

RESPONDENT’S REPLY TO ENFORCEMENT BRIEF IN THE MATTER OF OIP 3-15755

SEC Senior Trial Counsel John Bulgozdy knowingly crafted a TRO for a civil action, on which this OIP is based (CV12-03237-EJD), with snippets, material omissions, and material mischaracterizations for California limited liability company pooled mortgage funds which Bulgozdy knew were exempt from SEC regulatory oversight; see attached Exhibits 1 and 2. And, Bulgozdy knowingly crafted a preliminary injunction consent in which he embedded legally extraneous and inculpatory language which he had an uninformed defendant, under severe duress and without benefit of counsel, sign; see attached Exh. 3, page 2. And Enforcement’s reply now makes issue that Respondent has not contested “disgorgement” as the basis for a lifetime ban? Respondent is not aware of a “disgorgement” issue being raised in the OIP. In addition to that, Enforcement’s Bulgozdy is fully aware that in the civil action which is running parallel to this OIP (with a FRCP Rule 60 hearing to reverse all Court findings and Orders scheduled for 3-18-21), Respondent did in fact raise the “disgorgement” issue, which Bulgozdy addresses in his civil filing on this matter (see Exhibit 4), but fails to reflect such known fact in his brief of 1-8-21.

Respondent accepted a single manufactured “mail fraud” count, of 29 counts in his original indictment. This was after rotting for a year in a maximum security jail, deprived of family visits, sunlight, living/sleeping most daily hours with gangbangers, drug lords, and sex traffickers on a cement slab and with a fabulous “diet” which included several hundred bologna sandwiches served to Respondent over that period of 420+ days. Respondent was incarcerated for twenty eight months and is now in the middle of 36 months of probation. Within six weeks of Respondent’s release from federal halfway house, [REDACTED]

[REDACTED] In the last thirty months of her life, Respondent spent only 48 hours with his mother that was not in the presence of armed corrections officers or addressing her from behind his side of bullet proof glass in a small cubicle smeared with lipstick stains and tissue paper left behind by others moistened by god-knows-what, while holding conversations which were recorded. And in that last 48 hours, Respondent’s beloved mother was well past being able to fully recognize, and/or, able to embrace Respondent. Defendant had to beg his probation officer for six weeks upon his release, and to file unjustifiable amounts of paperwork [REDACTED]

[REDACTED] and after looking forward to years of being back together again as a family while in prison as one of the means of keeping his spirits up during that dark journey.

SEC’s Bulgozdy and the DOJ combined their efforts to threaten to supersede Respondent’s indictment for all of his period of pre-trial incarceration with a new charge of obstruction, which, by itself, would add 3 to 5 years to any possible criminal sentence, with SEC and DOJ holding full awareness that if such charge obstruction charge, and the basis for it, were read out loud to a jury, that charge, by itself, would surely cause impressions to be formed which would lead a jury to find Defendant guilty on all counts of the indictment. Only seven calendar days before accepting the manufactured plea offered to him, Respondent had accepted, through his court appointed criminal counsel, a single count of “obstruction” offered to him by the U.S. Attorney, with the DOJ offering to drop all other charges, which DOJ held full awareness could not hold up at trial. That U.S. Attorney, Timothy Lucie, after three years’ assignment on Respondent’s criminal case, then resigned his position the following day, and the U.S. Attorney who replaced him, refused to honor the “obstruction” plea offered to Respondent.

The only things Respondent wishes to accomplish at this point is for the Commissioner's to:

1. Recognize that SEC never held regulatory authority over Respondent's investment funds. **This fact is so irrefutable that Enforcement did not, because it could not, refute this matter on Respondent's motion only weeks ago in district court for judicial notice of this fact.** In the SEC hysteria of the "Madoff" period, SEC's prosecution team of Bulgozdy, Susan Hannan, and Roger Boudreau employed the Commission's own failures to its benefit, with a sealed *ex parte* TRO request filled with snippets, material omissions, mischaracterizations, and accounting gimmickry (Boudreau's non-GAAP so-called "pro forma" adjustments to Respondent's GAAP basis financial operations to create Enforcement's so-called "*prima facie*" basis for a seizure and receivership) to present a larcenous profile of Respondent's companies under seal to a federal district court.

Respondent's companies were never subject to Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder,¹ Section 15(a) of the Exchange Act,² and Section 17(a) of the Securities Act of 1933 ("Securities Act"), with specific allowances for exemption appearing within Respondent's offering documents, and with those same offering documents referencing State of California securities law provisions which they were subject to under their only lawful regulator, the California Department of Corporations.
2. Recognize Bulgozdy's unlawful, if not criminal, conduct and refer these matters to SEC's OIG and to the U.S. Attorney to prosecute Bulgozdy, including to disbar Bulgozdy, for his central role in the unconstitutional taking of \$40 million+ dollars of private assets from Respondent and other lawful citizens of the United States, and direct cause of a taking of Respondent's due process rights as guaranteed under the 14th Amendment to the Constitution.
3. Recognize that an Enforcement CPA, Roger Boudreau, used accounting gimmickry to double the distributions of Respondent's investment funds to create the perception that they were a Ponzi-like scheme; see Exh. 4. Boudreau's "good faith" excuse is outrageous and brings shame to public servants, the Commission, and to the accounting profession, which the Commission itself regulates.
4. Recognize that Bulgozdy's handpicked receiver, Thomas Seaman, who Bulgozdy larcenously licensed under seal as a CPA, was, in effect, an agent of the Commission based upon his conduct and his repeated employment on SEC Enforcement actions.
5. Recognize that ALL investor losses of \$4.8 million (SEC's hand-picked receiver represented a "recovery" of 88%, (\$35.2 million recovery), indicating thereby a base value of assets of \$40 million) were caused by the Commission bringing about \$6.7 million expenses to investors; see Exhibits 5 and 6. No losses were caused by Respondent, who founded and managed legitimate and profitable companies properly organized and licensed in the State of California, and supervised by their only proper regulator, the California Department of Corporations.

Through this point, OIP proceedings have resembled a Kangaroo Court. If the Commissioners do not see fit to do dismiss this OIP in full, the above issues will be raised with the Ninth Circuit.

Respectfully,

Mark Feathers, MBA, Ret., Lt. (jg), USN

Respondent

1 Mark Feathers, *pro se*

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

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

9 SECURITIES AND EXCHANGE
10 COMMISSION,

11 Plaintiff,

12 v.

13 SMALL BUSINESS CAPITAL CORP., et al

Case No.: CV12-03237-EJD

Admin Motion for:

**(1) Judicial Notice that Plaintiff
Securities and Exchange Commission
Did not Refute That it Held No
Regulatory Authority over
Defendant Investors Prime Fund,
LLC.**

**(2) Leave to file motion for legal fees for
Defendant for assistance with reply
briefs for pending motion hearings**

DATE: Mar. 18, 2021 TIME: 9:00 A.M.

COURTROOM: 4 JUDGE HON. EDWARD
J. DAVILA

ADMIN MOTION REQUESTS

1
2 On 11-22-20 Defendant submitted an administrative motion (*see* Docket 1365) for
3 judicial notice that Defendant Investors Prime Fund, LLC, was not subject by any lawful basis to
4 federal regulatory oversight by Plaintiff SEC. Defendant asks the Court for judicial notice, under
5 allowable Federal Rules of Evidence, that SEC did not offer any refute to this Court to
6 Defendant's request for judicial notice. SEC did not refute Defendant's pointings in law that
7 SEC never held lawful authority over the operations of Investors Prime Fund, LLC, which was a
8 State of California lawfully permitted and State of California lawfully regulated pooled mortgage
9 investment fund.

10 By using a sealed *ex parte prima facie* TRO in a court of federal jurisdiction, SEC, a
11 federal agency, unlawfully and in violation of the 14th Amendment, usurped the assets of
12 Defendant and investors of Investors Prime Fund, subject to regulation under State of California
13 laws, not federal law. Defendant's assets deprived from him by Plaintiff SEC's unconstitutional
14 taking included Defendant's contractual rights to indemnification for legal fees from Investors
15 Prime Fund, LLC, subject to the laws of the State of California.

16 Defendant asks this Court consider, and take judicial notice, of the fact that Defendant
17 spent in excess of eight hundred days incarcerated in maximum security county prisons and
18 federal prison camps, wholly deprived from family and personal liberty as guaranteed to all
19 citizens by the United States Constitution, from March of 2017 through July of 2019 by way of a
20 forced plea on a government manufactured mail fraud plea related to the operations of Investors
21 Prime Fund, LLC, for which the federal government never held lawful authority over that
22 entities' operations in the first instance, which SEC has always held full awareness of, and which
23 such information SEC has withheld from this Court for more than eight years' time.

24 On the basis of the above, Defendant asks this Court for leave to again request legal fees
25 (*see* Docket 1345), or, preferably, to now approve Defendant's request for legal fees which will
26 aid Defendant prepare his reply briefs to SEC opposition to Defendant's motions for relief (*see*
27 Dockets 1285 and 1361).

28 Respectfully,

Mark Feathers, *pro se*, Defendant

12-15-20

1 Mark Feathers, *Pro Se*, Defendant

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
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24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
Menlo Park, CA [REDACTED]

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

11 SECURITIES AND EXCHANGE)
12 COMMISSION,)

13 Plaintiff,)

14 vs.)

15 SMALL BUSINESS CAPITAL CORP.; MARK)
16 FEATHERS; INVESTORS PRIME FUND, LLC;)
17 and SBC PORTFOLIO FUND, LLC,)

18 Defendants.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

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

**DEFENDANT’S NOTICE OF MOTION
REQUEST AND ADMINISTRATIVE
MOTION UNDER CIVIL LOCAL RULE
7-11 REQUESTING THE COURT’S
JUDICIAL NOTICE THAT
DEFENDANT INVESTOR’S PRIME
FUND, LLC, WAS EXEMPT FROM SEC
REGULATORY OVERSIGHT AND A
STATE LICENSED AND REGULATED
INVESTMENT FUND**

**HEARING: MARCH. 18, 2021 Time:
9:00 a.m.**

Hon. Edward J. Davila

Location: Courtroom 4, 5th Floor

NOTICE OF MOTION REQUEST AND MOTION

Defendant's Rule 60(b)(6) motion hearings are calendared for the Court's consideration on March 18, 2021. Defendant respectfully asks the Court for judicial notice that Defendant Investors Prime Fund, LLC, was a state licensed, permitted, and regulated investment fund, and Defendant SB Capital was an issuer of IPF securities. There was no secondary market for IPF securities; IPF was specifically exempt from Securities Acts provisions SEC cited by SEC in its TRO. Defendant asks the Court recognize the investment practices of IPF were regulated by the California Department of Corporations, not by SEC. From IPF's Offering Circulars (2009-2012) (*see* SEC TRO Docket 9, page 9 of 59)

“THESE SECURITIES ARE BEING OFFERED AND SOLD ONLY TO RESIDENTS OF THE STATE OF CALIFORNIA PURSUANT TO A PERMIT GRANTED BY THE CALIFORNIA COMMISSIONER OF CORPORATIONS. THE COMMISSIONER OF CORPORATIONS DOES NOT RECOMMEND OR ENDORSE TH PURCHASE OF THESE SECURTIS, NOR HAS THE COMSSIONER PASSED UPON THE ACCURACY OF TH INFORMATION SET FORTH HEREIN. THE SALE OF UNITS COVERED BY THIS OFFERING CIRCULAR HAS NOT BEEN REGISTERED WITH SECURITIES AND EXCHANGE COMSSION UNER THE SECURTIES ACT OF 1933, AS AMENDED (THE "ACT"), IN RELIANCE UPON THE EXEMPTIONS FROM SUCH REGISTRTION REQUIREMENTS PROVIDED FOR UNDER SECTION 3(a)(11) OF THE ACT AND RULE 147 THRERUNDER RELATING TO INTRASTATE OFFERINGS. ACCORDINGLY, THESE UNITS ARE BEING OFFERED SOLELY TO CERTAIN SELECTED RESIDENTS OF CALIFORNIA AND NON-U.S. CITIZENS WHO ARE RESIDENTS OF A FOREIGN NATION, WHO MEET THE SUITABILITY STANDARDS DESCRIBED HEREIN, AND THIS DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY WITH RESPECT TO ANY OTHER PERSON. FURTHERMORE, FOR A PERIOD OF NINE MONTHS FROM THE TERMINATION OF THIS OFFERIG, NO UNITS MAY BE SOLD OR OTHRWISE TRANSFERRED EXCEPT TO PERSONS WHO WERE ELIGIBLE TO PURCHASE UNTS IN THE INITIAL OFFERING.”

Id., page 21 of 59:

“...the...brokerage activities of the Manager and the Fund are subject to supervision or regulation by the...Department of Corporations...”

/s/Mark Feathers

Mark Feathers, *pro se* 3-18-22

Mark Feathers, *pro se*

██████████
Menlo Park, CA ██████████
██████████
████████████████████

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SMALL BUSINESS CAPITAL CORP., et al

Case No.: CV12-03237-EJD

**Motion and Notice of Motion for Relief
under Federal Rules of Civil Procedure
60(b)(1) and/or (6) and Request for Judicial
Notice of Materials in Support of Motion for
Relief**

**Request for Judicial Notice that During
SEC's Claims Period Defendant's Funds'
Maintained their Books and Records and
Filed Their Income Tax Returns using the
Accrual Method of Accounting in
Accordance with Their Offering Documents**

DATE: Mar. 18, 2021 TIME: 9:00 A.M.

COURTROOM: 4 JUDGE HON. EDWARD
J. DAVILA

1 **I. INTRODUCTION - RULE 60(b)(6) MOTION TO REVERSE JUDGEMENT AND ORDERS**

2 Defendant asks for Rule 60(b)(1), (2), and (6) relief on two considerations. The first basis
3 for extraordinary relief is that in precedent civil proceedings the Court approved SEC's TRO (in
4 2012) and SEC's MSJ (in 2013) by making its determinations of fact based upon objectively
5 false and highly distorted financial illustrations information provided to the Court by SEC, and
6 which violated GAAP, because these "facts" were prepared by SEC, and the court appointed
7 Receiver afterwards, by using a cash-basis accounting analysis on Defendant's accrual-basis
8 accounting state regulated pooled mortgage investment Funds. Along with these highly distorted
9 objectively false financial illustrations, SEC employed material omissions, mischaracterizations,
10 and misstatements about the Funds in its TRO, and the receiver and his counsel, while taking
11 \$5.1 million payment for their services (*see* Docket 1293-2) failed to follow Court orders to
12 "investigate" (*see* Docket 30) the operations of the Funds, which was presumably meant to
13 include their reading of the Funds' offering document language somewhere between the date of
14 the Receiver's appointment in June of 2012 and the date of completion of the Receiver's so-
15 called "Preliminary Forensic Accounting" (*see* Docket 171) or his Forensic Report (*see* Docket
16 557) August 15th of 2013, precisely one day before the Court's MSJ hearing. The Court, in error,
17 held no evidentiary hearings on the receiver's reports even though Defendant showed strong
18 basis that findings of fact presented by the Receiver in those reports could not be reliably
19 sufficient for MSJ findings in Defendant's opposition filings (*see* Dockets 172 & 568) because
20 the receiver was not qualified for a GAAP analysis, did not hire accountants who were qualified
21 for a GAAP analysis when he could have, and should have, knowingly employed the wrong
22 accounting analysis of Defendant's investment funds, while also failing to demonstrate in his
23 reports on the material issue of whether, or not, Defendant was operating his Funds in
24 accordance with the terms of the Funds' offering documents. A receiver was never warranted.
25 However, "[A] primary purpose of appointing a receiver is to conserve the existing estate" *26
26 and " [r]eceivers appointed at the SEC's request are equipped with a variety of tools to help
27 preserve the status quo while the various transactions [are] unraveled . . . to obtain an accurate
28 picture of what transpired." *Eberhard v. Marcu*, 530 F.3d 122, 131 (2d Cir. 2008) (quotations
omitted) (bolded alterations in original).

 The second basis for extraordinary relief is that Defendant was denied qualified counsel by
the Court in its error primarily because Defendant, on an uninformed basis and while under
threats from SEC, signed SEC's Order to its preliminary injunction ("PI") while not knowing

1 (until the year 2017) that it held legally extraneous and inculpatory language even while at odds
2 with itself by stating their to be no findings of fact. Although Defendant signed SEC's PI on 7-
3 3-12, the Court in its remand (*see* Docket 70) recognized counsel of "limited engagement", but
4 in its error failed to note that Defendant's counsel "of limited engagement" filed a Notice of
5 Appearance only on 7-9-12. Although no findings of fact were permissible under the limited
6 scope of Defendants' consent to SEC's preliminary injunction ("PI", *see* Dockets 29 and 29-1),
7 SEC nonetheless included legally extraneous, inculpatory language in the PI and Order stating
8 that "[g]ood cause exists to believe" that Mr. Feathers has engaged in, is engaging in, and is
9 about to engage in "acts, practices and courses of business that constitute violations" of multiple
10 provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, and that "[t]he
11 Commission has demonstrated a probability of success on the merits in this action and the
12 possibility of dissipation of assets." The Court erroneously relied in part on the legally
13 extraneous, inculpatory language that the SEC had inserted in the Preliminary Injunction, stating
14 that although Defendant had not admitted to any wrongdoing by consenting to the Preliminary
15 Injunction, the Injunction contained factual findings of fraud "that cannot be ignored."

16 In its Remand to deny legal fees for Defendant (*see* Docket 70) the Court, in its error,
17 accepted prejudicial statements of the Receiver in his unsolicited "letter-form report" with the
18 Court (*see* Docket 54), none of whose' contents had proper evidentiary foundation to establish
19 civil wrongdoing by Defendant sufficient for the Receiver or SEC sought to add to its causes of
20 action against Defendant, such as Defendant's "payments to nanny and children", issuing himself
21 a "cashier's check", or show basis as to defeat Defendant's arguments as to his own "equity
22 injection" into his company (*see* Docket 55, page 1). In his second Status Report (*see* Docket
23 53) while the Receiver backpedaled on the facts as to the circumstances of the "cashier's check",
24 citing it to be a "moot point", the Court, in its error, cited the "cashier's check", as one of the
25 reasons to deny legal fees to Defendant (Order, Docket 70, page 6, lines 5-7). The receiver,
26 thereafter, never presented to the Court in his interim reports or his so-called "forensic reports"
27 any basis to support his contentions in his "letter-form report" to the Court (*see* Docket 54) that
28 Defendant had engaged in any wrongful activities. The Court, in error, denied Defendant's
subsequent requests for legal expenses (*see* Dockets 457, 510, and 1345) based on these same
matters, and denied, in error, Defendant's request for appointment of an expert witness (*see*
Docket 488) as "moot" because it had just prior issued its MSJ findings.

1 In its Remand (see Docket 70), the court cited, in its error, that Defendant’s auditors could not
2 issue a “clean” financial statement. Under GAAP there is no such definition of a “clean”
3 financial statement. Subsequent to that, the Court, in its error, would not accept the pointing of
4 Defendant in his pleadings to an email showing that it was Defendant’s auditor who advised him
5 as to how the Funds’ should properly reflect the accounting treatment and reporting on the
6 manager’s note, and the Court, in its error, denied Defendant’s motion for enjoinder of his
7 auditors (*see* Docket 559) because of their material involvement in this matter.

8 On appeal, the Ninth Circuit applied correct legal rules to the wrong set of facts.
9 Defendant could never present or argue the correct set of facts because of material errors of the
10 Court and gross misconduct of SEC and the Receiver, who, on appearance could be likened to an
11 agent of SEC based on his conduct and his extensive history of SEC receivership appointments.
12 Defendant asks for Rule 60(b)(1) and/or Rule 60(b)(6) relief from the Court by way of
13 recognizing Defendant’s tolling on these issues, and a reversal of all prior Court orders adverse
14 to Defendant, based upon gross misconduct of the United States Securities and Exchange
15 Commission (“SEC” and/or “Plaintiff”) and the Receiver, combined with errors of the Court
16 which caused wrongful findings of fraud of Defendant.

17 If due process had been afforded Defendant, and had his private property not been taken
18 wrongfully, both of these violations of Defendant’s protected 14th Amendment rights caused by
19 SEC, and continued by the Receiver, a jury of reasonable persons, had Defendant been properly
20 represented by qualified counsel, would have found that SEC did not establish proper foundation
21 for either its TRO or its MSJ, and further, that SEC acted in extraordinary misconduct, likely due
22 self-serving goals the Agency established arising from its wholly self-caused Madoff debacle
23 (*see* Dockets 1355 & 1356). Because of the extraordinary harms which have befallen Defendant
24 from SEC’s wrongful TRO, Defendant asks for extraordinary relief from the Court. Defendant is
25 *pro se* and asks the Court to also consider if Federal Rule of Civil Procedure 9(b) is applicable.

26 **II. ARGUMENTS**

27 SEC, through the means described, wrongly established central fraud and scheme elements in
28 its TRO of “Ponzi-like Payments to Investors” (*see* Docket 7, narratives and tables, pages 9-10).
The word Ponzi by itself is a harmful and potentially prejudicial, term which Defendant
challenged prior (*see* Orders, Dockets 143 and 209), and, when employed within a hyphenated-
phrase, is a very vague term, at best, but very destructive on those to whom it is applied. Despite
the Court’s order for SEC to not use language destructive to Fund investors and affecting the

1 viability of Fund assets, SEC again did so in its MSJ (*see* Docket 537, page 8, lines 10-11); the
2 Court erred by allowing this to Court despite its prior Orders, and in fact, the Court then in error,
3 used the very same phrase (*see* Docket 571, page 15, line 23) in its MSJ Order in favor of SEC,
4 likely due to SEC employing objectively false facts in its MSJ. At best, SEC employed
5 unnecessary surplusage with use of such a deliberately vague term, and, at worst SEC used the
6 term “Ponzi” for deliberate prejudicial impact it would cause to Fund investors (*see* Dockets 478
& 481), and to the Court as the preliminary trier of fact, and thereby to harm Defendant.

7 This Court should consider if Defendant was afforded equal protection as others with similar
8 charges in a different era than SEC’s heightened Ponzi-period of 2009-2012 who faced similar
9 allegations of fraud, minus SEC’s scheme of employing a “Ponzi-like” label on the Funds and
10 Defendant. Fund offering documents always held provisions, written by the Fund’s outside
11 counsel, that new investor capital could (exactly like a “Ponzi” scheme in the first instance, using
12 lawful definitions of that word) properly be used for distributions to “prior” investors, and that
13 investor Fund profits would be determined in accordance with GAAP; *see* TRO Docket 9-1,
14 page 52 of 59, and TRO Docket 9, page 8 of 59:

- 15
- 16 (1) “A new investor’s subscription may be used in whole or in part to fund withdrawals
or redemptions”
 - 17 (2) “To the extent cash distributions exceed the current and accumulated earnings and
18 profits of the Fund, they will constitute a return of capital”

19 In criminal proceedings the government did not dispute alleged misstatements and
20 omissions identified by SEC to form the basis of its TRO were accurately set forth in
21 audited financial statements and offering documents of the Funds, nor that these were
22 readily available to any investor, *see, e.g.*, 6-29-2011 IPF Offering Document, Docket #9-1,
23 at 25 [SBCC006941] (audited financial statements available); 12-28- 2009 SPF PPM,
24 Docket #9-4, at 25 [SBCC007641] (same). Additionally, the books and records of the Funds
25 were available for inspection. *See, e.g.*, 12-28-2009 SPF PPM, Docket #9-4 [SBCC007641];
26 1-25-2011 SPF PPM DKT 9-4 [SBCC011738]; 6-29-2011 IPF Offering Document, Docket
#9-3 [SBCC006952].

27 SEC created a TRO replete with “facts” in its narratives, tables, spreadsheets, and charts
28 not derived from the Funds’ CPA prepared cash-basis GAAP statements, but with

1 objectively false “facts” SEC derived by way of a pro forma improper cash-basis analysis,
2 “add backs” (*see* Docket 8, page 2, lines 17 and 24, page 5, line 6, and page 6, line 15),
3 “allowance” adjustments (*id.*, page 3, line 21), “calculations” (*id.*, page 5, line 5), “deductions”
4 and “reductions” (*id.*, page 5, line 7 and page 6, line 5), characterizations of “erroneous”
5 premiums and “mechanisms” (*id.*, page 6, line 3), “adjustments” (*id.*, line 14), and
6 “determinations” (*id.*, line 16).

7 Defendant’s reliance on the review and approval of the challenged financial statements by
8 professional accountants remains a complete defense, defeating both intent- and negligence-
9 based charges; *see e.g., Addington v. Comm’r*, 205 F.3d 54, 58 (2d Cir. 2000). Defendant relied
10 in good faith on accounting experts in making representations concerning impairment, fair value,
11 and GAAP compliance; SEC’s financial statements charges in all its motions should be
12 dismissed; *see Addington*, 205 F.3d at 58.

13 SEC’s TRO engaged in repeated instances of unreasonable conduct and violation of GAAP
14 standards, which, for private accounting professionals, could prevent them from appearing before
15 SEC; *see* 17 C.F.R. § 201.102(e)(1)(iv)(B)(2). SEC cannot dispute that its Enforcement
16 accountants were “Experts”, and cited Federal Rules of Evidence in their witness statements.
17 Subsequent to that, SEC impeached its own expert’s testimony (*see* Docket 160), creating very
18 strong direct inference to the unreliability of their testimony in their TRO. On that basis, the
19 testimony of SEC in its TRO is unreliable hearsay, is inadmissible and, to the extent it is
20 admitted, should be accorded little, if any, weight; *see* SEC Rule of Practice 320, 17 C.F.R. §
21 201.320; Amendments to the Commission's Rules of Practice, 81 Fed. Reg. 50,212, 50,226-27
22 (July 29, 2016); 5 U.S.C. § 556(d). SEC had a continuing obligation to produce to Defendant,
23 but failed, until 2014 at the earliest, and never at all in full amounts as required, all material
24 exculpatory and impeachment evidence pursuant to the Due Process Clause of the Fifth
25 Amendment of the U.S. Constitution, the Brady doctrine, the Jencks Act, and SEC Rules of
26 Practice 230 and 231, 17 C.F.R. §§ 201.230, .231. *See supra* ¶¶ 99-100.

27 Through a defective TRO SEC met its lower burden requirements “than a private civil
28 litigant” seeking a TRO or other pretrial relief, and established likelihood of success on the

1 merits, and a presumption of irreparable injury to Fund investors to justify injunctive relief, and a
2 premise for the Court to freeze to assets for ancillary injunctive relief and to appoint a receiver.

3 **III. OTHER SEC DUE PROCESS HARMS ON DEFENDANT**

4 During the period of civil proceedings, SEC frequently arbitrarily, and without merit,
5 exercised its substantial powers, unfairly stripping *pro se* Defendant of time necessary to defend
6 himself during civil proceedings, and time that could have been better spent on life, liberty, and
7 supporting his family. In 2014 Defendant gained U.S. Bankruptcy court's concurrence SEC
8 wrongly attempted to violate Defendant's 14th Amendment property rights, where SEC lost to
9 Defendant because neither its arguments or legal theories had merit (*see* Docket 71 "Order
10 Granting Motion to Avoid Judicial Lien", No. 13-55816, Nor. Dist. of CA). During MSJ
11 proceedings forced Defendant to spend much time and effort producing Opposition pleadings
12 (*see* Docket 509) in order to protect his 5th Amendment protected privileges to not have his
13 spouse testify against him (*see* Order, Docket 536, page 3, lines 6-10). During this same period,
14 SEC motioned, unsuccessfully, (*see* Docket 576) for evidentiary sanctions against Defendant, but
15 only after subjecting Defendant to third-world conditions insisting on a videotaped deposition in
16 2012 where Defendant arrived at SEC offices in suit and tie and was informed by SEC at the
17 start of eight hours of depositions the office "had no air conditioning", and that SEC "had no
18 budget for water", and informed Fund investors of same, and to be aware of SEC's deposition
19 tactics. Following Defendant notifying Fund investors of these matters, SEC filed a motion in
20 the middle of time and labor intensive MSJ pleadings with hundreds of pages of pleadings and
21 exhibits which included an obituary of Defendant's spouses' recently deceased father (*see*
22 Docket 453, Exhibit 2), raising inference of ulterior motives of SEC with both of these actions.

23 SEC got even with Defendant for these matters, working with DOJ to indict Defendant at the
24 end of 2014, only after more than twelve months transpired after Defendant lost summary
25 judgement, with that time lapse due to the fact that DOJ's charges, all relying on the work of
26 SEC and the Receiver, could not possibly lead to a win at trial. The Fifth Amendment
27 "prohibit[s] the government from prosecuting a defendant because of some specific animus or ill
28 will on the prosecutor's part, or to punish the defendant for exercising a legally protected
statutory or constitutional right." *United States v. Benson*, 941 F.2d 598, 611 (7th Cir. 1991)

1 (citations omitted). “Actual vindictiveness must play no part in a prosecutorial or sentencing
2 decision and, since the fear of such vindictiveness may unconstitutionally deter a defendant’s
3 exercise of his rights, the appearance of vindictiveness must also be avoided.” *United States v.*
4 *King*, 126 F.3d 394, 397 (2d Cir. 1997) (internal quotation marks and brackets omitted). A
5 defendant who alleges vindictive prosecution must make a showing of an appearance of
6 vindictiveness. *United States v. Burt*, 619 F.2d 831, 836 (9th Cir. 1980). After that showing, “the
7 burden then shifts to the prosecution to show that the prosecutor’s decision to prosecute was
8 justified.” *United States v. Heldt*, 745 F.2d 1275, 1280 (9th Cir. 1984) (citation omitted). In
9 recognition of the government’s pattern of vindictiveness and misconduct, Defendant’s federal
10 public defender motioned in 2016 to compel discovery (*see* Docket 1195 and Docket 65, CV14-
11 00531-LHK, page 10, lines 18-19).

12 **IV. DEFENDANT’S HISTORY PRIOR TO SEIZURE ON JUNE 28, 2012**

13 Defendant resigned his Naval commission in 1989, completed MBA studies and continued
14 public service working from 1992 – 1994 with SBA, and from 1994-2005 building his SBA
15 experience with FDIC insured banks as their SBA 7(a) and 504 program manager. After
16 thousands of hours familiarizing himself with, and abiding by, SBA’s complex CFR 13, SOP
17 50-10 and SOP 50-50, and assisting scores of small businesses with SBA loans, Defendant
18 founded the Funds in 2006 and 2008, specifically for the purpose of the Funds becoming national
19 SBA direct 7(a) and 504 lenders. Defendant originally named his company 504 First Mortgage
20 Lending Corp. to make clear the nature of Defendant’s business operations to prospective clients
21 seeking expertise in SBA lending operations. In 2010 Defendant’s efforts and his reputation for
22 integrity with SBA allowed the Funds to obtain one of only fourteen national Small Business
23 Lending Company licenses issued nationwide by SBA.

24 **V. FACTS SHOWING DUE PROCESS INTERFERENCE THROUGH THE DATE**
25 **OF, AND AFTER, DENIAL OF LEGAL FEES**

26
27 SEC brought a non-public Order of Investigation of Defendant on 12-5-11. SEC issued a
28 subpoena to Defendant on 12-6-11. Defendant voluntarily stopped selling investments in March
2012. Defendant’s company and personal bank accounts, and the Funds, were seized on 6-26-12.

1 At seizure Defendant's company had \$263,575 (*see* Docket 30, Exhibit A) cash and a civil
 2 judgement award (*see* Docket 1164, the "Cline" Judgement) originating from 2007 with book
 3 value in excess of \$300,000 in 2012. That judgement had \$110,507 of actual income from 2012-
 4 2016 denied from Defendant (*id*). At least \$600,000 of Defendant's assets were unavailable to
 5 Defendant during the entirety of civil proceedings because of SEC's assertions that the assets
 6 were traceable to fraud through its defective TRO and Complaint, and which SEC knew of.

7 The Receiver informed district court it appears business activity "in relation to the SBA loans"
 8 was properly managed; *see* 6-28-12 Transcript, CV12-03237 EJD, Dkt. No. 1197. The
 9 Receiver's First Status Report on 7-10-12 stated (a) it "appears that the Receiver has or will
 10 shortly be in possession of funds in the amount of \$10,184,613.50", and (b) the Receivership
 11 Entities could receive another \$4.216 (million) in the short term, and (c) in reference to loan
 12 servicing and interest income of the funds of "\$196,500 per month", "it appears that the interest
 13 income and servicing income generated by SB Capital's operations were not alone sufficient to
 14 fund payment of monthly distributions to investors...of \$301,500 per month". The receiver
 15 failed "to find" an average of \$134,556 of premium income to the Funds, per month, from the
 16 date of their SBA licensing on 4-1-10 through seizure 6-27-12 (*see* Docket 557, Receiver's
 17 Forensic Accounting Report, page 9, line 22, showing \$3.663 million of Fund premium income),
 18 which would have covered that "shortage" and then some.

19 **VI. SBA EVENTUALLY ARRIVED AT OPPOSITE CONCLUSIONS OF SEC**

20 Caught without awareness of SEC's fraud and scheme claims on Defendant, SBA OIG put in
 21 a subpoena to the receiver in August 2012, followed by SBA's claim against the receivership
 22 estate exceeding \$24 million, only to be later dropped by 99.8% to \$40,000 (*see* Docket 1164)
 23 when irrefutable facts unfolded about the legitimacy of Fund operations.

24 **VII. SEC FAILED TO ALLEGE WITH REQUISITE SUFFICIENCY IN ITS TRO**

25 SEC's TRO Table of Contents (emphasis by underscores):

- 26
 27 1. II.B. Feathers and SB Capital's Use/Misuse of the Funds' Moneys
 28 2. II.C. Defendants' Ponzi-like Payments to Investors
 3. II.D. Use of Offering Proceeds
 4. II.E. The Funds' Conservative Lending Standards

5. II.F. The Funds' Loan Portfolios and Their Performance
6. II.G. Conflicts of Interest Between the Funds and SB Capital

Under GAAP, "Loans to Manager" (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. SEC always held awareness of disclosures and explanations in the audited financial statements, QuickBooks accounting records, and auditor-prepared workpapers that are counter to the \$7.497 million portrayed in its MSJ, with similar numbers in its TRO, as "Misstatements Regarding Fund Loans and Money Transfers".

SEC always held awareness that "Offering Documents' "Use of Proceeds" Section Included Provisions for Payment by the Fund to the Manager for Organizational Expenses, and that 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." 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. Similarly, SEC always held awareness that the "Advances/Payments to Manager" Were Fully Disclosed in the Funds' Audit Reports". Email communications between Defendant and the Funds' 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

1 costs that may be capitalized as organization/syndication costs. In both the IPF and SPF
2 audit reports, the auditors' opinion was that the financial statements present fairly, in all
3 material respects, the financial position of the Funds.”

4 SEC always held awareness that SPF 2010 Audit Report and Financial Statements
5 Note 7, Related Party Transactions disclosure included details about the amount and terms
6 of the note due from manager, and that the IPF 2010 Audit Report and Financial
7 Statements Note 11, Related Party Transactions, disclose details about the amount and
8 terms of the note due from manager”. SEC always held awareness, with the its possession
9 of the Fund's audited financial statements, which were consistent with the IPF QuickBooks
10 general ledger details, that the \$1,374,047 amount included in Table 1 of SEC's MSJ (see
11 Docket 479) was known, audited and disclosed by Spiegel/SAC and, therefore, not
12 misrepresented by MF or the Fund.

13 SEC always held awareness that the Funds' 2010 Audit Report Opinion Was
14 Qualified Due to Inability to Assess Collectability of Receivable from Fund Manager, Not
15 Due to Impropriety of Fund Advances, that Permission was obtained by the Manager from
16 the Fund investors to reclassify the capital cost asset, that several parts of the various
17 offering documents conveyed the broad authority and responsibility of the Manager, and
18 that Defendant still sought to disclose and obtain investor approval of changes in the Fund
19 operations and accounting, and that the Advances by IPF to Manager Continued in 2012
20 Under the Provisions Outlined in the Offering Documents and Operating Agreements.

21 Defendant's outside auditor relied on language of Fund offering documents to perform
22 accounting and produce audited financial statements that disclosed cash transfers (*see* Stalker
23 Report at 6-14). The government held these same materials and admitted its review of these
24 prior to the TRO (*see* Declarations 2-33, Docket 9, CV12-03237-EJD). Information regarding
25 the Fund's performance and its current loan portfolio is set forth below was set forth in the
26 Fund's 2010 Audited Financial Statements. The Funds' 6-29-2011 IPF Offering Document (*see*
27 Docket 9-1) shows that “A copy of the Fund's audited financial statements as of December 31,
28 2010” were available from the Fund Manager and Further details about the Fund's loan portfolio
are included in those financial statements”. Within offering documents were tables of contents

1 pointing investors' attention within the documents to those allowances, provisions, and reporting.
2

3 **VIII. OTHER SEC DUE PROCESS INTERFERENCE**

4 SEC arguments supported the fact that Defendant needed qualified counsel when it argued
5 Defendant's motion filings were "irrelevant or not supported by any competent evidence" (*see*
6 Docket 617, page 1) and "...legally deficient, irrelevant, not supported by any credible
7 evidence..." (*id.*, page 8, lines 4-5). The Court, as well, in error, criticized in its Order for
8 summary judgement in favor of SEC (*see* Docket 591) pro se Defendant's pleadings methods
9 and styles, while failing to look at the merit of Defendant's arguments, which held sufficient
10 evidentiary support that there should have been no MSJ findings in favor of SEC.

11 An expert witness was always beyond Defendant's resources due to SEC's asset freeze, loss
12 of income, and poor credit from Chapter 7 and Chapter 11 bankruptcies Defendant was forced to
13 file in 2013 and 2015. SEC raised in its TRO Defendant's fiduciary responsibilities (*see* Docket
14 8, page 2, line 7) without citations to California law or statute and mischaracterized that
15 Defendant had only certain "limited conflicts" (*see* Docket 7, page 2, line 7) while holding
16 knowledge that Fund documents had substantial references to Manager's conflicts. SEC was
17 always Defendant's pooled mortgage funds, licensed and highly regulated by an agency of the
18 federal government, SBA, had core lending operations which rebutted SEC's notion the Funds'
19 were engaged in a scheme. The Receiver's Final Accounting shows loan portfolio gross
20 servicing and interest income of \$6,527,821.57 for June 2012-2016 (*see* Docket 1164, page 8).
21 In other words, unlike a Ponzi scheme, the Funds were not "phony" and did not "lack economic
22 substance".

23 SEC's TRO employed highly visible, improperly derived, central element tables of "loan
24 premiums" up to "33%". In actuality SEC displayed premiums 300% over true amounts by
25 varying from industry practice, which is to calculate loan premiums with fractional denominator
26 of a date of SEC's choosing to calculate its premium, rather than dividing a premium by the
27 gross funded amount of the loan as the denominator to that fraction, as the central element of
28 SEC's TRO "emergency" relief claim for the appearance of "dissipation" of investor's capital
(*see* TRO, Docket 7, page 23, line 9).

1 SEC cited improper “cash transfer” citations on the first page of its TRO “Feathers and SB
2 Capital have taken over \$6 million from the funds to pay the operating expenses of SB Capital”.
3 SB Capital was entitled to reimbursement of its expenses to manage the Funds. SEC deposed
4 Defendant at its regional headquarters in 2012 months prior to the Funds’ seizure and had
5 opportunity to question Defendant on central elements of its TRO. Defendant would have
6 pointed to, while with counsel, provisions in Fund offering documents, auditor communications,
7 and disclosure NOTES in audited statements to show transparency in Fund and manager
8 operations. Defendant would have pointed to Fund documents that put investors on notice about
9 the authority and potential of conflicts with the Manager.

10 SEC always held awareness that during the period of claims of SEC’s emergency Defendant
11 was paying substantial monies on the Funds’ receivables, and that its method in its table of Gross
12 Cash Transfers in Docket 479 described a summation of all check payments from IPF and SPF,
13 collectively the Funds, to the Manager, SBCC, but omitted the material information that monies
14 were deposited into a Fund bank account by the Manager in its table.

15 The Court failed, in error, during predicate civil proceedings to recognize the merit to
16 Defendant’s arguments that the Fund’s auditors violated attorney work product doctrine by
17 providing SEC with a copy of a letter from Fund outside counsel without authority from the
18 Fund Manager. SEC held lawful obligation to produce to the Court knowledge of its awareness
19 that [REDACTED]

20 [REDACTED]”
21 Fund counsel’s letter clearly was work-product doctrine protected from disclosure materials
22 “prepared in anticipation of litigation or for trial by or for another party or its representative
23 (including the other party’s attorney, consultant, surety, indemnitor, insurer, or agent). On
24 appearance Defendant’s counsel sent this letter specifically to prepare a defense for himself in
25 anticipation of litigation; FED. R. CIV. P. 26(b)(3)(A); *see also Upjohn Co. v. United States*, 449
26 U.S. 383, 398 & n.7 (1981); *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947); *McKinley v. Bd. of*
27 *Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 341 (D.C. Cir. 2011).

28 SEC and the Receiver both held knowledge that the Funds had liquidity features beyond their
substantial balance sheet cash that allowed SB Capital to have the Funds concurrently make

1 member distributions and to finance new SBA loans through the sale of up to 90% of SBA loans
2 (*see* Docket 30, page 10, line 3). Pro se Defendant did not know the working of Federal Rules of
3 Evidence and Civil procedure. Fund investors who were CPAs and licensed attorneys submitted
4 letters to the Court showing indication of their belief (*see* Exhibits 1 & 2) in the potential abuse
5 of receiverships and likely could have been investors that Defendants' qualified counsel could
6 have taken sworn testimony from attesting on their well-founded belief in SEC's wrongs.
7 Defendant only gained awareness after SEC's MSJ of a disgruntled past investor who
8 communicated with SEC more than fifty times with scheme accusations from 2010-2011 due to
9 her wrongful belief that Defendant owed her fees activities for her unlicensed securities broker
10 work, showing lawful evidentiary violations of law by SEC while also violating the basic precept
11 in American law to know who your accuser is.

12 SEC civil suits for injunctive relief are authorized to be brought under Section 20(b) of the
13 Securities Act, on "proper showing" of a "scheme". SEC created its "proper showing" and
14 "reasonable likelihood" of Defendant violating federal securities laws with a TRO by alleging
15 impropriety of "loan sales" to "generate fees to management" while holding materials showing
16 Defendant's operations to be in accord with the Funds' offering document language. SEC's
17 TRO employed nomenclature outside of mortgage and/or GAAP norms in its TRO to describe
18 the Funds' "receivable" asset and the nature of the Funds' receivables as fund "loans" and in
19 violation "of conservative loan policies" rather than by the actual representations in Fund
20 offering documents and audited financial statements. Ultimately, actual Fund investors losses of
21 \$4.8 million (*see* Docket 1164) were directly caused, and not linked by attenuation, to SEC's
22 TRO and the direct expenses of the receivership estate of \$6.7 million (*see* Exhibit 1293-2).

23 SEC caused the Defendant to be placed into receivership without providing prior notice and
24 opportunity to be heard on TRO issues by way of a Wells notice which SEC typically issues to
25 the target of its investigations before filing a complaint to allow the target to marshal evidence to
26 demonstrate there is no basis for prosecution before assets are frozen, and during a period that
27 Defendant had benefit of counsel; *see* 17 C.F.R. § 202.5(c). If SEC had provided Defendant
28 with a Wells notice, he could have set forth his position with respect to why SEC should not

1 bring an action against him; *see* page 20, “Securities and Exchange Commission, Division of
2 Enforcement, Enforcement Manual, produced by the Office of Chief Counsel 11/28/17”. SEC’s
3 decision to freeze Defendant’s assets and Fund assets contributed to the Court’s denial of legal
4 fees, *pro se* status for Defendant, and contributed to the court’s ultimate determination of
5 summary judgement in favor of SEC, which led to Defendant’s criminal prosecution. In *United*
6 *States v. Payment Processing Center*, 439 F. Supp. 2d 435 (E.D. Pa 2006), the Court faced an
7 issue of some similarity as to here. The Court ruled in favor of the Defendants, who also had a
8 TRO, and allowed the Defendant’s indemnification although there was no provision for that in
9 their operating agreement. Finding in favor of the Defendants, the Court Stated:

10 [A] court cannot make a final determination of willful misconduct, e.g., fraud, or
11 recklessness in the vacuum of an *ex parte* submission. Our adversarial system of
12 justice is founded on the notion that allegations of wrongdoing must be tested
13 through discovery, confrontation, cross-examination, and courtroom advocacy in the
14 public forum. The Court further explained that an *ex parte* TRO made to preserve
15 the status quo is not a judicial determination of the merits.” Here, Defendant did
16 have fund indemnifications. The Court, however, could not be aware of Plaintiff’s
17 failure to allege in their TRO their central elements. Plaintiff used remaining civil
18 proceedings as their means to re-test their remaining Complaint’s causes of action
19 using the same flawed cash-flow analysis and material omissions, misstatements, and
20 mischaracterizations against a Constitutionally harmed, due process-deprived,
21 scheme-vilified, and bankrupt and financially resourceless *pro se* Defendant.

22 The Supreme Court has already held that lowering the burden of proof substantially weakens
23 the presumption of innocence, and has reversed cases where the standard of proof is lowered
24 from beyond a reasonable doubt to a preponderance of the evidence. SEC is also aware that
25 Fund auditor Spiegel was obligated under the Securities Exchange Act (1934) and the U.S
26 Private Securities Litigation Reform Act of 1995 Section 10A to determine whether it was likely
27 that an illegal act by Defendants occurred, and made no presentations in civil proceedings that
28 the Funds’ demonstrated their belief in Defendant’s illegal acts under 10A prior to SEC’s TRO,
which was all due to the fact of Defendant’s auditors were state regulated, not SEC regulated.

24 **IX. CONCLUSION**

25 Probable cause for pre-trial asset seizures must be based on particularized facts, not mere
26 suspicion of illegal activity that Defendant participated in a scheme or artifice to defraud and had
27 the specific intent to deprive victims of money or property. The Supreme Court has noted that
28

1 probable cause “is not a high bar: It requires only the kind of fair probability on which
2 reasonable and prudent [people], not legal technicians, act.” *Kaley v. United States*, 134 S.Ct.
3 1090, 1103 (2014)(internal quotation omitted). Here, SEC established probable cause solely
4 through *ex parte* sealed affidavits of only its own Enforcement prosecutors and accountants,
5 which not only was conclusory, but presented objectively false information based on matters
6 described herein.

7 Since the TRO, the Receiver’s report (see Docket 1164) in 2016 buttresses the validity of
8 Defendant’s financial presentations in their tax returns and audited financial statements, and
9 discredits any validity to SEC’s probable cause landscape in its TRO or its MSJ. “It takes little
10 imagination to see that seizures based entirely on *ex parte* proceedings create a heightened risk
11 of error.” See *Kaley* at 1113 (Roberts, C.J., dissenting). For Defendant, SEC’s TRO created
12 instant harms, and ultimate harms that still resonate with Defendant through this day.

13 Had Defendant benefitted with qualified counsel and gone to trial, a reasonable civil juror
14 would have seen the government impeached itself many times over (*i.e.*, see Docket 160). The
15 Fifth Circuit has held that when government seeks equitable relief it “is as much bound to do
16 equity as is a private litigant.” *Lacy v. US ex rel. and for Use of Tennessee Valley Authority*, 216
17 F.2d 223, 225 (5thCir. 1954). The Fifth Circuit held that “the United States is no more immune
18 to the general principles of equity than any other litigant.” *Id.*

19 A reversal of prior Orders is the most effective remedy here to help deter SEC from
20 similarly breaching its duties of care in the future. Defendant held some level of awareness, but
21 not the ability to properly identify, nor articulate, the gravity of the flaws in SEC’s TRO. We
22 live in a society governed by laws, including those government must follow, in order to not harm
23 citizens. SEC will always push prosecutorial limits. The Court should establish limits now for
24 the benefit of other private citizens in order to avoid their risk of harm in the future, and in order
25 to not allow SEC to impede fairness in litigation, such as has been experienced by Defendant.

26 There was no error of the Court in its preliminary injunction based on facts presented by
27 SEC. At trial, with objectively false facts underpinning its causes of action in its complaint and
28 knowledge of this by jurors, SEC could never have held basis for a favorable outcome nor have
established merit to its case, and there is no logical argument that SEC would suffered

1 irreparable injury, hence its basis for a preliminary injunction, since it suffered no injury in the
2 first instance. SEC, as a federal agency, held little at stake here with the potential of an outcome
3 unfavorable to it, given that it enjoys a surplusage of offsetting positive outcome hundreds of
4 times each year in civil lawsuit and administrative lawsuit, given its reporting on those matters
5 on its agency website. Defendant and fund investors, though, suffered substantial and irreparable
6 losses. There could be no balancing test between SEC's interests and that of Defendant's when
7 SEC tipped the scales in its favor with the production of objectively false facts in its TRO by
8 way of its knowingly wrongful method of analysis of the financial performance of the funds, and
9 through its omissions, misstatements, and mischaracterizations of Fund offering documents.

10 With assets frozen and represented by last minute "counsel of limited engagement", and
11 while under threats by SEC, Defendant could not contest the basis upon which SEC deprived
12 Defendant of his protected interests, in any meaningful way, and was deprived fairness of
13 proceedings. SEC failed to allege the basis to its TRO, gained unwarranted relief, and violated
14 Defendant's constitutional rights before, and during civil proceedings, with Defendant – as a
15 felon – now not enjoying the same constitutional rights and no ability to enjoy the fruits of his
16 education and work experience. SEC's insufficient *prima facie* showing improperly tipped the
17 scales of its rights versus Defendant's substantive and procedural protected 14th Amendment
18 rights to his property and to his derivative property rights of Fund indemnification for legal fees.

19 SEC further re-injures and maligns Defendant by forcing Defendant for the past year to
20 defend himself in the proceedings of its administrative law forum, for the second time in six
21 years, on the basis of the same summary judgement findings against Defendant. As the statutory
22 guardian of the nation's financial markets, SEC is imbued with enormous powers. SEC's canon
23 of ethics cautions: "The power to investigate carries with it the power to defame and destroy." 17
24 C.F.R. at 200.66, and that "Judges rely on the SEC to deploy those powers conscientiously and
25 provide accurate assessment regarding the evidence collected in their investigations. In that way,
26 the integrity of the regime is preserved." *Opinion and Order* (Docket 140, CV15-oo894-WHP-
27 JLC) of United States District Court of New York. (Footnote ²⁴; SEC v. Management Dynamics,
28 Inc. 515 F.2d 801, 802 (2d Cir. 1975)."

1 SEC, only by employing snippets and omissions in its TRO and violating GAAP established
2 a substantial showing of likelihood on the merits of its alleged misrepresentations. The issue
3 now for this Court to consider is not “what reasonable investors” would have thought, but the
4 issue if a jury of Defendant’s peers would agree that SEC engaged in gross misconduct by
5 knowingly presenting to district court a TRO that was constructed in such a way as to show fraud,
6 when the scheme all along was that of SEC constructing its TRO in such way as to justify an
7 asset freeze, preliminary injunction, and temporary receiver.

8 Defendant has identified an appellate decision with some similarities to Defendant’s SEC
9 proceedings such as “loan disclosures” and “provisions in Fund governing documents” in which
10 the Circuit denied SEC’s request for an asset freeze. Defendant respectfully asks the Court to
11 review the Circuit’s Order for: *Sec. & Exch. Comm'n v. Morgan* UNITED STATES DISTRICT
12 COURT WESTERN DISTRICT OF NEW YORK Jun 5, 2019 1:19-CV-00661 EAW (W.D.N.Y.
13 Jun. 5, 2019) 1:19-CV-00661 EAW 06-05-2019.

14 It is abundantly clear, as DOJ served a grand jury subpoena on the Receiver in August 2012
15 weeks after the TRO and asset freeze, while Defendant was not indicted until almost two and
16 one-half years later, that SEC and the DOJ structured civil proceedings in such a way as to
17 deprive Defendant access to legal fees from his fund indemnifications (with DOJ even waiting
18 until Defendant had appealed legal fees to the Ninth Circuit, so that jurisdiction on this matter no
19 longer rested with District Court), and specifically to prevent Defendant’s timely showing of
20 SEC’s gross misconduct in its TRO. "Although a court may impose an asset freeze in a civil
21 case, notwithstanding a companion criminal case, these circumstances dictate that the court pay
22 particular attention to the defendant's Fifth and Sixth Amendment rights." Coates, 1994 WL
23 455558, at *3. At Defendant’s criminal sentencing the U.S. Attorney opined as to a “positive
24 result” and a “positive outcome” with investors suffering only a loss of \$4.8 million, while
25 failing to inform the Court that the expenses of the receivership estate, brought about by SEC,
26 were \$6.7 million (*see* Exhibit 1293-2), accounting for more than 100% of investor losses.
27 Investors did not benefit from the normal procedural safeguards of a receiver, as he failed to
28 meet the requirements of his position, and to follow Orders of the Court.

1 Defendant respectfully requests judicial notice of Exhibit 3 Fund tax returns, which SEC by
2 design omitted from its TRO, showing Defendant's financial reporting prepared on an accrual
3 basis.

4 The Supreme Court has long indicated economic injury must accompany fraud actions.
5 Here, investor's injuries are those from SEC's gross misconduct, aided by the Receiver's failures,
6 and by errors of the Court. The injuries to Defendant from these are incalculable.

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8 Mark Feathers, pro se, Defendant

November 18, 2020

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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 vs.

15 SMALL BUSINESS CAPITAL CORP.;
16 MARK FEATHERS; INVESTORS PRIME
FUND, LLC; and SBC PORTFOLIO FUND,
17 LLC,

18 Defendants.

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

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION’S
OPPOSITION TO DEFENDANT’S
“ADMINISTRATIVE MOTION REQUEST
UNDER CIVIL LOCAL RULE 7-9 FOR
LEAVE TO REFILE MOTION (DOCKET
1208) FOR THE COURT’S PRIOR ORDER
OF MONETARY PENALTIES (DOCKET
622)” (Dkt. No. 1330)**

Date: N/A
Time: N/A
Place: Courtroom 4, 5th Floor
(Hon. Edward J. Davila)

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1 Plaintiff Securities and Exchange Commission, pursuant to Civil L.R. 7-11(b), opposes
2 Defendant’s “Administrative Motion Request Under Civil Local Rule 7-9 for Leave to Refile
3 Motion (Dkt. No. 1208) for the Court’s Prior Order of Monetary Penalties (Dkt. No. 622)” (Dkt.
4 No. 1330).

5 Civil L.R. 7-11 provides that administrative motions may be made to address issues “not
6 otherwise governed by a federal statute, Federal or local rule or standing order of the assigned
7 judge. These motions would include matters such as motions to exceed otherwise applicable page
8 limitations or motions to file documents under seal, for example.”

9 Here, Feathers is apparently seeking leave to “refile” a September 6, 2016, motion made
10 under Rule 60(b), and since the timeliness of such a motion is governed by Fed. R. Civ. P. 60(b),
11 the motion is not properly made as an administrative motion under Civil L.R. 7-11. *See* September
12 6, 2016 “Motion for Relief From Prior Order of Disgorgement (Dkt. No. 622) per Fed. R. Civ. P.
13 60,” and additional motions (Dkt. No. 1208). In addition, Feathers has already filed a “Motion for
14 Relief From Prior Order of Disgorgement (Dkt. No. 622) per Fed. R. Civ. P. 60,” and additional
15 motions (Dkt. No. 1285 filed August 19, 2020). Feathers provides no legal authority for filing
16 multiple Rule 60(b) motions involving the same order, for “refiling” a motion that was filed and
17 decided approximately 4 years ago, or for making such a motion under Civil L.R. 7-11.

18 Feathers also purports to make the motion under Civil L.R. 7-9, as a motion for
19 reconsideration. Under Civil L.R. 7-9, such a motion for reconsideration must be made “[b]efore
20 the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties
21 in a case” Here, the Court has entered final judgment as to Feathers, he appealed to the Ninth
22 Circuit, and his appeal was adjudicated. *See SEC v. Feathers*, 774 Fed. App’x 354 (9th Cir. 2019),
23 *amended as to costs*, 773 Fed. App’x 929 (Mem) (9th Cir. 2019). Feathers does not explain how he
24 is making a motion under Civil L.R. 7-9 under Civil. L.R. 7-11, as the provisions of Civil L.R. 7-11
25 do not apply when a motion is governed by another Local Rule.

26 ///

27 ///

28 ///

1 Because this is not a motion properly made under Civil L.R. 7-11, it should be denied in all
2 respects.

3
4 DATED: October 19, 2020

Respectfully submitted,

5
6 */s/ John B. Bulgozdy*

John B. Bulgozdy

Lynn M. Dean

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 444 S. Flower Street,
Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On October 19, 2020 I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO DEFENDANT'S "ADMINISTRATIVE MOTION REQUEST UNDER CIVIL LOCAL RULE 7-9 FOR LEAVE TO REFILE MOTION (DOCKET 1208) FOR THE COURT'S PRIOR ORDER OF MONETARY PENALTIES (DOCKET 622)" (Dkt. No. 1330)** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

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

Date: October 19, 2020

/s/ John B. Bulgozdy
John B. Bulgozdy

SEC v. SMALL BUSINESS CAPITAL CORP, et al.
United States District Court – Northern District of California
San Jose Division
Case No. 5:12-CV-03237-EJD

SERVICE LIST

Mark Feathers (*via U.S. Mail and email*)

Menlo Park, CA

Email:

Pro Se Defendant Mark Feathers

David Zaro, Esq. (*via ECF*)

Allen Matkins Leck Gamble Mallory & Natsis LLP

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Los Angeles, CA 90071

Email: dzaro@allenmatkins.com

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

Rita Bosworth (*via UPS*)

Federal Public Defender

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Thomas A. Seaman (*via ECF*)

tom@thomasseaman.com

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Thomas Seaman, the Court-appointed Receiver herein, respectfully submits this
3 Memorandum of Points and Authorities in Support of his motion to conclude the receivership and
4 to: (1) approve the sale of the Cline Judgment and California Business Bank ("CBB") Stock;
5 (2) authorize the Receiver to establish a reserve and make administrative payments and final
6 distributions to claimants; (3) approve stipulation related to the claim of the SBA; (4) approve
7 final accounting and report; (5) approve destruction or transfer of books and records; (6) approve
8 release of Feathers reserve funds; and (7) discharge the Receiver ("Motion"). The Receiver and
9 his counsel have filed their fee applications concurrently herewith.

10 The Receiver has monetized all but two assets of the receivership estate. If the Court
11 approves the sale of the Cline Judgment and CBB stock, then all assets of the receivership will
12 have been liquidated and final distributions to investors can be made. If the Court grants the
13 additional relief requested herein, then the Receiver can take the steps necessary to conclude the
14 receivership.

15 In the Receiver's First Interim Report (Dkt. No. 30), the Receiver estimated the value of
16 the assets of the Receivership Entities to be approximately \$34.1 million. Ultimately, investors
17 will have recovered more than \$35.2 million from the receivership estate or more than 88% of
18 their investments, using a rising tide methodology. This is an exceptional result in any case
19 involving securities fraud, and especially in one involving extensive commingling, inter-company
20 transfers, and Ponzi-like operations. The relief sought herein will allow the Receiver to take the
21 remaining steps necessary to conclude the receivership, including making final distributions to
22 investors.

23 **I. RECEIVER'S FINAL REPORT AND ACCOUNTING**

24 **A. Stabilizing the Enterprise**

25 Pursuant to the *Ex Parte* Motion for a Temporary Restraining Order and Orders
26 (1) Freezing Assets; (2) Prohibiting the Destruction of Documents; (3) Granting Expedited
27 Discovery; (4) Requiring Accountings; and (5) Appointing a Temporary Receiver; and An Order
28 to Show Cause re Preliminary Injunction and Appointment of a Permanent Receiver ("TRO") filed

Receivership Estate Expenses, SEC
v. SBCC, et al

<u>Amount</u>	<u>Description</u>	<u>Source</u>
\$65,107	post-closing reserve	Docket 1277, Page 2
\$45,000	receiver fees	1274
\$75,000	Allen Matkins fees	1274
\$145,000	Taxes, tax work, contingency	1274
\$60,158	Allen Matkins fees	1274
\$17,500	Receiver fees	1274
\$10,000	Taxes	1274
\$1,754,138	Receiver Fees	1274 exh. A
\$41,949	SBA settlement	1274 exh. A
\$788,244	Income taxes	Docket 1164, page 9
\$340,139	payroll expenses	Docket 1164, page 9
\$1,946,597	receiver fees	Docket 1164, page 9
\$1,028,759	Allen Matkins fees	Docket 1164, page 9
\$226,855	Accounting	Docket 1164, page 9
<u>\$42,516</u>	<u>other professionals</u>	Docket 1164, page 9
\$6,586,959	total fees per Receiver's reports	

1 JOHN B. BULGOZDY (Cal. Bar No. 219897)
Email: bulgozdyj@sec.gov
2 SUSAN F. HANNAN (Cal. Bar No. 97604)
Email: hannans@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Michele Wein Layne, Regional Director
5 John W. Berry, Regional Trial Counsel
5670 Wilshire Boulevard, 11th Floor
6 Los Angeles, California 90036
Telephone: (323) 965-3998
7 Facsimile: (323) 965-3908

8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 SMALL BUSINESS CAPITAL CORP.;
17 MARK FEATHERS; INVESTORS PRIME
FUND, LLC; and SBC PORTFOLIO FUND,
18 LLC,

19 Defendants.

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

**DECLARATION OF ROGER
BOUDREAU IN SUPPORT OF
PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
OPPOSITION TO DEFENDANT
MARK FEATHERS' MOTION FOR
F.R.C.P. 9 SPECIAL SANCTIONS
AGAINST ROGER BOUDREAU
FOR MISCONDUCT OF A
GOVERNMENT AGENT ACTING
UNDER COLOR OF AUTHORITY
AND F.R.C.P. 12(b)(6) DISMISSAL
FOR CAUSE (Dkt. No. 126)**

Date: February 22, 2013
Time: 9:00 a.m.
Place: Courtroom 4, 5th Floor
(Hon. Edward J. Davila)

1 I, Roger Boudreau, pursuant to 28 U.S.C. § 1746, declare as follows:

2 1. I have personal knowledge of each of the matters set forth below, and if called
3 upon as a witness I could and would competently testify as to the facts stated herein.

4 2. I am a certified public accountant and have been licensed with the State of
5 California since 1989. I am a Senior Accountant with the Enforcement Division of the U.S.
6 Securities and Exchange Commission (the "Commission"). My office is located in the
7 Commission's Los Angeles Regional Office.

8 3. As part of my Commission duties, I analyze bank records, brokerage records,
9 financial records, and other books and records of companies, and I make calculations and
10 conclusions based on those records. The documents that I analyze in the course of my
11 Commission duties are of the type reasonably relied upon by accountants in forming opinions
12 and conclusions about, among other matters, the finances of a company and the disposition of
13 company assets.

14 4. In June 2012, I prepared a declaration in support of the Commission's *ex parte*
15 application for a temporary restraining order against the defendants. The Commission brought
16 this action in the public interest, to protect investors and to prevent continued dissipation of the
17 assets of Investors Prime Fund, LLC ("IPF"), and SBC Portfolio Fund, LLC ("SPF")
18 (collectively, the "Funds") by defendants Mark Feathers and Small Business Capital Corp. ("SB
19 Capital").

20 5. As part of my work, I calculated what I believed in good faith to be the total
21 amount of distributions to investors from each of the Funds for 2010, 2011 and the first quarter
22 of 2012. I and others at the Commission analyzed financial statements produced by defendants
23 from their QuickBooks system, which, among other things, included separate entries for "re-
24 invested distributions" and for "distributions" in the category "Liabilities & Equity." (*See, e.g.*,
25 Boudreau Declaration (Dkt. No. 8-1), Exhibit 8, at page 1 (IPF Balance Sheet).) When the
26 Commission's *ex parte* application was prepared, I believed in good faith that the total amount
27 of distributions was reached by adding together these two items, which is how I computed the
28 total distribution amounts for each period for the Funds in my declaration supporting the

1 Commission's application. These amounts for the total distribution amounts were included in
2 allegations made in the Complaint.

3 6. At the time that I prepared my declaration in June 2012, I believed that I had a
4 good faith basis for my calculation of the amount of member returns. At all relevant times, I
5 acted in good faith, with due diligence, and with no improper motive or purpose towards
6 Feathers or any of the defendants.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on January 14, 2013, in Los Angeles, California.

9
10 /s/ Roger D. Boudreau

11 Roger D. Boudreau, CPA
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648
Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On January 14, 2013, I caused to be served the document entitled **DECLARATION OF ROGER BOUDREAU IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO DEFENDANT MARK FEATHERS' MOTION FOR F.R.C.P. 9 SPECIAL SANCTIONS AGAINST ROGER BOUDREAU FOR MISCONDUCT OF A GOVERNMENT AGENT ACTING UNDER COLOR OF AUTHORITY AND F.R.C.P. 12(b)(6) DISMISSAL FOR CAUSE (Dkt. No. 126)** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

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

Date: January 14, 2013

/s/ Javier Delgadillo
Javier Delgadillo

1 **SEC v. SMALL BUSINESS CAPITAL CORP, et al.**
2 **United States District Court – Northern District of California**
3 **San Jose Division**
4 **Case No. 5:12-CV-03237-EJD**
5 **LA-4141**

6 **SERVICE LIST**

7 **Mark Feathers** (*via Email and U.S. Mail*)

8 [REDACTED]

9 Los Altos, CA [REDACTED]

10 ***Defendant Mark Feathers***

11 David Zaro, Esq. (*via ECF*)

12 Allen Matkins Leck Gamble Mallory & Natsis LLP

13 515 S. Figueroa Street, 9th Floor

14 Los Angeles, CA 90071

15 Email: *dzaro@allenmatkins.com*

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

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Other Supporting Documents

[5:12-cv-03237-EJD Securities and Exchange Commission v. Small Business Capital Corp. et al](#)

ADRMOP,E-
Filing,MEDTERM,ProSe

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered by Bulgozdy, John on 1/14/2013 at 4:11 PM PST and filed on 1/14/2013

Case Name: Securities and Exchange Commission v. Small Business Capital Corp. et al

Case Number: [5:12-cv-03237-EJD](#)

Filer: Securities and Exchange Commission

Document Number: [161](#)

Docket Text:

[Declaration of Roger Boudreau in Support of \[160\] Opposition/Response to Motion filed by Securities and Exchange Commission. \(Related document\(s\)\[160\]\) \(Bulgozdy, John\) \(Filed on 1/14/2013\)](#)

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

David Robert Zaro dzaro@allenmatkins.com

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Ted Fates tfates@allenmatkins.com, bcrfilings@allenmatkins.com, jbatiste@allenmatkins.com

5:12-cv-03237-EJD Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

John W. Berry
Securities and Exchange Commission
Regional Trial Counsel
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Los Angeles, CA 90036

Michele Wein Layne
US Sec & Exchg Comm
5670 Wilshire Blvd 11FL
Los Angeles, CA 90036-3648

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Users\delgadilloj\Desktop\Boudreau Declaration in support of Plaintiff's
Opposition to Motion to Dismiss Boudreau Declaration final.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/14/2013] [FileNumber=9268643-0]
[8b2f2a08f92cfc87888cd8b108e78314575f1f999e9cea8e146086b1eef2bd244fed7
2d71de84645a73e848aecf63b9493d90db9741237418fc120132a2f3576]]