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6 Attorneys for Receiver  
7 THOMAS A. SEAMAN

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

11 SECURITIES AND EXCHANGE  
COMMISSION,

12  
13 Plaintiff,

14 vs.

15 SMALL BUSINESS CAPITAL CORP.;  
16 MARK FEATHERS; INVESTORS  
PRIME FUND, LLC; AND SBC  
17 PORTFOLIOS, LLC,

18 Defendants.

Case No. CV12-03237 EJD

EX PARTE MOTION FOR ORDER  
SHORTENING TIME FOR HEARING  
ON MOTION OF RECEIVER FOR  
APPROVAL OF SALE OF 7(a) LOAN  
PORTFOLIO, SERVICING RIGHTS  
AND SBLC LICENSE [Dkt. 1132];  
DECLARATION OF RECEIVER,  
THOMAS A. SEAMAN, IN SUPPORT  
THEREOF; [PROPOSED] ORDER

Ctrm: 4 - 5th Floor  
Judge: Hon. Edward J. Davila

19  
20 Thomas A. Seaman ("Receiver"), the Court-appointed Receiver for Small  
21 Business Capital Corp. ("SB Capital"), Investors Prime Fund, LLC ("IPF"),  
22 SBC Portfolio Fund, LLC ("SPF") and their subsidiaries and affiliates (collectively,  
23 "Receivership Entities"), hereby applies *ex parte* for an order shortening time for a  
24 hearing on the Motion of Receiver For Approval of Sale of 7(a) Loan Portfolio,  
25 Servicing Rights and SBLC License (the "Sale Motion"), filed January 27, 2016,  
26 Dkt. 1132. The Receiver seeks to advance the hearing date for the Sale Motion to a  
27 date in the next 30 days in order to preserve the value of the subject sale.  
28

1 Notice of this *ex parte* motion was provided to and discussed with the  
2 Securities and Exchange Commission and they have indicated that they do not  
3 oppose.

4 This *ex parte* motion is further supported by the Declaration of Thomas A.  
5 Seaman in Support of *Ex Parte* Motion For Order Shortening Time For Hearing on  
6 Motion to Approve Sale ("Seaman Declaration"), filed herewith.

## 7 I. INTRODUCTION

8 This *ex parte* motion seeks to set a hearing date within the next 30 days for  
9 the Sale Motion which has been filed and is set for hearing on April 14, 2016, the  
10 date assigned by the Court's courtroom deputy. Specifically, the Receiver requests a  
11 hearing on February 25, 2016.

12 The Sale Motion seeks authority to sell the 7(a) loan portfolio for 90% of the  
13 principal value of the respective loans plus \$1,200,000 for the Servicing Rights and  
14 SBLC License. This valuable sale opportunity is jeopardized by the inability of the  
15 Receiver to obtain a hearing sooner than April 14, 2016. That is, the sale is  
16 premised upon, among other things, the size and quality of the 7(a) loan portfolio as  
17 of January 25, 2016, the date of execution of the Loan Purchase and Sale Agreement  
18 executed by BYL Small Business Finance, LLC, a California limited liability  
19 company (the "Buyer"). Moreover, the Buyer is presently ready and willing to close  
20 the sale and the Receiver does not wish to risk the loss of the sale as previously  
21 occurred. As noted in the Seaman Declaration, there are significant risks of loss  
22 associated with having to wait until April 14, 2016 for Court approval.

23 By this application, the Receiver requests an order shortening the time for a  
24 hearing on the Sale Motion. The Receiver requests that the Sale Motion be heard  
25 within the next thirty (30) days, specifically on February 25, 2016.

## 26 II. CAUSE FOR SHORTENING TIME

27 There is good cause to hear the Sale Motion within the next 30 days. As a  
28 result of extensive marketing and negotiations, the Receiver has received an offer to

1 purchase the 7(a) loans valued at 90% of the principal amount of the specific 7(a)  
2 loans being sold, plus \$1,200,000 in cash. The sale and transfer of the license has  
3 been approved by the Small Business Administration.

4 The parties contemplated that the sale would close within approximately  
5 30 days of execution of the Loan Purchase and Sale Agreement, albeit subject to  
6 Court approval.

7 To the extent that loans in the portfolio are paid off or the sale cannot be  
8 consummated within the next 30 days, the Buyer may seek a credit for interest and  
9 servicing income. If there was a substantial or material change in the makeup of the  
10 7(a) loan portfolio, then Buyer could possibly seek to withdraw from the deal. For  
11 example, if a substantial number of loans went into default, the value of the 7(a)  
12 loan portfolio may be substantially reduced. Moreover, to the extent that any of the  
13 loans are paid off via refinancing by borrowers while we are awaiting for the April  
14 14, 2016 hearing, further losses may occur or the deal may not close. Id. at 7 - 9.  
15 Such occurrences could reduce the Receiver's recovery, significantly delay the  
16 distribution for investors and the close of the receivership; all of which could  
17 adversely impact investors and creditors. Seaman Declaration, ¶ 7 - 9.

18 The Receiver believes that if the Sale Motion cannot be heard until April 14,  
19 2016, there is a reasonable chance that recovery by the Receiver, and thus  
20 distributions to investors, will be less than if the Sale Motion is heard in the next 30  
21 days. Id. As noted above, the SEC and SBA have indicated their approval of the  
22 sale and the Receiver is not aware of any other objection.

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7 THOMAS A. SEAMAN

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

11 SECURITIES AND EXCHANGE  
COMMISSION,

12 Plaintiff,

13 vs.

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

17 Defendants.

Case No. CV12-03237 EJD

DECLARATION OF THOMAS A.  
SEAMAN IN SUPPORT OF EX PARTE  
OF RECEIVER FOR ORDER  
SHORTENING TIME FOR HEARING  
ON MOTION FOR APPROVAL OF  
SALE OF 7(a) LOANS, SERVICING  
RIGHTS, AND LICENSE

Ctrm: 4, 5th Floor  
Judge: Hon. Edward J. Davila

18  
19 I, Thomas A. Seaman, declare:

20 1. I am the court-appointed receiver for Small Business Capital Corp.  
21 ("SB Capital"), Investors Prime Fund, LLC ("IPF"), and SBC Portfolio Fund, LLC  
22 ("SPF"), and their subsidiaries and affiliates ("Receivership Entities"). I have  
23 personal knowledge of the facts stated herein, and if called upon to do so, I could  
24 and would personally and competently testify to them. This declaration is prepared  
25 in support of the Ex Parte Motion for Order Shortening Time for Hearing on  
26 Receiver's Motion for Approval To Sell 7(a) Loan, Servicing Rights and the License  
27 (the "Sale Motion"). [Docket 1132.]  
28

1           2.       At present, I am seeking Court approval of the sale to BYL Small  
2 Business Finance, LLC, a California limited liability company ("Buyer"), of the 7(a)  
3 loan portfolio, which loans are listed in **Exhibit A**, attached hereto and incorporated  
4 herein by this reference (the "7(a) Loans"), the rights to service the 7(a) Loans (the  
5 "Servicing Rights"), and an SBA Small Business Lending Company license (the  
6 "License"). As noted below, I am concerned that this sale to Buyer or the value of  
7 the sale may be jeopardized if we cannot have a hearing on the Sale Motion in the  
8 next 30 days and specifically on February 25, 2016. The SBA has notified me that  
9 they have approved the sale of the 7(a) Loans and the transfer of the Servicing  
10 Rights and License to the Buyer.

11           3.       During my tenure as Receiver, I have stabilized the servicing of the  
12 7(a) Loans and ensured that the loan portfolios generated profits. In the course of  
13 servicing of the loans, I have diligently managed the servicing, addressed borrower  
14 compliance with loan covenants, and enforced the rights of the lender. The resulting  
15 stability of the loan portfolios, combined with effective marketing of the assets and  
16 the yield enhancement of the servicing income, has proved to be attractive to  
17 potential bidders. As such, if the Sale Motion is approved, Buyer will pay the  
18 Receivership Entities 90% of the amounts due on the 7(a) Loans plus \$1,200,000 for  
19 the Servicing Rights and the License.<sup>1</sup>

20           4.       On May 9, 2014, the Court entered the Order Granting Approval for  
21 Sale Procedures for Loan Portfolios and 7(a) License; Authorizing Engagement of  
22 Voit Real Estate Services LP as Broker (the "Sale Procedures Order"). After entry  
23 of the Sale Procedures Order, the broker, Voit Real Estate Services LP ("Voit"), and  
24 I diligently marketed the Assets for sale in accordance with the process described in  
25 the Sale Procedures Order. As indicated by the following statistics, the loan  
26 portfolios were widely exposed to the marketplace: 7,262 parties were notified of  
27

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

1 the sale; the Receiver executed non-disclosure agreements with 149 entities with  
2 access given to 191 people at those entities; and numerous potential bidders paid the  
3 \$500 access fee to complete full due diligence.

4 5. As the Court is aware, the Receiver originally agreed, with the approval  
5 of this Court, to sell the Assets to BusinessUS, LLC. After BusinessUS, LLC  
6 breached their contract in late May 2015, I returned to the marketplace to locate a  
7 new purchaser for the Assets.

8 6. After several more months of marketing by Voit and me, I received bid  
9 qualification packages from the bidders interested in the 7(a) Loans, Servicing  
10 Rights and the License. My office reviewed these bid packages for compliance with  
11 the SBA guidelines and forwarded those in compliance to the SBA. The SBA  
12 reviewed the bid packages, sought out some additional information and ultimately  
13 notified me as to those bidders that had qualified to purchase the Assets.

14 7. I ultimately selected Buyer based on its bid of 90% of the 7(a) Loans  
15 and \$1,200,000 for the Servicing Rights and License, as well as, their ability to  
16 qualify as a licensee by the SBA. The SBA approved the Buyer on December 24,  
17 2015 and thereafter we negotiated and signed a Loan Purchase and Sale Agreement  
18 with the Buyer. Based upon the foregoing and my good faith business judgment, I  
19 recommend proceeding with the sale of the Assets to Buyer pursuant to the Loan  
20 Purchase and Sale Agreement.

21 8. 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 Buyer.

1           9. In the course of concluding the Agreement with Buyer, my counsel  
 2 sought a Court date for a hearing to approve the sale to the Buyer. At our request,  
 3 the Court's calendar clerk attempted to find the earliest date on the Court's calendar.  
 4 While we appreciated this effort, the earliest available hearing date was April 14,  
 5 2016, well beyond the 30 days contemplated by the parties and a date far enough in  
 6 the future that the conclusion of the sale could be put at risk. I am concerned that  
 7 the Buyer could attempt to either withdraw from the sale or demand a discount if  
 8 there are material changes to the 7(a) Loan portfolio during this interim period. For  
 9 example, if a number of the loans are prepaid, then the portfolio may be too small  
 10 to be of interest to Buyer. Or, if there were a number of monetary defaults with  
 11 regard to loans, then the Buy might attempt to re-trade the deal or attempt to avoid  
 12 closing based upon allegations of a material change. In addition, the SBA approval  
 13 could be withdrawn if there are material changes to the financial condition of the  
 14 Buyer. In short, I am concerned that if the Court does not hear the Sale Motion until  
 15 April 14, 2016, then the sale could be lost or the return to investors reduced.  
 16 Accordingly, I am requesting the Court to advance the hearing date to a date in the  
 17 next 30 days.

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

20           Executed this 2nd day of February, 2016, at Irvine, California.

*Thomas A. Seaman*

THOMAS A. SEAMAN



# **EXHIBIT A**



# **PROPOSED ORDER**

**Proposed Order**

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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. CV12-03237 EJD  
  
[PROPOSED] ORDER SHORTENING  
TIME ON MOTION OF RECEIVER  
FOR APPROVAL OF SALE OF 7(a)  
LOAN PORTFOLIO, SERVICING  
RIGHTS AND LICENSE  
  
Ctrm: 4 - 5th Floor  
Judge: Hon. Edward J. Davila

The Ex Parte Application for Order Shortening Time on Motion for Approval to Sell 7(a) Loan Portfolio, Servicing Rights and License ("Ex Parte Motion") of Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for Small Business Capital Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC, and their subsidiaries and affiliates, came before the Court. The Court, having received and read the Ex Parte Motion and all papers in support thereof or opposition thereto, and being so advised in the matter and finding good cause, orders as follows:

**IT IS ORDERED:**

- 1. The Ex Parte Motion is granted.



**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:

- **EX PARTE MOTION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION OF RECEIVER FOR APPROVAL OF SALE OF 7(a) LOAN PORTFOLIO, SERVICING RIGHTS AND LICENSE;**
- **DECLARATION OF THOMAS A. SEAMAN IN SUPPORT OF EX PARTE MOTION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION OF RECEIVER FOR APPROVAL OF SALE OF 7(a) LOAN PORTFOLIO, SERVICING RIGHTS AND LICENSE; AND**
- **[PROPOSED] ORDER SHORTENING TIME FOR HEARING ON MOTION OF RECEIVER 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 **February 2, 2016**, 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**  
eric.adams@sba.gov
- **John Brian Bulgozdy**  
bulgozdyj@sec.gov, LAROfiling@sec.gov, delgadilloj@sec.gov, mitchells@sec.gov, berryj@sec.gov, irwinma@sec.gov
- **California Business Bank**  
rormond@buchalter.com
- **Lynn Marie Dean**  
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- **Thomas A. Seaman**  
tom@thomasseaman.com
- **David Robert Zaro**  
dzaro@allenmatkins.com

2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **February 2, 2016**, 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**

Mark Feathers  
1520 Grant Road  
Los Altos, CA 94024  
650.776.2496 (phone) | 650.961.2382 (fax)  
markfeathers@sbcglobal.net

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 **February 2, 2016** at Los Angeles, California.

*/s/ Martha Diaz*  
\_\_\_\_\_  
Martha Diaz