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12 THOMAS A. SEAMAN

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 vs.

20 SMALL BUSINESS CAPITAL CORP.;
21 MARK FEATHERS; INVESTORS
22 PRIME FUND, LLC; AND SBC
23 PORTFOLIOS, LLC,

24 Defendants.

Case No. CV12-03237

REPLY OF RECEIVER IN SUPPORT
OF MOTION OF RECEIVER FOR
APPROVAL OF SALE OF 7(a) LOAN
PORTFOLIO, SERVICING RIGHTS
AND SBLIC LICENSE

Date: May 7, 2015
Time: 9:00 am
Ctmm: 4 - 5th Floor
Judge: Hon. Edward J. Davila

25 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

26 **PLEASE TAKE NOTICE** that the Court-appointed receiver, Thomas A.
27 Seaman ("Receiver") for Small Business Capital Corp. ("SBCC"), Investors Prime
28 Fund, LLC ("IPF"), SBC Portfolio Fund, LLC ("SPF") and their subsidiaries and
affiliates, including Small Business Capital, LLC ("SBC LLC") and SBC Senior
Commercial Mortgage Fund, LLC ("SCMF"), hereby submits his reply in support of
his motion for approval of sale of the Small Business Administration ("SBA") 7(a)
loan portfolio, the servicing rights associated with 7(a) loans, and the SBA Small
Business Lending Company license to BusinessUS, LLC, a Delaware limited

1 liability company (the "Motion") and in response to Mark Feathers' Response to the
2 Motion (Dkt. 1038).

3 INTRODUCTION

4 The Receiver seeks authority to sell the following assets of the receivership
5 estate to BusinessUS, LLC, a Delaware limited liability company (the "Buyer"):

- 6 • Interests in a loan portfolio consisting of Small Business
7 Administration ("SBA") 7(a) Loans, which loans and interests are
8 identified on that chart attached to the Seaman Declaration as Exhibit A
9 ("7(a) Loans");
- 10 • The rights to service the 7(a) Loans and receive servicing fees in
11 connection therewith ("Servicing Rights"); and
- 12 • The SBA Small Business Lending Company license governed by the
13 SBA regulations (the "License").¹

14 The Motion seeks approval of the sale of the Assets to the Buyer in
15 accordance with procedures set forth in that Motion for (A) Approval of Sales
16 Procedures for Loan Portfolio and (B) Authority to Engage Voit, as Real Estate
17 Broker ("Sale Procedures Motion") [Docket No. 762]; the May 9, 2014 Order
18 Granting Approval of Sale Procedures for Loan Portfolios and 7(a) License and
19 Authorizing Engagement of Voit Real Estate Services LP as Broker [Docket
20 No. 898] ("Sale Procedures Order"). The Securities and Exchange Commission has
21 filed a brief supporting the sale. No investor has filed an objection to the Motion.
22 In fact, the sole person objecting to the sale is Mr. Feathers.

23 The proposed sale of the 7(a) Assets is in the best interest of the receivership
24 estate and the investors. Mr. Feathers' response to the proposed sale is replete with
25 inaccurate statements and assertions that are not relevant to the instant Motion.

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28 ¹ The 7(a) Loans, Servicing Rights and License are sometimes collectively
referred to as the "7(a) Assets."

1 Mr. Feathers' objections to the sale of the 7(a) Assets rests upon his ongoing
2 concern that the Receiver is liquidating the business enterprise and that the price
3 being paid is not equal to the "going concern" value of SBCC or its affiliated
4 business enterprises. Mr. Feathers' many concerns with regard to the liquidation of
5 the business have been repeatedly addressed by this Court in connection with the
6 Receiver's claims process and distribution plan as well as the Sale Procedures
7 Motion and the Sale Procedures Order. In considering the Sale Procedures Motion,
8 the Court again considered these objections to the Receiver's proposal to sell loan
9 portfolios and determined that it was reasonable and appropriate to sell the 7(a)
10 Assets. See, Sale Procedures Order, Docket No. 898.

11 It should be noted that, since the inception of this case, it has been clear that
12 the Receiver would not be making small business loans or otherwise continuing the
13 business of SBCC, other than to preserve the value of existing assets (e.g., servicing
14 the existing loans in accordance with SBA guidelines.) While the Receiver has
15 continued to service the loans, no new SBA loans have been made under the 7(a)
16 License or otherwise. For this and other reasons, there is no basis to value the 7(a)
17 Loan Assets as a so-called "going concern."

18 With regard to whether the proposed sale reflects the market value of the 7(a)
19 Loan Assets, again, Mr. Feathers appears to ignore all of the prior proceedings in
20 this Court as well as the marketing and sales process described in the Motion. The
21 7(a) Loan Assets have been marketed to the broadest possible audience in
22 accordance with the Sale Procedures Order. The offers received reflected market
23 value for each of the assets being sold in light of all of the facts and circumstances
24 of this case.

25 Mr. Feathers also dismisses the interest of the SBA in the 7(a) Loan Assets
26 and the sales process. In fact, the SBA and Receivership Entities have contracts in
27 place that cannot be ignored. These contracts were presented and discussed in
28 connection with the Sale Procedures Motion. Needless to say, the SBA believes that

1 they hold certain approval rights and indemnity claims with regard to the 7(a)
2 Assets. While the Receiver continues to dispute the scope of such interests, they are
3 an important factor to be considered when looking at the marketability and ultimate
4 value of the assets

5 Importantly, the Receiver has also taken into consideration, the SBA's \$24
6 million claim filed in connection with the loan guaranties and indemnity claims
7 associated with the 504 and the 7(a) loan portfolios. Working with the SBA in order
8 to locate an approved purchaser of the 7(a) Assets has likely enabled the Receiver to
9 eliminate much, if not all, of the SBA's claims, thereby freeing up assets for
10 distribution to the investors.

11 Finally, Mr. Feathers suggests that the requirements of 28 U.S.C. §§ 2001 and
12 2004 have been violated by this proposed sale. Again, this was an issue raised and
13 addressed by this Court in connection with the Receiver's Sale Procedures Motion
14 and Sale Procedures Order. At that time, the Receiver proposed an auction sale
15 process which the Receiver and SBA believed would generate the highest purchase
16 price for the assets of this receivership estate. Based upon that, this Court agreed to
17 waive the requirements of Sections 2001 and 2004, including but not limited to, the
18 various appraisal and notice requirements. As such, Mr. Feathers' arguments with
19 regard to the need for additional appraisals is inapplicable and should be disregarded
20 by this Court.

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1 Based upon the foregoing, Receiver respectfully requests this Court to grant
2 the Receiver's Motion for Approval of Sale of 7(a) Loan Portfolio, Servicing Rights
3 and the SBLC License.

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Dated: April 27, 2015

Respectfully submitted,
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ David R. Zaro
DAVID R. ZARO
Attorneys for Receiver
THOMAS A. SEAMAN

PROOF OF SERVICE

Securities and Exchange Commission v. Small Business Capital Corp; Mark Feathers, et al.
USDC, Northern District of California – San Jose Division – Case No. 5:12-cv-03237-EJD

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

REPLY OF RECEIVER IN SUPPORT OF MOTION FOR APPROVAL OF SALE OF 7(a) LOAN PORTFOLIO, SERVICING RIGHTS AND LICENSE

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **April 29, 2015**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Eric James Adams**
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- **John Brian Bulgozdy**
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- **David Robert Zaro**
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On April 29, 2015, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit.

Pro Se Defendant

Overnight Mail

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I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **April 29, 2015** at Los Angeles, California.

/s/ Martha Diaz

Martha Diaz