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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 EJD

DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF MOTION
FOR APPROVAL OF SALE OF 7(a)
LOAN PORTFOLIO, SERVICING
RIGHTS, AND SBLC LICENSE

Date: April 14, 2016
Time: 9:00 a.m.
Ct rm: 4, 5th Floor
Judge: Hon. Edward J. Davila

25 I, Thomas A. Seaman, declare:

26 1. I am the court-appointed receiver for Small Business Capital Corp.
27 ("SB Capital"), Investors Prime Fund, LLC ("IPF"), and SBC Portfolio Fund, LLC
28 ("SPF"), and their subsidiaries and affiliates ("Receivership Entities"). I have
personal knowledge of the facts stated herein, and if called upon to do so, I could
and would personally and competently testify to them. This declaration is prepared
in support of the Motion of Receiver for Approval of Sale of 7(a) Loan Portfolio,
Servicing Rights and the SBLC License (the "Sale Motion").

2. Since the inception of this receivership, I have continuously operated
the Receivership Entities. Initially, the operations focused on servicing 72 loans,

1 however, some of these loans have been sold (*i.e.*, the 504 Loan Portfolio), paid off
2 or otherwise resolved. At present, I am seeking Court approval of the sale to BYL
3 Small Business Finance, LLC ("Buyer"), of the 7(a) loan portfolio, which loans are
4 listed in **Exhibit A**, attached hereto and incorporated herein by this reference (the
5 "7(a) Loans"), the rights to service the 7(a) Loans (the "Servicing Rights"), and an
6 SBA Small Business Lending Company license (the "License"). Attached hereto as
7 **Exhibit B** is a true and correct copy of the Loan Purchase and Sale Agreement (the
8 "Agreement") executed by the parties, which Agreement reflects the terms and
9 conditions of the proposed sale, (one of which is this Court's approval of the sale).
10 On December 24, 2015, the SBA has notified me that they approved the sale of the
11 7(a) Loans and the transfer of the Servicing Rights and License to the Buyer. See,
12 **Exhibit C**.

13 3. During my tenure as Receiver, I have stabilized the servicing of the
14 7(a) Loans and ensured that the loan portfolios generated profits. Prior to my
15 appointment, the operating expenses of the Receivership Entities exceeded the
16 interest and servicing income, leaving no net profit from which to make investor
17 distributions. In the course of servicing of the loans, I have diligently managed the
18 servicing, addressed borrower compliance with loan covenants, and enforced the
19 rights of the lender. The resulting stability of the loan portfolios, combined with
20 effective marketing of the assets and the yield enhancement of the servicing income,
21 has proved to be attractive to potential bidders. As such, if the Motion is approved,
22 Buyer will pay the Receivership Entities 90% of the amounts due on the 7(a) Loans
23 plus \$1,200,000.00 for the Servicing Rights and the License.¹

24 4. Based upon the status of the case, the condition of the loan portfolios,
25 and the general economy, in March 2014, I proposed a process to market and sell
26 the Assets. The proposed process for marketing and selling the Assets was
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28 ¹ The 7(a) Loans, Servicing Rights and License are sometimes collectively referred to herein as the "Assets".

1 described in detail in the Motion for (A) Approval of Sales Procedures for Loan
2 Portfolios and 7(a) License and (B) Authority to Engage Voit Real Estate Services
3 LP as Broker, filed in this Court on March 12, 2014. Following oral argument, on
4 May 9, 2014, the Court entered the Order Granting Approval for Sale Procedures for
5 Loan Portfolios and 7(a) License; Authorizing Engagement of Voit Real Estate
6 Services LP as Broker (the "Sale Procedures Order").

7 5. After entry of the Sale Procedures Order, the broker, Voit Real Estate
8 Services LP ("Voit"), and I diligently marketed the Assets for sale in accordance
9 with the process described in the Sale Procedures Order. Among other things, this
10 work included: establishing a virtual due diligence platform where prospective
11 buyers could review the loans and loan files; providing a broad notice to interested
12 parties; reviewing prospective purchasers for their financial capabilities; evaluating
13 indicative bids received from interested parties; establishing competitive ranges for
14 bids; reviewing final bids; consulting with the Small Business Administration
15 ("SBA"); and selecting the purchaser.

16 6. As indicated by the following statistics, the loan portfolios were widely
17 exposed to the marketplace: 7,262 parties were notified of the sale; the Receiver
18 executed non-disclosure agreements with 149 entities with access given to 191
19 people at those entities; and numerous potential bidders paid the \$500 access fee to
20 complete full due diligence.

21 7. Upon the conclusion of the due diligence period, I received bid
22 qualification packages and indicative bid from the bidders interested in the 7(a)
23 Loans, Servicing Rights and the License. My office reviewed these bid packages
24 for compliance with the SBA guidelines and forwarded those in compliance to the
25 SBA.

26 8. The SBA reviewed the bid packages, sought out some additional
27 information and ultimately notified me as to those bidders that had qualified to
28 purchase the Assets. I then asked the bidders to submit their best and final offers.

1 9. Originally, I selected BusinessUS LLC, a Delaware limited liability
2 company ("BusinessUS") to be the purchaser, based on its bid of 93% of the 7(a)
3 Loans and \$700,000 for the Servicing Rights and License. The SBA advised me
4 that they approved BusinessUS. BusinessUS executed the Loan Purchase and Sale
5 Agreement, and this Court granted my motion to approve the sale. BusinessUS then
6 breached their contract and failed to close the sale. I retained their \$300,000 earnest
7 money deposit accordingly.

8 10. After BusinessUS failed to close the sale, I resumed the marketing and
9 sales process in accordance with the Sale Procedures Order. I worked with Voit to
10 reopen marketing efforts and to contract, among others, those who previously
11 expressed interest in the Assets. In addition, I worked with the SBA to identify
12 potential bidders who might qualify as purchasers by the SBA.

13 11. Ultimately, after receiving bids, negotiating the highest prices from
14 bidders, I submitted the bid packages to the SBA. After significant back and forth
15 with the SBA and potential buyers, the Receiver selected the Buyer. The SBA
16 completed its work and approved Buyer on December 24, 2015.

17 12. The sale price for the Assets to Buyer reflects an amount equal to
18 approximately 90% of the principal due on the 7(a) Loans plus \$1,200,000.00 for
19 the Servicing Rights and License. I estimate this will provide approximately \$4.966
20 million to be distributed to investors and creditors.

21 13. The SBA submitted a claim for over \$24 million in the receivership.
22 This claim is contingent upon the SBA proving their contention that certain of the
23 loans in the portfolio did not conform to the loan program rules and that they have
24 suffered damages as a result of the loan program deficiencies. I object to the SBA
25 claim. Based on my discussions with the SBA, it has become clear that one way to
26 satisfy the SBA's claim may be through the sale of the loan portfolios to third parties
27 who assume the liability associated with the loans. The sale of Assets is conditioned
28 upon an assumption of liabilities to the SBA by the Buyers and, thus, should lead to

1 resolution of the SBA's claim so that the sale proceeds may be distributed to
2 investors and creditors.

3 14. Based upon the foregoing analysis and my good faith business
4 judgment, I recommend proceeding with the sale of the Assets to Buyer pursuant to
5 the Loan Purchase and Sale Agreement.

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

8 Executed this 27th day of January, 2016, at Irvine, California.

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Thomas A. Seaman

THOMAS A. SEAMAN

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