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8 Thomas A. Seaman

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

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12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 vs.

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

18 Defendants.

Case No. CV12-03237

**RECEIVER'S RESPONSE TO  
DEFENDANT FEATHERS' MOTION FOR  
A REQUIREMENT FOR THE  
RECEIVERSHIP ESTATE TO ENJOIN IN  
A LEGAL ACTION**

Date: February 22, 2013  
Time: 9:00 a.m.  
Ctrm: 4 - 5th Floor  
Judge: Hon. Edward J. Davila

1 Thomas A. Seaman ("Receiver") Court-appointed permanent receiver for Small Business  
2 Capital Corp. ("SB Capital"), Investors Prime Fund, LLC ("IPF"), SBC Portfolio Fund, LLC  
3 ("SPF") and their subsidiaries and affiliates (collectively, "Receivership Entities"), submits this  
4 response to Defendant Mark Feathers' "Motion for a Requirement for the Receivership Estate to  
5 Enjoin [Join] in a Legal Action" ("Motion").

6 Although the title of the Motion is confusing, the body requests that the Court instruct the  
7 Receiver to allocate monies from the receivership estate to join a pending lawsuit filed by Fortune  
8 Capital, LLC ("Fortune"), Benjamin Efraim and Kena-Chin Efraim ("Efraims") against California  
9 Business Bank ("Fortune Lawsuit") and to share in the legal expenses of the Fortune Lawsuit. The  
10 Fortune Lawsuit concerns alleged misrepresentations by California Business Bank ("CBB") and  
11 its officers, directors and outside accountants in connection with Fortune and Efraims investment  
12 in CBB. As Mr. Feathers alludes to in his Motion, the Receivership Entities also purchased shares  
13 in CBB.

14 The Receiver has been investigating the facts and circumstances surrounding the  
15 Receivership Entities' purchase of CBB shares. As part of his investigation, the Receiver has  
16 spoken with Mr. Feathers, Mr. Efraim and his attorney, Steven Pahl. The Receiver has also  
17 requested the documents, PPM, emails and other information concerning the CBB transactions.  
18 The Receiver is continuing his investigation of the facts and circumstances surrounding the  
19 Receivership Entities' purchase of shares and evaluating potential causes of action against CBB.

20 Mr. Feathers' suggestion that the Receiver join in the Fortune Lawsuit is also under  
21 consideration, however, given the facts and circumstances of the case, the Receiver is presently  
22 skeptical as to whether there would be any benefit from that approach. In either event, the  
23 Receiver is carefully assessing the facts and law concerning this matter before engaging in what  
24 may be expensive litigation. Among other things, the Receiver is assessing the likelihood of  
25 prevailing and whether a judgment can be collected.

26 The Receiver expects to be in a position to make a recommendation to the Court regarding  
27 pursuit of such causes of action in the next several weeks. To the extent that the Receiver decides  
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1 to proceed with the case, the Receiver will file a motion seeking authority to proceed along with a  
2 proposed budget.

3 For the foregoing reasons, the Receiver recommends the Motion be denied.  
4

5 Dated: January 17, 2013

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

7 By:           /s/ Ted Fates            
8 TED FATES  
9 Attorneys for Receiver, Thomas A. Seaman  
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**PROOF SERVICE**

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

On January 17, 2013, I served the within document(s) described as:

- **RECEIVER'S RESPONSE TO DEFENDANT FEATHERS' MOTION FOR A REQUIREMENT FOR THE RECEIVERSHIP ESTATE TO ENJOIN IN A LEGAL ACTION**

on the interested parties in this action by:

- BY MAIL:** I placed a true and correct copy of the document in a sealed envelope or package addressed as indicated on the attached Service List on the above mentioned date in San Diego, California for collection and mailing pursuant to the firm's ordinary business practice. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by an overnight courier service, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated in the attached service list on the above-mentioned date, with fees for overnight delivery paid or provided for.
- BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a true copy of the document to be sent to the persons at the corresponding electronic address as indicated on the attached Service List on the above-mentioned date.

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

Executed on January 17, 2013, at San Diego, California.

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Janine Batiste  
(Type or print name)

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*Janine Batiste*  
(Signature of Declarant)

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**SERVICE LIST**

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