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San Jose

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

CV 12 - 03237 EJD

13 **SECURITIES AND EXCHANGE**
14 **COMMISSION,**

Case No. _____

15 Plaintiff,

COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

16 vs.

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

19 Defendants.
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1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

2 **SUMMARY**

3 1. This matter concerns an offering fraud by defendant Mark Feathers through three
4 entities he controls – defendant Small Business Capital Corp. (“SB Capital”) and two mortgage
5 investment funds SB Capital and Feathers manage, defendants Investors Prime Fund, LLC
6 (“IPF”) and SBC Portfolio Fund, LLC (“SPF”) (collectively, IPF and SPF are referred to herein
7 as the “Funds”). As of March 30, 2012, Feathers and SB Capital had raised net \$42 million from
8 over 400 investors through the offer and sale of membership interests in the Funds. In doing so,
9 since at least 2009, defendants have violated the antifraud provisions of the federal securities
10 laws by making material misrepresentations and omissions regarding the Funds’ investment
11 activities. In addition, SB Capital has also violated the broker-dealer registration provisions by
12 failing to register as a broker-dealer with the Commission.

13 2. Defendants represented to prospective investors that the Funds would pay
14 “Member Returns” of at least 7.5% from profits generated by the Funds’ mortgage loan
15 portfolios. Contrary to those representations, since at least 2010 for IPF and since 2011 for SPF,
16 Feathers and SB Capital have paid returns to investors in excess of net profits of the Funds, in a
17 Ponzi-like scheme in which the returns were partially funded with money from new investors.

18 3. Defendants also represented to investors that the Funds would use between 96%
19 and 98% of offering proceeds to make or invest in mortgages, that the Funds had conservative
20 lending standards and for the most part were prohibited from making loans to SB Capital, and
21 that the Funds’ loans were secured, performing, and current. Contrary to these representations,
22 from 2009 to early 2012, Feathers and SB Capital caused the Funds to transfer over \$6 million to
23 SB Capital, and improperly to record these transfers as receivables due from SB Capital. The \$6
24 million in receivables due from SB Capital represents over 14% of the Funds’ combined total
25 assets. SB Capital used the money to pay its operating expenses, including over \$485,850 paid
26 to Feathers and companies he controls. Defendants’ disclosures to investors were false and
27 misleading because they failed to disclose that SB Capital had improperly taken \$6 million from
28 the Funds, that defendants caused the Funds to record the amounts taken as assets in the form of

1 receivables, that the receivables that were recorded were unsecured loans, that SB Capital
2 borrowed additional money from IPF to make interest payments on these receivables, and that
3 the Funds were not able to assess the collectability of these receivables because of the
4 uncertainty of SB Capital's cash flow. Moreover, by recording the \$6 million as receivables on
5 the Funds' financial statements, defendants concealed that the money was used to pay SB
6 Capital's expenses rather than to invest in mortgage loans.

7 4. Defendants represented that SB Capital owed a fiduciary duty to the Funds'
8 investors, and disclosed certain limited, potential conflicts of interest. However, defendants
9 Feathers and SB Capital failed to disclose the significant conflicts of interest arising from
10 causing the Funds to transfer \$6 million to SB Capital so it could pay its expenses, and recording
11 these transfers as assets of the Funds. In addition, in the first quarter of 2012, Feathers and SB
12 Capital caused SPF to sell eight mortgage loans to IPF at substantial premiums over the
13 outstanding balance of the loans, and then caused SPF to use the premiums to pay over \$570,000
14 in management fees to SB Capital. Defendants failed to disclose the significant conflicts arising
15 from such inter-company transactions, at inflated prices, designed solely to funnel investor funds
16 to SB Capital and Feathers.

17 5. By engaging in the conduct described in this complaint, defendants have violated,
18 and unless enjoined will continue to violate, the antifraud provisions of the federal securities
19 laws, specifically Section 17(a)(1)-(3) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C.
20 §§ 77q(a)(1), 77q(a)(2) & 77q(a)(3), and Section 10(b) of the Securities Exchange Act of 1934
21 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5(a)-(c) thereunder, 17 C.F.R. §§ 240.10b-
22 5(a), 240.10b-5(b) & 240.10b-5(c), and, with respect to defendant SB Capital, the broker-dealer
23 registration provisions in Section 15(a) of the Exchange Act, 15 U.S.C. §78o(a). SB Capital and
24 Feathers are also liable as a control persons under Section 20(a) of the Exchange Act, 15 U.S.C.
25 § 78o(a) – Feathers for violations of Section 10(b) and 15(a) of the Exchange Act, and SB
26 Capital for violations of Section 10(b).

27 6. By this action, the Commission seeks emergency relief against the defendants,
28 including a temporary restraining order; an asset freeze; accountings; expedited discovery; an

1 order prohibiting the destruction of documents; and a temporary receiver over SB Capital, IPF,
2 and SPF. The Commission also seeks preliminary and permanent injunctions; disgorgement
3 with prejudgment interest; a permanent receiver over SB Capital, IPF, and SPF; and civil
4 penalties against Feathers.

5 JURISDICTION AND VENUE

6 7. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1)
7 and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d)(1) and 77v(a); and Sections 21(d)(1),
8 21(d)(3)(A), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e)
9 and 78aa. Defendants have, directly or indirectly, made use of the means or instrumentalities of
10 interstate commerce, of the mails, or of the facilities of a national securities exchange, in
11 connection with the transactions, acts, practices, and courses of business alleged in this
12 Complaint.

13 8. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15
14 U.S.C. § 77v(a); and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the
15 transactions, acts, practices, and courses of conduct constituting violations of the federal
16 securities laws occurred within this district, defendants Feathers resides in this district, and
17 defendants SB Capital, IPF and SPF have their principal place of business in this district.

18 DEFENDANTS

19 9. **Small Business Capital Corp.** (“SB Capital”) is a privately-held California
20 corporation formed in 2004 with its principal place of business in Los Altos, California. SB
21 Capital is the sole manager of co-defendants IPF and SPF. SB Capital also manages two other
22 funds: (1) Small Business Capital, LLC (“SBC LLC”), which is a wholly owned subsidiary of
23 defendant IPF; and (2) SBC Commercial Mortgage Fund, LLC, which through March 31, 2012,
24 had raised about \$2.8 million from fourteen investors. SB Capital is not registered with the
25 Commission in any capacity.

26 10. **Mark Feathers**, age 48, resides in Los Altos, California. He is the founder, CEO
27 and a director of SB Capital. Through SB Capital, Feathers is the controlling person of IPF and
28 SPF. Feathers is not registered with the Commission in any capacity and has never had a

1 securities license.

2 11. **Investors Prime Fund, LLC** (“IPF”) is a California limited liability company
 3 formed in May 2005 with its principal place of business in Los Altos, California. SB Capital is
 4 the sole manager of IPF. IPF is engaged in the business of investing in loans secured by first
 5 deeds of trust encumbering commercial and income-producing residential real estate located
 6 primarily in California. IPF began raising funds from investors in 2005, but did not begin
 7 operations until June 26, 2006 when its minimum capitalization of \$500,000 was reached. As of
 8 March 31, 2012, approximately 314 investors had invested about \$31.5 million in IPF. IPF has a
 9 subsidiary, SBC LLC, and through March 31, 2012, IPF had contributed approximately \$10
 10 million to SBC LLC. IPF and its securities are not registered with the Commission.

11 12. **SBC Portfolio Fund, LLC** (“SPF”) is a California limited liability company
 12 formed in July 2007 with its principal place of business in Los Altos, California. SB Capital is
 13 the sole manager of SPF. SPF is engaged in the business of investing in loans secured by deeds
 14 of trust secured by commercial and income-producing residential real estate in California and
 15 other states. SPF began raising funds from investors in 2007. As of March 31, 2012,
 16 approximately 103 investors had invested about \$10.5 million in SPF. SPF and its securities are
 17 not registered with the Commission.

18 ALLEGATIONS

19 I. DEFENDANTS’ OFFER AND SALE OF IPF AND SPF

20 A. The Formation and Operating Agreements of IPF and SPF

21 13. IPF was formed in May 2005 as an investment fund, which would use proceeds
 22 raised from investors in IPF to purchase loans secured by first deeds of trust on commercial and
 23 income-producing residential real estate located primarily in California. In 2007, SB Capital
 24 became the sole manager of IPF. Beginning in 2007, IPF’s offering documents identified
 25 Feathers as the majority owner and operator of SB Capital.

26 14. SB Capital and Feathers formed SPF in 2007 as an investment fund that would
 27 use investor proceeds to purchase loans secured by first and second deeds of trust secured by
 28 commercial and income-producing residential real estate in California and other states. SB

1 Capital has been the sole manager of SPF since it was formed. SPF's offering documents also
2 identified Feathers as the majority owner and operator of SB Capital.

3 15. IPF and SPF entered into similar operating agreements with SB Capital. These
4 operating agreements defined the terms of SB Capital's duties and obligations as manager of IPF
5 and SPF. The operating agreements were signed, or to be signed, by Feathers on behalf of SB
6 Capital, and by Feathers as "attorney-in-fact" for the investors in IPF and SPF.

7 16. The operating agreements expressly provided that SB Capital owed a fiduciary
8 duty to IPF and SPF, as the sole manager of each Fund. In a provision titled "Fiduciary Duty,"
9 the IPF and SPF operating agreements state that SB Capital has a "fiduciary responsibility for the
10 safekeeping and use of all funds and assets" of IPF or SPF, and that "the Manager [SB Capital]
11 shall not employ such funds or assets in any manner except for the exclusive benefit of" IPF or
12 SPF.

13 **B. Defendants' Offerings of Investments in IPF and SPF**

14 17. At all relevant times, in their role as sole manager, Feathers and SB Capital had
15 ultimate authority over IPF and SPF, including the content of any statements made by IPF or
16 SPF in connection with their offering of securities to investors, such as the advertisements,
17 newsletters, and offering documents.

18 18. SB Capital and Feathers offered investments in IPF through advertisements in
19 California publications, as well as through their monthly newsletters to investors currently
20 invested in SB Capital's funds. The advertisements generally offered a rate of return and invited
21 interested persons to contact SB Capital for additional information.

22 19. As for SPF, SB Capital and Feathers offered investments in SPF in their monthly
23 newsletters. The newsletters contained a signature block at the end from Feathers, as CEO of SB
24 Capital. Some versions of the newsletters stated that SPF was open only to accredited investors
25 who were existing SB Capital clients and that investment restrictions applied. In some
26 newsletters, Feathers invited prospective SPF investors to contact him directly for more
27 information about SPF.

28 20. Defendants SB Capital, Feathers, IPF, and SPF were successful in raising money

1 from investors. Feathers, SB Capital, and IPF raised \$5,502,911 in new contributions in 2009 for
2 IPF; \$8,498,899 in new contributions in 2010; \$13,795,357 in new contributions in 2011; and
3 \$6,041,077 in new contributions during the first quarter of 2012.

4 21. Defendants SB Capital, Feathers and SPF raised \$1,395,934 in new contributions
5 in 2009 for SPF; \$2,044,551 in new contributions in 2010; \$7,351,038 in new contributions in
6 2011, and \$2,243,732 in new contributions during the first quarter of 2012.

7 **C. SB Capital's Broker-Dealer Activities**

8 22. SB Capital employed several people whose duties included meeting with
9 prospective investors to discuss investments in IPF or SPF. Feathers also offered to meet with
10 prospective investors interested in SPF, or with investors who wanted to increase their
11 investments in IPF.

12 23. The duties of the SB Capital employees who met with prospective investors
13 included responding to requests for information, providing offering documents to prospective
14 investors, and processing investments.

15 24. SB Capital paid its investor representatives a salary and a commission on any
16 investments that they brought into IPF or SPF.

17 25. Beginning around February 2010, Feathers, SB Capital, and IPF began a “thank-
18 you referral program” which rewarded investors with a capital contribution of up to \$500 “from
19 Fund management” for referring a new investor, or increasing the amount invested. The referral
20 program was announced in defendants’ February 17, 2010 newsletter to investors. In subsequent
21 newsletters, Feathers and SB Capital advertised the need for more capital and touted the
22 popularity of the referral program.

23 **D. IPF's and SPF's Offering Documents**

24 26. After defendants were contacted by prospective investors, SB Capital sent
25 prospective investors offering materials for the Fund in question – an offering circular for IPF,
26 and a private placement memorandum for SPF (collectively, the “Offering Documents”). The
27 Offering Documents for IPF and SPF were updated and re-issued generally on an annual basis.
28

1 **1. The IPF Offering Circulars**

2 27. IPF issued and provided offering circulars to prospective investors, four of which
3 were issued in 2009, 2010, and 2011 and are the subject of this Complaint (collectively, the
4 “Offering Circulars”): an offering circular dated June 11, 2009 (“2009 Offering Circular”), an
5 offering circular dated June 9, 2010 (“2010 Offering Circular”), an offering circular dated
6 January 28, 2011 (“1/2011 Offering Circular”), and an offering circular dated June 29, 2011
7 (“6/2011 Offering Circular”). Feathers reviewed and approved the IPF offering circulars before
8 they were distributed to prospective investors.

9 28. The IPF Offering Circulars disclosed substantially similar offering terms. In
10 general, IPF would make or purchase loans secured by first deeds of trust on commercial and
11 income-producing residential real estate. Investors were to receive monthly a “Member
12 Preferred Return” on their investments of at least 7.5%. Investors were offered the option to
13 receive their Member Preferred Return as a monthly cash distribution from income from Fund
14 operations, or to “allow their proportionate share of Fund income to compound and be reinvested
15 by the Fund for their accounts.”

16 29. SB Capital and Feathers claim that they ceased offering and selling IPF securities
17 on March 30, 2012. As of March 31, 2012, IPF had raised a net \$31.5 million from 314
18 investors and had \$1.2 million in cash on hand.

19 **2. The SPF Private Placement Memoranda**

20 30. SPF issued and provided private placement memoranda to prospective investors.
21 Three private placement memoranda are the subject of this Complaint (collectively, the “Private
22 Placement Memoranda”): a private placement memorandum dated July 26, 2007 (“2007 PPM”),
23 a private placement memorandum dated December 28, 2009 (“2009 PPM”), and a private
24 placement memorandum dated January 25, 2011 (“2011 PPM”).

25 31. The SPF Private Placement Memoranda disclosed substantially similar terms as
26 those offered by IPF. In general, SPF would make or purchase loans secured by first and
27 seconds deeds of trust on commercial and income-producing residential real estate. Investors
28 were to receive monthly “Member Return” on their investment of at least 7.5%. As with IPF,

1 investors in SPF were offered the option to receive their Member Return as a monthly cash
2 distribution of income from Fund operations, or to allow their proportionate share of Fund
3 income to be reinvested for their accounts.

4 32. SB Capital and Feathers claim that they ceased offering and selling SPF securities
5 on February 9, 2012. As of March 31, 2012, SPF had raised a net \$10.5 million from 103
6 investors and had \$3.5 million cash on hand.

7 **3. The Funds' Financial Statements**

8 33. The SPF Private Placement Memoranda did not purport to include financial
9 statements for SPF.

10 34. The 2010 IPF Offering Circular purported to include as an attachment a copy of
11 the 2009 audited financial statements. The 1/2011 IPF Offering Circular did not include any
12 audited financial statements as attachments, and instead stated that a copy of the audited
13 financial statements "as of December 31, 2009" were available from SB Capital. The 2009 IPF
14 audited financial statements did not disclose the receivable to SB Capital.

15 35. The 6/2011 IPF Offering Circular did not include any audited financial statements
16 as attachments, and instead stated that a copy of the audited financial statements as of December
17 31, 2010, were available from SB Capital.

18 36. Beginning in at least 2009, defendants did not send audited, or un-audited,
19 financial statements of either Fund to investors. According to Feathers, the only way an investor
20 could obtain those financial statements was to ask Feathers or SB Capital for a copy of the
21 financial statements.

22 **II. DEFENDANTS' OPERATION OF IPF AND SPF (2009 TO PRESENT)**

23 **A. Feathers' and SB Capital's Misuse of the Funds' Moneys**

24 37. Since at least 2009, Feathers and SB Capital have caused the Funds to transfer
25 over \$6 million to SB Capital, which monies were not payable to SB Capital under the terms of
26 the offerings, and caused the Funds to record the amounts taken as assets in the form of
27 receivables. As the auditors noted in the 2010 audit report, issued in March 2011, the Funds
28 were unable to assess the collectability of the receivables due from SB Capital, and thus could

1 not determine whether an allowance for loss was necessary, and whether the receivable should
 2 be carried at full value. In the notes to the Funds' audited financial statements, defendants
 3 acknowledged that the value of the receivable assets may be impaired due to the unsecured
 4 nature of the note and the lack of certainty of cash flows of SB Capital. Defendants further
 5 acknowledged in these financial statements that the receivables from the Funds' manager were
 6 "prohibited" by the Funds' operating agreement and Offering Documents.

7 38. The chart below shows the amounts that Feathers and SB Capital caused the
 8 Funds to transfer to SB Capital:

Amounts Recorded as Receivables due from SB Capital on the Funds' Financial Statements		
Period ended	IPF	SPF
December 31, 2009	\$405,623	\$534,736
December 31, 2010	\$1,850,000	\$707,464
December 31, 2011	\$4,838,478	\$708,555
March 31, 2012	\$5,328,311	\$524,967

16 **1. Feathers and SB Capital caused IPF to lend money so SB Capital can**
 17 **make loan payments to the Funds**

18 39. SB Capital did not generate sufficient income to pay the interest due on the
 19 receivables it owed to the Funds.

20 40. In addition, in 2008, SB Capital had borrowed money from IPF to purchase two
 21 properties out of foreclosure, which were identified as Loan 30001 and Loan 65. In fact, IPF had
 22 originally made the loans on the properties that secured Loan 30001 and Loan 65. However, the
 23 borrowers had defaulted, and IPF foreclosed. Feathers caused IPF to loan money to SB Capital
 24 to buy the properties out of foreclosure. In 2008, the two mortgage loans had a total outstanding
 25 balance of \$1.15 million. Feathers has caused IPF to advance additional amounts under these
 26 loans, so that as of March 31, 2012, the outstanding principal balance on these two loans was
 27 \$1.96 million (or 6.2% of the total amount invested). In 2010 and 2011, SB Capital did not
 28 generate sufficient income to make payments to IPF on Loan 30001 and Loan 65.

41. In 2010 and 2011, Feathers and SB Capital caused IPF to transfer additional funds to SB Capital, and increase the amount of the receivable asset on IPF's books, so that SB Capital could make payments to IPF on Loan 30001 and Loan 65, as well as payments to both IPF and SPF on the receivables due from SB Capital.

42. The chart below shows the amount recorded as an increase in the receivable due to IPF from SB Capital, and payments from SB Capital to IPF and SPF that correspond in time to such increases, during 2010:

2010		
Date	\$ Increase in SB Capital's Receivable to IPF	SB Capital's Description and Amount of Payment
1/4/2010	\$125,000	
1/18/2010		Loan 30001: interest payment to IPF in amount of \$6,535.64
1/18/2010		Loan 65: interest payment to IPF in the amount of \$6,020
6/25/2010	\$100,000	
6/28/2010		Loan 30001: interest payment to IPF in amount of \$10,000
6/28/2010		Loan 65: interest payment to IPF in the amount of \$10,000
12/23/2010	\$174,047.17	
12/29/2010		Loan 30001: interest payment to IPF in amount of \$34,238.58
12/29/2010		Loan 65: interest payment to IPF in the amount of \$60,056.60

43. The chart below shows the amount recorded as an increase in the receivable due to IPF from SB Capital, and the payments from SB Capital to IPF and SPF that correspond in time to such increases, during 2011:

2011		
Date	Date	Date
6/14/2011	\$250,000	
6/14/2011		Loan 30001: interest payment to IPF in amount of \$24,718.14
6/14/2011		Loan 65: interest payment to IPF in amount of \$38,250.00
6/30/2011	\$100,000	
6/30/2011		IPF Promissory Note: interest payment to IPF of \$67,633.02
6/30/2011		SPF Promissory Note: interest payment to SPF of \$26,457.34
9/28/2011	\$225,000	
9/28/2011		Loan 30001: interest payment to IPF in amount of \$16,248.76
9/28/2011		Loan 65: interest payment to IPF in amount of \$22,500.00
9/28/2011		IPF Promissory Note: interest payment to IPF of \$68,007.18
9/28/2011		SPF Promissory Note: interest payment to SPF of \$13,374.04
12/15/2011	\$75,000	
12/21/2011	\$80,000	
12/21/2011		Loan 30001: interest payment to IPF in amount of \$15,704.52
12/21/2011		Loan 65: interest payment to IPF in amount of \$16,634.84
12/21/2011		IPF Promissory Note: interest payment of \$82,221.51
12/21/2011		SPF Promissory Note: interest payment of \$13,559.88

44. Feathers has admitted that some of the interest payments from SB Capital to IPF and SPF were funded with money from the Funds.

2. Feathers and SB Capital cause IPF to purchase loans at a premium from SPF to generate money to pay management fees

45. In the first quarter of 2012, Feathers and SB Capital caused IPF to purchase eight mortgage loans from SPF at a premium above the outstanding balances of the loans, and then caused SPF to use the premiums to pay \$576,598 in management fees to SB Capital.

46. In these first quarter 2012 transactions, at about the same time that Feathers and SB Capital caused IPF to purchase mortgages from SPF at a premium, Feathers and SB Capital

1 caused SPF to pay management fees to SB Capital. In some cases, the management fees
 2 corresponded to the exact amount of the premium. For example, on March 12, 2012, SPF sold
 3 IPF a loan at a \$25,989 premium above the outstanding balance, and SPF then made a payment
 4 to SB Capital for management fees of that exact same amount – \$25,989 – on that same day.
 5 The chart below summarizes this and other loan sales from SPF to IPF at premiums, and the
 6 payments of management fees from SPF to SB Capital, in the first quarter of 2012. The chart
 7 shows the date of the mortgage sale, the outstanding principal balance of the mortgage on SPF's
 8 books, the sale price for the loan paid by IPF, the percentage premium of the sale price over book
 9 value, the dollar amount of the premium, and the dates and amounts of management fees paid by
 10 SPF to SB Capital:

Date	Outstanding Balance of Mortgage Loan on SPF's books	Price IPF Paid to Purchase Loan from SPF	Sale Price Premium over Mortgage Loan's Outstanding Balance		SPF Management Fee Payment to SB Capital
			(as %)	(in \$)	
2/15/2012					\$95,000
2/16/2012	\$284,986	\$379,981	33.33%	\$94,995	
2/16/2012	\$342,628	\$456,837	33.33%	\$114,209	
2/16/2012	\$747,789	\$997,052	33.33%	\$249,263	
2/17/2012	\$82,271	\$109,695	33.33%	\$27,424	
2/17/2012	\$106,732	\$142,309	33.33%	35,577	
2/17/2012					\$60,000
2/29/2012					\$225,115
3/12/2012	\$796,000	\$821,989	3.26%	\$25,989	
3/12/2012					\$25,989
3/12/2012	\$1,178,500	\$1,225,169	3.96%	\$46,669	
3/12/2012					\$46,669
3/30/2012	\$1,000,000	\$1,123,825	12.38%	\$123,825	
3/30/2012					\$123,825
Totals	\$4,538,906	\$5,256,857		\$717,951	\$576,598

26 47. IPF recorded the loans it purchased from SPF as assets at the full price paid to
 27 SPF, including the \$717,951 in premiums over the outstanding value of the mortgages.
 28

1 **3. Feathers' efforts to amend the IPF Operating Agreement in 2010**

2 48. During 2010, SB Capital and Feathers sought approval from investors in IPF to
3 amend the operating agreement between IPF and SB Capital. The purported purpose of the
4 amendment was to allow SB Capital to borrow money from IPF to pay operating expenses.
5 Under the terms of the operating agreements and Offering Documents in effect prior to the
6 amendment, IPF was not permitted to make loans to SB Capital except under specific
7 circumstances.

8 49. In or around August 2010, SB Capital sent letters to IPF investors, signed by
9 Feathers, which requested the investors' "concurrence to a modification of the IPF operating
10 agreement in order to initiate beneficial financial and tax planning for the fund..." Defendants
11 authored at least two different versions of the letter to send to investors.

12 50. Neither version of the letter sent to investors disclosed that SB Capital and
13 Feathers had already used over \$1 million of investor money from the Funds to pay SB Capital's
14 day-to-day expenses, that the amounts were being carried as unsecured, receivable assets on the
15 Funds' financial statements, and that the collectability of the receivables was uncertain because
16 of the lack of certainty of SB Capital's cash flows.

17 **B. Defendants' Ponzi-like Payments of Member Returns to Investors**

18 51. The Offering Documents represented that the Funds would pay returns to
19 investors from profits generated by the Funds' mortgage lending operations. The Offering
20 Documents for the Funds also represented that monthly returns would be no less than 7.5% per
21 annum for both IPF and SPF.

22 52. In 2010, 2011, and the first quarter of 2012, Feathers and SB Capital caused IPF
23 to pay more in Member Returns than IPF earned in profits, while IPF continued to raise money
24 from investors.

25 53. In 2011 and the first quarter of 2012, Feathers and SB Capital caused SPF to pay
26 more in Member Returns than SPF earned in profits, while SPF was continuing to raise funds
27 from investors.

28 54. The chart below shows the amount of investor contributions that the Funds raised

1 in 2010, 2011, and the first quarter of 2012; the Funds' net profit; and the amount paid in
 2 Member Returns. In addition, the Funds' profits for the first quarter of 2012 are also shown
 3 adjusted to account for the sale of eight loans from SPF to IPF at a premium of \$717,951.

Selected Financial Results for the Funds (2010 to Q1 2012)			
		IPF	SPF
2010	Amount Raised from Investors	\$8,498,899	
	Net Profit	\$852,686	
	Member Return Paid	\$1,284,874	
2011	Amount Raised from Investors	\$13,795,357	\$7,351,038
	Net Profit	\$1,036,212	\$436,988
	Member Return Paid	\$2,146,299	\$673,812
Q1 2012	Amount Raised from Investors	\$6,041,077	\$2,243,732
	Net Profit	\$793,131	\$330,429
	<i>Adjusted Net Income</i>	\$75,180	\$163,328
	Member Return Paid	\$572,322	\$400,758

16
 17 55. In 2010, 2011, and the first quarter of 2012, IPF paid Member Preferred Returns
 18 totaling approximately \$4,003,495. During the same period, IPF had a net profit, adjusted, of
 19 only \$1,964,078.

20 56. IPF's net profit from 2010 through Q1 2012 was sufficient to fund only about
 21 49% of the Member Preferred Returns paid during the same period. The only source to fund the
 22 additional amounts paid above net profits was new investor funds.

23 57. In 2011 and the first quarter of 2012, SPF paid Member Returns totaling
 24 approximately \$1,074,570. During the same period, SPF had a net profit of only \$767,417. SPF
 25 had an adjusted profit of only \$573,316.

26 58. SPF's net profit from 2011 through Q1 2012 was sufficient to fund only about
 27 71% of the Member return paid during the same period; its adjusted profit was sufficient to fund
 28 only about 54% of the Member Returns. The only source to fund the additional amounts paid

1 above net profits was new investors funds.

2 **III. DEFENDANTS' FRAUD IN THE OFFER AND SALE OF SECURITIES**

3 **A. Defendants Made Fraudulent Ponzi-like Payments to Investors in Excess of**
4 **Fund Profits**

5 59. Defendants paid distributions to IPF and SPF investors in excess of the profits of
6 IPF and SPF in a Ponzi-like scheme and in direct conflict with the representations in the Offering
7 Documents.

8 **1. Defendants' representations regarding Membership Returns**

9 60. The 2009 Offering Circular for IPF stated: "Fund profits will first be allocated
10 entirely to the Members each year up to the amount of the Member Preferred Return, which is
11 the greater of 7.5% per annum or the prime rate, which is adjusted monthly. Any profits
12 exceeding the Member Preferred Return may be retained by the Manager." Substantially similar
13 and/or identical representations were made in IPF's 2010 Offering Circular, 1/2011 Offering
14 Circular, and 6/2011 Offering Circular.

15 61. The various IPF Offering Circulars, again using substantially similar, if not
16 identical, language, also disclosed how profits would be allocated and distributed to IPF
17 investors:

18 Profits and losses for the Fund will be calculated monthly, on an annualized
19 basis, based upon information available to the Manager at the time of such
20 allocation. Monthly profits will be allocated among the Members as of the
21 last day of each month in accordance with their respective capital account
22 balances as of such date. Each month, profits shall be allocated entirely to
23 the Members until they have been allocated the Member Preferred Return
24 for that year to date, and all profits in excess of that amount may be
25 allocated to the Manager. To the extent the Fund's profits in any given
26 month are less than the Member Preferred Return for such month, any
27 unpaid Member Preferred Return will accrue in favor of the Members on a
28 non-compounded basis and shall be payable from subsequent monthly

1 profits earned by the Fund (if any) in the same calendar year.

2 62. The SPF Private Placement Memoranda contained substantially similar
3 representations as those in the IPF Offering Circulars. The 2007 PPM stated, in pertinent part:
4 “Members are entitled to a preferred return on their investment at a simple annual rate equal to
5 the greater of (a) the Prime Rate plus 1.5%, or (b) 7.5% per annum. All profits of the Fund
6 exceeding the Member Return shall be retained by the Manager.” Substantially identical
7 representations were made in SPF’s 2009 PPM and 2011 PPM. The SPF Private Placement
8 Memoranda contained substantially similar representations that investor returns would be paid
9 from profits as the representations in the IPF offering circulars.

10 **2. Defendants told investors that IPF and SPF were paying Member**
11 **Returns of 7.5% and greater in 2010 and 2011**

12 63. Throughout 2010 and 2011, Feathers and SB Capital were trying to raise
13 additional money for IPF and SPF. To that end, in addition to the representations in the Offering
14 Documents, Feathers and SB Capital routinely stated the amount of the monthly return in the
15 monthly newsletters to investors.

16 64. In the January 5, 2010 newsletter, defendants stated: “Fund yield, compounded,
17 for 2009 will be approximately 7.5% for [IPF] and 8.5% for [SPF]. These yields considerably
18 exceeded many other investment categories for 2009. Barring unexpected events, we anticipate
19 stable yields at about the same range for the next year.”

20 65. In the February 17, 2010 newsletter, defendants listed the IPF “current yield” at
21 7.5%, and the “January SBC Portfolio Fund Yield (compounded)” as “9.0%.”

22 66. In the September 9, 2010 newsletter, defendants stated: “The September
23 distribution for [IPF] was 7.2% when annualized.” For SPF, defendants stated: “[SPF] investors
24 received a distribution of 9%, annualized, for the month, which will likely increase in October to
25 10% for the remainder of the year.”

26 67. In the February 2011 newsletter, defendants stated that IPF “distributed at 7.25%
27 (compounded = 7.5%) for February.” Defendants stated that SPF “distributed at 10%
28 (compounded = 10.47%) for February.”

1 68. Similarly, in the September 2011 newsletter, defendants stated that IPF distributed
2 “7.50% (compounded) for September.” They further stated that SPF “distributed at 10.00%
3 (compounded) for September.”

4 **3. IPF’s Ponzi-like payments in 2010, 2011, and Q1 2012**

5 69. Contrary to these representations, Feathers and SB Capital caused IPF to pay
6 more in Member Preferred Returns to the IPF investors than IPF earned in profits in 2010, 2011
7 and in the first quarter of 2012.

8 70. In 2010, IPF recorded a net profit of \$852,685, but paid Member Preferred
9 Returns to investors of \$1,284,874. IPF’s 2010 profits were sufficient to fund only 66% of the
10 returns paid to investors.

11 71. In 2011, IPF recorded a profit of \$1,036,212, but paid Member Preferred Returns
12 to investors of \$2,146,299. IPF’s 2011 profits were sufficient to fund only 48% of the returns
13 paid to investors.

14 72. For the first quarter of 2012, IPF recorded a profit of \$793,131, however, that
15 profit did not include as an expense the \$717,951 paid to SPF as a premium to purchase eight
16 mortgage loans during the quarter. As adjusted to take those transactions into account, IPF’s
17 adjusted profit was \$75,180, but IPF paid Member Preferred Returns to investors of \$572,322.
18 IPF’s adjusted Q1 2012 profits were sufficient to fund only 13% of the returns paid to investors.

19 73. The IPF Offering Circulars were false and misleading, and omitted material
20 information, because they stated that Member Preferred Returns would be paid from the Fund’s
21 profits, when, in fact, defendants Feathers and SB Capital caused IPF to pay returns in 2010,
22 2011 and the first quarter of 2012 that substantially exceeded IPF’s profit for those periods.

23 74. The newsletters were false and misleading, and omitted material information,
24 when they represented that investor returns were being paid from profits.

25 75. Defendants Feathers, SB Capital and IPF knew, or were reckless in not knowing,
26 that the IPF Offering Circulars and newsletters were materially false and misleading when they
27 represented that investor returns would be paid from profits, and omitted material information
28 that defendants Feathers and SB Capital were causing IPF to pay more in returns than IPF’s

1 profits.

2 **4. SPF's Ponzi-like payments in 2011 and Q1 2012**

3 76. Contrary to the representations in the SPF Private Placement Memoranda,
4 Feathers and SB Capital caused SPF to pay more in Member Returns to investors than SPF
5 earned in profits in 2011 and the first quarter of 2012.

6 77. In 2011, SPF recorded a profit of \$436,989, but paid Member Returns to investors
7 of \$637,812. SPF's 2011 profits were sufficient to fund only 64% of the returns paid to
8 investors.

9 78. In the first quarter of 2012, SPF recorded a profit of \$330,429, but paid Member
10 Preferred Returns to investors of \$400,758. SPF's Q1 2012 profits were sufficient to fund only
11 82% of the returns paid to investors. Moreover, SPF's Q1 2012 results include the related party
12 loan sales to IPF at a premium, and when its profit is adjusted to account for those related party
13 transactions, the adjusted net profit of \$163,328 was sufficient to fund only 40% of the returns
14 paid to investors.

15 79. The SPF Private Placement Memoranda were false and misleading because they
16 stated that Member Returns would be paid from the Fund's profits, when, in fact, defendants
17 Feathers and SB Capital caused SPF to pay returns in 2011 and the first quarter of 2012 that
18 substantially exceeded SPF's profits for those periods.

19 80. The newsletters were false and misleading, and omitted material information,
20 when they represented that investor returns were being paid from profits.

21 81. Defendants Feathers, SB Capital and SPF knew, or were reckless in not knowing,
22 that the SPF Private Placement Memoranda were materially false and misleading when they
23 represented that investor returns would be paid from profits, and omitted material information
24 that defendants Feathers and SB Capital were causing SPF to pay more in returns than the SPF's
25 profits.

26 **B. Defendants' Fraudulent Misuse of the Funds' Money**

27 82. As alleged above, from 2009 through at least March 2012, Feathers and SB
28 Capital caused IPF and SPF to transfer at least \$6 million to SB Capital. Feathers and SB

1 Capital caused IPF and SPF to record these amounts as assets of the Funds, specifically,
2 receivables due from SB Capital.

3 83. Taking \$6 million from the Funds violated the terms of the Offering Documents,
4 which contained express representations concerning SB Capital's compensation and express
5 prohibitions against loans to the manager, except under specific circumstances.

6 84. The Offering Documents for IPF and SPF expressly identified the fees and
7 compensation that could be paid to SB Capital. The IPF Offering Circulars stated that SB
8 Capital as manager was entitled to the following compensation: (1) "Manager's Administrative
9 Fee," paid from the proceeds of the offering, of up to "1% of the funds maximum offering
10 amount invested to cover its operating expenses, marketing, and other overhead items"; (2)
11 "Manager's Subordinated Profits Interest," which was the remainder of the funds available for
12 distribution after all fund expenses and all allocations of investor returns were made; and (3)
13 "Origination and Loan Documentation Fees," which were payable by the borrowers. Feathers,
14 SB Capital, and IPF made such representations in IPF's Offering Circulars.

15 85. The SPF Private Placement Memoranda contained substantially similar
16 representations about the fees and compensation that could be paid to SB Capital. The SPF
17 Private Placement Memoranda stated that SB Capital as manager was entitled to the following
18 compensation: (1) "Manager's Subordinated Profits Interest," which was defined the same for
19 SPF as for IPF; (2) "Origination and Loan Documentation Fees," payable by borrowers; and (3)
20 Reimbursement of Expenses to Manager," which was defined as "reimbursement for all out-of-
21 pocket organization and syndication and all operating and administrative expenses of the Fund."
22 Feathers, SB Capital, and SPF made such representations in SPF's 7/26/2007 PPM, 12/29/2009
23 PPM, and 1/25/2011 PPM.

24 86. Feathers, SB Capital, IPF, and SPF also represented in the Offering Documents
25 that the Funds would not make loans to the manager, SB Capital, except for limited and
26 identified purposes. In IPF's Offering Circulars, in a section titled "Lending Standards and
27 Policies," under the heading "No Loans to Managers," defendants represented, in pertinent part:
28 "No loans will be made by the Fund to the Manager or to any of its affiliates, except for any

1 financing extended as part of a sale of real estate owned or loans purchases as a result of
2 foreclosure.”

3 87. Substantially similar, if not identical, representations were made in SPF’s Private
4 Placement Memoranda, again under the heading “No Loans to Managers.”

5 88. As of March 31, 2012, IPF’s unaudited financial statements show that SB Capital
6 owes IPF approximately \$5,328,311.61, recorded under the category “Fund Loans Receivable.”
7 The amount due from SB Capital accounts for approximately 17% of IPF’s total assets as of that
8 date.

9 89. As of March 31, 2012, SPF’s unaudited financial statements show that SB Capital
10 owed SPF approximately \$524,967.02, recorded under the category “Other Receivables.” The
11 amount due from SB Capital accounts for approximately 4.78% of SPF’s total assets as of that
12 date.

13 90. Feathers, SB Capital, and IPF knew, or were reckless in not knowing, that the
14 statements in IPF’s Offering Circulars concerning the compensation that would be paid to SB
15 Capital were materially false and misleading because Feathers and SB Capital took substantial
16 amounts from IPF that was not compensation allowed under the offering, and the Offering
17 Circulars omitted material information about money being advanced from IPF to SB Capital by
18 Feathers and SB Capital.

19 91. Feathers, SB Capital, and IPF knew, or were reckless in not knowing, that the
20 statements in IPF’s Offering Circulars that there would be “no loans to managers” were
21 materially false and misleading because Feathers and SB Capital caused IPF to loan substantial
22 amounts to SB Capital, and the Offering Circulars omitted material information that Feathers and
23 SB Capital were causing IPF to lend money contrary to the express representations in the
24 Offering Circulars.

25 92. Feathers, SB Capital, and SPF knew, or were reckless in not knowing, that the
26 statements in SPF’s Private Placement Memoranda concerning the compensation that would be
27 paid to SB Capital were materially false and misleading because Feathers and SB Capital took
28 substantial amounts from SPF that was not compensation allowed under the offering, and the

1 Private Placement Memoranda omitted material information about money being advanced from
2 SPF to SB Capital by Feathers and SB Capital.

3 93. Feathers, SB Capital, and SPF knew, or were reckless in not knowing, that the
4 statements in SPF's Private Placement Memoranda that there would be "no loans to managers"
5 were materially false and misleading because Feathers and SB Capital caused SPF to loan
6 substantial amounts to SB Capital, and the Private Placement Memoranda omitted material
7 information that Feathers and SB Capital were causing SPF to lend money contrary to the
8 express representations in the Private Placement Memoranda.

9 **C. Defendants Made Fraudulent Statements About Use of Investor Proceeds**

10 94. Defendants Feathers, SB Capital, IPF, and SPF represented to investors that over
11 96% of investor proceeds from the offerings would be invested in mortgage loans. However,
12 defendants caused the Funds to advance substantial amounts of investor proceeds to SB Capital
13 instead of investing those proceeds in mortgage loans, contrary to the representations to investors
14 in the Offering Documents.

15 95. Each of the Offering Documents for IPF and SPF that was issued by defendants
16 during 2009 through 2009 included a section titled "Use of Proceeds." The Use of Proceeds
17 section contained a chart which listed various ways that the proceeds were to be used, with
18 corresponding percentages of the amount of proceeds that would be used as listed. The Use of
19 Proceeds section disclosed that proceeds from the sale of units in the Fund "will be used
20 approximately as set forth below. The figures set forth below are only estimates, and actual use
21 of proceeds will vary." In the IPF and SPF Offering Documents, the Use of Proceeds charts
22 included a category labeled "mortgage loans," and the percentage of proceeds that defendants
23 represented would be invested in mortgage loans varied, among the differing Offering
24 Documents, from 96% to 98%.

25 96. The chart below summarizes the representations in the Funds' Offering
26 Documents about use of proceeds:

Disclosure of Use of Offering Proceeds in Offering Documents			
Offering Document	% Mortgage Loans	% Reserve	% Organizational and/or Syndication Expenses
2009 IPF Offering Circular	96.5%	3%	0.5%
2010 IPF Offering Circular	99%	0%	1%
1/2011 IPF Offering Circular	98%	0%	2%
6/2011 IPF Offering Circular	98%	0%	2%
2009 SPF PPM	96%	2%	2%
2011 SPF PPM	No percentages assigned to use of proceeds		

97. Using net offering proceeds of \$42 million, at most Feathers and SB Capital could claim \$840,000, or 2% of offering proceeds, for expenses (assuming *arguendo* that those funds were used for permitted expenses).

98. The approximately \$6 million that Feathers and SB Capital took from the Funds during that same period is over 4% of net total combined contributions.

99. Defendants Feathers, SB Capital, IPF, and SPF knew, or were reckless in not knowing, that the representations concerning use of proceeds in the Offering Documents were materially false and misleading because defendants were not using over 96% of the offering proceeds for mortgage loans, and that the Offering Documents omitted material information that defendants were using substantial amounts of the offering proceeds for purposes other than to make mortgage loans.

D. Defendants Made Fraudulent Statements About the IPF's Loan Portfolios and Performance

100. In the Offering Documents for IPF and defendants' monthly newsletters, defendants represented that the IPF's portfolios consisted of secured loans, and that all loans were performing and current. However, defendants' representations about IPF's loan portfolios and performance were false and misleading and omitted material information about the large, unsecured receivables owed by SB Capital, and that SB Capital was borrowing additional money from IPF to make payments on its outstanding obligations to the Funds.

1 101. In the IPF Offering Circulars, defendants included representations about the
 2 composition of the loan portfolio and statistics on the performance of the loan portfolio.
 3 Defendants represented that (1) “100%” of the mortgage loans held by IPF were secured by “first
 4 trust deeds”; (2) “0%” of the loans were categorized as “non-accrual status loans” (i.e., loans that
 5 IPF had ceased to accrue interest on for purpose of calculating earnings because the loans were
 6 delinquent); (3) “0%” of the loans were “impaired” (i.e., loans for which there was serious doubt
 7 about the full recovery of the loan balance); (4) IPF did not have any real estate owned, or
 8 “REO” properties, where the property had been taken through foreclosure; and (5) there were no
 9 loan loss reserves recorded for any of IPF’s mortgage loans.

10 102. The chart below summarizes the disclosures that Feathers, SB Capital, and IPF
 11 made in the IPF Offering Circulars about its loan portfolio:

Statements About IPF Loan Portfolio and Performance in IPF Offering Circulars				
	2009 Offering Circular	2010 Offering Circular	1/2011 Offering Circular	6/2011 Offering Circular
Information as of	12/31/2008	12/31/2009	12/31/2010	5/31/2011 for loan portfolio composition; 12/31/2010 for loan performance
Amount of Loans	\$6,400,000	\$8,100,000	\$9,900,000	\$11,400,000
First Trust Deed	100%	100%	100%	100%
Commercial Property	100%	100%	100%	100%
Non-Accrual Status Loans	0%	0%	0%	0%
Impaired Loans	0%	0%	0%	0%
REO	0%	0%	0%	0%
Loan Loss Reserve	\$0	\$0	\$0	\$0

24
 25 103. Defendants Feathers, SB Capital, and IPF knew, or were reckless in not knowing,
 26 that these representations were materially false and misleading, and omitted material
 27 information, because SB Capital had taken substantial amounts from IPF and defendants had
 28 caused these amounts to be recorded as an unsecured receivable due from SB Capital to IPF. In

1 addition, defendants were unable to assess the collectability of the SB Capital receivable, as
2 required by GAAP, due to its unsecured nature and the lack of certainty of SB Capital's cash
3 flow, which material information was also omitted from the IPF Offering Circulars. Defendants
4 also omitted material information that SB Capital was borrowing additional amounts from IPF to
5 make payments on the amounts it owed to IPF.

6 104. In addition to these misrepresentations and omissions in the IPF Offering
7 Circulars, during 2010 and 2011 Feathers and SB Capital sent regular newsletters to investors in
8 IPF and SPF. In those newsletters, defendants regularly made statements reassuring investors
9 that the funds were making loans secured by first and second deeds of trust and that all loans
10 were performing.

11 105. For example, Feathers and SB Capital stated, in pertinent part (a) in a May 7,
12 2010 newsletter: "Within IPF we make only 1st position note investments"; (b) in a March 2011
13 newsletter, in a section entitled "Investors Prime Fund": "The fund is comprised entirely of first
14 position real estate secured note investments." (c) in a July 2011 newsletter: "our 'problem
15 loan' projections are very, very low, and because all of our loans are real estate secured, and also
16 have personal guarantees as well as government repayment guarantees, our expected 'loss' rate
17 of capital is *well below* 1%" (emphasis in original); and (d) in a November 2011 newsletter
18 (under heading "Investors Prime Fund"): "Additionally, IPF's note investment portfolio is 100%
19 current with no borrowers late on payments."

20 106. Defendants Feathers, SB Capital, and IPF knew, or were reckless in not knowing,
21 that these representations in newsletters to investors were false and misleading, and omitted
22 material information, because SB Capital had taken substantial amounts from IPF and defendants
23 had caused these amounts to be recorded as an unsecured receivable due from SB Capital to IPF.
24 In addition, defendants were unable to assess the collectability of the SB Capital receivable, as
25 required by GAAP, due to its unsecured nature and the lack of certainty of SB Capital's cash
26 flow, which material information was also omitted from the IPF Offering Circulars. Defendants
27 also omitted material information that SB Capital was borrowing additional amounts from IPF to
28 make payments on the amounts it owed to IPF

1 **E. Defendants' False Representations About the Funds' Conservative Lending**
2 **Standards**

3 107. In the various Offering Documents for IPF and SPF, defendants SB Capital,
4 Feathers, IPF, and SPF represented that the Funds used conservative lending standards, and that
5 loans would be secured by first deeds of trust for IPF, first or second deeds of trust for SPF, and
6 loan-to-value ratios would not exceed 65% of the value of the security property.

7 108. Defendants SB Capital, Feathers, and IPF stated in IPF's Offering Circulars, in a
8 section entitled "Lending Standards and Policies": "All fund loans will be secured by first deeds
9 of trust on commercial or industrial real estate collateral." Other sections in the offering
10 circulars reiterated these lending standards. Under "Priority of Mortgages," IPF stated that its
11 loans "will be secured by first deeds of trust (i.e., senior to any other encumbrances on the
12 security property)." In a section entitled "Loan-to-Value Ratios," defendants stated that the
13 "average amount of the Fund's loans without a Federal guarantee will not exceed 65% of the
14 value of the security property based upon an appraisal performed by an independent California
15 certified appraiser."

16 109. Defendants Feathers, SB Capital, and IPF knew, or were reckless in not knowing,
17 that these representations in the Offering Circulars were false and misleading, and omitted
18 material information, specifically defendants were causing IPF to make large, unsecured loans
19 and advances to SB Capital, and these loans and advances were contrary to the conservative
20 lending standards disclosed in the Offering Circulars for IPF.

21 110. Defendants Feathers, SB Capital, and SPF stated in the SPF Private Placement
22 Memoranda, in a section entitled "Lending Standards and Policies": "Most loans will be secured
23 by commercial or other non-residential real estate, but the Fund may in some instances also make
24 or purchase loans secured by deeds of trust that encumber residential real estate when, in the
25 Manager's discretion, it is beneficial for the Fund to do so." In a section entitled "Loan-to-Value
26 Ratios," they stated that the "amount of the Fund's loan (when added to the indebtedness secured
27 by senior liens on the same property) generally will not exceed sixty five percent (65%) of the
28 value of the security property...."

1 111. Defendants Feathers, SB Capital, and SPF knew, or were reckless in not knowing,
2 that those representations in the Private Placement Memoranda were false and misleading, and
3 omitted material information, specifically defendants were causing SPF to make a large,
4 unsecured loans and advances to SB Capital, and these loans and advances were contrary to the
5 conservative lending standards disclosed in the Private Placement Memoranda.

6 **F. Defendants Omitted Material Information About Conflicts of Interest**
7 **Between SB Capital and the Funds**

8 112. The Offering Documents represented that SB Capital owed a fiduciary duty to IPF
9 and SPF, and to their members (i.e., the investors), that SB Capital would exercise good faith and
10 integrity with respect to Fund affairs, and that the members should rely on general fiduciary
11 standards to prevent unfairness by SB Capital or an affiliate in a transaction with a Fund.

12 113. The IPF and SPF Offering Documents disclosed a list of contemplated
13 transactions between the respective Fund and SB Capital that presented potential, contemplated
14 conflicts of interest: (a) SB Capital would receive a loan origination or brokerage fee from
15 borrowers of up to 5% on loans made or purchased by a Fund; (b) SB Capital would operate
16 other loan funds and other businesses; and (c) SB Capital or its affiliates could purchase
17 defaulted loans or foreclosed properties from a Fund.

18 114. The Offering Documents were false and misleading, and omitted material
19 information, about the substantial amounts of money that Feathers and SB Capital were taking
20 from the Funds to pay SB Capital's operating expenses, and which Feathers and SB Capital were
21 causing the Funds to record as assets.

22 115. The Offering Documents also failed to disclose that the amounts they caused the
23 Funds to record as receivables from SB Capital were unsecured, and the Funds could not account
24 for such receivables in accordance with GAAP because the collectability could not be assessed,
25 and that the collectability could not be assessed because of the lack of certainty of the cash flows
26 of SB Capital.

27 116. The Offering Documents were also false and misleading, and omitted material
28 information, that Feathers and SB Capital would cause the Funds to engage in related party

1 transactions in which SPF would sell loans to IPF at a premium over the outstanding balance, to
2 generate profits for SPF that would then be used to pay management fees to SB Capital.

3 117. Defendants Feathers, SB Capital, IPF, and SPF knew, or were reckless in not
4 knowing, that these representations were materially false and misleading, and omitted material
5 information, about the conflicts of interest caused by SB Capital taking money from the Funds,
6 causing the Funds to record such amounts as assets, failing to disclose material information
7 about the collectability of the receivables, and failing to disclose that they were going to cause
8 the Funds to engage in related party transactions for the purpose of generating management fees
9 for SB Capital, and contrary to the interests of the investors.

10 118. At all relevant times, in connection with the actions alleged above, Feathers acted
11 with scienter. Feathers' scienter is imputed to the entities he controlled, specifically, SB Capital,
12 IPF, and SPF.

13 **FIRST CLAIM FOR RELIEF**

14 **Fraud in the Offer or Sale of Securities**

15 **Violations of Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act**

16 **(Against All Defendants)**

17 119. The Commission realleges and incorporates by reference paragraphs 1 through
18 118 above.

19 120. The defendants, and each of them, by engaging in the conduct described above, in
20 the offer or sale of securities by the use of means or instruments of transportation or
21 communication in interstate commerce or by use of the mails directly or indirectly:

- 22 a. with scienter, employed devices, schemes, or artifices to defraud;
- 23 b. obtained money or property by means of untrue statements of a material
24 fact or by omitting to state a material fact necessary in order to make the statements made, in
25 light of the circumstances under which they were made, not misleading; or
- 26 c. engaged in transactions, practices, or courses of business which operated
27 or would operate as a fraud or deceit upon the purchaser.

28 121. By engaging in the conduct described above, all of the defendants violated, and

1 unless restrained and enjoined will continue to violate, Sections 17(a)(1), 17(a)(2), and 17(a)(3)
2 of the Securities Act, 15 U.S.C. §§ 77q(a)(1), 77q(a)(2), & 77q(a)(3).

3 **SECOND CLAIM FOR RELIEF**

4 **Fraud In Connection With the Purchase or Sale of Securities**

5 **Violations of Section 10(b) of the Exchange Act**

6 **and Rules 10b-5(a), 10b-5(b), and 10b-5(c) Thereunder**

7 **(Against All Defendants)**

8 122. The Commission realleges and incorporates by reference paragraphs 1 through 118
9 above.

10 123. The defendants, and each of them, by engaging in the conduct described above,
11 directly or indirectly, in connection with the purchase or sale of a security, by the use of means or
12 instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities
13 exchange, with scienter:

14 a. employed devices, schemes, or artifices to defraud;

15 b. made untrue statements of a material fact or omitted to state a material fact
16 necessary in order to make the statements made, in the light of the circumstances under which
17 they were made, not misleading; or

18 c. engaged in acts, practices, or courses of business which operated or would
19 operate as a fraud or deceit upon other persons.

20 124. By engaging in the conduct described above, the defendants violated, and unless
21 restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. §
22 78j(b), and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a), 240.10b-
23 5(b), & 240.10b-5(c).

24 ///

25 ///

26 ///

27 ///

28 ///

1 **THIRD CLAIM FOR RELIEF**

2 **Unregistered Broker-Dealer**

3 **Violations of Section 15(a) of the Exchange Act**

4 **(Against SB Capital)**

5 125. The Commission realleges and incorporates by reference paragraphs 1 through 118
6 above.

7 126. Defendant SB Capital by engaging in the conduct described above, used the mails
8 and the means and instrumentalities of interstate commerce, to effect transactions in, or induct or
9 attempt to induce the purchase or sale of securities, without registering being with the Commission
10 as a broker.

11 127. By engaging in the conduct described above, defendant SB Capital violated, and
12 unless restrained and enjoined will continue to violate, Section 15(a) of the Exchange Act, 15
13 U.S.C. § 78o(a).

14 **FOURTH CLAIM FOR RELIEF**

15 **Controlling Person Liability**

16 **Under Section 20(a) of the Exchange Act**

17 **(Against Feathers and SB Capital)**

18 128. The Commission realleges and incorporates by reference paragraphs 1 through 118
19 above.

20 129. Defendant Feathers is, or was at the time the acts and conduct set forth herein were
21 committed, directly or indirectly, a person who controlled SB Capital, IPF, and SPF, each of which
22 sold securities in the Funds through fraudulent means in violation of the Section 10(b) of the
23 Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder, 17
24 C.F.R. §§ 240.10b-5(a), 240.10b-5(b), & 240.10b-5(c).

25 130. Defendant Feathers is, or was at the time the acts and conduct set forth herein were
26 committed, directly or indirectly, a person who controlled SB Capital who effected securities
27 transactions without being registered with the Commission as a broker in violation of Section 15(a)
28 of the Exchange Act, 15 U.S.C. § 78o(a).

1 131. By engaging in the conduct described above, under Section 20(a) of the Exchange
2 Act, 15 U.S.C. § 78t(a), defendant Feathers is jointly and severally liable with, and to the same
3 extent as, the persons he controlled for violations of Sections 10(b) and 15(a) of the Exchange Act,
4 15 U.S.C. §§ 78j(b) & 78o(a), and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder, 17 C.F.R. §§
5 240.10b-5(a), 240.10b-5(b), & 240.10b-5(c).

6 132. Defendant SB Capital is, or was at the time the acts and conduct set forth herein
7 were committed, directly or indirectly, a person who controlled IPF and SPF, each of which sold
8 securities in the Funds through fraudulent means in violation of the Section 10(b) of the Exchange
9 Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder, 17 C.F.R. §§
10 240.10b-5(a), 240.10b-5(b), & 240.10b-5(c).

11 133. By engaging in the conduct described above, under Section 20(a) of the Exchange
12 Act, 15 U.S.C. § 78t(a), defendant SB Capital is jointly and severally liable with, and to the same
13 extent as, the persons it controlled for violations of Section 10(b) of the Exchange Act, 15 U.S.C.
14 §§ 78j(b), and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a),
15 240.10b-5(b), & 240.10b-5(c).

PRAYER FOR RELIEF

17 WHEREFORE, the Commission respectfully requests that the Court:

I.

18 Issue findings of fact and conclusions of law that defendants committed the alleged
19 violations.
20

II.

21 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of Civil
22 Procedure, temporarily, preliminarily, and permanently enjoining the defendants and their
23 officers, agents, servants, employees, and attorneys, and those persons in active concert or
24 participation with any of them, who receive actual notice of the judgment by personal service or
25 otherwise, and each of them, from violating Section 17(a)(1), 17(a)(2), and 17(a)(3) of the
26 Securities Act, 15 U.S.C. § 77q(a)(1), 77q(a)(1), & 77q(a)(3), and Sections 10(b) and 15(a) of
27 the Exchange Act, 15 U.S.C. §§ 78j(b) & 78o(a), and Rules 10b-5(a), 10b-5(b), and 10b-5(c)
28

1 thereunder, 17 C.F.R. §§ 240.10b-5(a), 240.10b-5(b), & 240.10b-5(c).

2 **III.**

3 Issue, in forms consistent with Rule 65 of the Federal Rules of Civil Procedure, a
4 temporary restraining order and a preliminary injunction freezing the assets of each of the
5 defendants and any entity affiliated with any of them; appointing a temporary and permanent
6 receiver over SB Capital, IPF, SPF any entity affiliated with any of them; prohibiting each of the
7 defendants from destroying documents; granting expedited discovery from each of the
8 defendants; and requiring an accounting from each defendant

9 **IV.**

10 Order defendants to disgorge all ill-gotten gains from their illegal conduct, together with
11 prejudgment interest thereon.

12 **V.**

13 Order defendant Feathers to pay civil penalties under Section 20(d) of the Securities Act,
14 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. 78u(d)(3).

15 **VI.**

16 Retain jurisdiction of this action in accordance with the principles of equity and the
17 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
18 decrees that may be entered, or to entertain any suitable application or motion for additional
19 relief within the jurisdiction of this Court.

20 **VII.**

21 Grant such other and further relief as this Court may determine to be just and necessary.

22
23
24 DATED: June 21, 2012

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

JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 SECURITIES AND EXCHANGE COMMISSION

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 John B. Bulgozdy and Susan F. Hannan (323)965-3998
 Securities and Exchange Commission
 5670 Wilshire Blvd., 11th Floor, Los Angeles, CA 90036

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

County of Residence of First Listed Defendant Santa Clara County
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) **V12-03237**

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 15 U.S.C. Sections 77(q)(a), 78j(b), 78o(a), 78t(a), 17 C.F.R. Section 240.10b.5

Brief description of cause:
 Complaint alleges violations of the Federal securities laws.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2) (Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity.

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. Divisional Assignment. In accordance with Civil L.R. 3-2(c) - (f), select the appropriate venue based upon the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.

Date and Attorney Signature. Date and sign the civil cover sheet.