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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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

11 SECURITIES AND EXCHANGE)
COMMISSION,)

12 Plaintiff,)

13 vs.)

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

16)
17 Defendants.)
18)
19)

Case No. CV12-03237 EJD

(1) REQUEST FOR A COURT
ORDERED AMENDMENT TO
THE ORDER AND INJUNCTION

AND

(2) MOTION FOR A
REQUIREMENT FOR THE
RECEIVERSHIP ESTATE TO
ENJOIN A LEGAL ACTION

HEARING SCHEDULED FOR
FEBRUARY 22ND, 2012

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1 **I Introduction**

2 *Pro se* defendant Feathers is asking the court to instruct the receiver to allocate monies from
3 the assets of the receivership estate for shared legal expenses to protect, preserve, and/or recover
4 \$990,000 of the equity capital of Investors Prime Fund, LLC ("IPF"), which represents IPF's full
5 investment into California Business Bank, and to join the following lawsuit:

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A Professional Law Corporation
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13 Attorneys for Plaintiffs
FORTUNE CAPITAL, LLC, BENJAMIN B. EFRAIM and KENA-CHIN EFRAIM

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

FORTUNE CAPITAL, LLC, BENJAMIN)	Case No.
B. EFRAIM, and KENA-CHIN EFRAIM,)	
Plaintiffs)	COMPLAINT FOR VIOLATION OF
v.)	FEDERAL AND CALIFORNIA
CALIFORNIA BUSINESS BANK, RAFFI)	SECURITIES LAWS, FRAUD & DECEIT,
D. KRIKORIAN, MICHAEL MALUCCIO,)	NEGLIGENT MISREPRESENTATION,
COLE W. MINNICK, JR., JANE)	UNFAIR COMPETITION, AND
AUSERWALD, PEGGY HANSEN,)	CONSTRUCTIVE TRUST
MLADEN BUNTICH, STEVEN HONG,)	AND
BIFF NAYLOR, KENNETH THOMPSON,)	DEMAND FOR JURY TRIAL.
and HUTCHINSON & BLOODGOOD,)	
I.L.P.)	
Defendants)	

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23 Investors Prime Fund, LLC, invested in subject bank at same time as named plaintiffs,
24 through the same offering, and is the largest single investor in California Business Bank, at 9.9%
25 ownership, and its interests will best be served by adjoining this legal matter. Total IPF legal fees
26 for subject lawsuit are estimated at \$125,000 or less, and with an expected recovery in excess over
27 legal fees of approximately \$700,000.

1 **II History of IPF Investment into California Business Bank**

2 Investors Prime Fund, LLC, invested \$990,000 into an equity offering of California
3 Business Bank in June of 2011. Prior to this investment, IPF members had approved community
4 bank equity investments from fund capital, to allow for an increase in IPF's SBA guaranteed loan
5 fundings through loan participations with FDIC insured banks. The likelihood of loan
6 participations was increased by way of a relationship gained through an equity investment into a
7 partner bank.

8 In June of 2011, IPF made equity investments into California Business Bank, for
9 approximately 9.9% of the bank's shares outstanding, based upon information in the bank's
10 placement memorandum and attachments and exhibits.

11 Within approximately sixty days of the IPF investment into the bank, and after the
12 completion of a joint regulatory review of the bank (on-site safety and soundness exam) by the
13 FDIC and the California Department of Financial Institutions, it became apparent that the bank's
14 board and officers had withheld from investors serious amounts of material information about the
15 bank's financial soundness. In fact, before the end of that quarter (September 31st, 2011), the
16 regulators directed the bank's board of directors to retroactively revise its June 30th, 2011, financial
17 statement, which caused the bank to write off approximately fifty percent of its equity position, or
18 essentially all of its new capital raised. Subsequent to the revision of the bank's financial statement
19 and write down of capital, the bank was categorized by regulators as substantially under-
20 capitalized, and directed to raise capital, or to face a likelihood of closure within twelve months or
21 so. Subsequent to the exam, several senior bank officers were terminated, and several board
22 members left the bank.

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24 **III Delays Harm the Estate - The Bank's D & O policy is Reduced from Prior Levels**

25 In 2011 the bank's D & O policy, which would have been the primary and most direct
26 recovery source for the lawsuit, was at approximately \$5,000,000. Due to the bank's decreased
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1 capital and increased regulatory oversight, it is now recently lowered to approximately \$1,500,000,
2 or less than one-third of the level of one year ago.

3 With the tenets of the lawsuit already established, as outlined below from the complaint of
4 the lawsuit, a substantial benefit to IPF is also a savings in legal fees, in addition to providing the
5 measurable upside benefits to the members of IPF with a strong likelihood of favorable resolution
6 for the moving party.

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9 2. Commencing on or about September 28, 2010, and continuing until on or about
10 June 28, 2011, Defendant CBB, and its Officers and Directors, issued false and misleading
11 statements in CBB's PPM, in violation of federal and California securities laws, in connection
12 with a Private Placement Offering of up to 3,333,334 shares of CBB common stock. The PPM
13 misrepresented and inflated CBB's loan portfolio by understating CBB's Allowance for Losses
14 on Loans and Leases ("ALLL"), in violation of the law and the specific directives from CBB's
15 Regulators, and in contravention of a Consent Order entered into with CBB's Regulators.
16 Defendant Hutchinson & Bloodgood, LLP, was the certified public accountancy firm who
17 audited the CBB financial statements that were included as Exhibit B to the PPM.

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IV Conclusion

This request provides for an opportunity for IPF to share in legal expenses in which it might otherwise have to carry the full burden in this matter.

1 An expected net recovery in this matter, of up to \$700,000 or so, represents approximately
2 twenty-five percent of IPF's expected annual net income (prior to Order and Injunction), and will
3 recover approximately 2.5% of the fund's capitalization. A benefit:cost ratio of approximately 6:1
4 on expected legal fees vs. expected recovery makes these monies for expenses a sound investment.

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Respectfully submitted,

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Mark Feathers, *Pro Se* Defendant

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