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8 Attorneys for Thomas A. Seaman, Receiver

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
12 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.
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Case No. CV12-03237

**DECLARATION OF THOMAS A. SEAMAN
IN RESPONSE TO:**

**(1) SECOND AMENDED FRCP 12 MOTION
TO DISMISS THE LAWSUIT;**

**(2) MOTION TO INSTRUCT RECEIVER
TO DISCONTINUE FORENSIC AND ALL
OTHER WORK, TO DISMISS THE
RECEIVER, TO INVALIDATE ALL
RECEIVER AND RECEIVER'S
COUNSEL'S PRIOR REPORTS TO THE
COURT;**

**(3) FRCP 11 MOTION FOR SANCTIONS
AGAINST PLAINTIFF'S OFFICERS, JOHN
BULGOZDY AND SUSAN HANNAN; AND**

**(4) FRCP 9 REQUEST FOR SPECIAL
SANCTIONS AGAINST PLAINTIFF, THE
RECEIVER AND RECEIVER'S COUNSEL**

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

Date: May 10, 2013
Time: 10:00 a.m.

1 I, Thomas A. Seaman, declare as follows:

2 1. I am the principal of Thomas Seaman Company and the court-appointed Receiver
3 for Small Business Capital Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC and their
4 affiliates (collectively, "Receivership Entities"). The following facts are of my personal
5 knowledge and, if called as a witness I could and would personally and competently testify to
6 them under oath.

7 2. This declaration is made in response to the Plaintiff's Second Amended FRCP 12
8 Motion To Dismiss The Lawsuit; Motion To Instruct Receiver To Discontinue Forensic And All
9 Other Work, To Dismiss The Receiver, To Invalidate All Receiver's and Receiver's Counsel's
10 Prior Reports To The Court; FRCP 11 Motion For Sanctions Against The Plaintiff's Officers John
11 Bulgozdy And Susan Hannan; and FRCP 9 Request For Special Sanctions Against Plaintiff And
12 The Receiver And Receiver's Counsel (the "Motion").

13 3. Contrary to the allegations in the Motion, I have never represented to this Court,
14 the Securities and Exchange Commission (the "Commission"), or anyone else that I am a Certified
15 Public Accountant ("CPA"). As reflected in my proposal to the Commission in this case as well as
16 my Curriculum Vitae, stationery, business cards, and signature blocks, I am a Chartered Financial
17 Analyst ("CFA"). Attached hereto as Exhibit A and incorporated herein by this reference is my
18 proposal to the Securities and Exchange Commission with regard to the above-captioned case in
19 which I clearly state in the second paragraph that I am a Chartered Financial Analyst.

20 4. After receiving Mr. Feathers' pleading, I reviewed the Commission's filing with the
21 District Court and noted their reference to me as a CPA. I also noted that in the attachments to the
22 Commission's recommendations presented by the Commission to the District Court that my
23 Chartered Financial Analyst designation is noted on the very first page of my letter proposal
24 attached as Exhibit A as well as my Curriculum Vitae and in the signature block.

25 5. On the day I was appointed as receiver in this case, I met Mr. Feathers at his office
26 and gave him a copy of my business card. My business card refers to my designation as a CFA,
27 not CPA. I have sent Mr. Feathers a number of letters and in each case the letters reflect my CFA
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1 designation in the signature block. When Mr. Feathers misstated my credentials in court on
2 February 22, 2013, I immediately corrected him.

3 6. I have 34 continuous years of experience as a financial professional, including
4 working as a controller in private industry, a court-appointed fiduciary, a CFA, and an equity
5 receiver with regard to innumerable matters. I have completed and filed numerous accounting
6 reports for the matters in which I have served as a court-appointed fiduciary. I have prepared
7 every manner of accounting report; from income and balance sheets, to a very complex forensic
8 accounting. I cannot recall an instance where my credentials have been called into question by a
9 court or where my accounting reports have been rejected.

10 7. For the Court's information, a CFA charter takes many years to attain. The
11 requirements include a formal business degree, four years of relevant working experience, a CFA
12 sponsor, and three years of extensive study with annually administered examinations. At the time
13 I took the CFA exam there were six hour long essay exams. Many of these tests are extremely
14 difficult to complete, with many candidates failing. Often it may take three to five years for an
15 individual to complete their exams. I passed all three exams the first time. I would refer the Court
16 to the website for the CFA Institute for a complete description of the CFA charter:

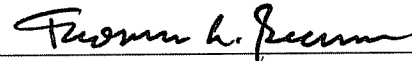
17 www.cfainstitute.org.

18 8. The accounting work called for in this case involves accounting for the raising of
19 money from and distribution of money to investors. In addition, we must account for the lending
20 of money to borrowers, the collection of payments and the use of such proceeds. None of this
21 work requires a CPA. In this case, as in most receivership cases that I have worked on, the point
22 of the forensic accounting is to determine where the money came from (*e.g.*, from investors or
23 returns on investments), on the one hand, and where it went (what did the receivership entities or
24 individuals do with the money they received), on the other hand. In this instance, we can
25 accomplish the accounting by entry of all cash deposits, withdrawals and transfers into a database.
26 While the volume of transactions and the number of accounts is large, the accounting work can
27 most cost-effectively be completed by the Receiver, his staff, and former employees of SB
28 Capital. As in most cases, bringing in an outside third party CPA firm would be vastly more

1 expensive and serve no purpose whatsoever. It should be noted that I have found the CFA charter
2 to be a more useful tool for me as a receiver in matters such as this case, where GAAP has been
3 misused and accounting gimmickry employed. For example, here the GAAP rule does not fully
4 explain the dissipation of the investors' principal. Instead a cash-based analysis is required. As a
5 financial analyst, I was trained to assemble and analyze data into a logical framework for the value
6 of looking beyond a simple audit. I have the ability to assemble and analyze data into a logical
7 framework for the purpose of informing the Court and interested parties of the financial activities
8 of the enterprise.

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

11 Executed this 8th day of March, 2013, at Irvine, California.

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14 THOMAS SEAMAN
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PROOF OF 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 March 8, 2013, I served the within document(s) described as:

- **DECLARATION OF THOMAS A. SEAMAN IN RESPONSE TO: (1) SECOND AMENDED FRCP 12 MOTION TO DISMISS THE LAWSUIT; (2) MOTION TO INSTRUCT RECEIVER TO DISCONTINUE FORENSIC AND ALL OTHER WORK, TO DISMISS THE RECEIVER, TO INVALIDATE ALL RECEIVER AND RECEIVER'S COUNSEL'S PRIOR REPORTS TO THE COURT; (3) FRCP 11 MOTION FOR SANCTIONS AGAINST PLAINTIFF'S OFFICERS, JOHN BULGOZDY AND SUSAN HANNAN; AND (4) FRCP 9 REQUEST FOR SPECIAL SANCTIONS AGAINST PLAINTIFF, THE RECEIVER AND RECEIVER'S COUNSEL**

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 March 8, 2013, at San Diego, California.

Janine Batiste
(Type or print name)

Janine Batiste
(Signature of Declarant)

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SERVICE LIST

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