JOHN B. BULGOZDY (Cal. Bar No. 219897)
Email: bulgozdyj@sec.gov
LYNN M. DEAN (Ca. Bar. No. 205562)
Email: deanl@sec.gov
SUSAN F. HANNAN (Cal. Bar No. 97604)
Email: hannans@sec.gov

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants.

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

DECLARATION OF DAVID GRUEBELE

DECLARATION OF DAVID GRUEBELE

I, David Gruebele, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a resident of Folsom, California. I currently work as a management consultant and my company is called Halo Management Group. I do interim finance management and "ABS" mortgage office consulting. I have personal knowledge of each matter set forth below, and if called as a witness, I could and would competently testify to the facts stated herein.

2. I have a B.S. in Engineering from the University of California, Davis, which I received in 1986. After college, I was an engineer and then transitioned into turnaround management, and through working with troubled companies, I became involved in mortgage refinancing as a vehicle to recapitalize troubled companies. Through my consulting work, I became expert in the use of ABS mortgage office software.

3. At some point in 2009, I received a call from Mark Feathers who informed me that he ran a real estate mortgage fund. I generally knew of Mr. Feathers and his fund from others in the industry. Mr. Feathers told me that another consultant with whom he was working had referred me in connection with some accounting and ABS issues that Mr. Feathers was having. Mr. Feathers told me that he had a DRE audit of his trust account that had been problematic. We had a general discussion of my capabilities. The conversation concluded. I was not retained at that time.

4. Later in 2009, in or about November or December 2009, Mr. Feathers called me again and we set up an appointment to meet. I went to the offices of Small Business Capital Corp. ("SBCC") in Los Altos and met with Mr. Feathers and his accounting personnel/bookkeepers at the time, Christine Corso and Claire Delgado. Mr. Feathers and SBCC retained me to assist with issues identified by the DRE during its audit of the loan servicing trust account used by Mr. Feathers and SBCC. Shortly after I was retained, Mr. Feathers discharged Ms. Corso and Ms. Delgado. In early 2010, Mr. Feathers and SBCC retained Carmen Palenske to work as the controller for SBCC and all entities managed by it.. My assignments were expanded and I became involved in the annual financial audit of the two funds managed by

Feathers and SBCC, Investors Prime Fund, LLC ("IPF") and SBC Portfolio Fund, LLC ("SPF")(collectively, the "Funds"). I continued to work as a consultant for Mr. Feathers and SBCC through approximately June 2012. My assignments, at different times, included updating the ABS reports; reviewing and updating the general ledgers for SBCC, IPF, SPF, and other companies operated by Mr. Feathers; producing monthly financial statements for the Funds including profit & loss ("P&L") statements; monitoring the loan servicing trust account; and periodically monitoring the balance of SBCC's operating account. In early 2012, most of my duties involved responding to document requests from the Securities and Exchange Commission, and much of the day-to-day accounting work was done by Mae Saechao and others. Ms. Saechao was hired as the controller for SBCC and all the entities it managed, replacing Ms. Palenske.

5. At the time I was retained in late 2009, Mr. Feathers had undertaken a project to have the Funds reimburse SBCC for various operating expenses. However, Mr. Feathers did not want to record the reimbursements as expenses on the Funds' books and records, because there were limitations in the Funds' offering documents concerning expenses. In addition, recording these payments as expenses of the Funds would reduce the Funds' net income, and thus negatively impact the Funds' performance. Mr. Feathers decided to categorize the expenses as organizational costs or syndication costs, and he proposed to record these as capitalized assets of the Funds. Based upon my understanding of accounting, this meant that there would not be any impact on the income of the Funds from the payment of these expenses. It also meant that the total assets of the Funds would not decrease.

6. Attached hereto and marked as Exhibit 3 is a true and correct copy of an email, with attachments, that I sent to Mr. Feathers and persons affiliated with IPF's independent outside auditor, on March 18, 2010, with the subject of "IPF Board Minutes" (SAC00000950-953). The attachments are IPF Board Minutes for January 15, 2009, and for December 18, 2009. I created the attached minutes, and sent this email with the attached minutes, at the direction of Mr. Feathers. To the best of my recollection, Mr. Feathers reviewed the attached minutes before they were sent to IPF's independent auditor. Mr. Feathers provided me with information for the

January 15, 2009 minutes, because I was not present at that meeting and had not even been retained by Mr. Feathers and SBCC in January 2009. I was present at a meeting with Mr. Feathers in December 2009, where Mr. Feathers discussed his wish that SBCC would be reimbursed by the Funds for various expenditures that had been made during the year, which Mr. Feathers characterized as organizational and syndication expenses. The expenses that Mr. Feathers identified at the meeting were, as stated in the attached minutes: "additional rent expense for larger offices, separate offices and overhead for investor reps, investor reps compensation, advertising expenses, seminar expenses." Mr. Feathers did not ask me for my opinion on whether such expenses were properly categorized as organizational costs or syndication costs.

7. Mr. Feathers assigned me to interface with IPF's independent outside auditors during the audit of IPF's 2009 financial statements. During the audit, IPF's auditors raised questions about items that Mr. Feathers had instructed me, and others, to categorize as organizational costs and syndication costs in the QuickBooks records of IPF. IPF's auditors required SBCC and IPF to re-categorize many of the expenditures because they were not expenses of IPF, but were expenses of the manager. The auditor required Mr. Feathers and SBCC to repay those expenses. At the end of the audit process, Mr. Feathers and SBCC had created a receivable owed by SBCC to IPF that was recorded as an asset, due from Fund manager, on the books of IPF. This was referred to as the "due from" or the "manager's note" at different times.

8. This process was repeated during the audit of SPF's 2009 financial statements. Again, the auditor objected that certain items booked as organizational or syndication costs of SPF were not expenses of the fund, but rather were expenses of the fund manager, SBCC. The auditor required Mr. Feathers and SBCC to reimburse those expenses to SPF. This resulted in the creation of a due from fund manager on SPF's audited financial statements.

9. Beginning in or around early 2010 after the "due from" was created, Mr. Feathers used the "due from" manager or manager's note for two purposes. First, as a means of providing cash to SBCC from the Funds to pay for SBCC's operations because SBCC was not earning any

net management fees from the Funds under the terms of the offering documents. Second, to the extent that the Funds' actual expenses were such that when netted against income, the net income was below the amount necessary to pay the target yield, then Mr. Feathers directed that the expenses be added to the manager's "due from" or manager's note rather than being recorded as an expense of the Funds. This converted those excess expenses into an "asset" of the Funds by adding them to the manager's "due from" or the manager's note.

10. My duties included working with the ABS mortgage software, which among other reports, produced a "mortgage pool statement." A true and correct copy of a mortgage pool statement for SPF, for the period 1/1/2011 to 5/31/2011, is attached hereto and marked as Exhibit 79 (SBCC011026-036). This report provides a detailed balance sheet (assets and liabilities) and transactions year-to-date. The "mortgage pool evaluation" on page 1 provides a summary of the information in the report. This particular report shows a negative partner's equity, which means that expenses and distributions year-to-date to the shareholders have exceeded the income of the fund. If this persisted at year-end, then the amount of the negative value would be a pro rata reduction to the partners' capital account balances, and would be reported on their Form K-1 tax forms.

11. My responsibilities included generating the disbursement checks to investors in IPF and SPF. Mr. Feathers instructed me that he wanted to maintain monthly payments to IPF investors at a return of approximately 7.5% per annum, and to SPF investors at a return of approximately 9-10% per annum, each month, without regard to the Funds' net income. From time to time in the course of my duties, I advised Mr. Feathers that IPF and/or SPF had distributed more to investors than the Funds' income at that point in time. In response, Mr. Feathers usually assured me that additional income was going to be generated in the near future from new transactions that would balance the over-distributions and/or generate net management fees to SBCC.

12. Attached hereto and marked as Exhibit 76 is a true and correct copy of an email I sent to Mr. Feathers on October 6, 2010 (G00643). In that email, I informed Mr. Feathers that for IPF, the manager, SBCC, had borrowed an additional $1.050 million year to date that was

recorded as "syndication expense" at Mr. Feathers' instruction. In that email with regard to IPF, I wrote: "Net income year to date is just shy of 500K, and we have distributed about 300K more than we have in income year to date." In that sentence, I was informing Mr. Feathers that IPF had net income for 2010 year-to-date that was just under $500,000, but that SBCC and IPF had paid investors about $800,000 year-to-date – or about $300,000 more than IPF had actually earned as income year-to-date.

13. Attached hereto and marked as Exhibit 80 is a true and correct copy of an email exchange I had with Mr. Feathers in February and March 2011 (G0004-5). In my original email dated February 23, 2011, I informed Mr. Feathers that "SBC LLC currently does not show a profit in 2011." The reference to "SBC LLC" was to Small Business Capital, LLC ("SBC LLC"), a wholly-owned subsidiary of IPF. SBC LLC owned the Small Business Administration lending license. In my email dated March 3, 2011 to Mr. Feathers, I informed him that IPF and SPF had paid more to investors in returns than net income year-to-date. I was informing Mr. Feathers about IPF where I wrote: "We have now distributed 250K more than made in income as of yesterday and have booked 400K of advances to the manager as due from as of 2/28 making the due from now 1.9mm." In that sentence, I informed Mr. Feathers that SBCC and IPF had paid $250,000 more to investors in the first two months of 2011 than IPF earned as income. I was also informing Mr. Feathers that in the first two months of 2011, SBCC had taken $400,000 from IPF as "advances" on the manager's note. In the next sentence, I provided Mr. Feathers with information on SPF: "SBC PF has distributed 50k more than earned as of 3/1…" In that sentence, I was informing Mr. Feathers that SBCC and SPF had paid $50,000 more to investors than SPF had earned as income. In the final sentence of my email, I wrote: "Lining both funds for a 2011 k-1 adj if we don't substantially increase net income thru the rest of the year." I was advising Mr. Feathers that if the Funds continued at their current level of performance, it would be difficult to make up the difference between the amount distributed and projected income, which would result in a year-end reduction of the investors' capital accounts in their Form K-1 tax statements.

14. Mr. Feathers asked me to monitor the balance of SBCC's operating account, and to advise him when the balance of the account was low. Either Mr. Feathers or his wife, Natalie Taaffe Feathers, would transfer funds into the SBCC account from one of the Funds' accounts when SBCC's account ran low. Attached hereto and marked as Exhibits 69, 56, 73, and 74 are examples of emails on this topic. Exhibit 69 (G00137) is a true and correct copy of an email I sent on September 13, 2011 to Mr. Feathers, and to his wife Natalie Feathers (who used the email address natalie@sbcapital.com) in which I informed them that the SBCC operating account, which was at Heritage Bank with an account number that ended in "3604,"needed funds to meet payroll. I advised Mr. and Mrs. Feathers that funds were needed immediately to address the account becoming overdrawn by about $20,000. I also advised Mr. and Mrs. Feathers that SBCC would need an additional $80,000 to bring current its interest payments on the amounts that SBCC owed to IPF and SPF on the "manager's notes" or "due from," and that SBCC would need $40,000 more to bring current its interest payments to IPF on "REO" (or "real estate owned") properties. I further advised Mr. and Mrs. Feathers that SBCC needed about $250,000 to pay its expenses through the end of September 2011.

15. The REO properties were Loan 65, which was secured by property in San Leandro, California, and Loan 300001, which was secured by property in Holt, California. I learned that IPF had been the original lender on both these properties, but that the borrowers had defaulted and IPF had foreclosed on both properties in 2008. I also learned Mr. Feathers did not want foreclosures to impact the reported performance of IPF, so Mr. Feathers caused IPF to make loans to SBCC, to be secured by the foreclosed properties, which paid off the original balances of the loans. This made it appear on the books of IPF that the original borrowers had sold the property and paid off the loans, when in fact the property had become REO. SBCC did not have sufficient income in 2011 to make the monthly interest payments on Loan 65 and Loan 300001, so to bring the loans current, Mr. Feathers caused SBCC to borrow funds from either IPF or SPF using the due from manager notes, which were then used to bring interest payments current on those loans.

16. Attached hereto and marked as Exhibit 56 is a true and correct copy of an email dated September 22, 2011 that I sent to Mr. Feathers and Mrs. Feathers with the subject: "Heritage 3604 cash needs in the next week." The first four items listed were obligations that SBCC owed to IPF and SPF. The payroll covered employees of various companies, including SBCC and SBC LLC. "Amex" and "Capital One" refer to credit card bills that were due. "Rents" refers to rents on various offices operated by SBCC. I asked them to "please advise when in place" because I did not have signatory authority over any accounts of SBCC, IPF, SPF, SBC LLC, or any other company owned or managed by Mr. Feathers.

17. Attached hereto and marked as Exhibit 73 (H00070-71) is a true and correct copy of an email I received from Mr. Feathers, in response to my September 22, 2011 email. In this email, Mr. Feathers instructed me on which payments to make, and informed me that he "will move $200k on Monday." In the email, Mr. Feathers shared with Mrs. Feathers and me his thoughts on how he and SBCC were going to pay off the millions of dollars that SBCC owed to IPF and SPF. The $200,000 that Mr. Feathers was going to move on the Monday following this email was going to come from the Funds and would therefore increase the "due from" or amounts that SBCC owed to the Funds. During my association with Mr. Feathers and SBCC, Mr. Feathers often projected different avenues that he would use to pay down or pay off the amounts owed by SBCC to IPF and SPF, but from early 2010 through early 2012, the amount owed by SBCC to the Funds grew by millions of dollars.

18. Attached hereto and marked as Exhibit 74 (G00128) is a true and correct copy of an email sent by Mr. Feathers to me, copied to Mrs. Feathers, on or about September 27, 2011, with the subject line "checks for 'due from' and rents on REO." Mr. Feathers was instructing me to prepare checks for his signature for interest payments from SBCC to IPF and SPF on the amounts owed to them, as well as "rents" on "WJ" (which was Whiskey Junction, the Holt, California property also referred to as Loan 300001) and "San Leandro" (which was Loan 65). Mr. Feathers also informed me that he anticipated "moving over $150k from the funds to SB Capital tomorrow for the above, as well as for payroll." I understood the reference in that

sentence to "the funds" directed that cash would be borrowed from IPF against the note or "due from" manager to make those payments.

19. Based upon my familiarity with the books and records of SBCC and the Funds, I understood that Mr. Feathers used the "due from" or "manager's note" as a means of managing the net income, or yield, of the Funds so that it would appear that the Funds were distributing profits to the investors. If over-disbursed, Mr. Feathers would add debt to the "due from" to maintain the yield, and if there were excess earnings Mr. Feathers would pay down the "due from" or pay interest against the "due from." Attached hereto and marked as Exhibit 112 (H00762) is an email from Mr. Feathers to me, copied to Mrs. Feathers and Carmen, dated December 16, 2010, with the subject "last week of the year accounting issues." In the email, Mr. Feathers asked for totals on checks issued by IPF that had been categorized as syndication, manager's earnings, or similar categorizations. In the next paragraph, Mr. Feathers explained how, depending on what actual income for the Funds was in 2010, some of these items would need to be repaid and/or re-categorized. Mr. Feathers then stated that "we have an allowance to go up to 1% of the $150MM (therefore $1.5MM) of IPF's managr's [sic] distributions into a due-from-manager fund asset. This category would be separate and distinct from any prior organizational/restructuring assets now on the fund's balance sheet. As necessary we may have to use up much or all of this amount as necessary to ensure hitting our yield target to investors of 7.5% (compounded)." This is an example of directions from Mr. Feathers to use the "due-from-manager" or manager's note as a source to convert expenses into an "asset", so that the expenses would not appear on IPF's P&L where they would decrease the net income of IPF and lower its yield.

20. Attached hereto and marked as Exhibit 100 (H00084-85) is a true and correct copy of an email that Mr. Feathers sent to me and others on or about January 5, 2012. I had provided Mr. Feathers with a draft of the year-end 2011 financial statements for IPF. Mr. Feathers was raising a question about a loan loss expense provision of $205,000 which was to create an allowance for loan losses. This expense appeared on the P&L of IPF, and thus decreased net income by $205,000. In this email, Mr. Feathers was instructing me that he

believed the expense should be offset by a "new due-from," which Mr. Feathers had asked investors to approve in early 2012. Mr. Feathers concluded that the expense should be reversed, which "would put net income at or above the amount needed for the 7.5% preferred yield, I believe."

21. I have reviewed a filing made by Mr. Feathers' former counsel in this proceeding in which counsel represented that I provided opinions to support premiums paid on transfers of loans between the Funds in 2012. I did not provide any opinions concerning fair market value of the premiums that Mr. Feathers caused the Funds to pay for intra-fund sales in 2012. Mr. Feathers determined the amount of the premiums, and also instructed me and others at SBCC to immediately pay the premium amounts to SBCC as a management fee. Attached hereto and marked as Exhibit 104 (H00183-84) is a true and correct copy of an email exchange I had with Mr. Feathers in February 2012, on the subject "spreadsheets for premium determination." Mr. Feathers created a spreadsheet that he instructed me, and others, to use to calculate loan premiums. Attached hereto and marked as Exhibit 105 (G00698) is a true and correct copy of an email that Mr. Feathers sent to Mae Saechao, who was hired in 2012 as an employee, and copied to me and Mrs. Feathers, on the subject "more 504 sales." Mr. Feathers instructed the recipients that he wanted IPF to buy notes from "Fund III," which was SBC Senior Commercial Mortgage Fund, a new fund that Mr. Feathers had recently started. In the email, Mr. Feathers instructed us that the "premium to fund III would be 5 pts. on the gross amount for each. When the premium goes into the fund as income, I'd like the income which is in excess of the investor's yield distributed to the fund manager." Mr. Feathers did not ask me for my opinion on the amount of the premium, and I did not provide any opinion on the amount of the premium.

22. Attached hereto and marked as Exhibit 109 (H00737) is a true and correct copy of an email exchange I had with Mr. Feathers on or about May 18, 2012. In Mr. Feathers' email to me, he advised me that he caused SPF to sell a note to IPF which "generated revenues today, a portion of which went to SB Capital as manager's income." I understood that Mr. Feathers was referring to a sale of a loan from SPF to IPF at a premium. I was not involved in the transaction and did not provide any opinion on the reasonableness of the premium.

23. In early 2012, Mr. Feathers directed me to create a *pro forma* financial model to show the ability of SBCC to pay a return on investment in connection with a possible private placement by SBCC. I understood that the purpose of the private placement was to raise sufficient funds to pay the amounts SBCC owed IPF and SPF – the "due from" or "manager's notes." The *pro forma* financial model was part of the preparation for a private placement memorandum for an offering by SBCC. The model showed that SBCC would continue to lose money in 2012, and projected that it would lose nearly $3 million to $4 million in 2013. I estimated that SBCC would need a cash infusion of about $2 million in 2012, and another $2 million in 2013, to pay its expenses. A true and correct copy of an email in which I communicated this to Mr. Feathers, Mrs. Feathers, and Mae Saechao is attached hereto and marked as Exhibit 117 (H00747).

24. Attached hereto and marked as Exhibit 98 is a true and correct copy of an email, with attachments, that I sent on or about January 25, 2011, with the subject "IPF proxy vote on manager due from Aug-2010" (G00520-28). The letter addressed to Natalie E. Taaffe included in the attachments (G00521) was provided to me by either Mr. Feathers or Mrs. Feathers, along with the spreadsheet and consents. I was not involved in drafting or editing the letter, and did not prepare the spreadsheet.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 9th day of May, 2013 at Fair Oaks, California.

David Gruebele