

Reply to Enforcement's "Motion for Summary Disposition" re: Mark Feathers 3-15755, or, alternatively, Motion to Stay Enforcement's Motion due to Active district Court Litigation on these Matters

The burden of Respondent is to demonstrate with this response to Enforcement's motion for summary disposition that there are material issues of fact in dispute.¹ Respondent asks for the court to take judicial notice of the attached:

- a. Exhibit 1 - "Report of Annette Stalker, CPA/CFF, CFE" (marked PACER Document 67) dated 8-22-16
- b. Exhibit 2 - "Receiver's Sixteenth Interim Report to the Court (marked PACER Document 1158) dated 4-8-16
- c. Exhibit 3 - Order of District Court (marked PACER Document 92, page 13), dated 12-19-16
- d. Exhibit 4 - Respondent's Rule 60 Motion Filing to district court, dated 8-17-20

In its motion for summary disposition filed 8-14-21, Enforcement states that "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". The district court's decision to enjoin Respondent was based upon incomplete and inaccurate information presented to the Court by Enforcement in 2012 - 2013. Respondent was *pro se* in those proceedings. Respondent did not have the benefit of a third-party report available at that time to present to the Court to assist him in contesting Enforcement's motion for summary judgement. In 2016 Respondent presented to district court Exhibit 1. Several months prior to that submission, Thomas A. Seaman, federal equity receiver in the precedent civil case, presented his "Receiver's Sixteenth Interim Report" to the court, Exhibit 2. Due to jurisdictional issues, Exhibit 1 was not ruled upon by the court after its submission. In accordance with rules by which it operates, and as outlined prior by this court to Respondent, this court may accept into evidence Respondent's exhibits at this time.

On August 14, 2020, Respondent filed a Rule 60 motion in district court to overturn the prior adverse summary judgement against him. Attachments to Respondent's Rule 60 motion are the same as presented now to this court as Exhibits 1, and 2. The underlying facts to the civil case precedent to this OIP are in active litigation at this time. On that basis, it is premature to discuss sanctions at the present time, with active litigation in district court to overturn earlier findings based upon incomplete and inaccurate information which it relied upon for its earlier findings and orders. For the benefit of the court, Respondent has attached his Rule 60 motion filing, so that the court may understand the basis for the filing by way of his brief filing of less than ten pages. From the court's reading of Respondent's Rule 60 motion filing, the court will see that there are raised genuine disputes of material fact which dispute Enforcement's pleadings to district court in 2013.

Resp. 

Mark Feathers, Respondent, *pro se* 8-17-20

¹ Respondent on 8-17-20 filed a motion asking for the court or the Commission to issue a stay in proceedings on the basis of matters outlined in the motion.

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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,) No. CR 14-00531 RMW
12)
Plaintiff,) **REPORT OF ANNETTE M.**
13) **STALKER, CPA/CFF, CFE**
14 vs.) Date: September 26, 2016
Time: 9:00 a.m.
15 MARK FEATHERS,)
16 Defendant.) **Honorable Ronald M. Whyte**
17)
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26)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES

v.

MARK FEATHERS

CASE NO. 5:14-cr-000531-RMW

REPORT OF
ANNETTE M. STALKER, CPA/CFF, CFE

AUGUST 22, 2016

I. Nature and Scope of Assignment

I, Annette Stalker, through my firm, Stalker Forensics, have been retained by the Federal Public Defender's Office for the Northern District of California, located in San Jose, California to provide forensic accounting services relative to the criminal matter US v. Feathers. In specific, I have been provided with financial records related to several entities that Mark Feathers ("MF") owned or managed and include: Small Business Capital Corporation ("SBCC"), a California subchapter S corporation, and four mortgage investment funds managed by MF via SBCC: Investors Prime Fund, LLC ("IPF") including subsidiary SB Capital, LLC ("SBC LLC"), SBC Portfolio Fund, LLC ("SPF"), and SBC Senior Commercial Mortgage Fund, LLC ("SCMF"). The entity names, acronyms and relationships are illustrated in Chart 1 below.

In connection with the forensic accounting analysis being performed in the criminal matter, I have been asked to review and provide observations about the supporting records for the financial amounts cited in the Order for Summary Judgment from the underlying civil matter (case number 5:12-cv-03237-EJD).

The observations in this report are based on review of the restored QuickBooks Company files, audited financial statements and related workpapers, tax returns, offering documents, operating agreements, interim reports by the receiver, as well as declarations and briefs filed in the civil matter. On August 11, 2016 several thousand additional pages of audit workpapers pertaining to the entities under receivership were provided. My review of those documents is not yet completed. As such, the observations in this document may be amended and/or supplemented based on review and analysis of the contents of the recently provided records.

II. Introduction

The observations expressed in this report and portions of the information presented in the accompanying exhibits are based on work performed to date. Amendments and additions to this report and accompanying exhibits may be required as indicated or as a result of new evidence, expert discovery, and the testimony of other witnesses at trial.

III. Qualifications

I am the owner of Stalker Forensics which is a Certified Public Accounting firm that provides forensic accounting and consulting services.

I hold a Bachelor of Science degree in Business with a concentration in Accounting from California Polytechnic University in San Luis Obispo, California. I am a Certified Public Accountant, a Certified Fraud Examiner and am Certified in Financial Forensics. I have provided forensic accounting, litigation support, and management consulting services since 1994. My experience, education and professional involvement is more detailed in my current curriculum vitae, included as Exhibit A.

I am a member of the American Institute of Certified Public Accountants ("AICPA"), the professional associate that provides guidance for over 400,000 CPA professionals in the United States. Since 2013, I have served as the Chair of the AICPA's Forensic and Litigation Services ("FLS") Committee. The FLS Committee provides guidance to AICPA Forensic and Valuation Services Section members.

I am a member of the California Society of Certified Public Accountants (“CalCPA”) where I serve as the Chair of the statewide Professional Conduct Committee and as member of the statewide Steering Committee for the Forensic Services Section. I am also an instructor of Forensic Accounting at UC Davis Extension in their Accounting Certificate Program.

IV. Background - Timeline and Parties

Mark Feathers is the founder and former manager of several fund entities that specialized in SBA lending (collectively, “Funds”). He was also the majority shareholder of the corporation that served as the manager of the Funds, SBCC.

At all times relevant to the formation and operation of the Funds, CPA Jeffrey Spiegel and his related firms provided annual audit and tax return preparation services to the Funds.

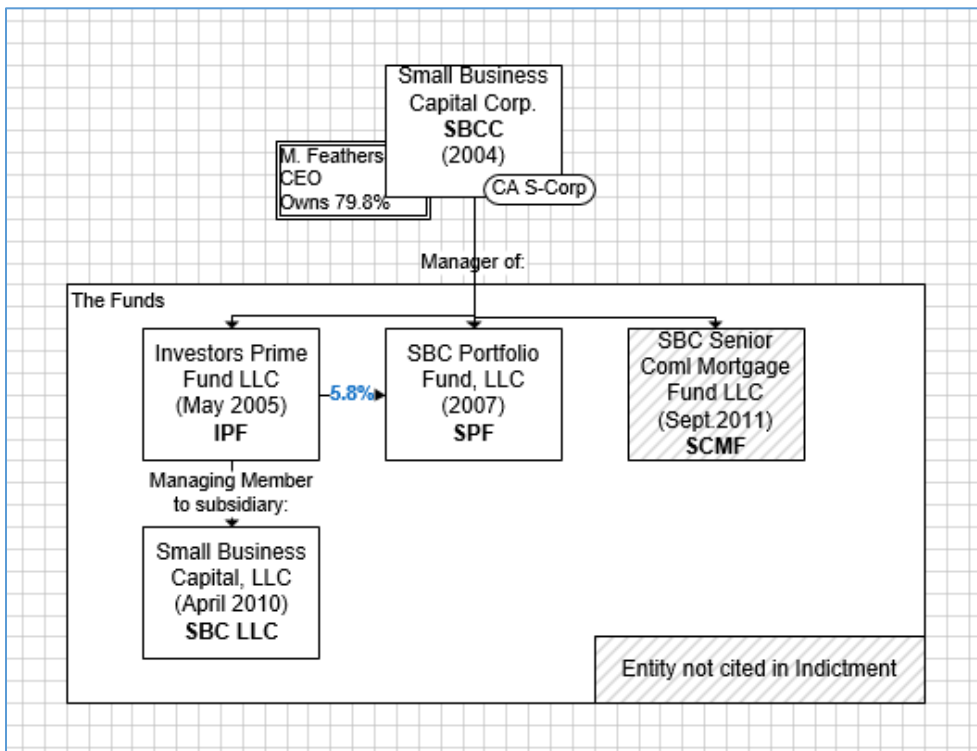
The indictment in the current matter follows a civil complaint filed by the SEC against Mark Feathers (“MF”) and related entities on June 21, 2012 for various violations of the US securities acts. SBCC and Fund entity assets were seized and a temporary receiver, the Thomas Seaman Company, was installed on June 26, 2012. By July 10, 2012, the receiver was made permanent.

Several SEC-issued declarations/pleadings were filed during the approximately 19 days between the original complaint filing and the final order that included the installment of a permanent receiver.

An Order Granting the SEC’s Motion for Summary Judgment was filed on 8/16/2013. The Order outlines several bases for the decision as detailed in the civil matter action as Document_591.

Chart 1, below, is an Organization Chart that includes entity names and acronyms used throughout this document.

Chart 1



V. Records Considered

A detailed list of records provided for my review in conjunction with this matter is included at Exhibit B to this document. In general, the relevant records include:

1. Various filings, declarations, and exhibits related to the civil case by the SEC
2. Fund offering documents and operating agreements
3. Audited Financial Statements of SPF, IPF, SBC LLC (subsidiary of IPF) and SCMF for the years ended December 31, 2008 through December 31, 2010
4. Draft Audit Reports and Financial Statements for SPF, IPF, SBC LLC, and SCMF for the year ended December 31, 2011
5. Tax Returns of IPF, SPF, and SCMF for the
6. Tax Returns of SBCC (the funds' manager) for 2009-2010
7. Mortgage Pool Statements (from ABS, system that manages investors and loans)
8. QuickBooks Company Data

VI. Primary Citation of Cash "Advances" Claimed in MSJ (and Mitchell Declaration, Document 479)

The following "Table 1" appears in the order granting the Commission's MSJ. This table was reported in the declaration of Commission employee Sarah Mitchell, a paralegal (civil case Document no. 479). In Ms. Mitchell's declaration, she identifies the method used to create the schedule as being based on print-outs of the general ledger for the Investors Prime Fund, LLC ("IPF") and Small Business Capital Portfolio Fund, LLC ("SPF") "*which were produced to the Commission by the Receiver.*"

The method described represents a summation of all check payments from IPF and SPF, collectively the Funds, to the Manager, SBCC. The inverse, monies that were deposited into a Fund bank account by the Manager, SBCC, does not appear to have been taken into account.¹ There is also no reference to the GAAP-basis audited financial statements for the Funds which reflect the financial transactions between the Fund and Manager as well as provide detail disclosure about the nature and timing of payments by the Fund to the Manager.

¹ For example, the IPF general ledger (from QuickBooks) reflects a sum of four interest payments by Manager SBCC to IPF for a total of \$244,661 as a reduction to the accrued interest receivable of \$324,623 during the years 2011-2012. See Exhibit E, IPF General Ledger Export page 42.

Table 1

Table 1: 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	

VII. Summary of Analysis and Observations

My analyses of the specific cash outflow from IPF and SPF as listed in Table 1 include the following observations.

A. The Cash Basis Accounting Method Differs Significantly from the Generally Accepted Accounting Principles (GAAP) Accounting Method

The Receiver used a cash-basis method of accounting that was inconsistent with the Funds' required Generally Accepted Accounting Principles ("GAAP") basis of accounting, as stated in the offering documents and operating agreements. The Receiver has indicated that the version of QuickBooks received did not contain complete records prior to 2010.² The Receiver appears to have recreated the accounting records on a cash basis using the bank records as the source of information. However, for the same time periods in which the Receiver sought to create cash basis accounting records, there were GAAP-compliant audited financial statements available. It is not clear why the Receiver did not use the audited financial statements and the underlying trial balance detail data from the external independent auditor, Spiegel Accountancy Corporation ("SAC"), a Certified Public Accounting firm, as the source for the accounting analysis.

² Receiver's Second Interim Report dated 8/10/2012.

Often in cases where a claim of fraud is made and there are not reliable financial accounting records, an accountant will seek to analyze records from a pure cash basis and perform a simple "Source and Use of Funds" analysis. While this exercise is helpful for determining where the funds came from and where they went, there are shortcomings with regard to using those results as a measure against GAAP-based financial statement elements.

A primary example of this issue is with regard to the collection of entries that have been cast as being part of the "Loans to Manager" issue. Under GAAP, those loans (monies advanced by the Fund to the Manager) are an asset of the Fund. Under Cash Basis, those funds represent an expense of the Fund which decreases the net income or net proceeds on a Profit and Loss statement.

In specific, there are disclosures and explanations in the audited financial statements, QuickBooks accounting records, and auditor-prepared workpapers that are counter to the \$7.497 million portrayed as "Misstatements Regarding Fund Loans and Money Transfers".³

B. Offering Documents' "Use of Proceeds" Section Includes Provision for Payment by the Fund to the Manager for Organizational Expenses

Several parts of the offering documents put the reader on notice about the authority and potential conflicts with the Manager SBCC. For example, the Table of Contents to the January 28, 2011 offering document includes sections entitled RISK FACTORS, COMPENSATION TO MANAGER AND ITS AFFILIATES, CONFLICTS OF INTEREST, and USE OF PROCEEDS.

In particular, the SUMMARY OF THE OFFERING states that "*The Manager can change a portion of the organization and syndication accruals which have been, or may be incurred in the year 2010 and afterwards, and separate from any similar prior year's accruals, up to 1% of the Fund's maximum capitalization of \$250,000,000, from a capital asset to a receivable from the Manager.*"⁴ The change referenced above equates to \$2,500,000 while the limits stated in the Use of Proceeds section (see below for details from each Fund's offering documents) reference a 2% anticipated maximum which equates to \$5,000,000. IPF did not exceed the maximum during the 2011 year according to the draft audited financial statements, audit workpapers, and the internal QuickBooks balance sheet report.

The offering documents include provisions whereby the Fund could advance up to a set percentage of the funds' maximum capitalization amount. Based on review of the Use of Proceeds portion of various Fund offering documents, the approximate uses are outlined as being for Organizational/Syndication Expenses, Mortgage Loans, and Reserves. The introductory paragraph indicates that the figures set forth "are only estimates, and actual use of the proceeds will vary."⁵ The maximum limit of the advances to Manager related to organization/syndication expenses are represented as:

Related to IPF

1. The June 9, 2010 offering document for IPF contained a provision for the capitalization of organization and syndication costs of up to 1% of the maximum fund capitalization of \$100 million (\$1,000,000 limit) [Bates SBCC010348].

³ Civil case Order Granting Plaintiffs' Motion for Summary Judgment (case 5:12-cv-03237-EJD Document 591 page 8 line 12)

⁴ Bates page SAC00000621 (and Case 5:12-cv-0237-EJD Document 480, Exhibit 26-12)

⁵ Bates SBCC0011666 (also civil Case 5:12-cv-03237 Document 9-3, page 31 of 59)

2. The January 28, 2011 offering document for IPF modified that provision to 2% of the maximum fund capitalization of \$250 million (\$5,000,000 limit) [Bates SBCC006960].
3. The June 29, 2011 offering document for IPF reflected another modification to 2% of the maximum fund capitalization of \$500 million (\$10,000,000 limit) [Bates SBCC006911].

Related to SPF

4. The December 28, 2009 offering document for SPF reflects that up to 2% of the maximum fund capitalization of \$50,000,000 (a \$1,000,000 limit) may be advanced to the Manager [Bates SBCC007611].
5. The January 25, 2011 offering document for SPF reflects that up to 2% of the maximum fund capitalization of \$50,000,000 (a \$1,000,000 limit) may be advanced to the Manager [Bates SBCC007611].

It appears that the auditor used the maximum capitalization amount in audit procedures to test the Fund's compliance with the Use of Proceeds provision of the offering and operating agreement.

C. The Advances/Payments to Manager Were Fully Disclosed in the Funds' Audit Reports

For the years ended December 31, 2009 and 2010, the amounts that were recorded by the Funds as capitalized costs (an asset) were reported as either a capitalized cost asset or, later, as part of the Note Receivable-Manager or Due From Manager (another asset) in the audited financial statements of SPF and IPF. The various offering documents for IPF and SPF specified that annual reports including audited financial statements would be provided at investor's request [example for IPF is as of 1/28/2011, Ex. 26-1 thru 26-38].

Email communications between MF and the auditor reveal that between April 2010 and July 2010 there was a change in the CPA's interpretation of accounting rules that guide the types of costs that may be capitalized as organization/syndication costs. The auditor advised MF that the types of costs being reimbursed by the Fund to the Manager did not constitute "syndication" costs but rather a return of member equity. This change in position occurred between April and July of 2010. The auditor issued the **2009 IPF** audit report in April 2010 which included Syndication Costs as an asset of the Fund. Then, by the time the **2009 SPF** audit report was issued in July 2010 the capitalized costs were reported as a Due From Manager asset (as opposed to a capital cost asset). In both the IPF and SPF audit reports, the auditors' opinion was that the financial statements present fairly, in all material respects, the financial position of the Funds.

1. SPF 2009 Audit Report and Financial Statements Note 6, Related Party Transactions, disclosure includes:

Due to Related Party

During the year ended December 31, 2009, advanced \$534,736 to the Fund manager. This receivable from the fund manager is unsecured, has a 5 year term and bears an interest rate of 5% per annum. Payments of \$25,000 per quarter, principal and interest, will begin on January 1, 2011. The receivable from the fund manager is in violation of the Fund's operating agreement and offering circular. Subsequent to December 31, 2009, the Fund Manager is in the process of obtaining approval of this receivable from the Fund members.

The auditor workpaper entitled "Contract Capitalization" and "Interest and Other Receivables" demonstrate that the final balance of \$534,736 amount is comprised of two components: (a) the 2009 advances for syndication costs of \$490,000 that the "auditor noted that the syndication fees incurred during the year were not in accordance with the offering circular for the period ended 12/31/2009, therefore auditor will record AJE#104 to adjust the syndication fee balance to a receivable from fund manager balance"⁶ and (b) an auditor-proposed adjustment (reclassification from management fee expense to receivable) for the previously recorded management fee expense of \$63,780⁷ (along with a few other adjustments) for an ending balance of \$534,736.

Based on the audit report supplemented by the auditor workpapers, it appears that the reported amount Due from Manager of \$534,736 was accurately stated. As such, it appears that the \$540,000 amount included in Table 1 was known, audited and adjusted by Spiegel/SAC and, therefore, not misrepresented by MF or the Fund.

2. SPF 2010 Audit Report and Financial Statements Note 7, Related Party Transactions, disclosure includes details about the amount and terms of the note due from manager.⁸ Specifically, the Note includes details about the non-GAAP requirement to assess collectability of the receivable and the balance and terms of the promissory note as illustrated below:

NOTE 7 - RELATED PARTY TRANSACTIONS (CONTINUED)

Note Receivable from Manager

The Fund does not account for its note receivable from Manager in accordance with generally accepted accounting principles (GAAP), which would require the Fund to assess the carrying value of the note receivable for fair value impairment due to the unsecured nature of the note and the lack of certainty of cash flows of the Manager. The Fund carries the note at the full value of the cash advanced to the Manager under the note.

As of December 31, 2010, \$707,464 has been advanced to the Fund manager under the promissory note agreement. The note is unsecured, and bears an interest rate of 7.5% per annum beginning on January 1, 2011. Payment of interest is due quarterly beginning on March 31, 2011 with all principal due on or before January 1, 2016. The receivable from the Fund manager is prohibited by the Fund's operating agreement and offering circular. The Fund manager is currently preparing a revision to the operating agreement.

The \$175,000 reflected as having been transferred to SBCC by SPF in 2010 for "Due From Manager" is included in the audited transactions that result in the balance of \$707,464. The details transactions comprising the \$175,000 are detailed in the SPF Company QuickBooks file as well. See Exhibit C for an excerpt of the SPF General Ledger detail for

⁶ Civil case 5:12-cv-03237-EJD Document 480-5 page 75 of 105

⁷ Civil case 5:12-cv-03237-EJD Document 480-5 page 79 of 105

⁸ Bates page SBCC004905 (also civil case 5:12-cv-03237-EJD Document 480-4, Ex. 28-16)

account no. 1220, Due From Manager. As such, it appears that the \$707,464 amount included in Table 1 was known, audited and disclosed by Spiegel/SAC and, therefore, not misrepresented by MF or the Fund.

3. SPF 2011 Audit Report Draft and Financial Statement Note 10, Related Party Transactions, includes disclosures about the current year balance in Due From Manager of \$690,868. Similar to prior years, the note disclosure includes the balance and terms of the note.⁹

The balance in the 2011 SPF Due from Manager decreased from the prior year. As such, there are no advances listed on Table 1. It should be noted that the QuickBooks General Ledger details of the SPF account 1220, Due From Manager, and account 1215, Interest Receivable on Due From Manager, reflect over \$50,000 of deposits made to the Fund from the Manager.¹⁰ The 2011 audit was never issued but based on the draft report and audit workpapers, the majority of the auditing procedures had been completed. Review of the audit workpapers for the 2011 audit of SPF, some of which were provided to me on August 11, 2016, is not complete and may provide additional insights.

4. IPF 2009 Audit Report and Financial Statements Note 4, Capitalized Costs, include disclosure about the Capitalized Cost asset balance of \$353,779 as of 12/31/2009. There are two transactions for a total of \$300,000 listed in Table 1, represented as advances by IPF to the Manager SBCC. The audited financial statements in Note 4 shows that there was a \$300,000 increase in Syndication Costs (a component of the Capitalized Cost asset). Note 4 provides details about the composition, amounts reimbursed by the Fund to the Manager, and related amortization of the asset.

Below is an excerpt from Note 4 of the IPF 2009 Audited Financial Statement:¹¹

⁹ Civil case 5:12-cv-03237-EJD Document 480-5 Page 46 of 105

¹⁰ Exhibit C, Excerpt of QuickBooks General Ledger export report

¹¹ Bates page SBCC002960 and SBA-027262

NOTE 4 - CAPITALIZED COSTS, NET

Capitalized Costs as shown in the summary below represent Fund disbursements for expenditures incurred during the organization and structuring of the fund and costs of raising long term capital investments. These costs are amortized on a straight line basis over the estimate period that the fund will benefit from the incurred costs. Under the terms of the Offering Circular, the fund manager is entitled to reimbursement from the Fund for all out-of-pocket organization and syndication expenses. The Offering Circular allows for a total reimbursement of 5% of the total Fund capitalization to a maximum of \$500,000. To date the Fund has reimbursed the Manager a total of \$383,929 for organization and syndication costs.

	<u>2009</u>	<u>2008</u>
Organization Costs	\$ 33,929	\$ 33,929
Restructuring Costs	51,670	51,670
Syndication Costs	<u>350,000</u>	<u>50,000</u>
Total Capitalized Costs	435,599	135,599
Accumulated Amortization	<u>(81,820)</u>	<u>(27,202)</u>
Total Capitalized Costs, Net	<u>\$ 353,779</u>	<u>\$ 108,397</u>

Organization Costs – These were incurred when the fund was first organized and represent legal fees and the costs associated with the initial Fund offering.

Restructuring Costs – These were incurred when the fund separated from its previous manager restructured into the current fund. These costs represent legal fees and expenditures related to revisions in the offering circular and management agreement.

Syndication Costs – These are the reimbursements to the Fund Manager for his costs in developing and raising additional capital investments.

Amortization charged to fund operations for the years ended December 31, 2009 and 2008 was \$54,948 and \$18,345, respectively.

The transactions cited in Table1 are consistent with the IPF Company General Ledger details as well. See Exhibit E for the general ledger detail for IPF exported from QuickBooks, page 44 includes the account 1653, Syndication Costs.

Given the audited financial statements, which is consistent with the IPF QuickBooks general ledger details, it appears that the \$300,000 amount included in Table 1 was known, audited and disclosed by Spiegel/SAC and, therefore, not misrepresented by MF or the Fund.

- IPF 2010 Audit Report¹² and Financial Statements Note 11, Related Party Transactions, disclose details about the amount and terms of the note due from manager.¹³ The reported balance of the Note Receivable from Fund Manager is \$1,850,000 as of 12/31/2010. This balance includes \$350,000 from the prior year which were reported as part of Capitalized Cost asset which were reclassified to the Note Receivable Due from Fund Manager as of the end of 2010.

Specifically, the Note includes that the funds were advanced the the Fund Manager, that the note is unsecured, and that the receivable was “...prohibited by the Fund’s operating agreement and offering circular, which has been amended and approved by the

¹² Bates page SBCC002966 (and Government Exhibit 11 dated 5-14-12)

¹³ Bates page SBA-027247

Department of Corporations in November 2010."¹⁴ An excerpt from the audit report, Note 11 is below:

<p>Investors Prime Fund, LLC and Subsidiary Notes to Consolidated Financial Statements Years Ended December 31, 2010 and 2009</p> <p>NOTE 11 - RELATED PARTY TRANSACTIONS (CONTINUED)</p> <p><u>Note Receivable from Manager (Continued)</u></p> <p>As of December 31, 2010, \$1,850,000 has been advanced to the Fund manager under the promissory note agreement. The note is unsecured, and bears an interest rate of 7.5% per annum beginning on January 1, 2011. Payment of interest is due quarterly beginning on March 31, 2011 with all principal due on or before January 1, 2016. The receivable from the Fund manager was prohibited by the Fund's operating agreement and offering circular, which has been amended and approved by the Department of Corporations in November 2010.</p>
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Table 1 includes advances of \$1,374,047 being made during 2010 from IPF to SBCC. This amount is consistent with the prior year balance of \$350,000 and the current year, 12/31/2010, ending balance of \$1,850,000. The general ledger exported detail for IPF is consistent with the total amount listed in Table 1 as well as the supporting details listed in the exhibits to Sarah Mitchell's declaration (Document 479, Exhibit 220-7 and 220-8).

Given the audited financial statements, which are consistent with the IPF QuickBooks general ledger details, it appears that the \$1,374,047 amount included in Table 1 was known, audited and disclosed by Spiegel/SAC and, therefore, not misrepresented by MF or the Fund.

6. IPF 2011 Draft Audit Report Note 12¹⁵ and Workpaper for Due From Fund Manager Lead Sheet¹⁶ and Offering Circular Provide Amounts and Details About the Advances.

The 2011 audit was never issued but based on the draft report and audit workpapers, the audit testing and procedures had been substantially completed. The Note 12 disclosure on the draft audit report states the balance of \$4,863,479 as having been advanced, that the note is unsecured and bears interest at 7.5%. The note also indicates that "*Prior to July 2011, the note receivable from the Manager was prohibited by the Fund's operating agreement and offering circular. The operating agreement has been amended and approved by the Department of Corporations to allow the note receivable from Manager up to 1% of the Fund's maximum capitalization of \$500,000,000 or \$5,000,000, but the offering circular was not amended and still prohibits the receivable from Manager.*"¹⁷ The basis for the Spiegel statement that the offering circular prohibited the receivable because the June 29, 2011 IPF Offering Circular indicates that up to 2% of the Fund's maximum capitalization of \$500,000,000 proceeds may be used for Organizational Expenses (or \$10,000,000).

¹⁴ Bates page SBA-027247

¹⁵ IPF 2011 draft audited financial statements' Note 12 is Exhibit 46-15 of civil case 5:12-cv-03237 Document 480-5

¹⁶ SAC 2011 audit workpaper Due From Fund Manager LS (Lead Sheet) is Bates page SBA-000085

¹⁷ IPF 2011 draft audited financial statements' Note 12 is Exhibit 46-15 of civil case 5:12-cv-03237 Document 480-5

Below is an excerpt from the June 29, 2011 Offering Circular (Case 5:12-cv-03237-EJD, Document 9-2, page 54 of 59):

<u>USE OF PROCEEDS</u>				
The proceeds from the sale of Units offered hereby will be used approximately as set forth below. The figures set forth below are only estimates, and actual use of proceeds will vary.				
	Minimum Offering	Percentage	Maximum Offering	Percentage
Organizational Expenses	\$10,000	2%	\$10,000,000	2%
Mortgage Loans ¹¹	\$490,000	98%	\$490,000,000	98.0%
TOTAL	\$500,000	100.0%	\$500,000,000	100.00%

In either case, the Note Receivable from Manager balance at the end of 2011 was less than \$5,000,000. The audit workpaper demonstrating the audit procedures performed over the 2011 IPF Due From Fund Manager is attached as Exhibit D to this report. The audit workpaper, Note A includes a statement that although the balance is in accordance with the note receivable, the auditor does not believe the balance is in accordance with the offering circular/operating agreement. The auditor's conclusion noted their workpaper (Note A on the workpaper noted above) was a plan to note the non-compliance on the auditor's opinion and in the Notes to the financial statements (as had been done in prior years).

Counter to the auditor's notation in their workpapers regarding the offering circular, the Offering Circular as of January 28, 2011, indicates that a portion of the funds advanced as reimbursement of organizational costs may be reflected as a note receivable on the Fund balance sheet. Below is an excerpt from the IPF Offering Circular:

Tax and Accounting Treatment The Manager can change a portion of organizational and syndication accruals which have been, or may be incurred in the year 2010 and afterwards, and separate from any similar prior year's accruals, up to 1% of the Fund's maximum capitalization of \$250,000,000, from a capitalized asset to a receivable from the Manager. This may eliminate substantial portion of the tax schedule amortization of these expenses and increase earnings. The receivable will be reduced annually over a period of 5 years from Manager contributions, and also generate additional interest earnings to the Fund at the preferred yield of 7.5%.

D. The 2010 Audit Report Opinion Was Qualified Due to Inability to Assess Collectability of Receivable from Fund Manager, Not Due to Impropriety of Fund Advances

The 2010 audit report opinion is qualified for both IPF and SPF. However, the only reason stated for the qualified audit opinion on both audit reports is the Fund's inability to assess the collectability of the receivable due from the Manager to determine whether an allowance would be required against the receivable, which is a departure from GAAP. By definition, a GAAP departure will result in a qualified audit opinion. The audit report opinion references the related Note disclosure that more fully explains the situation.

The **IPF 2010** audit report includes that "...the Fund is unable to assess the collectability of the note receivable from the fund manager and thus cannot determine whether an allowance for

loss is necessary which reflects a departure from generally accepted accounting principles.”¹⁸ Reference is made to Note 11 which states the balance and terms of the note including that “the receivable was prohibited by the Fund’s operating agreement and offering circular which **has been amended and approved by the Department of Corporations in November 2010.**” Importantly, the Note details and audit workpaper documentation provide qualifications as to the collectability of the note, not the validity of the note being recorded as an asset of the Fund. Further, the auditor’s reference to the approval by the Department of Corporations appears to support the propriety of the receivable asset being recorded on the balance sheet of the Fund.

The **SPF 2010** audit report includes that “...the Fund is unable to assess the collectability of the note receivable from the fund manager and thus cannot reasonably determine whether an allowance for loss is necessary...” Reference is made to Note 7 which states the balance and terms of the note including that “the receivable from the Fund manager is prohibited by the Fund’s operating agreement and offering circular. The Fund manager is currently preparing a revision to the operating agreement.”

First, the balance and terms of the receivables are fully disclosed. Second, the auditor provided an opinion that the receivable is not in compliance with GAAP due to an inability to assess the collectable value to determine whether an allowance should be recorded. Third, the Notes disclose that the receivable may not have been in compliance with offering documents. Importantly, neither the auditor’s opinion or Note details identify the nature of costs reimbursed by the Funds as being improper.

E. Permission was obtained by the Manager from the Fund investors to reclassify the capital cost asset. The request was to reclassify the capitalized as a Note Receivable from Manager.

Despite several parts of the various offering documents which convey the broad authority and responsibility of the Manager, the Manager still sought to disclose and obtain investor approval of changes in the Fund operations and accounting.

For example, there is language in the various offering documents that the Use of Proceeds indicate an approximate portion of the proceeds will be used for “Organizational Expenses”, but that the actual use of proceeds will vary. Specific communications related to the “Loans to Manger” topic include:

1. Letters were sent by MF to Fund investors in August 2010 explaining the Manager’s reasoning for re-classifying the Organization/Syndication as Loans to Manager and requesting approval.¹⁹

“Request No. 1 – SB Capital would assume accrued IPF organizational and syndication expenses, **up to 1% of the fund manager’s maximum approved capitalization now and in the future** for the fund...” and “...pay for these expenses through contributions from fund manager’s income.”²⁰

¹⁸ IPF 2010 audited financial statements

¹⁹ Bates page SBCC011137 (also civil case 5:12-cv-03237 Document 480-2, Ex. 25-2), and Bates page G 00521 (also civil case 5:12-cv-03237 Document 9-8, page 14 of 59)

²⁰ *ibid*

The letter includes another reference to a similar measure having been approved by the Fund CPA and implemented for SPF. As of the date of this letter, August 16, 2010, the SPF audit report for 2009 recently been issued (July 14, 2010)²¹ whereby the previously recorded Organization & Syndication capital asset was reported as part of the Due From Manager receivable. It is not unreasonable to infer the CPA had approved of the measure since the auditor provided SPF with a clean (unqualified) audit opinion for the financial statements in which the CPA auditor re-classified the syndication asset to a receivable asset.

2. An updated operating agreement was sent with the requests so it could be considered along with the letter explanation.

F. The Monies Paid to SBCC which are reflected as Management Fee Expenses in Table 1 Do Not Comport with Audited Financial Statements (Income Statement).

1. Table 1 reflects an advance of \$63,780 by SPF in 2009 for Management Fees. However, the audit reports for SPF state that there were no management fees paid by SPF to SBCC. The SPF 2010 Audit Report Note 7, Related Party Transactions, states that "There were no management fees incurred during the years ended December 31, 2010 and 2009."²² Excerpt from the audit report follows:

Management Fees

The Manager shall receive subordinated monthly distributions from the Fund in amounts equal to the remainder of funds available for distribution after all allocations of the higher of prime rate published in the Wall Street Journal as of the last business day of the month, plus 1.5%, or 7.50% (the "floor rate") has been made first to the Members, and after payment of Fund expenses. There were no management fees incurred during the years ended December 31, 2010 and 2009.

An adjustment must have been made at or after the year end to remove the management fee expenses from SPF books for 2009. Since the calculation of earnings and related investor distributions was done on a monthly basis, there may have been payments made during the year (the excess of earnings over the distributions) which were not warranted once the full year was measured.

2. Advancement and later repayment by the Manager to the Fund is outlined in the offering documents. Under Manager's Subordinated Profits Interest in the SPF January 25, 2011 Private Placement Memorandum ("PPM") states that the Manager would may monthly distributions from the Fund. These monies were subject to return if the year-end calculations demonstrate the Fund profits allocated to Members was less than the Member Return. An excerpt from the SPF PPM²³ includes:

²¹ Spiegel Declaration civil case5:12-cv-03237 Document 480 paragraph 42 (email from Ms. Thomas dated 7/14/2010 stating that the SPF 2009 Audit Report would be issued "today")

²² Bates page SBCC004904

²³ Bates page SBCC0011724

Manager's Subordinated Profits Interest

The Manager shall receive subordinated monthly distributions from the Fund in amounts equal to the remainder of the Fund's net income after all Fund expenses and all allocations of the Member Return to the Members. The Manager is required to disgorge such monthly distributions only if and to the extent that it is later determined, as of the end of that same calendar year, that total Fund profits allocated to Members for that year was less than the Member Return. The Manager does not guaranty the Member Return, and is not required to disgorge any distributions to subsidize the Member Return in later years.

3. Table 1 reflects \$439,500 advanced by IPF in 2009 as being paid for Management Fees. However, according to the audited financial statement, there were no management fee expenses in 2009.²⁴

Below is an excerpt from the IPF audited financial statements:

Investors Prime Fund, LLC Statements of Income		
	<u>Years Ended December 31,</u>	
	<u>2009</u>	<u>2008</u>
Mortgage Interest Income	\$ 725,733	\$ 690,365
Operating Expenses:		
Advertising and Marketing	-	26,426
Amortization Capitalized Costs	54,948	17,974
Amortization SBA License Costs	3,669	371
Consulting	66,698	1,200
Insurance	25,940	8,508
Management Fees	-	72,500
Meals and Entertainment	-	1,770
Miscellaneous Fees	10,618	8,251
Professional Fees	44,922	39,875
Total Operating Expenses	206,795	176,875
Income from Operations	518,938	513,490

An adjustment must have been made at or after the year end to remove the management fee expenses from IPF books for 2009. Since the calculation of earnings and related investor distributions was done on a monthly basis, there may have been payments made during the year (the excess of earnings over the distributions) which were not warranted once the full year was measured.

4. Table 1 reflects \$100,000 advanced by IPF to Manager for 2011 Fund Management Fees. While there was originally \$100,000 advanced according to the QuickBooks accounting details for IPF, that amount was not reported on the draft audited financial statements for 2011.²⁵ As such, an adjustment must have been made by the auditor. An excerpt from the Note 12, Related Party Transactions, includes:

Management Fees

The Manager shall receive monthly distributions from the Fund in amounts equal to the remainder of funds available for distribution after all allocations of the higher of Prime Rate or 7.5% (the "floor rate") has been made first to the members, and after payment of Fund expenses. During the year ended December 31, 2011, no management fees were earned.

²⁴ Bates page SBCC002956 (and SBA-027257)

²⁵ Reference civil case 5:12-cv-03237-EJD, Document 480-5, Exhibit 46-16

5. Table 1 also reflects \$922,927 as having been advanced by SPF as Fund Management Fee expense in 2012. There is no SPF audit report since it was mid-year at the time of the asset seizure. The SPF 2012 General Ledger details reflect expenses (payments and journal entries) to Manager, SBCC, as Management Fee expense of \$1.17 million between January 1, 2012 and May 31, 2012. The SPF Profit & Loss Statement generated out of the QuickBooks file shows a Net Income of \$522,199 for the partial year (through May 31st). The detail entries to Fund Management Fees (account no. 5020) include payments by IPF to SBCC for “Excess Earnings” and “Management Fees” which appear to have been paid periodically in 2012. See Exhibit G for the SPF Profit & Loss Report and detail transactions within the Fund Management Fees account generated from QuickBooks for 2012.

Should the year have continued, a year end recalculation and true-up, if needed, would have been made as in the prior years. Given the incomplete accounting for 2012, the advances listed on Table1 for 2012 as management fees paid by SPF in the amount of \$922,927 would require further analysis to determine whether they are a proper expense of the SPF Fund.

- G. Table 1 of the MSJ Order Does Not Consider Monies Advanced/Paid for Troubled Properties as Allowable (Loan 65 and 300001) Despite Language in Offering Circular Related to Loans to Manager.

The two amounts listed on Table1 as having been advanced in 2009 for “Loan 65” and “Loan 300001” are \$100,000 and \$152,148, respectively. Based on information contained in the Spiegel declaration, there is some question as to the status of these loans and the related property.

At this time, the two amounts have been listed as “pending” further analysis since the IPF Company QuickBooks begins with 2010 details, an analysis of the 2009 audit workpapers is necessary to corroborate the details surrounding these advances. At this time, the analysis of the audit workpapers is pending as these were provided recently among over 5,000 pages of PDF documents and multiple native files.

However, if it is shown that the monies paid by IPF to Manager SBCC were related to troubled loan property, there are provisions in the offering documents which permit those transactions.

As early as 2007, the Fund offering documents have contained provisions for advances to the Manager for purposes of financing related to a sale of real estate owned (“REO”) or loans purchased as a result of foreclosure.

For example, an excerpt from the SPF offering document from July 26, 2007²⁶ contains this statement:

6. 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.”)

Similar language is included in the majority of subsequent offering documents.

²⁶ Bates page SBCC011654 (and civil case 5:12-cv-03237 Document 9-3 page 19 of 59)

As early as 2008, the offering documents included a provision outlining the process for defaulted loans or real estate owned. Below is an excerpt from the IPF Offering dated March 11, 2008²⁷ which provides:

Sale of Defaulted Loans or Real Estate Owned to Affiliates

In the event a Fund loan goes into default or the Fund becomes the owner of any real property by reason of foreclosure on a Fund loan, the Manager's first priority will be to arrange the sale of the loan or property for a price that will permit the Fund to recover the full amount of its invested capital plus accrued but unpaid interest and other charges, or so much thereof as can reasonably be obtained in light of current market conditions. In order to facilitate such a sale, the Manager may arrange a sale to persons or entities controlled by or affiliated with the Manager (e.g., to another entity formed by the Manager or its affiliates), for the express purpose of acquiring defaulted loans or foreclosure properties from lenders such as the Fund. The Manager will be subject to conflicts of interest in arranging such sales since it will represent both parties to the transaction. For example, the Fund and the potential buyer will have conflicting interests in determining the purchase price and other terms and conditions of sale. The Manager's decision will not be subject to review by any outside parties.

The Manager shall undertake to resolve these conflicts by setting a purchase price for each defaulted loan or property which is not less than any of the following: (i) the independently appraised value of such loan or property, if any, at the time of sale; (ii) the amount of any third party offer already received, if any; or (iii) the total amount of the Fund's investment in the property. The Fund's investment is deemed to include without limitation the following: the unpaid principal amount of the loan upon which the Fund foreclosed, all unpaid interest accrued to the date of foreclosure, expenditures made to protect the Fund's interest in the property such as payments to senior lienholders and for insurance and taxes, all costs of foreclosure (including attorneys fees actually incurred to prosecute the foreclosure or to obtain relief from stays in bankruptcy), and any advances made by or on behalf of the Fund for any of the foregoing. A portion of the purchase price may be paid by the affiliate executing a promissory note in favor of the Fund, secured by a deed of trust on the property being sold. The total loan-to-value ratio for the property (including the Fund's note and any senior liens) will not exceed 90% of the appraised value of the property, and the note will otherwise contain terms and conditions comparable to those that would be contained in notes executed by third parties.

Again, if the 2009 audit workpapers reflect that the purpose of the two advances cited on Table 1 for Loans 65 and 300001 are related to troubled assets, the funds may have been properly advanced and recorded.

H. The Advances by IPF to Manager Continued in 2012 Under the Provisions Outlined in the Offering Documents and Operating Agreements

By the start of the 2012 calendar year, the operative offering document provided for The amounts listed in Table1 as 2012 advances by IPF to the Manager of \$400,000. The IPF balance sheet from the IPF QuickBooks records show that the balance of the Note Receivable Due from Manager as of May 31, 2012 included the advances of \$400,000 as well as some re-payments (where excess earnings was recorded as a reduction to the receivable rather than a deposit).

Since the 2012 year was incomplete, final review and adjusting entries have not been completed or recorded in the financial records. As such, the \$400,000 reported as advances made by IPF in 2012 as Notes Receivable From Manager on Table1 would require further analysis to determine whether they are supported by the operating agreements and disclosures to investors.

²⁷ Bates pages SAC00006719 and SBA-003852

VIII. Summary of Adjusted Table1


Based on the foregoing analyses and observations, I recreated the Table1 from Sarah Mitchell's declaration and made adjustments to reflect the above analyses.

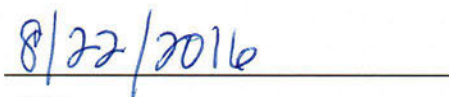
[Table 1: Declaration of S. Mitchell, Document 479]								
Year	Fund	GL Acct. No.	GL Account Name	Source	Cash Paid to SBCC	Adjustment	Net	VII. Summary Reference
2009	IPF	1770	Syndication Expense (2009)	A-00624	\$ 100,000.00	\$ (100,000.00)	\$ -	C., E.
2009	IPF	1725-22	Loan 65	A-00626	\$ 100,000.00		\$ 100,000.00	G. Pending
2009	IPF	1725-20	Loan 300001	A-00627	\$ 152,148.37		\$ 152,148.37	G. Pending
2009	IPF	1780-4	Organizational Expenses	A-00632	\$ 200,000.00	\$ (200,000.00)	\$ -	C., E.
2009	IPF	6550-2	Management Fees - SB Capital	A-01212 -3	\$ 439,500.00	\$ (439,500.00)	\$ -	F.3
2009	SPF	6550	Management Fees	A-00789-90	\$ 63,780.00	\$ (63,780.00)	\$ -	F.1
2009	SPF	2050	Capitalization of Contract	A-01169	\$ 540,000.00	\$ (540,000.00)	\$ -	C.
2010	IPF	1250	LT Rec-Fund Mgrs Organ Invt	A-00882	\$ 1,374,047.14	\$ (1,374,047.14)	\$ -	C., E.
2010	SPF	1220	Due From Manager	A-01273-4	\$ 175,000.00	\$ (175,000.00)	\$ -	C.
2011	IPF	5020	Fund Management Fees	A-00959-60	\$ 100,000.00	\$ (100,000.00)	\$ -	F.4
2011	IPF	1250	LT Rec-Fund Mgrs Organ Invt	A-00882	\$ 2,930,000.00	\$ (2,930,000.00)	\$ -	C., E.
Subtotal 2009 through 2011 Items					\$ 6,174,475.51	\$ (5,922,327.14)	\$ 252,148.37	
2012	IPF	1250	LT Rec-Fund Mgrs Organ Invt	A-00882	\$ 400,000.00		\$ 400,000.00	H. Pending
2012	SPF	5020	Fund Management Fees	A-01322	\$ 922,927.00		\$ 922,927.00	F.5 Pending
Subtotal 2012 (in-process year) Items					\$ 1,322,927.00	\$ -	\$ 1,322,927.00	
Grand Total All of Table 1					\$ 7,497,402.51	\$ (5,922,327.14)	\$ 1,575,075.37	

The basis for the various adjustments made to Table1 above are reflected in the referenced section within VII. Summary of Analysis and Observations, of this document.

IX. Miscellaneous

For services rendered in my engagement with the Federal Public Defenders' Office, Stalker Forensics is being compensated at the contractually agreed upon rate of \$280 per hour. My work is ongoing and my opinions are subject to revision based on new information (including reports or testimony by other parties and experts), which subsequently may be provided to or obtained by me.


Annette M. Stalker, CPA/CFF, CFE


Date

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THOMAS A. SEAMAN

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

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

17 SMALL BUSINESS CAPITAL CORP.;
18 MARK FEATHERS; INVESTORS PRIME
FUND, LLC; AND SBC PORTFOLIOS, LLC,

19 Defendants.
20

Case No. CV12-03237

**RECEIVER'S SIXTEENTH INTERIM
REPORT**

Ctrm: 4 - 5th Floor
Judge: Hon. Edward J. Davila

1 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for Small Business
2 Capital Corp. ("SBCC"), Investors Prime Fund, LLC ("IPF"), SBC Portfolio Fund, LLC ("SPF")
3 and their subsidiaries and affiliates, including Small Business Capital, LLC ("SBC LLC") and
4 SBC Senior Commercial Mortgage Fund, LLC ("SCMF") (collectively, "Receivership Entities"),
5 submits this Sixteenth Interim Report. The Receiver has previously filed 15 quarterly status
6 reports. This Sixteenth Interim Report covers the Receiver's activities during the three-month
7 period from October 1, 2015 through December 31, 2015 ("Quarter") and also provides inception-
8 to-date accounting information.

9 I. EXECUTIVE SUMMARY

10 During the Quarter, the Receiver continued to service the loan portfolio which generated a
11 gross profit of \$113,456.65. The Receiver also made significant progress with marketing and
12 selling the remaining SBA 7-A loan portfolio and license. Several parties submitted SBA lender
13 applications and indicative bids to the Receiver, the applications were reviewed and complete
14 packages were forwarded to the SBA for preliminary approval. Those parties who the SBA
15 preliminarily and conditionally approved were asked to revise their applications and submit a best
16 final bid. The Receiver selected the highest qualified bidder to be the buyer and their additional
17 information was submitted to the SBA for final approval. The SBA issued its final approval on
18 December 24, 2015. The Court approved the sale on February 26, 2016, and the sale closed at the
19 end of March 2016. As of December 31, 2015, the cash balance held by the Receiver was
20 \$7,287,885.36.

21 II. SUMMARY OF RECEIVER'S ACTIVITIES

22 A. Operations and Accounting

23 1. Post-Receivership Receipts and Disbursements

24 Attached hereto as Exhibit A are accounting reports reflecting the post-receivership
25 receipts and disbursements. Exhibit A provides cash basis financial statements for the Quarter and
26 inception-to-date through September 30, 2015, and includes a Profit and Loss Statement, Balance
27 Sheet, and a redacted General Ledger for July, August, and September 2015. The total gross
28 receipts to the receivership estate during the three-month period were \$1,629,170.24 comprised of

1 loan interest income of \$69,963.16 and loan servicing income of \$62,137.99, Coast Capital
 2 income of \$3,491.75, bank interest income of \$1,623.71, net loan payments from borrowers owing
 3 to participants in the amount of \$1,311,656.35, and loan principal repayments of \$180,297.28

4 Total disbursements during the Quarter were \$1,273,690.12, comprised of payments to
 5 lending participants of \$767,378.02, return of sale deposits of \$325,000, additional fees for local
 6 counsel in Maryland on the 3-AM loan foreclosure of \$1,260, operating expenses of \$29,014.50,
 7 and Court-approved Receiver and professional fees and costs of \$151,037.60.

8 The Profit and Loss statement on page 1 of Exhibit A provides a summary of all operating
 9 expenses and costs of administration. The Receiver was holding cash in the total amount of
 10 \$7,287,885.36 as of December 31, 2015. The unpaid balance of the retained portion of loans in
 11 the portfolio was \$4,209,829.29 as of December 31, 2015.

12 From the inception of the receivership through December 31, 2015, the total gross receipts
 13 are \$65,496,687.02, comprised of cash on hand at the time of the Receiver's appointment of
 14 \$10,249,494.45, loan interest income of \$3,159,831.70, loan servicing revenue of \$3,241,194.32,
 15 net loan payments from borrowers owing to participants in the amount of \$27,831,424.43, loan
 16 principal repayments of \$10,946,878.50, rental income of \$50,830, Coast Capital revenue of
 17 \$77,387.43, late fees of \$39,361.09, refunds of \$56,785.28, proceeds from real and personal
 18 property sales of \$1,543,559.33, buyer deposits on future sales of 833,240.79, loan sale proceeds
 19 of \$7,454,233.19, and bank interest income of \$12,466.51.

20 From inception of the receivership through December 31, 2015, the total disbursements
 21 were \$58,208,801.66, comprised of distributions to investors of \$24,523,143.61, payments to
 22 lending participants of \$27,272,760.07, operating expenses of \$1,280,551.40, Receiver's fees of
 23 \$1,833,390.00, Receiver's counsel's fees and expenses of \$1,011,619.00, taxes of \$815,708.10,
 24 payments on the Natoma REO mortgage of \$400,140.04, buyer deposits returned of \$590,000,
 25 Feathers' living expenses of \$30,000, and loan funding and advances of \$451,489.44.

26 **2. Receiver and Professional Fees and Costs**

27 The Receiver's fees for the quarter were \$81,764.50, a decrease of 39.4% from the prior
 28 quarter as loan servicing requirements decreased. The fees were incurred as follows:

1	October 2015	\$38,783.00
2	November 2015	\$23,948.00
3	<u>December 2015</u>	<u>\$19,033.00</u>
4	Total	<u>\$81,764.50</u>

5 From inception of the receivership through December 31, 2015, the Receiver incurred fees
6 of \$2,675,865.50, or 4.1% of gross receipts for the 43-month duration of the receivership, an
7 average of \$62,229 per month. The loan servicing fees alone of \$3,241,194 vastly exceed the
8 Receiver's fees. Allen Matkins' fees and costs for the Quarter were approximately \$41,000. From
9 inception through December 31, 2015, Allen Matkins incurred fees of approximately \$1,636,565,
10 or approximately 2.5% of gross receipts.

11 **B. Litigation Against California Business Bank**

12 The Receiver filed an action against California Business Bank ("CBB") and the directors
13 and officers named in the Receiver's complaint other than N. Aaron Yashouafar ("Individual
14 Defendants") arising out of, among other things, misrepresentations made to the Receivership
15 Entities in connection with the sale of CBB stock. The parties participated in a mediation with a
16 Court-assigned mediator on November 19, 2013, in San Francisco. The case did not settle.

17 The Receiver filed his complaint asserting state law claims in Los Angeles Superior Court
18 on May 8, 2014. CBB moved to strike one paragraph of the complaint arguing that it contains
19 attorney-client privileged communications. CBB also demanded return of the documents
20 containing such attorney-client communications and sought disqualification of Allen Matkins.
21 The Receiver opposed the motion, which the court denied without prejudice to CBB re-raising the
22 motion at a later date. Among other things, the court also instructed the parties to participate in a
23 second mediation, which took place on September 23, 2014. The case did not settle at mediation.

24 Following the mediation, CBB filed an answer to the Receiver's amended complaint. The
25 case is now "at issue." The parties have served each other with discovery requests and we had
26 anticipated commencing depositions in January 2016. To avoid further increasing the cost of the
27 litigation, the Receiver again approached CBB and suggested that the parties discuss settlement.
28 Discussions ensued and a settlement has been reached for \$650,000, subject to Court approval.

1 The Receiver will seek approval of the CBB settlement in connection with his motion to conclude
2 the receivership.

3 **C. Judgment Against Peter Cline**

4 The only remaining asset requiring disposition is a \$279,000 judgment in favor of SBCC
5 against Peter Cline, which was obtained prior to the Receiver's appointment. In connection with
6 enforcement of the judgment, Mr. Cline's right to receive distributions from accounts at a
7 company called Coast Capital was assigned to SBCC. This generates occasional small payments
8 (a total of \$77,387.43 since the Receiver's appointment). The Receiver is attempting to sell the
9 judgment and associated rights to payments from Coast Capital.

10 **III. RECOMMENDED FURTHER ACTIVITIES**

11 As set forth above, the sale of the 7(a) Assets closed at the end of March 2016. Conclusion
12 of the sale will complete the liquidation of the receivership estate's primary assets and the
13 Receiver will be in a position to resolve the SBA's \$24 million contingent claim. Given the recent
14 settlement of the CBB litigation, subject to Court approval, all significant assets will soon be
15 resolved. The Receiver, therefore, intends to bring a motion to conclude the receivership. The
16 motion will seek approval of (i) the settlement with CBB and related defendants, (ii) a proposed
17 disposition of the Cline judgment, (iii) a resolution to the SBA's claim, (iv) the Receiver's final
18 account and report, (v) professional fees and order the fees paid. The motion will also seek
19 authorization for the Receiver to maintain a reserve for expenses related to Mr. Feathers' appeals,
20 make a final distribution to investors and claimants, and discharge the Receiver.

21
22 Dated: April 8, 2016

By: Thomas A. Seaman
THOMAS A. SEAMAN, Receiver

23
24 Dated: April 8, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
By: /s/ Edward Fates
EDWARD G. FATES
Attorneys for Receiver, THOMAS A. SEAMAN

EXHIBIT A

11:13 AM
02/25/16
Cash Basis

Small Business Capital, Corp
Profit & Loss
October through December 2015

	Oct - Dec 15
Ordinary Income/Expense	
Income	
Coast Capital Income	3,491.75
Loan Interest Income	69,963.16
Loan Servicing Income	62,137.99
Total Income	135,592.90
Gross Profit	135,592.90
Expense	
Bank Service Charges	633.69
Computer and Internet Expenses	2,353.83
Operating Expense	
Outside Services	6,519.80
Total Operating Expense	6,519.80
Postage and Delivery	153.97
Professional Fees	
Accounting fees	12,237.50
Legal Expense-Receivers Counsel	3,517.72
Legal Fees - Collection Counsel	401.00
Legal Fees - Receivers Counsel	78,368.00
Litigation Support	2,080.00
Receiver Fees	72,669.60
Total Professional Fees	169,273.82
Rent Expense	128.10
Utilities	
Electricity	988.89
Total Utilities	988.89
Total Expense	180,052.10
Net Ordinary Income	-44,459.20
Other Income/Expense	
Other Income	
Interest Income	1,623.71
Total Other Income	1,623.71
Net Other Income	1,623.71
Net Income	-42,835.49

11:13 AM
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Cash Basis

Small Business Capital, Corp
Profit & Loss
As of December 31, 2015

	Dec 31, 15
Ordinary Income/Expense	
Income	
Coast Capital Income	77,387.43
Late Fees	39,361.09
Loan Interest Income	3,159,831.70
Loan Servicing Income	3,241,194.32
Refunds	56,785.28
Rental Income	50,830.00
Sale of Assets/Distributions	1,543,559.33
Turnover/Seizure	10,249,494.45
Total Income	18,418,443.60
Gross Profit	18,418,443.60
Expense	
11th Hour Investor Refund	45,000.00
Association Dues	2,858.00
Bank Service Charges	11,727.31
Business Licenses and Permits	0.00
Commission Expense	81,057.60
Computer and Internet Expenses	30,772.66
Defendant Living Expenses	30,000.00
Deposit Refunds	3,750.00
Discount on Loan	200,000.00
Distributions to Investors	24,523,143.61
Dues and Subscriptions	5,084.46
Employee moral	500.00
Insurance Expense	
E & O Insurance	102,953.65
General Liability Insurance	2,342.37
Health Insurance	9,516.59
Life Insurance	1,635.00
Property Insurance	1,336.76
Worker's Compensation	2,915.00
Total Insurance Expense	120,699.37
Late Payment Fee	0.00
Licenses & Fees	34,889.00
Loan Payments	400,140.04
Moving & Storage	868.38
Office Supplies	1,604.27
Operating Expense	
Outside Services	152,956.55
Total Operating Expense	152,956.55
Payroll Expenses	340,138.54
Payroll Service fees	7,861.01
Postage and Delivery	9,346.22
Printing and Reproduction	2,909.68
Professional Fees	
Accounting fees	220,368.61
Appraiser Fees	0.00
Legal Expense-Receivers Counsel	28,996.37
Legal Fees - Collection Counsel	7,285.25
Legal Fees - Receivers Counsel	982,622.63
Litigation Support	4,220.00
Receiver Fees	1,833,390.00
Total Professional Fees	3,076,882.86
Rent Expense	54,747.89
Rent/Leased Equipment Expense	2,073.00
REO Expenses	42,347.24
Repairs and Maintenance	1,206.25

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Cash Basis

Small Business Capital, Corp
Profit & Loss
As of December 31, 2015

	Dec 31, 15
Servicing	
Collection & Servicing Expenses	16,639.01
Lodging	235.00
Meals & Entertainment	3,089.45
Travel-Airfare-Hotel	21,595.02
Travel-Car	6,460.48
Total Servicing	48,018.96
Taxes	
Corporate Income Taxes	787,194.31
Escape Property Tax	3,673.18
Secured Property Taxes	23,721.03
Unsecured Property Taxes	1,119.58
Total Taxes	815,708.10
Utilities	
Electricity	5,450.16
Utilities - Other	23,918.60
Total Utilities	29,368.76
Total Expense	30,075,659.76
Net Ordinary Income	-11,657,216.16
Other Income/Expense	
Other Income	
Gain on Sale of Loans	442,251.67
Interest Income	12,466.51
Total Other Income	454,718.18
Other Expense	
Loss on Sale of Loans	711,391.89
Total Other Expense	711,391.89
Net Other Income	-256,673.71
Net Income	-11,913,889.87

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Cash Basis

Small Business Capital, Corp
Balance Sheet
As of December 31, 2015

	Dec 31, 15
ASSETS	
Current Assets	
Checking/Savings	
ML_CDARS - SB Cap Corp.	5,653,639.14
Rabo_SBC Corp_Distribution_2766	999.88
WF_Defense counsel act_#6291	200,420.60
WF_SB Capital, LLC_Trust_0112	14,049.51
WF_SB Capital_Trust_0120	8,189.02
WF_SBC Operating_1438	1,410,587.21
Total Checking/Savings	7,287,885.36
Accounts Receivable	
Accounts Receivable	32,359.70
Total Accounts Receivable	32,359.70
Total Current Assets	7,320,245.06
Other Assets	
Loans Receivable SBC, LLC	4,177,469.59
Total Other Assets	4,177,469.59
TOTAL ASSETS	11,497,714.65
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Deposits from bidders 7A loans	243,240.79
Loan Pay Hold_Brokers Trust	
Due to Others/ Prepaid	8,189.00
IPF	0.01
SBC-SCMF	0.01
Total Loan Pay Hold_Brokers Trust	8,189.02
Loan Pay Hold_LLC Trust	6,188.56
Total Other Current Liabilities	257,618.37
Total Current Liabilities	257,618.37
Total Liabilities	257,618.37
Equity	
Opening Balance Equity	23,153,986.15
Retained Earnings	-2,002,453.10
Net Income	-9,911,436.77
Total Equity	11,240,096.28
TOTAL LIABILITIES & EQUITY	11,497,714.65

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Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
HB_Investors Prime Fund_3513								0.00
Total HB_Investors Prime Fund_3513								0.00
HB_Investors Prime Fund_3596								0.00
Total HB_Investors Prime Fund_3596								0.00
HB_SB Cap Co Brokers Trust_3679								0.00
Total HB_SB Cap Co Brokers Trust_3679								0.00
HB_SB Cap Corp_Operating_3604								0.00
Total HB_SB Cap Corp_Operating_3604								0.00
HB_SB Capital LLC_3984								0.00
Total HB_SB Capital LLC_3984								0.00
HB_SB Capital LLC_4172								0.00
Total HB_SB Capital LLC_4172								0.00
HB_SBC Portfolio Funds LLC_3695								0.00
Total HB_SBC Portfolio Funds LLC_3695								0.00
HB_SBC Senior CM Mort Fund_4354								0.00
Total HB_SBC Senior CM Mort Fund_4354								0.00
ML_CDARS - SB Cap Corp.								5,652,194.36
Deposit	10/31/2015			Interest	Interest Income	1,127.44		5,653,321.80
Deposit	11/30/2015			Interest	Interest Income	0.23		5,653,322.03
Deposit	12/31/2015			Interest	Interest Income	317.11		5,653,639.14
Total ML_CDARS - SB Cap Corp.						1,444.78	0.00	5,653,639.14
Rabo_SBC Corp_Distribution_2766								999.88
Total Rabo_SBC Corp_Distribution_2766								999.88
WF_Defense counsel act_#6291								200,420.60
Total WF_Defense counsel act_#6291								200,420.60
WF_Investors Prime Fund_6953								0.00
Total WF_Investors Prime Fund_6953								0.00
WF_SB Capital Corp_Payroll_0104								0.00
Total WF_SB Capital Corp_Payroll_0104								0.00
WF_SB Capital LLC_Payroll_0096								0.00
Total WF_SB Capital LLC_Payroll_0096								0.00

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 Accrual Basis

Small Business Capital, Corp
General Ledger
 As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
WF_SB Capital, LLC_Trust_0112								14,057.96
Deposit	10/1/2015			Deposit	Loan Pay Hold...	10,403.22		24,461.18
Deposit	10/2/2015			Deposit	-SPLIT-	20,472.40		44,933.58
Deposit	10/2/2015			Deposit	-SPLIT-	20,668.02		65,601.60
Check	10/5/2015		South County Bank	Disbursemen...	Loan Pay Hold...		862.43	64,739.17
Deposit	10/5/2015			Deposit	-SPLIT-	10,246.40		74,985.57
Deposit	10/5/2015			Deposit	Loan Pay Hold...	1,306.77		76,292.34
Deposit	10/7/2015			Deposit	-SPLIT-	12,761.67		89,054.01
Deposit	10/8/2015			Deposit	-SPLIT-	31,988.94		121,042.95
Check	10/9/2015	Debit	California Business ...	Oct 2015 Dis...	Loan Pay Hold...		4,127.22	116,915.73
Deposit	10/9/2015			Deposit	-SPLIT-	29,717.27		146,633.00
Deposit	10/10/2015			Deposit	Loan Pay Hold...	3,000.00		149,633.00
Check	10/13/2015		Wells Fargo	Service Charge	Bank Service ...		126.10	149,506.90
Transfer	10/13/2015			Funds Transf...	WF_SBC Ope...	126.10		149,633.00
Deposit	10/16/2015			Deposit	Loan Pay Hold...	4,511.18		154,144.18
Deposit	10/19/2015			Deposit	Loan Pay Hold...	575,370.32		729,514.50
Check	10/19/2015	Wire	Colson Services Corp	Payoff of Loa...	Loan Pay Hold...		431,312.98	298,201.52
Check	10/19/2015	Trans...	SB Capital LLC	Distribution f...	Loan Pay Hold...		143,890.57	154,310.95
Check	10/19/2015	1045	VS Investment Gro...	Overpayment...	Loan Pay Hold...		166.77	154,144.18
Deposit	10/20/2015			Deposit	Loan Pay Hold...	1,733.94		155,878.12
Deposit	10/23/2015			Deposit	Loan Pay Hold...	4,025.66		159,903.78
Deposit	10/23/2015			Deposit	Loan Pay Hold...	4,264.00		164,167.78
Deposit	10/28/2015			Deposit	-SPLIT-	11,195.55		175,363.33
Check	10/30/2015	Debit	California Business ...	Nov 2015 Dis...	Loan Pay Hold...		1,157.09	174,206.24
Check	10/30/2015		Colson Services Co...	Oct 2015 Dist...	Loan Pay Hold...		108,805.93	65,400.31
Check	10/30/2015	Trans...	SB Capital LLC	Oct-15 Fund ...	Loan Pay Hold...		54,359.39	11,040.92
Deposit	10/30/2015			Deposit	Loan Pay Hold...	3,017.04		14,057.96
Deposit	11/2/2015			Deposit	-SPLIT-	11,388.06		25,446.02
Check	11/3/2015		South County Bank	Disbursemen...	Loan Pay Hold...		862.43	24,583.59
Deposit	11/3/2015			Deposit	-SPLIT-	24,853.50		49,437.09
Deposit	11/3/2015			Deposit	-SPLIT-	20,668.02		70,105.11
Deposit	11/4/2015			Deposit	-SPLIT-	11,146.40		81,251.51
Deposit	11/5/2015			Deposit	-SPLIT-	12,920.35		94,171.86
Deposit	11/5/2015			Deposit	-SPLIT-	3,040.71		97,212.57
Deposit	11/6/2015			Deposit	Loan Pay Hold...	4,511.18		101,723.75
Deposit	11/9/2015			Deposit	-SPLIT-	20,337.74		122,061.49
Deposit	11/10/2015			Deposit	Loan Pay Hold...	7,350.80		129,412.29
Deposit	11/10/2015			Deposit	-SPLIT-	19,083.49		148,495.78
Check	11/12/2015	Debit	California Business ...	Nov 2015 Dis...	Loan Pay Hold...		4,127.24	144,368.54
Deposit	11/23/2015			Deposit	Loan Pay Hold...	4,264.00		148,632.54
Deposit	11/25/2015			Deposit	Loan Pay Hold...	2,838.69		151,471.23
Check	11/30/2015		Colson Services Co...	Nov 2015 Dis...	Loan Pay Hold...		98,028.09	53,443.14
Check	11/30/2015	Debit	California Business ...	Dec 2015 Dis...	Loan Pay Hold...		1,157.09	52,286.05
Deposit	11/30/2015			Deposit	-SPLIT-	18,238.25		70,524.30
Check	11/30/2015		Wells Fargo	Service Charge	Bank Service ...		182.80	70,341.50
Transfer	11/30/2015			Funds Transf...	WF_SBC Ope...	182.80		70,524.30
Check	11/30/2015	Trans...	SB Capital LLC	Niov-15 Fund...	Loan Pay Hold...		56,466.34	14,057.96
Deposit	12/2/2015			Deposit	Loan Pay Hold...	2,900.20		16,958.16
Check	12/3/2015		South County Bank	Disbursemen...	Loan Pay Hold...		862.42	16,095.74

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Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Deposit	12/3/2015			Deposit	-SPLIT-	14,701.66		30,797.40
Deposit	12/3/2015			Deposit	-SPLIT-	20,668.02		51,465.42
Deposit	12/4/2015			Deposit	-SPLIT-	3,040.71		54,506.13
Deposit	12/7/2015			Deposit	-SPLIT-	25,442.22		79,948.35
Deposit	12/8/2015			Deposit	-SPLIT-	16,681.47		96,629.82
Deposit	12/9/2015			Deposit	Loan Pay Hold...	4,000.00		100,629.82
Check	12/10/2015	Debit	California Business ...	Dec 2015 Dis...	Loan Pay Hold...		4,127.24	96,502.58
Deposit	12/10/2015			Deposit	Loan Pay Hold...	7,350.80		103,853.38
Deposit	12/10/2015			Deposit	Loan Pay Hold...	12,083.49		115,936.87
Deposit	12/10/2015			Deposit	-SPLIT-	18,366.47		134,303.34
Deposit	12/23/2015			Deposit	Loan Pay Hold...	4,264.00		138,567.34
Deposit	12/28/2015			Deposit	-SPLIT-	15,521.44		154,088.78
Deposit	12/30/2015			Deposit	Loan Pay Hold...	2,838.69		156,927.47
Check	12/31/2015	Debit	California Business ...	Jan 2016 Dis...	Loan Pay Hold...		1,157.09	155,770.38
Check	12/31/2015		South County Bank	Disbursemen...	Loan Pay Hold...		862.43	154,907.95
Check	12/31/2015		Colson Services Co...	Dec 2015 Dis...	Loan Pay Hold...		109,761.57	45,146.38
Check	12/31/2015	Trans...	SB Capital LLC	Dec-15 Fund ...	Loan Pay Hold...		57,682.13	-12,535.75
Deposit	12/31/2015			Deposit	-SPLIT-	20,668.02		8,132.27
Deposit	12/31/2015			Deposit	-SPLIT-	5,917.24		14,049.51
Check	12/31/2015		Wells Fargo	Service Charge	Bank Service ...		150.20	13,899.31
Transfer	12/31/2015			Funds Transf...	WF_SBC Ope...	150.20		14,049.51
Total WF_SB Capital, LLC_Trust_0112						1,080,227.10	1,080,235.55	14,049.51
WF_SB Capital_Trust_0120								8,189.02
General Journal	11/18/2015	27RR...		1 of 2 sales p...	Receivable fro...	491,941.37		500,130.39
Transfer	11/30/2015			Transfer 3AM...	WF_SBC Ope...		491,941.37	8,189.02
General Journal	12/17/2015	28RR...		Receipt of re...	Receivable fro...	52,345.41		60,534.43
Transfer	12/17/2015			Transfer rece...	WF_SBC Ope...		52,345.41	8,189.02
Total WF_SB Capital_Trust_0120						544,286.78	544,286.78	8,189.02
WF_SBC Operating_1438								1,056,543.42
Check	10/7/2015	1703	Reid Litigation Tech...	Inv 1753	Litigation Sup...		2,080.00	1,054,463.42
Check	10/7/2015	1704	Orange County Net...	Invoice #8242	Outside Servic...		190.00	1,054,273.42
Check	10/7/2015	1706	Southern California ...	Acct 2-31-86...	Electricity		253.20	1,054,020.22
Check	10/7/2015	1707	Case Anywhere LLC	Invoice 5750...	Outside Servic...		170.00	1,053,850.22
Check	10/9/2015	1708	Wertz & Company	Invoice #576...	-SPLIT-		11,166.00	1,042,684.22
Check	10/9/2015	1709	Orange County Net...	Invoice #8251	Outside Servic...		480.00	1,042,204.22
Check	10/13/2015	1710	Southern California ...	Acct 2-31-86...	Electricity		259.68	1,041,944.54
Check	10/13/2015	1711	WTI Communicatio...	Account #90...	Computer and...		159.17	1,041,785.37
Check	10/13/2015			Service Charge	Bank Service ...		45.08	1,041,740.29
Transfer	10/13/2015			Funds Transf...	WF_SB Capit...		126.10	1,041,614.19
Check	10/15/2015	1712	Irvine Self Storage	Unit C196 No...	Rent Expense		42.70	1,041,571.49
Deposit	10/19/2015			Deposit	-SPLIT-	143,890.57		1,185,462.06
Check	10/20/2015	1713	Tydings & Rosenbe...	Invoice #181...	Accounts Rec...		1,260.00	1,184,202.06
Deposit	10/30/2015			Deposit	-SPLIT-	54,359.39		1,238,561.45
Check	11/4/2015	wire	Avana Capital	Return of 7A ...	Deposits from ...		325,000.00	913,561.45
Check	11/5/2015	1714	Applied Business S...	Invoice #041...	Computer and...		923.16	912,638.29
Check	11/10/2015	1715	WTI Communicatio...	Account #90...	Computer and...		159.17	912,479.12
Check	11/11/2015	1716	Crowe Horwath, LLP	Inv 1986867 ...	Accounting fees		1,071.50	911,407.62

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Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Check	11/12/2015			Service Charge	Bank Service ...		11.52	911,396.10
Check	11/13/2015	1717	Southern California ...	Acct 2-31-86...	Electricity		252.75	911,143.35
Check	11/13/2015	1718	Irvine Self Storage	Unit C196 De...	Rent Expense		42.70	911,100.65
Check	11/17/2015	Wire	Allen Matkins	10th Interim ...	-SPLIT-		30,466.05	880,634.60
Check	11/17/2015	1719	Thomas Seaman C...	10th interim f...	Receiver Fees		72,669.60	807,965.00
Check	11/17/2015	1720	Tydings & Rosenbe...	Invoice #182...	Legal Fees - C...		401.00	807,564.00
Deposit	11/18/2015			Deposit	-SPLIT-	3,491.75		811,055.75
Check	11/20/2015	1721	Thomas Seaman C...	Reimbursem...	-SPLIT-		168.95	810,886.80
Check	11/25/2015	1722	Huron Consulting S...	Invoice #105...	Outside Servic...		4,550.00	806,336.80
Check	11/25/2015	1723	Orange County Net...	Invoice #8272	Outside Servic...		570.00	805,766.80
Transfer	11/30/2015			Funds Transf...	WF_SB Capit...		182.80	805,584.00
Deposit	11/30/2015			Deposit	-SPLIT-	56,466.34		862,050.34
Transfer	11/30/2015			Transfer 3AM...	WF_SB Capit...	491,941.37		1,353,991.71
Check	12/2/2015	1724	Applied Business S...	Invoice #041...	Computer and...		923.16	1,353,068.55
Check	12/8/2015	Wire	Allen Matkins	9th Interim F...	-SPLIT-		51,419.67	1,301,648.88
Check	12/11/2015			Service Charge	Bank Service ...		117.99	1,301,530.89
Deposit	12/14/2015			Deposit	Interest Income	178.93		1,301,709.82
Check	12/14/2015	1725	Irvine Self Storage	Unit C196 Ja...	Rent Expense		42.70	1,301,667.12
Transfer	12/17/2015			Transfer rece...	WF_SB Capit...	52,345.41		1,354,012.53
Check	12/18/2015	1731	Tydings & Rosenbe...	Invoice #182...	Postage and ...		22.32	1,353,990.21
Check	12/18/2015	1727	Southern California ...	Acct 2-31-86...	Electricity		223.26	1,353,766.95
Check	12/18/2015	1728	WTI Communicatio...	Account #90...	Computer and...		159.17	1,353,607.78
Check	12/18/2015	1729	Orange County Net...	Invoice #8295	Outside Servic...		432.50	1,353,175.28
Deposit	12/31/2015			Deposit	-SPLIT-	57,682.13		1,410,857.41
Transfer	12/31/2015			Funds Transf...	WF_SB Capit...		150.20	1,410,707.21
Check	12/31/2015	1735	Case Anywhere LLC	Invoice 6345...	Outside Servic...		120.00	1,410,587.21
Total WF_SBC Operating_1438						860,355.89	506,312.10	1,410,587.21
WF_SBC Portfolio Fund_6961								0.00
Total WF_SBC Portfolio Fund_6961								0.00
Accounts Receivable								37,586.73
Check	10/20/2015	1713	3AM, LLC.	Invoice #181...	WF_SBC Ope...	1,260.00		38,846.73
Payment	11/3/2015	1569	Meyer's Castle, Inc.	Apply to insur...	Undeposited F...		6,487.03	32,359.70
Total Accounts Receivable						1,260.00	6,487.03	32,359.70
Inventory Asset								0.00
Total Inventory Asset								0.00
Loan to SB Brokers Trust								0.00
Total Loan to SB Brokers Trust								0.00
Receivable from Colson								0.00
Total Receivable from Colson								0.00

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Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Receivable from Wells Fargo-3AM								
General Journal	11/18/2015	27RR...	3AM, LLC.	1 of 2 sales p...	WF_SB Capit...		491,941.37	544,286.78
General Journal	12/17/2015	28RR...		Receipt of re...	WF_SB Capit...		52,345.41	52,345.41
								0.00
Total Receivable from Wells Fargo-3AM						0.00	544,286.78	0.00
Undeposited Funds								
Payment	11/3/2015	1569	Meyer's Castle, Inc.	Apply to insur...	Accounts Rec...	6,487.03		6,487.03
Deposit	11/3/2015	1569	Meyer's Castle, Inc.	Apply to insur...	WF_SB Capit...		6,487.03	0.00
Total Undeposited Funds						6,487.03	6,487.03	0.00
Accumulated Depreciation								
Total Accumulated Depreciation								0.00
Furniture and Equipment								
Total Furniture and Equipment								0.00
Loans Receivable IPF								
Total Loans Receivable IPF								0.00
Loans Receivable SBC Portfolio								
Total Loans Receivable SBC Portfolio								0.00
Loans Receivable SBC, LLC								
Deposit	10/19/2015		SB Capital LLC	Principal pay...	WF_SBC Ope...		143,016.18	4,351,279.84
Deposit	10/30/2015		SB Capital LLC	Oct 2015 prin...	WF_SBC Ope...		10,617.89	4,208,263.66
Deposit	11/30/2015		SB Capital LLC	Nov 2015 pri...	WF_SBC Ope...		9,757.16	4,197,645.77
Deposit	12/31/2015		SB Capital LLC	Dec 2015 pri...	WF_SBC Ope...		10,419.02	4,187,888.61
								4,177,469.59
Total Loans Receivable SBC, LLC						0.00	173,810.25	4,177,469.59
Loans Receivable Sr Comm Mort								
Total Loans Receivable Sr Comm Mort								0.00
Accounts Payable								
Total Accounts Payable								0.00
3AM sale deposit & proceeds								
Total 3AM sale deposit & proceeds								0.00
Deposits for Portfolio Sale								
Total Deposits for Portfolio Sale								0.00
Deposits from bidders 504 loans								
Total Deposits from bidders 504 loans								0.00
Deposits from bidders 7A loans								
Check	11/4/2015	wire	Avana Capital	Return of 7A ...	WF_SBC Ope...	325,000.00		-568,240.79
								-243,240.79
Total Deposits from bidders 7A loans						325,000.00	0.00	-243,240.79

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Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Loan from Operating Acct								0.00
Total Loan from Operating Acct								0.00
Loan Pay Hold_Brokers Trust								-8,189.02
Due to Others/ Prepaid								-8,189.00
Total Due to Others/ Prepaid								-8,189.00
IPF								-0.01
Total IPF								-0.01
SBC-PF								0.00
Total SBC-PF								0.00
SBC-SCMF								-0.01
Prepaid 3AM Foreclosure Costs								0.00
Total Prepaid 3AM Foreclosure Costs								0.00
SBC-SCMF - Other								-0.01
Total SBC-SCMF - Other								-0.01
Total SBC-SCMF								-0.01
SBC Corp.								0.00
Total SBC Corp.								0.00
Loan Pay Hold_Brokers Trust - Other								0.00
Total Loan Pay Hold_Brokers Trust - Other								0.00
Total Loan Pay Hold_Brokers Trust								-8,189.02
Loan Pay Hold_LLC Trust								-6,197.01
Deposit	10/1/2015	1634	8098 Professional ...	4988965005	WF_SB Capit...		10,403.22	-16,600.23
Deposit	10/2/2015	1050	Iguana's Burrizoilla...	4669495009	WF_SB Capit...		6,213.80	-22,814.03
Deposit	10/2/2015	5108	Narendrakumar Bh...	5157815010	WF_SB Capit...		2,093.91	-24,907.94
Deposit	10/2/2015	2029	Simplepastimes	5087955010	WF_SB Capit...		2,900.20	-27,808.14
Deposit	10/2/2015	48346	Sun-Fax Arco	5044695004	WF_SB Capit...		6,425.80	-34,233.94
Deposit	10/2/2015	1501	Robert D. Smith	4566135003	WF_SB Capit...		2,838.69	-37,072.63
Deposit	10/2/2015		TB Insurance, LLC.	5246565009	WF_SB Capit...		2,036.09	-39,108.72
Deposit	10/2/2015		Lodge at Sedona, L...	5099975002	WF_SB Capit...		10,309.00	-49,417.72
Deposit	10/2/2015		KV Equity	4902815006	WF_SB Capit...		5,749.53	-55,167.25
Deposit	10/2/2015		Miguel A. Sanchez, ...	5184515009	WF_SB Capit...		2,573.40	-57,740.65
Check	10/5/2015		South County Bank	Disbursemen...	WF_SB Capit...	862.43		-56,878.22
Deposit	10/5/2015	7942	Teddy Bear Hauling	5166625003	WF_SB Capit...		2,062.06	-58,940.28
Deposit	10/5/2015	5048...	J.V. Mattress	5048615010	WF_SB Capit...		4,184.34	-63,124.62
Deposit	10/5/2015	4051...	VS Investment Gro...	5206135004	WF_SB Capit...		4,000.00	-67,124.62
Deposit	10/5/2015		Anait Khachatryan	4833645009	WF_SB Capit...		1,306.77	-68,431.39
Deposit	10/7/2015	2049	TRC Holdings, LLC.	4689375005	WF_SB Capit...		8,736.01	-77,167.40
Deposit	10/7/2015	648	Travis P. Biachi	4422575007	WF_SB Capit...		4,025.66	-81,193.06

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Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Deposit	10/8/2015	1786	8098 Professional ...	4988965005	WF_SB Capit...		10,403.22	-91,596.28
Deposit	10/8/2015	13683	Lillie Alexander, LTD.	4942385002	WF_SB Capit...		4,500.00	-96,096.28
Deposit	10/8/2015	1429	Bragato Investments	4367155006	WF_SB Capit...		12,083.49	-108,179.77
Deposit	10/8/2015	9037...	Vaidotas Vaitys	4963625001	WF_SB Capit...		5,002.23	-113,182.00
Check	10/9/2015	Debit	California Business ...	Oct 2015 Dis...	WF_SB Capit...	4,127.22		-109,054.78
Deposit	10/9/2015	15544	Meyer's Castle, Inc.	4531315009	WF_SB Capit...		10,633.94	-119,688.72
Deposit	10/9/2015	15543	Meyer's Castle, Inc.	4631275010	WF_SB Capit...		7,732.53	-127,421.25
Deposit	10/9/2015	5686	Tropicana Liquors	5084465010	WF_SB Capit...		4,000.00	-131,421.25
Deposit	10/9/2015	5916	Pamela S. Pitts	4228255001	WF_SB Capit...		7,350.80	-138,772.05
Deposit	10/10/2015	2629	Kevin Pham	4866115010	WF_SB Capit...		3,000.00	-141,772.05
Deposit	10/16/2015		David & Shema Sh...	5063135006	WF_SB Capit...		4,511.18	-146,283.23
Deposit	10/19/2015		VS Investment Gro...	5206135004	WF_SB Capit...		575,370.32	-721,653.55
Check	10/19/2015	Wire	Colson Services Corp	Payoff of Loa...	WF_SB Capit...	431,312.98		-290,340.57
Check	10/19/2015	Trans...	SB Capital LLC	Distribution f...	WF_SB Capit...	143,890.57		-146,450.00
Check	10/19/2015	1045	VS Investment Gro...	Overpayment...	WF_SB Capit...	166.77		-146,283.23
Deposit	10/20/2015		Amy YS Lin	4540675003	WF_SB Capit...		1,733.94	-148,017.17
Deposit	10/23/2015	649	Travis P. Biachi	4422575007	WF_SB Capit...		4,025.66	-152,042.83
Deposit	10/23/2015		Leticia Luna Trust	4515825009	WF_SB Capit...		4,264.00	-156,306.83
Deposit	10/28/2015	3805...	Intervention 911	4960205009	WF_SB Capit...		4,696.91	-161,003.74
Deposit	10/28/2015	9581...	Robert Marshall	4108505010	WF_SB Capit...		6,498.64	-167,502.38
Check	10/30/2015	Debit	California Business ...	Nov 2015 Dis...	WF_SB Capit...	1,157.09		-166,345.29
Check	10/30/2015		Colson Services Co...	Oct 2015 Dist...	WF_SB Capit...	108,805.93		-57,539.36
Check	10/30/2015	Trans...	SB Capital LLC	Oct-15 Fund ...	WF_SB Capit...	54,359.39		-3,179.97
Deposit	10/30/2015	995452	Alexis W. Readinger	5024485003	WF_SB Capit...		3,017.04	-6,197.01
Deposit	11/2/2015	7956	Teddy Bear Hauling	5166625003	WF_SB Capit...		2,062.06	-8,259.07
Deposit	11/2/2015	48506	Sun-Fax Arco	5044695004	WF_SB Capit...		6,425.80	-14,684.87
Deposit	11/2/2015	2036	Simplepastimes	5087955010	WF_SB Capit...		2,900.20	-17,585.07
Check	11/3/2015		South County Bank	Disbursemen...	WF_SB Capit...	862.43		-16,722.64
Deposit	11/3/2015	1569	Meyer's Castle, Inc.	4531275010	WF_SB Capit...		7,732.53	-24,455.17
Deposit	11/3/2015	1569	Meyer's Castle, Inc.	4531315009	WF_SB Capit...		10,633.94	-35,089.11
Deposit	11/3/2015		TB Insurance, LLC.	5246565009	WF_SB Capit...		2,036.09	-37,125.20
Deposit	11/3/2015		KV Equity	4902815006	WF_SB Capit...		5,749.53	-42,874.73
Deposit	11/3/2015		Miguel A. Sanchez, ...	5184515009	WF_SB Capit...		2,573.40	-45,448.13
Deposit	11/3/2015		Lodge at Sedona, L...	5099975002	WF_SB Capit...		10,309.00	-55,757.13
Deposit	11/4/2015	5109	Narendrakumar Bh...	5157815010	WF_SB Capit...		2,093.91	-57,851.04
Deposit	11/4/2015	1504	Robert D. Smith	4566135003	WF_SB Capit...		2,838.69	-60,689.73
Deposit	11/4/2015	1053	Iguana's Burritozilla...	4669495009	WF_SB Capit...		6,213.80	-66,903.53
Deposit	11/5/2015	3623	J.V. Mattress	5048615010	WF_SB Capit...		4,184.34	-71,087.87
Deposit	11/5/2015	2051	TRC Holdings, LLC.	4689375005	WF_SB Capit...		8,736.01	-79,823.88
Deposit	11/5/2015		Anait Khachatryan	4833645009	WF_SB Capit...		1,306.77	-81,130.65
Deposit	11/5/2015		Amy YS Lin	4540675003	WF_SB Capit...		1,733.94	-82,864.59
Deposit	11/6/2015		David & Shema Sh...	5063135006	WF_SB Capit...		4,511.18	-87,375.77
Deposit	11/9/2015	1806	8098 Professional ...	4988965005	WF_SB Capit...		10,835.51	-98,211.28
Deposit	11/9/2015	66215	Vaidotas Vaitys	4963625001	WF_SB Capit...		5,002.23	-103,213.51
Deposit	11/9/2015	13803	Lillie Alexander, LTD.	4942385002	WF_SB Capit...		4,500.00	-107,713.51
Deposit	11/10/2015	5917	Pamela S. Pitts	4228255001	WF_SB Capit...		7,350.80	-115,064.31
Deposit	11/10/2015	1432	Bragato Investments	4367155006	WF_SB Capit...		12,083.49	-127,147.80
Deposit	11/10/2015	2634	Kevin Pham	4866115010	WF_SB Capit...		3,000.00	-130,147.80
Deposit	11/10/2015	5756	Tropicana Liquors	5084465010	WF_SB Capit...		4,000.00	-134,147.80

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Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Check	11/12/2015	Debit	California Business ...	Nov 2015 Dis...	WF_SB Capit...	4,127.24		-130,020.56
Deposit	11/23/2015		Leticia Luna Trust	4515825009	WF_SB Capit...		4,264.00	-134,284.56
Deposit	11/25/2015	1505	Robert D. Smith	4566135003	WF_SB Capit...		2,838.69	-137,123.25
Check	11/30/2015		Colson Services Co...	Nov 2015 Dis...	WF_SB Capit...	98,028.09		-39,095.16
Check	11/30/2015	Debit	California Business ...	Dec 2015 Dis...	WF_SB Capit...	1,157.09		-37,938.07
Deposit	11/30/2015	4916...	Robert Marshall	4108505101	WF_SB Capit...		6,498.64	-44,436.71
Deposit	11/30/2015	995473	Alexis W. Readinger	5024485003	WF_SB Capit...		3,017.04	-47,453.75
Deposit	11/30/2015	4325...	Intervention 911	4960205009	WF_SB Capit...		4,696.91	-52,150.66
Deposit	11/30/2015	652	Travis P. Biachi	4422575007	WF_SB Capit...		4,025.66	-56,176.32
Check	11/30/2015	Trans...	SB Capital LLC	Niov-15 Fund...	WF_SB Capit...	56,466.34		290.02
Deposit	11/30/2015		SB Capital LLC	Meyer's Castl...	WF_SBC Ope...		6,487.03	-6,197.01
Deposit	12/2/2015	2038	Simplepastimes	5087955010	WF_SB Capit...		2,900.20	-9,097.21
Check	12/3/2015		South County Bank	Disbursemen...	WF_SB Capit...	862.42		-8,234.79
Deposit	12/3/2015	48693	Sun-Fax Arco	5044695004	WF_SB Capit...		6,425.80	-14,660.59
Deposit	12/3/2015	7968	Teddy Bear Hauling	5166625003	WF_SB Capit...		2,062.06	-16,722.65
Deposit	12/3/2015	1055	Iguana's Burritozilla...	4669495009	WF_SB Capit...		6,213.80	-22,936.45
Deposit	12/3/2015		KV Equity	4902815006	WF_SB Capit...		5,749.53	-28,685.98
Deposit	12/3/2015		Lodge at Sedona, L...	5099975002	WF_SB Capit...		10,309.00	-38,994.98
Deposit	12/3/2015		Miguel A. Sanchez, ...	5184515009	WF_SB Capit...		2,573.40	-41,568.38
Deposit	12/3/2015		TB Insurance, LLC.	5246565009	WF_SB Capit...		2,036.09	-43,604.47
Deposit	12/4/2015		Anait Khachatryan	4833645009	WF_SB Capit...		1,306.77	-44,911.24
Deposit	12/4/2015		Anait Khachatryan	4540675003	WF_SB Capit...		1,733.94	-46,645.18
Deposit	12/7/2015	13864	Lillie Alexander, LTD.	4942385002	WF_SB Capit...		4,192.80	-50,837.98
Deposit	12/7/2015	2052	TRC Holdings, LLC.	4689375005	WF_SB Capit...		8,736.01	-59,573.99
Deposit	12/7/2015	26742	Kevin Pham	4866115010	WF_SB Capit...		3,000.00	-62,573.99
Deposit	12/7/2015	122	David & Shema Sh...	5063135006	WF_SB Capit...		4,511.18	-67,085.17
Deposit	12/7/2015	9253...	Vaidotas Vaitys	4963625001	WF_SB Capit...		5,002.23	-72,087.40
Deposit	12/8/2015	1807	8098 Professional ...	4988965005	WF_SB Capit...		10,403.22	-82,490.62
Deposit	12/8/2015	5110	Narendrakumar Bh...	5157815010	WF_SB Capit...		2,093.91	-84,584.53
Deposit	12/8/2015	3630	J.V. Mattress	5048615010	WF_SB Capit...		4,184.34	-88,768.87
Deposit	12/9/2015	5818	Tropicana Liquors	5084465010	WF_SB Capit...		4,000.00	-92,768.87
Check	12/10/2015	Debit	California Business ...	Dec 2015 Dis...	WF_SB Capit...	4,127.24		-88,641.63
Deposit	12/10/2015	5919	Pamela S. Pitts	4228255001	WF_SB Capit...		7,350.80	-95,992.43
Deposit	12/10/2015	1434	Bragato Investments	4367155006	WF_SB Capit...		12,083.49	-108,075.92
Deposit	12/10/2015	15666	Meyer's Castle, Inc.	4531275010	WF_SB Capit...		7,732.53	-115,808.45
Deposit	12/10/2015	15665	Meyer's Castle, Inc.	4531315009	WF_SB Capit...		10,633.94	-126,442.39
Deposit	12/23/2015		Leticia Luna Trust	4515825009	WF_SB Capit...		4,264.00	-130,706.39
Deposit	12/28/2015	1498...	Robert Marshall	4108505010	WF_SB Capit...		6,498.64	-137,205.03
Deposit	12/28/2015	4798...	Intervention 911	4960205009	WF_SB Capit...		4,696.91	-141,901.94
Deposit	12/28/2015	653	Travis P. Biachi	4422575007	WF_SB Capit...		4,325.89	-146,227.83
Deposit	12/30/2015	1508	Robert D. Smith	4566135003	WF_SB Capit...		2,838.69	-149,066.52
Check	12/31/2015	Debit	California Business ...	Jan 2016 Dis...	WF_SB Capit...	1,157.09		-147,909.43
Check	12/31/2015		South County Bank	Disbursemen...	WF_SB Capit...	862.43		-147,047.00
Check	12/31/2015		Colson Services Co...	Dec 2015 Dis...	WF_SB Capit...	109,761.57		-37,285.43
Check	12/31/2015	Trans...	SB Capital LLC	Dec-15 Fund ...	WF_SB Capit...	57,682.13		20,396.70
Deposit	12/31/2015		KV Equity	4902815006	WF_SB Capit...		5,749.53	14,647.17
Deposit	12/31/2015		Lodge at Sedona, L...	5099975002	WF_SB Capit...		10,309.00	4,338.17
Deposit	12/31/2015		Miguel A. Sanchez, ...	5184515009	WF_SB Capit...		2,573.40	1,764.77
Deposit	12/31/2015		TB Insurance, LLC.	5246565009	WF_SB Capit...		2,036.09	-271.32

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Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Deposit	12/31/2015	995489	Alexis W. Readinger	5024485003	WF_SB Capit...		3,017.04	-3,288.36
Deposit	12/31/2015	2046	Simplepastimes	5087955010	WF_SB Capit...		2,900.20	-6,188.56
Total Loan Pay Hold_LLC Trust						1,079,776.45	1,079,768.00	-6,188.56
Payroll Liabilities								0.00
Total Payroll Liabilities								0.00
Opening Balance Equity								-23,153,986.15
Total Opening Balance Equity								-23,153,986.15
Retained Earnings								2,002,453.10
Total Retained Earnings								2,002,453.10
Coast Capital Income								-741.06
Deposit	11/18/2015	8985	Coast Capital Inco...	Nov 2015 Liq...	WF_SBC Ope...		87.40	-828.46
Deposit	11/18/2015	9081	Coast Capital Inco...	Nov 2015 Liq...	WF_SBC Ope...		177.29	-1,005.75
Deposit	11/18/2015	8987	Coast Capital Inco...	Nov 2015 Liq...	WF_SBC Ope...		3,227.06	-4,232.81
Total Coast Capital Income						0.00	3,491.75	-4,232.81
Commission Income								0.00
Total Commission Income								0.00
Late Fees								-103.10
Total Late Fees								-103.10
Loan Interest Income								-267,234.91
Deposit	10/19/2015		SB Capital LLC	Interst incom...	WF_SBC Ope...		357.54	-267,592.45
Deposit	10/30/2015		SB Capital LLC	Oct 2015 inte...	WF_SBC Ope...		23,032.24	-290,624.69
Deposit	11/30/2015		SB Capital LLC	Nov 2015 int...	WF_SBC Ope...		20,770.47	-311,395.16
Deposit	12/31/2015		SB Capital LLC	Dec 2015 int...	WF_SBC Ope...		25,802.91	-337,198.07
Total Loan Interest Income						0.00	69,963.16	-337,198.07
Loan Servicing Income								-275,968.12
Deposit	10/19/2015		SB Capital LLC	Servicing inc...	WF_SBC Ope...		166.85	-276,134.97
Deposit	10/19/2015		SB Capital Brokers ...	Payoff fee for...	WF_SBC Ope...		350.00	-276,484.97
Deposit	10/30/2015		SB Capital LLC	Oct 2015 ser...	WF_SBC Ope...		20,709.26	-297,194.23
Deposit	11/30/2015		SB Capital LLC	Nov 2015 ser...	WF_SBC Ope...		19,451.68	-316,645.91
Deposit	12/31/2015		SB Capital LLC	Dec 2015 ser...	WF_SBC Ope...		21,460.20	-338,106.11
Total Loan Servicing Income						0.00	62,137.99	-338,106.11
Miscellaneous Income								0.00
Total Miscellaneous Income								0.00
Refunds								0.00
Total Refunds								0.00

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Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Rental Income								0.00
Total Rental Income								0.00
Sale of Assets/Distributions								-300,721.11
Total Sale of Assets/Distributions								-300,721.11
Serving Income								0.00
Total Serving Income								0.00
Trust Account Receivable								0.00
Total Trust Account Receivable								0.00
Turnover/Seizure								0.00
Total Turnover/Seizure								0.00
Cost of Goods Sold								0.00
Total Cost of Goods Sold								0.00
11th Hour Investor Refund								0.00
Total 11th Hour Investor Refund								0.00
Advertising and Promotion								0.00
Total Advertising and Promotion								0.00
Association Dues								0.00
Total Association Dues								0.00
Automobile Expense								0.00
Total Automobile Expense								0.00
Bank Service Charges								1,875.26
Check	10/13/2015			Service Charge	WF_SBC Ope...	45.08		1,920.34
Check	10/13/2015		Wells Fargo	Service Charge	WF_SB Capit...	126.10		2,046.44
Check	11/12/2015			Service Charge	WF_SBC Ope...	11.52		2,057.96
Check	11/30/2015		Wells Fargo	Service Charge	WF_SB Capit...	182.80		2,240.76
Check	12/11/2015			Service Charge	WF_SBC Ope...	117.99		2,358.75
Check	12/31/2015		Wells Fargo	Service Charge	WF_SB Capit...	150.20		2,508.95
Total Bank Service Charges						633.69	0.00	2,508.95
Business Licenses and Permits								0.00
Total Business Licenses and Permits								0.00
Commission Expense								81,057.60
Total Commission Expense								81,057.60

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Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Computer and Internet Expenses								
Check	10/13/2015	1711	WTI Communicatio...	Account #90...	WF_SBC Ope...	159.17		4,275.86
Check	11/5/2015	1714	Applied Business S...	Invoice #041...	WF_SBC Ope...	923.16		4,435.03
Check	11/10/2015	1715	WTI Communicatio...	Account #90...	WF_SBC Ope...	159.17		5,358.19
Check	11/20/2015	1721	Thomas Seaman C...	Receivership ...	WF_SBC Ope...	30.00		5,517.36
Check	12/2/2015	1724	Applied Business S...	Invoice #041...	WF_SBC Ope...	923.16		5,547.36
Check	12/18/2015	1728	WTI Communicatio...	Account #90...	WF_SBC Ope...	159.17		6,470.52
Total Computer and Internet Expenses						2,353.83	0.00	6,629.69
Defendant Living Expenses								
Total Defendant Living Expenses								0.00
Deposit Refunds								
Total Deposit Refunds								0.00
Depreciation Expense								
Total Depreciation Expense								0.00
Discount on Loan								
Total Discount on Loan								0.00
Distributions to Investors								
Total Distributions to Investors								9,500,000.12
Dues and Subscriptions								
Total Dues and Subscriptions								158.49
Employee moral								
Total Employee moral								0.00
Insurance Expense								
E & O Insurance								
Total E & O Insurance								29,597.01
Foreclosure Bond								
Total Foreclosure Bond								29,597.01
General Liability Insurance								
Total General Liability Insurance								0.00
Health Insurance								
Total Health Insurance								0.00
Life Insurance								
Total Life Insurance								0.00

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Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Professional Liability								0.00
Total Professional Liability								0.00
Property Insurance								0.00
Total Property Insurance								0.00
Worker's Compensation								0.00
Total Worker's Compensation								0.00
Insurance Expense - Other								0.00
Total Insurance Expense - Other								0.00
Total Insurance Expense								29,597.01
Interest Expense								0.00
Total Interest Expense								0.00
Late Payment Fee								0.00
Total Late Payment Fee								0.00
Licenses & Fees								0.00
Total Licenses & Fees								0.00
Loan Payments								0.00
Total Loan Payments								0.00
Meals and Entertainment								0.00
Total Meals and Entertainment								0.00
Moving & Storage								0.00
Total Moving & Storage								0.00
Office Supplies								305.12
Total Office Supplies								305.12
Operating Expense								6,138.89
Outside Services								6,138.89
Check	10/7/2015	1704	Orange County Net...	Invoice #8242	WF_SBC Ope...	190.00		6,328.89
Check	10/7/2015	1707	Case Anywhere LLC	Invoice 5750...	WF_SBC Ope...	170.00		6,498.89
Check	10/9/2015	1709	Orange County Net...	Invoice #8251	WF_SBC Ope...	480.00		6,978.89
Check	11/20/2015	1721	Thomas Seaman C...	Sept & Oct 2...	WF_SBC Ope...	7.30		6,986.19
Check	11/25/2015	1722	Huron Consulting S...	Invoice #105...	WF_SBC Ope...	4,550.00		11,536.19
Check	11/25/2015	1723	Orange County Net...	Invoice #8272	WF_SBC Ope...	570.00		12,106.19
Check	12/18/2015	1729	Orange County Net...	Invoice #8295	WF_SBC Ope...	432.50		12,538.69
Check	12/31/2015	1735	Case Anywhere LLC	Invoice 6345...	WF_SBC Ope...	120.00		12,658.69
Total Outside Services						6,519.80	0.00	12,658.69

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02/25/16

Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Operating Expense - Other								0.00
Total Operating Expense - Other								0.00
Total Operating Expense						6,519.80	0.00	12,658.69
Payroll Expenses								0.00
Total Payroll Expenses								0.00
Payroll Service fees								0.00
Total Payroll Service fees								0.00
Postage and Delivery								1,481.73
Check	11/20/2015	1721	Thomas Seaman C...	Sept & Oct 2...	WF_SBC Ope...	131.65		1,613.38
Check	12/18/2015	1731	3AM, LLC.	Invoice #182...	WF_SBC Ope...	22.32		1,635.70
Total Postage and Delivery						153.97	0.00	1,635.70
Printing and Reproduction								150.00
Total Printing and Reproduction								150.00
Professional Fees								814,616.40
Accounting fees								26,141.50
Check	10/9/2015	1708	Wertz & Company	3rd installme...	WF_SBC Ope...	6,666.00		32,807.50
Check	10/9/2015	1708	Wertz & Company	2014 agreed-...	WF_SBC Ope...	2,500.00		35,307.50
Check	10/9/2015	1708	Wertz & Company	Q1 2015 com...	WF_SBC Ope...	2,000.00		37,307.50
Check	11/11/2015	1716	Crowe Horwath, LLP	Inv 1986867 ...	WF_SBC Ope...	1,071.50		38,379.00
Total Accounting fees						12,237.50	0.00	38,379.00
Appraiser Fees								0.00
Total Appraiser Fees								0.00
Legal Expense-Receivers Counsel								5,295.65
Check	11/17/2015	Wire	Allen Matkins	10th intermi...	WF_SBC Ope...	604.05		5,899.70
Check	12/8/2015	Wire	Allen Matkins	9th intermim ...	WF_SBC Ope...	2,913.67		8,813.37
Total Legal Expense-Receivers Counsel						3,517.72	0.00	8,813.37
Legal Fees - Collection Counsel								0.00
Check	11/17/2015	1720	3AM, LLC.	Invoice #182...	WF_SBC Ope...	401.00		401.00
Total Legal Fees - Collection Counsel						401.00	0.00	401.00
Legal Fees - Receivers Counsel								188,612.50
Check	11/17/2015	Wire	Allen Matkins	10th Interim ...	WF_SBC Ope...	29,862.00		218,474.50
Check	12/8/2015	Wire	Allen Matkins	9th Interim F...	WF_SBC Ope...	48,506.00		266,980.50
Total Legal Fees - Receivers Counsel						78,368.00	0.00	266,980.50
Litigation Support								2,140.00
Check	10/7/2015	1703	Reid Litigation Tech...	Inv 1753	WF_SBC Ope...	2,080.00		4,220.00
Total Litigation Support						2,080.00	0.00	4,220.00

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Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Receiver Fees								592,426.75
Check	11/17/2015	1719	Thomas Seaman C...	10th interim f...	WF_SBC Ope...	72,669.60		665,096.35
Total Receiver Fees						72,669.60	0.00	665,096.35
Tax Preparation								0.00
Total Tax Preparation								0.00
Professional Fees - Other								0.00
Total Professional Fees - Other								0.00
Total Professional Fees						169,273.82	0.00	983,890.22
Receiver's Expenses								0.00
Total Receiver's Expenses								0.00
Rent Expense								382.30
Check	10/15/2015	1712	Irvine Self Storage	Unit C196 No...	WF_SBC Ope...	42.70		425.00
Check	11/13/2015	1718	Irvine Self Storage	Unit C196 De...	WF_SBC Ope...	42.70		467.70
Check	12/14/2015	1725	Irvine Self Storage	Unit C196 Ja...	WF_SBC Ope...	42.70		510.40
Total Rent Expense						128.10	0.00	510.40
Rent/Leased Equipment Expense								0.00
Total Rent/Leased Equipment Expense								0.00
REO Expenses								239.23
Total REO Expenses								239.23
Repairs and Maintenance								0.00
Total Repairs and Maintenance								0.00
Scanning of Loan Files								0.00
Total Scanning of Loan Files								0.00
Servicing								1,488.61
Collection & Servicing Expenses								0.00
Total Collection & Servicing Expenses								0.00
Lodging								235.00
Total Lodging								235.00
Meals & Entertainment								150.00
Total Meals & Entertainment								150.00
Travel-Airfare-Hotel								301.58
Total Travel-Airfare-Hotel								301.58

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Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Travel-Car								802.03
Total Travel-Car								802.03
Servicing - Other								0.00
Total Servicing - Other								0.00
Total Servicing								1,488.61
Taxes								724.93
Corporate Income Taxes								724.93
Total Corporate Income Taxes								724.93
Escape Property Tax								0.00
Total Escape Property Tax								0.00
Federal Withholding								0.00
Total Federal Withholding								0.00
Secured Property Taxes								0.00
Total Secured Property Taxes								0.00
Unsecured Property Taxes								0.00
Total Unsecured Property Taxes								0.00
Taxes - Other								0.00
Total Taxes - Other								0.00
Total Taxes								724.93
Telephone Expense								0.00
Total Telephone Expense								0.00
Travel Expense								0.00
Total Travel Expense								0.00
Uncategorized Expenses								0.00
Total Uncategorized Expenses								0.00
Utilities								1,894.02
Electricity								1,894.02
Check	10/7/2015	1706	Southern California ...	Acct 2-31-86...	WF_SBC Ope...	253.20		2,147.22
Check	10/13/2015	1710	Southern California ...	Acct 2-31-86...	WF_SBC Ope...	259.68		2,406.90
Check	11/13/2015	1717	Southern California ...	Acct 2-31-86...	WF_SBC Ope...	252.75		2,659.65
Check	12/18/2015	1727	Southern California ...	Acct 2-31-86...	WF_SBC Ope...	223.26		2,882.91
Total Electricity						988.89	0.00	2,882.91

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Accrual Basis

Small Business Capital, Corp
General Ledger
As of December 31, 2015

Type	Date	Num	Name	Memo	Split	Debit	Credit	Balance
Land Line Telephone								0.00
Total Land Line Telephone								0.00
Mobile Phones								0.00
Total Mobile Phones								0.00
Utilities - Other								0.00
Total Utilities - Other								0.00
Total Utilities						988.89	0.00	2,882.91
Gain on Sale of Loans								-442,251.67
Total Gain on Sale of Loans								-442,251.67
Interest Income								-156.21
Deposit	10/31/2015			Interest	ML_CDARS - ...		1,127.44	-1,283.65
Deposit	11/30/2015			Interest	ML_CDARS - ...		0.23	-1,283.88
Deposit	12/14/2015	2985...	Colson Services Corp	VS Investme...	WF_SBC Ope...		178.93	-1,462.81
Deposit	12/31/2015			Interest	ML_CDARS - ...		317.11	-1,779.92
Total Interest Income						0.00	1,623.71	-1,779.92
Loss on Sale of Loans								711,391.89
Total Loss on Sale of Loans								711,391.89
No acct								0.00
Total no acct								0.00
TOTAL						4,078,890.13	4,078,890.13	0.00

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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

On April 8, 2016, I served on interested parties in said action the within:

➤ **RECEIVER'S SIXTEENTH INTERIM REPORT**

BY U.S. MAIL: by placing a true copy thereof in sealed envelope(s), addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service in San Diego County on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Mark Feathers
[Redacted]
Los Altos, California [Redacted]

Pro Se Defendant
Tel: [Redacted]
Fax: [Redacted]
Email: [Redacted]

BY OVERNIGHT DELIVERY: by placing a true copy thereof in sealed envelope(s), addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in a box or other facility regularly maintained by express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, with fees for overnight delivery paid or provided for.

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

Executed on April 8, 2016, at San Diego, California.

Edward Fates
(Type or print name)

/s/ Edward Fates
(Signature)

1 Funds, and (2) whether Defendant has a valid right of indemnification from the Funds—the very
2 issues that form the basis of Defendant’s Sixth Amendment claim.

3 The Court first discusses whether the pending appeals in the civil case divest this Court of
4 jurisdiction, and then discusses whether this Court can alter the final judgment of another district
5 court.

6 A valid notice of appeal divests a district court of jurisdiction “over those aspects of the
7 case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58
8 (1982); *United States v. Vroman*, 997 F.2d 627, 627 (9th Cir. 1993) (per curiam) (holding that the
9 “filing of notice of appeal divests the district court of its control over the aspects of the case
10 involved in the appeal”). Defendant currently has filed multiple appeals in the civil case that are
11 currently pending before the Ninth Circuit. Ninth Circuit Court of Appeals, Case Nos. 13-17304,
12 14-15466. Through these appeals, Defendant is challenging the final judgment entered after Judge
13 Davila issued the order granting summary judgment as well as Judge Davila’s order approving the
14 subordination of Defendant’s claim to the assets in the Funds to other investors. Civil Case ECF
15 Nos. 623, 719.

16 Due to the pendency of Defendant’s appeals, Judge Davila and this Court are divested of
17 jurisdiction to reconsider whether Defendant owns the assets in the receivership or whether they
18 are covered by the indemnification agreement because both issues were decided by Judge Davila
19 before final judgment. *See* Civil Case ECF No. 70, 591. This lack of jurisdiction is confirmed by
20 Defendant’s failed prior attempt, on August 15, 2014, to move for reconsideration of the final
21 judgment before Judge Davila. Civil Case ECF No. 940. That motion was denied for lack of
22 jurisdiction on November 10, 2014. Civil Case ECF No. 974. Defendant then brought a motion
23 before the Ninth Circuit “to allow a motion hearing with the trial court to set aside its judgment
24 under Fed. R. Civ. P. 60(b).” Ninth Circuit Court of Appeals, Case No. 13-17304, ECF No. 41.
25 ~~The Ninth Circuit denied the motion as moot because Judge Davila had held that he would not be~~
26 willing to entertain such a motion. *Id.* ECF No. 42. Thus, because the appeal is still currently

1 Mark Feathers, *pro se*

2 [REDACTED]
3 Menlo Park, CA [REDACTED]
4 [REDACTED]

5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7 SAN JOSE DIVISION

8 SECURITIES AND EXCHANGE
9 COMISSION,

10 Plaintiff,

11 vs

12 SMALL BUSINESS CAPITAL CORP., et al

Case No.: CV12-03237-EJD

NOTICE OF MOTION AND MOTIONS
FOR:

RULE 60 HEARING ON PRIOR ADVERSE
SUMMARY JUDGEMENT

AND RELATED MOTIONS:

REQUEST FOR INJUNCTION ON
PLAINTIFF ENJOINING AGAINST USE OF
THE PHRASE "PONZI-LIKE SCHEME"

REQUEST FOR JUDICAL NOTICE ON
MATERIALS ATTACHED TO MOTION,
OR PRIOR CIVIL PLEADINGS SUBITTED

STAYING REQUIREMENT FOR
DISGORGEMENT PAYMENTS

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28 DEFENDANT'S RULE 60 MOTION AND RELATED MOTION FILINGS

1 REQUESTING FUNDS TO COMPLETE A
2 FORENSIC ACCOUNTING

3
4 DATE: OCTOBER 22, 2020 TIME: 9:00
5 A.M.
6 CTRM: 4 JUDGE HON. EDWARD J.
7 DAVILA

8 MOTION AND NOTICE OF MOTION

9 TO THE HON. EDWARD J. DAVILA, JUDGE OF THE UNITED STATES

10 DISTRICT COURT AND INTERESTED PARTIES:

11 Mark Feathers (“Defendant”) in above captioned civil case hereby moves this

12 Court for Orders:

- 13 1. Rule 60 Motion in favor of Defendant
- 14 2. Approval of an injunction against Plaintiff employing the phrase “Ponzi-like scheme”
15 here or elsewhere
- 16 3. Request for Judicial Notice of:
- 17 a. The Stalker Forensic Accounting Report of Defendant’s investment funds prior
18 submitted to Court
- 19 b. The Receiver’s Final Forensic Accounting Report and Final Reports to the Court
20 Defendant, who is *pro se*, prays from the court to be lifted from the burden of preparing
21 Orders.
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1 **Rule 60 Motion to Reverse Prior Adverse Summary Judgement Against Defendant**

2 **I. SEC’s June 2012 *ex parte* Sealed Claims as to a “Ponzi-like Scheme”**

3 Legitimate questions are raised as to the reliability of the figures the Receiver presented
4 to the court in July 2012. The Receiver had already been employed in a substantial number of
5 SEC receiverships, at SEC’s request, before and after Defendant’s companies were seized. In
6 the Receiver’s First Interim Report (Docket 30, page 9), the Receiver claimed that “Investors
7 appear to have unpaid principal balance of \$46.083 million. Assuming all of these figures are
8 ultimately verified, there will be a likely shortfall of \$11.960 million” (equal to 26% of investor
9 monies).
10

11 Seven years later, the Receiver states to the Court that “The final distribution will bring
12 the total amount distributed to \$35,300,215.97”. Or, 87%, of investors capital (Doc. 1274, page
13 7). Losses to investors were \$5,274,744 (13%). Of the “losses”, Receiver and counsel’s fees
14 thru June 2016 were \$4,547,782, with several hundred thousand more dollars in fees after that
15 date. Clearly, 86% of the 13% loss to investors was due to the Receiver and his counsel’s
16 billings. Factoring in documented fees of the Receiver and his counsel, after 2016, of several
17 hundred thousand dollars, it is likely that the Receiver and his counsel actually, employing their
18 own reports to the court, account for 93 – 95% of the 13% loss to investors.
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22 **II. The Report on Defendant’s Investment Funds of Annette M. Stalker,**
23 **CPA/CFF, CFE**

24 Subsequent to the adverse summary judgement against Defendant in 2013, a third-party
25 forensic accounting was performed in 2016 on Defendant’s investment funds (the “Stalker
26 Report”). In her report, Stalker states, as to her qualifications:
27

1 “I am the owner of Stalker Forensics which is a Certified Public Accounting firm that
2 provides forensic accounting and consulting services. I hold a Bachelor of Science degree in
3 Business with a concentration in Accounting from California Polytechnic University in San Luis
4 Obispo, California. I am a Certified Public Accountant, a Certified Fraud Examiner and am
5 Certified in Financial Forensics. I have provided forensic, accounting, litigation support...since
6 1994.” “...I have served as the Chair of the AICAP’s Forensic and Litigation Services (“FLS”)
7 Committee. The FLS Committee provides guidance to AICPA Forensic and Valuation Services
8 Section Members. “I serve...as a member of the statewide Steering Committee for the Forensic
9 Services Section. I am also an instructor of Forensic Accounting at UC Davis Extension...”.

12 Stalker’s report shows no indication that it did not place full reliance in its findings a
13 reliance for its findings on the same financing materials, and offering documents and operating
14 agreements, which were used by SEC’s Enforcement CPA, and Thomas Seaman, court
15 appointed Receiver. Stalker points out not just variances from normal forensic examinations of
16 SEC employees, and Seaman, but also material omissions from normal forensic examinations by
17 both, as well. Questionably, SEC employees relied on the Receiver’s reports. At worst, SEC
18 deliberately pointed the court to wrongfully constructed findings of the Receiver they asked the
19 court to employ. After Defendant’s funds were seized by way of wrongful financial illustrations
20 of SEC Enforcement CPA’s, SEC never did again produce reports independently from SB
21 Capital materials already held in SEC’s possession from its earlier subpoenas in 2011-2012.

24 Stalker points out that SEC paralegal Sarah Mitchell created schedules for ledgers “*which*
25 *were produced to the Commission by the Receiver*” (page 4 of 18). And, Stalker points out how
26 Mitchell employed a method of summation of all check payments “collectively by the funds”,
27 but did not do the inverse, which was to show monies deposited in the fund’s bank accounts. So,
28

1 not only did Mitchell not use materials held by SEC, she deviated from normal audit and
2 reconciliation methods used by forensic examiners. Also, left unstated in Stalker’s report, is why
3 an SEC paralegal would be presenting financial analysis to the court in the first instance, instead
4 of a party with a financial and forensics background. SEC presented no evidence to the court
5 during earlier civil proceedings that their paralegal held qualifications to produce valid and
6 reliable financial tables, charts, etc.

8 Stalker points out that “There is no reference to the GAAP-based audited financial
9 statements for the Funds which reflect the financial transactions between the Fund and Manager
10 as well as provide detail disclosure about the nature and timing of payments by the Fund to the
11 Manager. And, whereas in its civil pleadings, SEC also made pointed and repeated references to
12 Defendant’s drawings on its “receivable”, nowhere does SEC or the Receiver make reference to
13 the fact that Defendant also made payments on that same receivable, on a timely basis and in
14 accordance with the requirements of that Receivable (see Footnote 1, page 4 of 18, Stalker
15 Report).
16
17

18 **Other Stalker Findings:**

- 19 - The Receiver used a cash-basis method of accounting that “inconsistent with the
20 Funds’ required Generally Accepted Accounting Principles (“GAAP”) basis of
21 accounting
22
- 23 - The Receiver “appears to have recreated accounting records on a cash basis...” when
24 there were “GAAP-compliant audited financial statements available.”. It is not clear
25 why the Receiver did not use the audited financial statements and the underlying trial
26 balance detail data from the external independent auditor, Spiegel
27 Accountancy”...”as the source for the accounting analysis”.

- 1 - In pointing out a major departure from normal audit work of Receiver's, and
2 illustrating the shortcomings of the "cash" basis method used by Seaman, Stalker
3 states when talking about the fund's receivable from the fund manager (of some
4 \$6M), "Under GAAP, those loans...are an asset of the Fund. Under Cash Basis,
5 those funds represent an expense of the fund which decrease the net income or not
6 proceeds on a Profit and Loss Statement. By employing "cash" analysis, Seaman
7 thereby likely grossly misrepresented the fund's financial performance, as pointed to
8 by Stalker.
9
- 10 - Stalker mentions, and provides detail, of other significant matters in the fund offering
11 documents, such as:
12
- 13 ○ That they "put the reader on notice about the authority and potential conflicts
14 with the Manager SBCC", which is a substantial departure from SEC's sealed
15 and uncontested complaint, which references the failure of SBCC to point to
16 conflicts of interest.
17
 - 18 ○ That "The Advances/Payments to manager were fully disclosed in the Funds'
19 Audit Reports
20
 - 21 ○ That notes in the Funds' audited reports disclose details about the amount and
22 terms of the note from the manager, including transparency approved by
23 Defendant to investors and regulators by way of including details about the
24 non-GAAP requirement to assess collectability of the receivable
25
 - 26 ○ That "related party transactions" such as the funds' receivable notes from the
27 manager were fully disclosed under "Related Party Transactions" in notes to
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1 their audited financial statements in 2011 and prior years, including the
2 balance and terms of the note

- 3 ○ That the balance for the note receivable SPF actually “decreased from the
4 prior year”, reflecting adherence to note provisions by Defendant’s companies
- 5 ○ That transactions in the tables of the CPA prepared audited financial
6 statements were “consistent with the IPF Company General Ledger”,
7 demonstrating full disclosure of all financial information between SBCC and
8 their accountants.
- 9 ○ That the funds’ restriction on advances to the fund manager (Defendant) had
10 been “amended and approved by the Department of Corporations”
- 11 ○ That any inconsistency in Defendant’s auditor’s representations in the audited
12 financial statements was due to errors of Defendant’s accountants, and not due
13 to any deliberate instructions of Defendant to avoid transparency. Stalker
14 states on page 12 of her report that “Counter to the auditor’s notation in their
15 workpapers regarding the offering circular” that “a portion of the funds
16 advances as reimbursement...maybe reflected as a note receivable on the
17 Fund balance sheet”.
- 18 ○ That “The 2010 Audit Report Opinion was Qualified” in accordance with
19 GAAP requirements, and not due to “Impropriety of Fund Advances”, and or
20 that it could not be properly recorded as an asset of the fund.
- 21 ○ That “Permission was obtained by the Manager from the Fund investors” to
22 properly reclassify the capital cost “asset”, and not that Defendant had hidden
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1 expenses improperly, as conveyed by SEC and Seaman often throughout their
2 civil pleadings.

- 3 ○ That “Despite several parts of the various offering documents which convey
4 the broad authority...of the manager”, that “..the Manager still sought to
5 disclose and obtain investor approval of changes in the Fund operations and
6 accounting”, with specific detailed examples provided by Stalker within her
7 report.
8

9 Contrary to the representations of SEC and the Receiver which preceded, and bolstered,
10 SEC’s request for adverse summary judgement, the Stalker Report throughout outlines
11 inconsistencies with GAAP and GAAS of SEC’s CPA, and Seaman, not of Defendant’s
12 information provided to investors. In closing her introduction to her report, Stalker states “My
13 review of those documents is not yet completed.”
14

15 Based on that, Defendant asks this Court to approve a completion by Stalker of her
16 report. SEC and Seaman should pay for the completion of this report, from the \$5M in fees paid
17 to Seaman and to his counsel. Clearly, Stalker raises material questions in her preliminary
18 findings of not only impropriety in the methods of SEC, but also of. The question that remains
19 unanswered at this point is “why” did SEC and Seaman depart from normal forensic audit
20 practices, and did their efforts cause there to be unconstitutional due process barriers to
21 Defendant during civil proceedings? Defendant asks this court consider directing a referral of
22 these matters to the United States attorney for a more thorough review of the inconsistencies of
23 the findings of Stalker vs. those of SEC’s CPA and the Receiver, Thomas A. Seaman.
24

25 Of additional note, at the time of SEC’s motion for adverse summary judgement, federal
26 agency U.S. Small Business Administration (“SBA”) had pending a “claim” in excess of
27

1 \$20,000,000 against the Receivership Estate. By the time of the Stalker Report, SBA dropped its
2 claim by more than 99.8%, to less than \$50,000, with no explanation provided by SBA in court
3 records as to why their initial claim was more than four hundred times higher than their final
4 settled claim against the Receivership Estate. Undoubtedly, SBA's claim, in the eyes of the
5 Court, could only have had a substantial negative bearing on Defendant at the time of motion
6 hearings on summary judgement, not any positive benefit whatsoever.
7

8
9 **MOTION FOR NATIONWIDE ENJOINER AGAINST SEC USING THE PHRASE**
10 **“PONZI-LIKE”**
11

12 The word “Ponzi” and any usage of same may bring harm to defendants, as well as to
13 third party investors. This court recognized that fact early in civil proceedings, as evidenced by
14 the court enjoining both parties to be cautious in words employed in ongoing proceedings. Yet,
15 some twelve years after Madoff, SEC continues to employ this harmful term, on appearance
16 entirely for its own benefit (See Exhibit 1). A close reading of Exhibit 1, a recent news article
17 about an SEC “Ponzi-like” civil action, demonstrates that, even before civil pleadings and
18 motion hearings are underway, that investors have already formed opinions in the absence of
19 fully developed factual evidentiary proceedings. If even one party is harmed because of
20 prejudicial opinions that form due to SEC's employment of the phrase “Ponzi-like”, then SEC
21 should be ordered to be discontinue this practice by this court. Are the terms “fraud-like” and
22 “conspiracy-like” valid legal terms? There are already in existence and used by the courts
23 proper, and suitable legal descriptions that SEC may use in filing civil actions and in their press
24 releases.
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1 **MOTION FOR DEFENDANT TO DISCONTINUE DISGORGEMENT PAYMENTS**

2 Defendant has experienced substantial difficulty in gaining employment since release
3 from the U.S. Bureau of Prisons in late July 2019. He has twice declared bankruptcy due to SEC
4 proceedings. And, Defendant has experienced physical conditions during the past year
5 (Defendant already had a 100% VA service-related disability rating prior to going to prison).
6 Despite all this, Respondent has paid in excess of \$23,000 restitution since his release. These
7 payments present a hardship to Defendant, and have also impeded his ability to provide family
8 support to his minor sons (i.e. for dental braces, auto insurance, etc.). And, Defendant continues
9 to be embroiled by SEC Administrative law proceedings (Mark Feathers, re: 3-15755). As SEC
10 is the party that may determine in the future if Defendant may be able to have his disgorgement
11 dropped, there is a conflict of interest here in that Defendant, on appearance, might suffer
12 retaliation from SEC in the future if administrative law proceedings do not go in SEC's favor.
13 For these reasons outlined, Defendant prays that this court now direct that Defendant may be
14 able to discontinue his disgorgement payments at the present time, and make similar
15 recommendation to the criminal court of Hon. Lucy Koh.
16
17
18

19 August 14, 2020

20 */s/ Mark Feathers*

21 _____
22 Mark Feathers, Defendant, *pro se*

23 **Declarations and Statement of Facts:**

24 I swear on my knowledge and belief that all matters outlined herein are accurate and
25 truthful, from San Mateo County, CA.

26 */s/ Mark Feathers*

27 _____
28 Mark Feathers, Defendant, *pro se*

1 **Proof of Service**

2 I have served these papers on all papers by email on this date. I have mailed a paper copy
3 to U.S. District Court on this date.
4

5 */s/ Mark Feathers*

6

Mark Feathers, Defendant, *pro se*