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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 PORTFOLIO
16 FUND, LLC,

17 Defendants.

Case No. 5:12-L-12-03237

EX PARTE APPLICATION FOR
CLARIFICATION AND ORDER
AUTHORIZING ADMINISTRATIVE
PAYMENTS [Dkt. 1238, 1165, 1166]

[PROPOSED ORDER SUBMITTED
CONCURRENTLY HEREWITH]

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

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20 Thomas A. Seaman, the court-appointed receiver for Small Business Capital Corp.,
21 Investors Prime Fund LLC, SBC Portfolio Fund, LLC and their subsidiaries and affiliates,
22 hereby files this Ex Parte Application for Clarification and Order Authorizing
23 Administrative Payments. [Dkt. No. 1238, 1165, 1166.] This application was discussed
24 with the Securities and Exchange Commission and they have indicated that they do not
25 oppose.

1 On February 10, 2017, the Court entered the Order Granting Receiver's Motion to
2 Conclude Receivership ("Concluding Order") [Dkt. No. 1238]. Pursuant to this
3 Concluding Order the Court ordered the following:

4 7. Once the sale of the Cline Judgment is completed, payment
5 to the SBA pursuant to the SBA Stipulation has been made,
6 court-approved fees and costs of the Receiver and his
7 professionals have been paid, the Reserve has been established,
8 any 2015 taxes have been paid, and any other ordinary course
9 business expenses have been paid, the Receiver is authorized to
10 distribute the funds remaining in the receivership estate to
11 investors and non-investor claimants pursuant to the approved
12 Distribution Plan.

9 The sale of the Cline Judgment has been completed, the payment to the SBA has
10 been made, the tax returns have been prepared and other ordinary course business expenses
11 addressed. The Receiver and his counsel's 13th Interim Fee Applications and Final Fee
12 Applications, [Docket 1165, 1166], are still pending, and without that determination, the
13 Receiver cannot make a distribution to investors.

14 Accordingly, the Receiver requests that the Court approve those fee applications
15 and authorize the Receiver to make the following payments and distributions:

16 1. Approval of all interim fees and the final fee application of Thomas A.
17 Seaman, and authorizing a final payment to Thomas A. Seaman in the amount of
18 \$763,703.20 (which includes the 13th interim fee application and the final fee application
19 covering the period from inception in 2012 to the present);

20 2. Approval of all interim fees and the final fee application of Receiver's
21 counsel Allen Matkins, and authorizing a final payment to Allen Matkins in the amount of
22 \$621,234.86 (which includes the 13th interim fee application and the final fee application
23 covering the period from inception in 2012 to the present); and

24 3. Approval of a final distribution to investors in the amount of \$10,486,770.00.

25 Good cause exists for this Court to grant this Application so that the Receiver can
26 make the distributions contemplated by the Concluding Order and proceed to close the
27 receivership. As the Court knows, 375 investors have been waiting for over four years for
28 their final distributions. These investors have uniformly and repeatedly conveyed their

1 stories of hardship, frustration, and unhappiness to the Receiver. Equity and fairness calls
2 for the Court to grant the relief requested so that the Receiver can make the distributions
3 and address these very real needs and concerns as soon as practicable. Moreover, the
4 Concluding Order makes payment of fees as a condition precedent to the final distribution,
5 so that approval is a condition precedent to the relief contemplated by the Concluding
6 Order.

7 Based upon all of the foregoing, the Receiver respectfully request the Court to grant
8 this Application and approve the Fee Applications so that the Receiver can, among other
9 things, make distributions contemplated by the Concluding Order.

10 Dated: March 14, 2017

Respectfully submitted

11 ALLEN MATKINS LECK GAMBLE
12 MALLORY & NATSIS LLP
13 DAVID R. ZARO
14 EDWARD G. FATES

15 By: /s/ David R. Zaro

16 DAVID R. ZARO
17 Attorneys for Receiver
18 THOMAS A. SEAMAN

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