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

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 SMALL BUSINESS CAPITAL
CORPORATION; MARK FEATHERS;
18 INVESTORS PRIME FUND, LLC; and SBCC
PORTFOLIO FUND, LLC,
19

20 Defendants.

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

DECLARATION OF ROBERT MORRIS

DECLARATION OF ROBERT MORRIS

I, Robert Morris, declare, pursuant to 28 U.S.C. § 1746, as follows:

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

2. I reside in Campbell, California. I am 60 years old and am retired. I work part-time as a management specialist doing construction project management for the City of Palo Alto.

3. In 2007, I often saw an advertisement for the Investors Prime Fund (“IPF”) which appeared on the second page of the main section of the San Jose Mercury News newspaper. I was interested in IPF because the advertisement promised a 7.5% rate of return. After deciding to respond to the advertisement, I telephoned Small Business Capital (“SBCC”) and asked for additional information. I believe I spoke with Christine Corso in the Palo Alto office. I made an appointment to go to the SBCC office to meet with Mark Feathers to discuss a possible investment in IPF.

4. I met with Mark Feathers in the Palo Alto office in approximately May, 2007. At that meeting, Mr. Feathers gave me a copy of the February 1, 2007 offering circular for IPF. Based on statements made to me by Mr. Feathers and my review of the offering circular, it was my understanding that IPF made loans on income producing commercial properties. Mr. Feathers told me that the loans were typically secured by first trust deeds, and the loan to value ratio on the properties was generally no greater than 50% though it could go as high as 60%. My understanding was that IPF was generating a profit to investors of either 7% or 7.5% per year. A true and correct copy of the February 1, 2007 IPF offering circular I received from Mark Feathers in May 2007 is attached hereto as Exhibit 118.

5. On June 4, 2007, I invested \$25,000 in IPF. To do so, I went to the Palo Alto Office of SBCC and met with Mark Feathers. I signed a subscription agreement and wrote a check payable to Investors Prime Fund LLC, which I gave to Mr. Feathers. A true and correct copy of the subscription agreement I signed on June 4, 2007 is attached hereto as Exhibit 119. A true and correct copy of my cancelled check for \$25,000 is attached hereto as Exhibit 120. I

1 received an acknowledgement letter signed by Christine Corso that indicated that the current rate
2 of return on my investment was 8.25%. A true and correct copy of the letter from Ms. Corso is
3 attached hereto as Exhibit 121.

4 6. At the time that I invested in IPF, I believed that IPF was profitable. At no time
5 prior to the SEC lawsuit against Mr. Feathers and SBCC in June 2012 did anyone tell me that
6 IPF was not profitable or that IPF's net income was negative in any period. I was never told by
7 anyone at SBCC that IPF's income was insufficient to pay the promised rate of return. My
8 account statements for IPF reflect that I earned the promised rate of return each month. I elected
9 not to take distributions of my returns, but reinvested those monies in IPF. True and correct
10 copies of account statements I received reflecting the activity in my IPF account for the period
11 May 21, 2007 to June 1, 2012 are attached hereto as Exhibit 122.

12 7. On July 28, 2009, I invested an additional \$20,000 in IPF. I made that investment
13 based on my belief that the fund had been performing as promised from the date of my initial
14 investment in June 2007. I believe that I mailed the \$20,000 check to SBCC. I do not recall
15 receiving any additional offering documents at that time. A true and correct copy of my July 28,
16 2009 check is attached hereto as Exhibit 123. I received a confirmation letter from Mark
17 Feathers dated July 29, 2009. A true and correct copy of Mark Feathers' July 29, 2009 letter to
18 me is attached hereto as Exhibit 124. As with my prior investment, I elected not to take
19 distributions, but to reinvest my returns in IPF.

20 8. In 2010, I learned that SBCC was offering a new fund, the SBCC Portfolio Fund
21 ("SPF"). I learned about SPF from the SBCC newsletters and from advertisements in the
22 newspaper. My understanding based on the newsletters and the advertisements was that SPF
23 would pay a 10% rate of return. I contacted SBCC to request additional information and recall
24 speaking with Wyatt Allen at SBCC's office in Los Altos about the new fund. I recall being told
25 that the SPF had a slightly higher risk than the IPF, but not significantly higher. I do not recall if
26 I received an offering circular or other written materials describing SPF.

27 9. On March 23, 2010, I invested \$50,000 in SPF. I filled out a subscription
28 agreement that was acknowledged by Mark Feathers. I invested in SPF because to my

1 knowledge my prior investment with IPF had been profitable and SPF was described as an
2 opportunity to make a higher rate of return with a little increase in risk. A true and correct copy
3 of the subscription agreement I signed, with an acknowledgement page signed by Mark Feathers,
4 is attached hereto as Exhibit 125.

5 10. My account statements for SPF reflect that I earned the promised rate of return
6 each month. I elected not to take distributions of my returns, but reinvested those monies in SPF.
7 True and correct copies of account statements I received reflecting the activity in my SPF
8 account for the period January 1, 2011 to June 1, 2012 are attached hereto as Exhibit 126.

9 11. On February 7, 2012, I invested an additional \$80,000 from a deferred
10 compensation account into SPF. I learned that I could invest retirement funds either from a
11 newsletter or an ad in the Mercury News. After learning I could make this investment, I met
12 with Peter Eberle in the Los Altos office in approximately December 2011 to discuss the
13 investment. I made the investment based upon that meeting with Mr. Eberle. A true and correct
14 copy of the subscription agreement I signed, with an acknowledgement page signed by Natalie
15 Taaffe, is attached hereto as Exhibit 127. A true and correct copy of the acknowledgement letter
16 dated February 7, 2012 is attached hereto as Exhibit 128.

17 12. My account statements for the \$80,000 retirement account that I invested in SPF
18 reflect that I earned the promised rate of return each month. I elected not to take distributions of
19 my returns, but reinvested those monies in SPF. True and correct copies of account statements I
20 received reflecting the activity in my SPF account for the period February 7, 2012 to June 1,
21 2012 are attached hereto as Exhibit 129.

22 13. In 2010, I received numerous requests from Mr. Feathers to approve changes to
23 the operating agreements for both the IPF and SPF. To the extent that I understood a proposed
24 change and felt that it was beneficial, I approved it. There were changes that I did not approve. I
25 never questioned anyone at SBCC regarding the proposed amendments. However, at no time
26 did I understand that I was being asked to approve SBCC borrowing money from IPF or SPF,
27 nor did I understand that I was being asked to ratify prior borrowing from the two funds.
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1 14. I received a letter from Mark Feathers dated August 15, 2010 that requested that I
2 approve two changes to the IPF Operating Agreement. I understood Request No. 1 in that letter
3 to be a request to ratify a change in IPF's accounting for tax purposes. I did not understand that
4 I was being asked to approve SBCC borrowing money from IPF, nor did I understand that I was
5 being asked to ratify prior borrowing. A true and correct copy of the August 15, 2010 letter from
6 Mark Feathers to me is attached hereto as Exhibit 130.

7 15. After I invested in IPF, I began receiving SBCC newsletters from Mark Feathers.
8 These newsletters summarized the operations IPF, and after SBCC began offering SPF, the
9 operations of SPF as well. These newsletters gave the impression that the two funds were
10 generating returns as promised by Feathers and SBCC. None of the newsletters ever indicated
11 that the funds were not generating the promised rate of return. Typically, the newsletters would
12 state that the funds distributed returns at or above the promised rate of return for each month.
13 For example, the November 2011 newsletter stated that IPF "distributed 7.50% (compounded)
14 for November," and SPF "distributed at 10.00% (compounded)." A true and correct copy of the
15 November 2011 SBCC Newsletter is attached hereto as Exhibit 131.

16 16. The SBCC newsletters also contained information regarding the performance of
17 the loan portfolio held by IPF and SPF. For example, the November 2011 newsletter represented
18 that "IPF's note portfolio is 100% current with no borrowers late on payments." Exhibit 131.
19 On or around January 11, 2012, I received a letter from Mark Feathers that represented that as of
20 year-end 2011, only one loan in the SPF portfolio was non-performing. That letter stated that
21 SBCC did not anticipate a loss on that loan "due to the fund's low cost basis in the note and the
22 collateral securing the note." A true and correct copy of Mark Feather's January 11, 2012 letter
23 is attached hereto as Exhibit 132.

24 17. I never saw audited financial statements for IPF or SPF. I did not know that they
25 existed, and I never asked to see them. Neither Mark Feathers nor anyone else at SBCC ever
26 disclosed to me that SBCC was borrowing money from IPF and SPF. Had I known, I would
27 have inquired why such borrowings were necessary, and I likely would have withdrawn my
28 investment.

1 18. Since this lawsuit was filed, I have learned that the audited financial statements
2 for IPF show an increase in a receivable due from SBCC to IPF from \$55,622 at year-end 2009
3 to \$1.8 million at year-end 2010. The existence of this receivable was unknown to me during the
4 time that Mr. Feathers had control of SBCC. Had I known about it, I would have inquired why
5 such borrowings were necessary. Neither Mr. Feathers nor anyone else at SBCC ever disclosed
6 to me that this receivable was not permissible under IPF's offering circular or operating
7 agreement before it was amended. Had I known these facts in 2010, I would have been
8 concerned about the safety of my investment, about management's integrity, and about
9 management's competence. I would have considered this to be material information that would
10 have altered my investment decision and I would likely have withdrawn my investment from IPF
11 and SPF.

12 19. Since this lawsuit was filed, I have learned that draft audited financial statements
13 for the IPF Fund show an increase in a receivable due from SBCC to IPF from \$1.8 million at
14 year-end 2010 to \$4.8 million at year-end 2011. The existence of this receivable was unknown
15 to me during the time that Mr. Feathers had control of SBCC. Had I known about it, I would
16 have inquired why such borrowings were necessary. Neither Mr. Feathers nor anyone else at
17 SBCC ever disclosed to me that this receivable was not permissible under IPF's offering circular
18 or operating agreement before it was amended. Had I known these facts in 2011, I would have
19 been concerned about the safety of my investment, about management's integrity, and about
20 management's competence. I would have considered this to be material information that would
21 have altered my investment decision and I would likely have withdrawn my investment from IPF
22 and SPF.

23 20. Since this lawsuit was filed, I have learned that the audited financial statements
24 for SPF show an increase in a receivable due from SBCC to SPF from \$534,736 at year-end
25 2009 to \$707,464 at year-end 2010. The existence of this receivable was unknown to me during
26 the time that Mr. Feather's had control of SBCC. Had I known about it, I would have inquired
27 why such borrowings were necessary. Neither Mr. Feathers nor anyone else at SBCC ever
28 disclosed to me that SPF's outside auditor had informed SBCC that this receivable was not

1 permissible under SPF's offering circular or operating agreement. Had I known these facts in
2 2010, I would have been concerned about the safety of my investment, about management's
3 integrity, and about management's competence. I would likely have withdrawn my investment
4 from IPF and SPF.

5 21. Since the SEC lawsuit was filed, I have learned that SPF was selling loans in its
6 portfolio to IPF at prices above the face value of the loan. I was not informed of these loan sales
7 at the time, and I would not have approved them if I had been informed.

8 22. A true and correct copy of a June 29, 2011 offering circular for IPF that I received
9 from SBCC is attached hereto as Exhibit 133.

10 23. A true and correct copy of a document entitled "SBC Portfolio Fund LLC Note
11 Investment Yield Illustration" that I received from SBCC is attached hereto as Exhibit 134. This
12 document reflects my understanding that notes held by SPF were "government guaranteed junior
13 loans . . . adding to the safety and security of the note investments." The document also reflects
14 my understanding that notes held by SPF generally had loan to value ratios of approximately
15 50%.

16 24. A true and correct copy of a single page document that I received from SBCC that
17 purports to illustrate the "Note Investment Yield" for IPF is attached hereto as Exhibit 135. This
18 document reflects my understanding that notes held by IPF had "government repayment
19 guarantees." The document also reflects my understanding that notes held by IPF generally had
20 loan to value ratios of approximately 65%.

21 25. A true and correct copy of a May 24, 2010 letter to IPF investors from Mark
22 Feathers that I received from SBCC is attached hereto as Exhibit 136.

23 26. A true and correct copy of a May 3, 2010 letter to investors from Mark Feathers
24 that I received from SBCC is attached hereto as Exhibit 137.

25 27. A true and correct copy of a June 10, 2010 letter to me from Mark Feathers that I
26 received from SBCC is attached hereto as Exhibit 138.

27 28. A true and correct copy of a September 30, 2010 letter to IPF investors from Mark
28 Feathers that I received from SBCC is attached hereto as Exhibit 139.

1 29. A true and correct copy of a December 21, 2010 letter to IPF investors from Mark
2 Feathers that I received from SBCC is attached hereto as Exhibit 140.

3 30. A true and correct copy of a May 23, 2012 letter to investors from Mark Feathers
4 that I received from SBCC is attached hereto as Exhibit 141.

5 31. A true and correct copy of a June 6, 2012 letter to me from Mark Feathers that I
6 received from SBCC is attached hereto as Exhibit 142.

7 32. A true and correct copy of an August 9, 2011 letter to me from Mark Feathers that
8 I received from SBCC is attached hereto as Exhibit 143.

9 33. A true and correct copy an August 2011 newsletter to IPF investors from Mark
10 Feathers that I received from SBCC is attached hereto as Exhibit 144.

11 34. A true and correct copy of an undated letter to IPF investors from Mark Feathers
12 discussing year-end 2011 results for IPF that I received from SBCC is attached hereto as Exhibit
13 145.

14 35. A true and correct copy a December 2011 newsletter to IPF investors from Mark
15 Feathers that I received from SBCC is attached hereto as Exhibit 146.

16 36. A true and correct copy of a January 16, 2012 letter to IPF investors from Mark
17 Feathers that I received from SBCC is attached hereto as Exhibit 147.

18 37. A true and correct copy a January 2012 newsletter to IPF investors from Mark
19 Feathers that I received from SBCC is attached hereto as Exhibit 148.

20 38. A true and correct copy a February 2012 newsletter to IPF investors from Mark
21 Feathers that I received from SBCC is attached hereto as Exhibit 149.

22 39. A true and correct copy a March 23, 2012 Press Release that I received from
23 SBCC is attached hereto as Exhibit 150.

24 40. A true and correct copy a March 2012 newsletter to SPF investors from Mark
25 Feathers that I received from SBCC is attached hereto as Exhibit 151.

26 41. A true and correct copy a March 2012 newsletter to IPF investors from Mark
27 Feathers that I received from SBCC is attached hereto as Exhibit 152.
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1 42. A true and correct copy an April 2, 2012 Press Release that I received from SBCC
2 is attached hereto as Exhibit 153.

3 43. A true and correct copy a April 2012 newsletter to IPF investors from Mark
4 Feathers that I received from SBCC is attached hereto as Exhibit 154.

5 44. A true and correct copy a May 2012 newsletter to investors from Mark Feathers
6 that I received from SBCC is attached hereto as Exhibit 155.

7 45. A true and correct copy an undated letter to investors that I received from Mark
8 Feathers Bates-stamped BM00054 is attached hereto as Exhibit 156.

9 46. A true and correct copy an undated letter to investors that I received from Mark
10 Feathers Bates-stamped BM00055-56 is attached hereto as Exhibit 157.

11 47. A true and correct copy a January 29, 2013 letter to investors that I received from
12 Mark Feathers is attached hereto as Exhibit 158.

13 48. A true and correct copy a January 29, 2013 letter to investors that I received from
14 Mark Feathers is attached hereto as Exhibit 158.

15 49. A true and correct copy a January 30, 2013 letter to investors that I received from
16 Mark Feathers is attached hereto as Exhibit 159.

17 50. A true and correct copy a February 4, 2013 letter to investors that I received from
18 Mark Feathers is attached hereto as Exhibit 160.

19 51. A true and correct copy a letter dated February 7, 2012 to investors that I received
20 from Mark Feathers is attached hereto as Exhibit 161. I received this letter in February 2013.

21 52. A true and correct copy a letter dated February 11, 2013 to investors that I
22 received from Mark Feathers is attached hereto as Exhibit 162.

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1 53. A true and correct copy a letter dated February 23, 2013 to investors that I
2 received from Mark Feathers is attached hereto as Exhibit 163.

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

4 Executed on May 17, 2013 at Campbell, California.

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Robert Morris