIC --

MR. ILLOVSKY: I THINK WE WILL JUST GO WITH CALIFORNIA, YOUR HONOR.

THE COURT: OKAY. THAT'S FINE.

SO I WILL RECOMMEND A BUREAU OF PRISONS FACILITY AS CLOSE AS POSSIBLE -- WELL, I WILL JUST SAY WITHIN CALIFORNIA TO FACILITATE FAMILY VISITS.

NOW I DID SEE YOUR REQUEST TO RELEASE MR. FEATHERS AND THEN HAVE HIM SELF SURRENDER IN A WEEK, AND I'M GOING TO DENY THAT REQUEST.

MR. ILLOVSKY: I GUESS YOU DON'T WANT ME TO GO TO MY

NUMBER TWO THEN.

THE COURT: WELL, WHAT WAS YOUR NUMBER TWO.

MR. ILLOVSKY: I'M SORRY, THE SELF SURRENDER THING.

THE COURT: NO, I DON'T THINK THAT WOULD BE APPROPRIATE IN THIS CASE.

MR. ILLOVSKY: NOTHING FURTHER THEN, YOUR HONOR.

THE COURT: ALL RIGHT.

WELL, YOU KNOW, THANK YOU ALL. AND GOOD LUCK TO YOU, MR. FEATHERS.

MS. HARRIS: THANK YOU, YOUR HONOR.

PROBATION OFFICER: THANK YOU, YOUR HONOR.

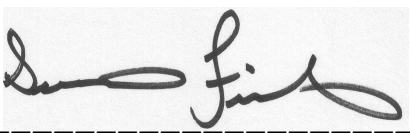
THE COURT: TAKE CARE OF YOURSELF, SIR.

(THE PROCEEDINGS WERE CONCLUDED AT 11:26 A.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED TRANSCRIPTION TO THE BEST OF MY ABILITY.



_____
SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185 DATED: 1/15/20

EXHIBIT 5

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15755

In the Matter of

MARK FEATHERS,

Respondent.

NOTICE TO PRO SE RESPONDENT

The Division of Enforcement has moved for summary disposition under Rule of Practice 250. This means that the Division has asked the administrative law judge to decide this proceeding based on written evidentiary materials submitted in support of its motion. Be aware that if the Division's motion for summary disposition is granted, the proceeding may be decided against you without a hearing, and sanctions may be imposed.

To oppose the Division's motion, your filing must include sufficient evidence contradicting the material facts asserted by the Division. You may not oppose summary disposition simply by relying on bare allegations or denials. See James S. Tagliaferri, Exchange Act Release No. 80047, 2017 WL 632134, at *7 (Feb. 15, 2017) ("The party opposing summary disposition may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing." (internal quotation marks omitted)). Rather, you must

submit evidence—such as declarations, your own affidavit and/or the affidavits of others, prior testimony, documentary evidence, or facts that can be officially noticed under Rule of Practice 323—countering the facts asserted by the Division and raising specific facts that support your contention that this matter requires a hearing.

Failure to respond to the Division's motion may be grounds for a default under Rule of Practice 155.

Dated: July 31, 2020

Respectfully submitted,

/s/ John B. Bulgozdy

John B. Bulgozdy
Lynn Dean
Senior Trial Counsel
Division of Enforcement
Los Angeles Regional Office
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036
(323) 965-3322 (telephone)
(323) 965-3908 (facsimile)
Email: bulgozdyj@sec.gov
Email: deanl@sec.gov

EXHIBIT A
APPLICABLE RULES OF PRACTICE

Rule 155. Default; motion to set aside default.

(a) A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the commission or the hearing officer pursuant to Rule 180(b).

(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

Rule 250. Dispositive motions.

(a) *Motion for a ruling on the pleadings.* No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. The hearing officer shall promptly grant or deny the motion.

(b) *Motion for summary disposition in 30- and 75-day proceedings.* In any proceeding under the 30- or 75-day timeframe designated pursuant to Rule 360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 230, any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law. The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

(c) *Motion for summary disposition in 120-day proceedings.* In any proceeding under the 120-day timeframe designated pursuant to Rule 360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 230, a party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, deposition transcripts, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law. A motion for summary disposition shall be made only with leave of the hearing officer. Leave shall be granted only for good cause shown and if consideration of the motion will not delay the scheduled start of the hearing. The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

(d) *Motion for a ruling as a matter of law following completion of case in chief.* Following the interested division's presentation of its case in chief, any party may make a motion, asserting that the movant is entitled to a ruling as a matter of law on one or more claims or defenses.

(e) *Length limitation for dispositive motions.* Dispositive motions, together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, deposition transcripts or other attachments), shall not exceed 9,800 words. Requests for leave to file motions and accompanying documents in excess of 9,800 words are disfavored. A double-spaced motion that does not, together with any accompanying memorandum of points and authorities, exceed 35 pages in length, inclusive of pleadings incorporated by reference (but excluding any declarations, affidavits, deposition transcripts or attachments) in the dispositive motion, is presumptively considered to contain no more than 9,800 words. Any motion that exceeds this page limit must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the word limit set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

(f) *Opposition and reply length limitations and response time.* A non-moving party may file an opposition to a dispositive motion and the moving party may thereafter file a reply.

(1) *Length limitations.* Any opposition must comply with the length limitations applicable to the movant's motion as set forth in paragraph (e) of this rule. Any reply must comply with the length limitations set forth in Rule 154(c).

(2) *Response time.*

(i) For motions under paragraphs (a), (b), and (d) of this rule, the response times set forth in Rule 154(b) apply to any opposition and reply briefs.

(ii) For motions under paragraph (c) of this rule, any opposition must be filed within 21 days after service of such a motion, and any reply must be filed within seven days after service of any opposition.

Rule 323. Evidence: Official notice.

Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

IN THE MATTER OF MARK FEATHERS
ADMINISTRATIVE PROCEEDING FILE NO. [3-15755]

SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

NOTICE TO PRO SE RESPONDENT

was served on July 31, 2020 upon the following parties as follows:

By Email
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Honorable James E Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
Email: alj@sec.gov

By Email and U.S. Mail
Mark Feathers
[redacted]
Menlo Park, CA 94025
Email: [redacted]
Pro Se Respondent

Dated: July 31, 2020

/s/ Sarah Mitchell
Sarah Mitchell

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15755

In the Matter of

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Respondent.

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Dated: July 31, 2020

Respectfully submitted,

/s/ John B. Bulgozdy

John B. Bulgozdy
Lynn Dean
Senior Trial Counsel
Division of Enforcement
Los Angeles Regional Office
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036
(323) 965-3322 (telephone)
(323) 965-3908 (facsimile)
Email: bulgozdyj@sec.gov
Email: deanl@sec.gov

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IN THE MATTER OF MARK FEATHERS
ADMINISTRATIVE PROCEEDING FILE NO. [3-15755]

SERVICE LIST

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NOTICE TO PRO SE RESPONDENT

was served on July 31, 2020 upon the following parties as follows:

By Email
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
Email: apfilings@sec.gov

By Email
Honorable James E Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
Email: alj@sec.gov

By Email and U.S. Mail
Mark Feathers
[redacted]
Menlo Park, CA 94025
Email: [redacted]
Pro Se Respondent

Dated: July 31, 2020

/s/ Sarah Mitchell
Sarah Mitchell