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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SMALL BUSINESS CAPITAL
CORPORATION; MARK FEATHERS;
INVESTORS PRIME FUND, LLC; and SBC
PORTFOLIO FUND, LCC,

Defendants.

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

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
OMNIBUS OPPOSITION TO
DEFENDANT MARK FEATHERS'S
(1) MOTION TO DISMISS UNDER
RULE 12(b)(2), (3), (4), (5), AND (6),
RULE 8(d), AND RULE 9(a)(1)(B)
(Dkt. No. 92)
(2) MOTION TO DISMISS FOR CAUSE
UNDER RULE 12(b) (Dkt. No. 93),
AND
(3) MOTION TO DISMISS RECEIVER
(Dkt. No. 94)**

Date: February 22, 2013

Time: 9:00 a.m.

Place: Courtroom 4

1 **I. INTRODUCTION**

2 In November 2012, Defendant Mark Feathers filed four motions seeking dismissal of this
3 action, removal of the court-appointed Receiver and other relief. *See* Dkt. Nos. 92, 93, 94 and
4 96. This omnibus opposition by Plaintiff Securities and Exchange Commission (the
5 “Commission”) specifically addresses three of those motions: “(i) Motion to Dismiss under
6 F.R.C.P Rule 12(b) 2,3,4,5,6 , Motion to Dismiss under F.R.C.P 8(d) and F.R.C.P 9(a)1(b)”
7 (Dkt. No 92), (ii) “F.R.C.P Rule 12(b) Motion to Dismiss for Cause” (Dkt. No. 93), and (iii)
8 “Motion to Dismiss the Receiver” (Dkt. No.94).¹

9 This first of these motions (Dkt. No. 92) is apparently brought under Rules 8, 9 and 12(b)
10 of the Federal Rules of Civil Procedure. Feathers’s motion does not appear to state the ground
11 for dismissal under Rule 8(d). Nor does he appear to challenge the sufficiency of the allegations
12 under Rule 9(b); rather he argues that the Commission’s complaint violates Rule 9(a)(1)(B) –
13 which merely states that “a pleading need not allege a party’s authority to sue.” In any event,
14 there is no question that the Commission’s complaint satisfies the requirements of Rule 8 for a
15 plain statement of the allegations. As for Rule 9(a)(1)(B), Feathers apparent argument that the
16 Commission should not have named the two mortgage funds he controlled and managed has no
17 merit. Those two funds were the vehicles through which he perpetuated his fraudulent offerings,
18 and thus are appropriate defendants. To the extent Feathers intended to challenge the fraud
19 allegations under Rule 9(b), there is no question that the 31-page complaint sets forth the
20 Commission’s allegations of the Defendants’ fraud in sufficient detail.

21 There is also no doubt as to whether the complaint satisfies the requirements under Rule
22 12(b). Indeed, Feathers’s arguments on this point amount to a dispute about the evidence, not
23 the Commission’s allegations. For that reason, his motion must be denied. In addition, the Court
24 has already entered a preliminary injunction against the Defendants in this case, and in doing so
25 concluded that the Commission presented sufficient evidence to make a *prima facie* showing of
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27 ¹ The Commission is filing a separate opposition to address Feathers’s fourth motion to dismiss,
28 which asks the Court to dismiss the case because he claims the Commission submitted a non-
privileged letter to the Court (Dkt. No. 96).

1 its claims for securities fraud and a probability of success on the merits. *See* Dkt. No. 34. Given
2 the Court’s holding that the Commission met its burden for the preliminary injunction, it is clear
3 the Commission’s complaint meets the less stringent standard under Rule 12(b)(6).

4 As for his contention that the case should be dismissed under Rule 12(b)(2) through
5 (b)(5), Feathers – while represented by counsel – already conceded in his answer to this Court’s
6 jurisdiction and to his residence in this District, and in answering the complaint, he never
7 objected to service. In fact, his prior litigation counsel reported to the Court in the parties’ joint
8 report that “[t]here are no issues as to subject matter, jurisdiction, venue or service.”

9 Feathers also raises constitutional issues in his motion. While represented, Feathers
10 consented to the preliminary injunction. He also had notice of the Commission’s request for the
11 injunction and a receiver, and chose not to contest that. In addition, Feathers was represented by
12 counsel during the Commission’s investigation that preceded this action. And his freedom of
13 speech has not been challenged here. Thus, there are no First, Fourth or Fifth Amendment
14 concerns here.

15 Feathers’s other motion (Dkt. No. 93) asks the Court to dismiss the action “for cause”
16 and to impose sanctions. Like his other motion, while he purports to bring this motion under
17 Rule 12(b), Feathers’s entire argument is premised on his self-serving view of the evidence. The
18 Commission recognizes he has the right to challenge the evidence against him. But, again, that
19 challenge is not appropriate at this stage of the case or for motions filed under Rule 12(b),
20 especially given this Court’s preliminary injunction findings.

21 Finally, with respect to Feathers’s motion to dismiss the Receiver (Dkt. No. 94), the
22 Receiver has submitted an opposition to that motion, which the Commission joins. Feathers’s
23 arguments are meritless attacks on the integrity of the Receiver and Commission counsel, and
24 should be rejected.

25 Accordingly, the Commission asks that this Court deny, with prejudice and in their
26 entirety, Feathers’s two motions to dismiss and his motion to dismiss the receiver (Dkts. Nos. 92,
27 93 and 94).

1 **II. BACKGROUND SUMMARY**

2 This case concerns a \$42 million offering fraud. Defendant Feathers and the firm he
3 controlled, Small Business Capital Corp. (“SB Capital”), managed two mortgage funds,
4 Investors Prime Fund, LLC (“IPF”) and SBC Portfolio Fund, LLC (“SPF”) (collectively, the
5 “Funds”). Over the course of several years, and continuing to the day the Commission
6 commenced this action, SBC and Feathers were unregistered broker-dealers who ran the Funds
7 as a Ponzi-like scheme by paying returns to Fund investors that were only partially funded by the
8 Funds’ actual profits, misused Fund assets, and violated his fiduciary duties by having the Funds
9 and SBC enter into several undisclosed transactions to create fictitious profits, and with conflicts
10 of interest. *See* Dkt. No. 7 (Pl. brief in support of TRO and preliminary injunction) at 3-14 (and
11 evidence cited therein).

12 The Commission filed this action on June 21, 2012. *See* Dkt. No. 1. It sought, and the
13 Court granted on June 26, a temporary restraining order against all Defendants, an asset freeze,
14 and the appointment of a temporary receiver. *See* Dkt. No. 5 (*ex parte* application for relief); *See*
15 Dkt. No. 16 (TRO). Ultimately, the Court concluded that the Commission had submitted
16 sufficient evidence of the securities fraud violations to establish a *prima facie* case of securities
17 fraud and a probability of success on the merits, and entered a preliminary injunction against the
18 Defendants and appointed a permanent receiver. *See* Dkt. No. 34 (Preliminary Injunction and
19 Orders) at 1. In its July 10, 2012 Order, the Court specifically found that “The Commission has
20 demonstrated a probability of success on the merits in this action and the possibility of
21 dissipation of assets.” *See* Dkt. No 34 (Preliminary Injunction and Orders) at 1.

22 While represented by litigation counsel, Feathers consented to the preliminary injunction
23 and the receiver. *See id.* Then, on August 24, 2012, he filed his answer to the Commission’s
24 complaint. *See* Dkt. 59. In the answer, Feathers admitted to venue and conceded his residence
25 in this District. *See id.* at ¶¶ 7-8. He also did not object to service.

26 In early November 2012, Feathers filed eight *ex parte* motions. *See* Dkt. Nos. 92-94, 96,
27 102-105. On November 13, 2012, this Court denied the *ex parte* relief and instructed the clerk to
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1 set a hearing date on the next available civil motion calendar to address four of the motions. *See*
2 Dkt. No. 106. The clerk set those four motions (Dkt Nos. 92, 93, 94, 96) for hearing on February
3 22, 2013. Three of those motions seek dismissal of the case and the Receiver (Dkt. Nos. 92, 93,
4 94), and are addressed in this omnibus opposition; the other motion challenging the introduction
5 of a non-privileged letter (Dkt. No. 96) is addressed in a separate opposition.

6 The Court also permitted Feathers to file his other four motions (Dkt. Nos. 102, 103, 104,
7 105) as regularly noticed motions, and specifically noted the requirement to obtain a hearing date
8 before filing. *See* Dkt. No. 106. Thereafter, Feathers filed five more *ex parte* motions and a
9 memorandum of points and authorities (Dkt. Nos. 109, 110, 111, 112, 113, 114) without
10 following the Local Rules and without obtaining hearing dates. Those motions are not addressed
11 in this omnibus opposition. Given the flurry of motion activity by Feathers, the Commission has
12 responded as best it can to the motions. To the extent the Court is considering any other motions
13 on February 22, 2013 other than the four motions that are addressed by the Commission in this
14 omnibus opposition and in its separately filed opposition, the Commission requests leave of the
15 Court to submit additional papers to the extent necessary.

16 **III. ARGUMENT**

17 Feathers's motions to dismiss should be denied. A motion to dismiss brought under Rule
18 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of the claims asserted
19 in a complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a
20 cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal
21 theory.'" *SEC v. Mozillo*, 2009 U.S. Dist. LEXIS 104689, at *17 (C.D. Cal. Nov. 3, 2009)
22 (*quoting Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). In reviewing a
23 motion a dismiss under Rule 12(b)(6), all allegations in the complaint, and all reasonable
24 inferences therefrom, are taken as true, and the allegations are construed in the light most
25 favorable to the non-moving party. *See Simpson v. AOL Time Warner, Inc.*, 452 F.3d 1040, 1046
26 (9th Cir. 2006). Dismissal is proper only if it appears beyond doubt that the non-movant can
27 prove no set of facts to support its claims. *Id.* Under this standard, Feathers clearly has not
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1 satisfied his burden in challenging the sufficiency of the Commission's allegations in this case or
2 the relief that has already been granted.

3 **A. Defendant's Motion To Dismiss Under Rules 8, 9 And 12(b) Should Be**
4 **Denied (Dkt. No. 92)**

5 **1. The Commission's complaint meets all necessary pleading**
6 **requirements**

7 Feathers's motion to dismiss under Rules 8, 9 and 12(b)(6) (Dkt. No. 92) should be
8 denied. First, there is no merit to Feathers's argument that the complaint should be dismissed
9 under Rule 12(b)(6). *See* Dkt. No. 92 (Def. motion) at 6-7. Although Feathers cites Rule
10 12(b)(6), he never challenges the sufficiency of the Commission's allegations. Instead, he claims
11 he has evidence to refute these allegations. That is not a basis for dismissal under Rule 12(b)(6),
12 and for that reason alone, Feathers's argument should be rejected.

13 Moreover, this Court has already held that the Commission has provided sufficient
14 factual support to establish a *prima facie* case of securities fraud and a probability of success on
15 the merits. *See* Dkt. No. 34 at 1. Having found that the Commission met its burden for the
16 preliminary injunction, its allegations have clearly met the less stringent standard under Rule
17 12(b)(6). *See, e.g., Motorola, Inc. v. Pick*, 2004 WL 5472092, at *3 (C.D. Cal. June 22, 2004)
18 (Collins, J.) (denying motion to dismiss that followed granting of preliminary injunction,
19 explaining that "[h]aving met its burden on its motion for preliminary injunction, the Court finds
20 that Plaintiff has easily met the less stringent burden of Rule 12(b)(6).").

21 His arguments regarding Rules 8 and 9 are equally futile. Although he cites Rule 8(d) in
22 his caption, nowhere does Feathers appear to argue that the Commission's complaint does not
23 satisfy Rule 8(d)'s requirement for the allegations to be "simple, concise and direct." FED. R.
24 CIV. P. 8(d). In any event, the Commission's complaint easily satisfies this requirement. He also
25 seems to argue that the Commission violated Rule 9(a)(1)(B) by naming IPF or SPF, the two
26 mortgage funds he manages, as Defendants. *See* Dkt. No. 92 (Def. motion) at 5-6. But that Rule
27 concerns the "authority to sue," and has nothing to do with which parties are proper defendants
28 in an action. FED. R. CIV. P. 9(a)(1)(B). To the extent Feathers meant to argue that the

1 Commission failed to plead its fraud allegations with the requisite particularity under Rule 9(b),
 2 that too lacks merit. The Commission’s complaint more than adequately alleges the “who, what,
 3 where, when and how” of the fraudulent conduct. *Vess v. Ciba-Geigy Corp.*, 317 F.3d 1097,
 4 1106 (9th Cir. 2003); *see also Odom v. Microsoft Corp.*, 486 F.3d 541, 553 (9th Cir. 2007)
 5 (allegations need to identify circumstances constituting fraud so defendant can prepare answer).

6 **2. Feathers has already conceded jurisdiction, venue and service of**
 7 **process**

8 Feathers also wrongly and belatedly asserts as a basis for dismissal Rules 12(b)(2) (lack
 9 of personal jurisdiction), 12(b)(3) (improper venue), 12(b)(4) (insufficient process), and 12(b)(5)
 10 (insufficient service of process). *See* Dkt. No. 92 (Def. motion) at 7, 12-13. With the aid of
 11 litigation counsel, Feathers already admitted in his answer that this Court has jurisdiction over
 12 this action, and that he resides in this District. *See* Dkt. No. 59 at ¶¶ 7-8. Also, this Court has
 13 already held that it “has jurisdiction over the parties to, and the subject matter of, this action.”
 14 Dkt. No. 34 at 1. Indeed, Feathers’s prior litigation counsel agreed in the parties’ joint report to
 15 the Court that “[t]here are no issues as to subject matter jurisdiction, venue, or service. All
 16 parties have been served.” Dkt. No. 74 (Joint Case Mgmt. Conf. Stmt. (Oct. 5, 2012) at 1. Thus,
 17 Feathers has no basis to dismiss the action under Rule 12(b)(2), (3), (4) or (5).²

18 **3. There is no merit to Feathers’s claims of constitutional violations**

19 Feathers makes additional meritless, irrelevant arguments, which are wholly unrelated to
 20 the sufficiency of the pleadings. The first of these is his claim that the Commission has violated
 21 his rights under the First, Fourth and Fifth Amendments. *See* Dkt. No. 92 (Def. motion) at 6-12.
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 25 ² A defendant must assert the defenses stated in Rule 12(b)(1) through (b)(7) before the
 26 defendant files a pleading responding to the complaint. *See* FED. R. CIV. P. 12(b) (“[a] motion
 27 asserting any of these defenses must be made before pleading if a responsive pleading is
 28 allowed”). Because Feathers already filed an answer in this case (Dkt. No 59), his pending
 motions must be treated as Rule 12(c) motions for judgment on the pleadings. *See Aldabe v.*
Aldabe 616 F 2d 1089, 1093 (9th Cir. 1980). The pleading standards for Rule 12(c) and Rule
 12(b) are the same – that is, all material facts in the pleading are assumed to be true. *See*
Fleming v Pickard 581 F 3d 922, 925 (9th Cir 2009).

1 Feathers misunderstands the protections afforded by the First Amendment. His argument
2 is based on *Chaplinsky v. New Hampshire*, where the Supreme Court considered whether the
3 New Hampshire high court construed a statute to only prohibit words likely to incite an
4 imminent breach of peace –so-called “fighting words.” 315 U.S. 568 (1942). Feathers argues
5 that the Commission’s use of words like “Ponzi-like scheme” in pleadings or press releases
6 violates his First Amendment rights to freedom of speech. Neither the *Chaplinsky* decision, nor
7 the First Amendment, supports such a contention. The Commission, like any plaintiff, has the
8 right to make allegations against a party and, as a government agency, exercises this right with
9 all due care. Feathers’s First Amendment argument, therefore, has no merit.

10 The basis for Feathers’s claim that his Fourth Amendment rights were violated is unclear.
11 To the extent it is intended to address the pre-trial freeze placed upon Defendants’ assets, this
12 argument is also meritless. This Court has the power to issue an asset freeze ancillary to the
13 injunctive relief sought by the Commission. *SEC v. Hickey*, 322 F.3d 1123, 1131 (9th Cir.
14 2003); *SEC v. International Swiss Inv. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990). Courts use
15 freeze orders to prevent waste and dissipation of assets and to ensure their availability for
16 disgorgement for the benefit of victims of the fraud. *See e.g., SEC v. Hickey*, 322 F.3d at 1132
17 (affirming imposition of asset freeze over nonparty brokerage firm controlled by the defendant to
18 effectuate disgorgement order against defendant). In fact, the Court has already held that the
19 Commission has already made a *prima facie* showing of “the possibility of dissipation of assets”
20 to support the asset freeze. Dkt. No 34 at 1. More importantly, Feathers, while represented by
21 counsel, consented to that freeze. *See id.*

22 Finally, Feathers also contends that the Commission has violated his rights under the
23 Fifth Amendment. This argument is also not clear. If it is based on the Commission’s conduct
24 of its investigation preceding this litigation, Feathers was not entitled to the “full panoply of
25 judicial procedures” in that fact-finding investigation. *SEC v. Rivlin*, 1999 WL 1455758, at * 3
26 (quoting *Hannah v. Larche*, 363 U.S. 420, 442 (1959)). Rather, Feathers “is afforded due
27 process rights through the adjudication before this court, and not during the investigation prior to
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1 the filing of the civil complaint.” *Id.* (citing *SEC v. OKC Corp.*, 474 F. Supp. 1031, 1041 (N.D.
2 Tex. 1979)).

3 Feathers also seems to claim the Commission violated his Fifth Amendment right against
4 self-incrimination, but does not state when or how the violation occurred. In fact, Feathers was
5 represented by counsel during the Commission’s investigation; and, as is the Commission’s
6 practice, his testimony, and all requests for documents, were accompanied by the specific
7 instruction that he could assert his Fifth Amendment right and not testify or produce documents.
8 *See* Declaration of Susan F. Hannan (“Hannan Decl.”) ¶¶ 5-6, Ex. 1, Form 1662 specifically
9 advising him “You may refuse, in accordance with the rights guaranteed by the Fifth
10 Amendment to the Constitution of the United States, to give any information that may tend to
11 incriminate you.” Therefore, there has been no violation of his Fifth Amendment rights.

12 **4. The Commission has not selectively targeted Feathers for prosecution**

13 Feathers also appears to argue that he is part of a group that has been selectively targeted
14 for prosecution. *See* Dkt. No. 92 (Def. motion) at 2, 20. Such a claim, however, requires a
15 showing that: (i) “others similarly situated have not been prosecuted” and (ii) “the decision to
16 prosecute was motivated by a discriminatory purpose.” *United States v. Nutri-Cology, Inc.*, 1993
17 WL 13585505, at *14 (N.D. Cal. Sept. 23, 1993) (citing *Wayte v. United States*, 470 U.S. 598
18 (1985)). Feathers has not pointed to any similarly situated person who was not prosecuted –
19 presumably because he was the sole founder and manager of SB Capital and the Funds. And his
20 sole basis for this claim is his self-serving, bare accusation. As such, his claim of selective
21 prosecution fails as a matter of law.

22 **5. This case is properly brought under federal law**

23 Feathers also contends that state laws are sufficient to address the Commission’s claims
24 and there is no basis for federal law to preempt those state laws here. *See* Dkt. No. 92 (Def.
25 motion) at 3,12. This assertion is frivolous. This Court has already held that it has subject
26 matter jurisdiction over this action. *See* Dkt. No. 34 at 1. Courts, including the Supreme Court,
27 routinely uphold enforcement actions by the Commission, and the federal government’s power to
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1 enforce the federal securities laws is not subject to serious dispute. *See, e.g., Aaron v. SEC*, 446
2 U.S. 680 (1980).

3 **6. Rule 11 sanctions against the Commission are not warranted**

4 Finally, Feathers argues that the Commission should be sanctioned. *See* Dkt. No. 92
5 (Def. motion) at 20. There are three basic grounds for sanctions under Rule 11. Sanctions may
6 be imposed when the pleading lacks evidentiary support; is not warranted by existing law or a
7 non-frivolous argument for extension or change in existing law; or filed for an improper purpose.
8 *See* FED. R. CIV. P. 11. Given the Court’s prior rulings in this case, and Feathers’s own consent
9 to some of them, there is simply no basis to impose sanctions. Moreover, the arguments Feathers
10 makes for sanctions are specious. Examples include his reference to the declaration of Roger
11 Boudreau, a Commission accountant, his argument that it is not fair to sue him because his
12 companies were not in the securities business, and his unfounded complaints about the asset
13 freeze, duress, and unrelated Commission investigations of hedge fund managers. These are all
14 “red herrings” that have nothing to do with sufficiency of the pleadings.

15 **B. This Court Should Deny Feathers’s Motion to Dismiss For Cause (Dkt. No.**
16 **93)**

17 In his motion to dismiss for cause (Dkt. No. 93), Feathers argues that “Plaintiff has no
18 evidentiary support to its claims of federal securities law violations, nor, therefore, to
19 demonstrate any basis for a requirement of a broker-dealer license, which defendant is not
20 required to hold, as an issuer for its funds.” Dkt. No. 93 at 15:7-10. Again, Feathers offers no
21 legal basis to support this argument. Rather, his motion is essentially an argument about the
22 sufficiency of the evidence.³ Therefore, this motion should be denied as well.

23 **C. Feathers’s Motion To Dismiss The Receiver Also Lacks Merit (Dkt. No. 94)**

24 In his motion to dismiss the Receiver (Dkt. No. 94), Feathers attacks the integrity of the
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27 ³ For example, Feathers argues that his funds were profitable, that his representations were “fact
28 based” and that Defendants provided full disclosure in the offerings. *See* Dkt. No. 93 (Def.
motion) at 1:22-2:24. The Commission disputes Feathers’s factual contentions.

1 Receiver and Commission counsel. He makes similar claims in his other motions, and they
2 should all be rejected. The Receiver is a court-appointed neutral party and serves to preserve
3 assets for investors. Feathers's aspersions cast against the Receiver and Commission counsel are
4 unfounded and untrue, and also irrelevant to the sufficiency of the pleadings. The Commission
5 joins in the Receiver's opposition to this motion, which addresses these charges.

6 **IV. CONCLUSION**

7 Therefore, for the foregoing reasons, the Commission respectfully requests the Court to
8 deny Defendant Feathers's motions to dismiss (Dkt. Nos. 92 and 93) and his motion to dismiss
9 the receiver (Dkt. No. 94) in their entirety and with prejudice, and to grant any other relief that is
10 appropriate.

11
12 DATED: November 19, 2012

Respectfully submitted,

13 /s/ Susan F. Hannan
14 JOHN B. BULGOZDY
15 SUSAN F. HANNAN
16 Attorneys for Plaintiff
17 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, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648
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On November 19, 2012, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OMNIBUS OPPOSITION TO DEFENDANT MARK FEATHERS'S (1) MOTION TO DISMISS UNDER RULE 12(b)(2), (3), (4), (5), AND (6), RULE 8(d), AND RULE 9(a)(1)(B) (Dkt. No. 92) (2) MOTION TO DISMISS FOR CAUSE UNDER RULE 12(b) (Dkt. No. 93), AND (3) MOTION TO DISMISS RECEIVER (Dkt. No. 94)** 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: November 19, 2012

/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**

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