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12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15

16 SECURITIES AND EXCHANGE  
COMMISSION,

17 Plaintiff,

18 vs.

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

22 Defendants.  
23  
24  
25  
26  
27  
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Case No. CV12-03237

**RESPONSE TO (A) OPPOSITION OF  
DEFENDANT MARK FEATHERS, AND  
(B) DECLARATION OF STEPHEN PAHL  
REGARDING ALLEN MATKINS' FIRST  
INTERIM FEE APPLICATION**

Date: February 22, 2013  
Time: 2:00 p.m.  
Dept: 4 - 5th Floor  
Judge: Hon. Edward J. Davila

1 Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for Small  
2 Business Capital Corp. ("SB Capital"), Investors Prime Fund, LLC ("IPF"), SBC Portfolio  
3 Fund, LLC ("SPF") and their subsidiaries and affiliates (collectively, the "Receivership Entities"),  
4 hereby responds to Defendant Mark Feathers' Opposition and Stephen Pahl's Declaration  
5 regarding the First Interim Fee Application of Allen Matkins Leck Gamble Mallory & Natsis LLP  
6 ("Allen Matkins").

## 7 I. INTRODUCTION

### 8 A. Mr. Feathers' Opposition

9 Mr. Feathers argues that because his request for receivership estate funds to pay counsel  
10 was denied, Allen Matkins should not receive any payments. Mr. Feathers attempted to draw the  
11 same improper comparison between his attorney fee request and the Receiver's employment of  
12 counsel before and the Court rejected it.

13 In its order denying Mr. Feathers' request for legal expenses, the Court noted that the  
14 Preliminary Injunction Order, to which Mr. Feathers consented, included a *prima facie* finding  
15 that Mr. Feathers violated securities laws. For this, and other reasons, the Court rejected the  
16 argument that Mr. Feathers could use receivership estate funds for his personal defense. In  
17 contrast, the Receiver was appointed by the Court to marshal, protect and preserve receivership  
18 assets, and carry out other specific duties. The Receiver's employment of Allen Matkins as his  
19 counsel was approved by the Court. Docket No. 36. The Receiver's work, and that of Allen  
20 Matkins, benefits the Receivership Entities and their investors and creditors. The Receiver and  
21 Allen Matkins should be compensated for their services from the assets of the receivership estate.  
22 *Donovan v. Robbins*, 588 F.Supp. 1268, 1271 (N.D. Ill. 1984) ("As a general rule, the expense and  
23 costs of a receivership are charged to the property or fund administered."); *F.T.C. v. Jordan*  
24 *Ashley, Inc.*, No. 93-2257, 1994 U.S. Dist. LEXIS 7577, at \*13 ("[T]he Court may award the  
25 Receiver fees out of property held for the benefit of a third party where the Receiver's actions  
26 have benefited the property."). Indeed, the Preliminary Injunction Order requires that defendants  
27 pay the fees and costs incurred by the Receiver and his professionals. Docket No. 34, Part XII.

28

1 The proper standard for determining whether fees and costs of the Receiver and Allen  
2 Matkins should be allowed is whether the fees and costs are reasonable under the circumstances,  
3 including the work performed, time expended, results achieved, and level of skill and expertise  
4 required. Allen Matkins' requested fees and costs are reasonable and should be approved.

5 **B. Mr. Pahl's Declaration**

6 Investor and former outside counsel for the Receivership Entities, Stephen Pahl, argues  
7 that the Receivership Entities are a small, simple operation and that the fees and costs of the  
8 Receiver and his counsel are "out of proportion" with the size of the estate. Mr. Pahl goes as far as  
9 to characterize the Receiver and his counsel as "a pride of lions on the Serengeti which have [sic]  
10 cornered a poor gazelle." Mr. Pahl's arguments and attacks are baseless. As discussed below, the  
11 Receivership Entities paid their employees (not including outside counsel) far more per month  
12 than the requested fees of the Receiver and Allen Matkins combined.

13 Mr. Pahl also questions whether the hourly rates charged by the Receiver and Allen  
14 Matkins are "commercially reasonable in the San Jose Metropolitan Area." Mr. Pahl presents no  
15 evidence suggesting that the hourly rates of the Receiver and Allen Matkins are inconsistent with  
16 those charged by similarly skilled and experienced receivers and attorneys in regulatory  
17 receivership matters, whether such matters are located in San Jose or elsewhere. The Securities  
18 and Exchange Commission, which has extensive knowledge of rates charged by receivers and  
19 their counsel in regulatory receiverships located throughout the country, supports the fee  
20 applications of the Receiver and Allen Matkins, and asserts that the requested fees are reasonable.  
21 Docket Nos. 147 and 148.

22 **II. MR. FEATHER'S OPPOSITION**

23 **A. Alleged Constitutional Rights Violations**

24 Mr. Feathers continues to argue that the Receiver has violated his constitutional rights.  
25 Mr. Feathers now contends that Allen Matkins has aided and abetted the Receiver in these  
26 violations. These arguments are addressed in the Receiver's Response to Mr. Feathers' Motion to  
27 Dismiss Receiver (Docket No. 117) and are not repeated herein.  
28

1           **B.     Time Entries**

2           Mr. Feathers goes through Allen Matkins' billing statements line-by-line, isolates certain  
3 entries (and partial entries), and criticizes them. These arguments are addressed as follows:

4                   1.     Travel time and hotel accommodations.

5           Mr. Feathers' contends that Allen Matkins billed over \$4,000 to have one its attorneys  
6 travel to the former offices of the Receivership Entities in Los Altos and stay in a hotel for two  
7 nights. To the contrary, Allen Matkins has not requested payment of these specific fees and costs.  
8 They appear under the "potential write-off" category at the end of Allen Matkins' bills, which is  
9 where fees and costs that are incurred but not charged are recorded. As this category  
10 demonstrates, the firm incurred but did not charge nearly \$25,000 in fees and more than \$800 in  
11 costs during the 14-week application period.

12                   2.     Research regarding usury laws

13           Mr. Feathers' questions the small amount of work performed by Allen Matkins relating to  
14 California licensing and usury laws. The Receivership Entities are lenders subject to California  
15 licensing and usury laws. The Receiver is charged with servicing the Receivership Entities'  
16 existing loans. It is important that the Receiver understands the licensing and usury laws  
17 applicable to the Receivership Entities' lending and servicing activities. At the Receiver's request,  
18 Allen Matkins performed a small amount of research on these topics and advised the Receiver on  
19 specific licensing and usury issues.

20                   3.     Receiver's letter regarding Feathers' request for legal expenses

21           Mr. Feathers questions Allen Matkins' fees relating the Receiver's letter brief addressing  
22 Mr. Feathers' attorney fee request. At the Receiver's request, Allen Matkins spent a small amount  
23 of time drafting a letter addressing Mr. Feathers' request for personal legal expenses.  
24 Mr. Feathers' was seeking to use receivership estate funds, which the Receiver is charged with  
25 protecting. Therefore, it was appropriate for the Receiver to provide input on the issue.  
26 Furthermore, the Receiver's letter was short and addressed specific factual contentions made in  
27 Mr. Feathers' letter brief. The Court cited the Receiver's letter several times in its order denying  
28

1 Mr. Feathers request, indicating that the Receiver's input was useful to the Court in reaching its  
2 decision.

3 4. Subpoenas issued to credit card issuers

4 Mr. Feathers asserts that the Receivership Entities had all records for the credit cards they  
5 used. That is simply incorrect. A significant portion of credit card records were missing.  
6 Accordingly, at the Receiver's request, Allen Matkins issued subpoenas to the credit card issuing  
7 banks to obtain such records.

8 5. Prior lawsuit

9 Mr. Feathers notes that Allen Matkins spent time reviewing pleadings and other documents  
10 relating to a prior lawsuit. He contends the lawsuit has "no bearing on these matters." To the  
11 contrary, the lawsuit resulted in a judgment in favor of the Receivership Entities. The judgment is  
12 an asset of the receivership estate. After reviewing the file, Allen Matkins assisted the Receiver in  
13 taking steps to enforce and collect on the judgment. This task was handled by a junior associate  
14 with limited supervision, as necessary, from a senior associate.

15 6. Work relating to loan that was paid off

16 Mr. Feathers argues that Allen Matkins spent time preparing loan modification documents  
17 for a loan that has since been paid off. This is actually correct. The borrower defaulted on the  
18 loan and requested a loan modification. The Receiver evaluated the loan, the borrower's financial  
19 condition, and the collateral, and negotiated terms of a modification. Once a basic structure was  
20 agreed on, the Receiver asked Allen Matkins to prepare loan modification documents. After the  
21 documents had been prepared, the borrower was able to sell one of the condominium units on the  
22 subject property and pay off the loan. The payoff occurred in early November.

23 **C. Receiver Neutrality**

24 Mr. Feathers' arguments regarding Receiver neutrality are addressed in the Receiver's  
25 Response to Mr. Feathers' Motion to Dismiss Receiver (Docket No. 117) and in the Response to  
26 Objections to the Receiver's First Interim Fee Application filed herewith.

1           **D.     SBA License**

2           Mr. Feathers' argues that the timing of Allen Matkins' research relating to the assignability  
3 of an SBA lending license somehow shows a plan to make the companies defunct. There is no  
4 truth to this accusation. Early in the receivership, Allen Matkins did a small amount of work to  
5 confirm the existence of the license and determine the type of license. The firm later conducted a  
6 small amount of research on the assignability of the license. The license is an asset of the  
7 receivership estate that the Receiver is charged with investigating, protecting and preserving.  
8 Preliminary research into whether it can be assigned, and the SBA approval process associated  
9 therewith, is entirely appropriate.

10           **E.     Contact with Federal Agencies**

11           Mr. Feathers contends that Allen Matkins "wasted no time in contacting other federal  
12 authorities such as the FBI and the US Attorney's office, to make sure that Feathers' future would  
13 be filled with unjustified efforts spent on criminal defenses as well as civil defenses." Contrary to  
14 Mr. Feathers' conspiracy theories, the Receiver has not initiated any contact with any federal  
15 agencies, but instead was contacted by them. Allen Matkins has assisted the Receiver in  
16 communicating with such agencies and responding to their inquiries.

17           **F.     "Shadowing" the Receiver**

18           Mr. Feathers contends that Allen Matkins "shadows every move of the receiver" and  
19 therefore the "true overall rates to the receivership estate are more closely in the range of \$500 or  
20 more per hour." After making this broad sweeping accusation, Mr. Feathers fails to identify any  
21 instances in which Allen Matkins duplicated work performed by the Receiver. This accusation  
22 has no basis. Indeed, the Receiver and Allen Matkins make a concerted effort to ensure that no  
23 work is duplicated and that each task is staffed as efficiently as possible.

24   **III.   MR. PAHL'S DECLARATION**

25           Investor and former outside counsel for the Receivership Entities, Stephen Pahl, argues  
26 that the Receivership Entities are a "a small loan production and loan administration company  
27 with limited accounting, limited employees, and a discreet number of transactions," and therefore,  
28

1 the requested fees and costs of the Receiver and Allen Matkins are "completely out of proportion"  
2 to the "corpus of the estate." Docket No. 150. This argument has no merit.

3 The Receivership Entities' monthly payroll and related expenses (not including legal  
4 expenses) in May 2012, the month before the Receiver's appointment, was approximately  
5 \$258,000. The Receiver seeks payment of \$217,697.85 for approximately 14 weeks of work.  
6 Over the same period, the Receivership Entities would have paid their employees approximately  
7 \$840,000. Even if you include Allen Matkins' requested fees of \$122,227.96, and the amount paid  
8 to employees of the Receivership Entities that the Receiver retained (\$84,113), the combined total  
9 is still far less than the Receivership Entities would have paid their employees (exclusive of  
10 amounts paid to outside counsel).

11 The fees and costs of an equity receiver taking control of an actively operating business are  
12 necessarily higher during the first few months than in subsequent months. The same applies to a  
13 receiver's counsel. Allen Matkins' fees in July were \$56,949.75, in August were \$48,970.80, and  
14 in September were \$16,120.35. This makes sense considering that at the outset of an equity  
15 receivership, a receiver's counsel needs to gain an understanding of the legal issues facing the  
16 Receivership Entities, key contracts and legal documents, pending litigation, potential claims and  
17 causes of action, and potential liabilities. Considering these substantial one-time legal costs  
18 associated with the transition, the total legal fees requested for the 14-week period is very  
19 reasonable.

#### 20 IV. CONCLUSION

21 For the foregoing reasons, the First Interim Fee Application of Allen Matkins should be  
22 approved.

23  
24 Dated: December 27, 2012

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

25  
26 By: /s/ Ted Fates

TED FATES  
Attorneys for Receiver Thomas A. Seaman