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THOMAS A. SEAMAN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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 **DECLARATION OF THOMAS A. SEAMAN IN SUPPORT OF MOTION FOR AUTHORITY TO:** **(A) SELL NATOMA PROPERTY;** **(B) SELL WHISKEY JUNCTION PROPERTY;** **(C) SELL SWEET FINGERS PROPERTY; AND** **(D) ACCEPT DISCOUNTED PAYOFF OF LOAN TO THE FOUR BROTHERS INNS, LLC** Date: August 23, 2013 Time: 9:00 a.m. Ctrm: 4 - 5th Floor Judge: Hon. Edward J. Davila

I, Thomas A. Seaman, declare:

1. I am the court-appointed receiver for Small Business Capital Corp. ("SB Capital"), Investors Prime Fund, LLC ("IPF"), and SBC Portfolio Fund, LLC ("SPF"), and their subsidiaries and affiliates. I have personal knowledge of the facts stated herein, and if called upon to do so, I could and would personally and competently testify to them.

The Natoma Property

2. In October 2008, SPF made a loan in the amount of $350,000 to 1350 Natoma Street, LLC.[1] The loan was guaranteed by Enda Keane. The initial term was nine months at an interest rate of 11% fixed, interest only. The loan was secured by a second Deed of Trust on four units of an eight unit condominium complex. The complex, which was built in 2007 and is located in the Mission District of San Francisco, contains eight residential loft-style condominiums. Upon completion, four units were sold and four units were held as income properties to be leased for the term of one year prior to their sale. The builder (and borrower) received a tax exemption for leasing four of the units rather than immediately putting them up for sale. The source of repayment was expected to be the sale of one or more of the four condominiums when the leases expired. However, when the leases started to expire and the loan matured, the borrower did not want to sell at the lowest point in the market. Another project he was building in San Francisco was near completion and he offered to repay the loan from the sale of this project. However, the project did not generate sufficient proceeds to pay off the debt to SPF. SPF extended the term, but the borrower was unable to pay off the loan. SPF took ownership of Unit #4 in November 2010 by deed in lieu of foreclosure as part of a loan workout. The borrower owed SPF a total of $348,483 at the time of the deed in lieu of foreclosure.

3. After SPF acquired title, it took out a new loan secured by the property in the amount of $400,000. At the time of my appointment, the condominium was occupied by an SB Capital employee at significantly below market rent. The tenant was paying $2,000 per

[1] 1350 Natoma Street, LLC is a single member California limited liability company formed in January 2006 by Enda Keane for the purpose of holding title to the subject real property located at 1350 Natoma Street, San Francisco, California.

month, while market rent was approximately $3,750 per month. I served the tenant with a 60-day notice of my intent to increase the rent and eventually agreed to allow the tenant to vacate no later than January 31, 2013, while continuing to pay the current rent of $2,000 per month. The tenant provided me with a 30-day notice of his intent to vacate and vacated effective January 1, 2013. The loan on the property matured in November 2012 and was paid off in full. The total amount paid was $393,506.77.

4. I engaged a broker and listed the property for sale in February 2013 at $715,000, subject to Court approval, based on comparable sales in the immediate area. I received two offers, negotiated with the potential buyers, and identified $762,000 as the highest and best offer. The proposed purchaser, Mike Jacobson, has deposited $22,860 into escrow, is required to deposit another $22,860 at the end of the contingency period, and is prepared to close within 65 days[2] of entry of an order authorizing the sale. I request authority to conclude the sale.

The Sweet Fingers Property

5. In 2006, IPF made a loan in the amount of $552,500 secured by the Sweet Fingers Property, which is located at 464 East 14th Street, San Leandro, California. The Sweet Fingers Property includes an operating restaurant called Sweet Fingers on the first floor and a residential apartment on the second floor. SB Capital acquired the loan from IPF in May 2008. The borrower defaulted and SB Capital foreclosed in June 2008 and took title to the property with a credit bid of $600,534.

6. SB Capital leased the Sweet Fingers Property back to the former borrower for $4,500 per month (for both the restaurant and apartment) on a month-to-month lease. In July 2008, IPF made a loan to SB Capital secured by the property in the amount of $700,000. The loan is listed as Loan 65 on IPF's books. Mr. Feathers personally guaranteed the loan. In December 2008, the loan was increased from $700,000 to $800,000. In December 2009, the loan was increased from $800,000 to $900,000. In June 2011, the maturity date of the loan was

[2] The title company will not issue the title insurance policy until the order authorizing the sale has become final. In this case, because a federal agency is a party, the appeal period is 60 days. 28 U.S.C. § 2107.

extended from January 31, 2011 to January 31, 2012. The Sweet Fingers Property was carried on SB Capital's books at $900,000, although a broker's opinion of value dated August 2012 values the property at $449,000. The treatment of this loan and REO is troubling because it appears to have been used as a means of overstating IPF net income, disguising a defaulted loan, and transferring money from IPF to SB Capital.

7. The payment performance on the lease to the former borrower was sporadic. At the time of my appointment in June 2012, the tenant had not made any lease payments since February 2012. I filed a complaint for unlawful detainer against the tenant in September 2012. The complaint resulted in a settlement including a Stipulated Judgment, which requires the tenant to pay $3,500 per month in rent beginning November 15, 2012 and continuing on a month-to-month basis or until the Sweet Fingers Property is sold. If the Sweet Fingers Property is sold to an owner/user, then the tenant has agreed to vacate within 60 days. In the event of a default on either the monthly rent payments or the agreement to vacate the property, a Stipulated Judgment for possession and a money judgment in the amount of $65,000 will be entered. As of March 31, 2013, the tenant was current on the monthly payments pursuant to the settlement agreement.

8. In September 2012, I engaged a broker and listed the Sweet Fingers Property for sale at $449,000 based on a careful review of comparable sales in the area. No offers have been received to date. In consultation with the broker, I am considering reducing the list price. I request authority to sell the property.

The Whiskey Junction Property

9. In November 2006, IPF made a loan in the amount of $381,000 to Jesse and Joyce Burnett. The loan was secured by the Whiskey Junction Property, which is located at 4479 S. Whiskey Slough Road in Holt, California. The Whiskey Junction Property, which is located near the California delta, is set up for use as a restaurant/bar. The borrower defaulted and IPF recorded a Notice of Default on November 5, 2007. A Notice of Trustee's Sale was recorded in February 2008, showing $426,147 due. On March 6, 2008, IPF made a loan in the amount of $447,851.63 to SB Capital. The next day, SB Capital purchased the property at the foreclosure sale for $428,157.

10. The property was listed on the Multiple Listing Service (MLS) in April 2008 for $460,000 and then sat vacant for a number of years. Between November 2009 and March 2010, IPF made several additional advances to SB Capital, increasing the loan balance to $659,150. I am informed that beginning in 2011, Mr. Feathers began some capital improvements to the interior and exterior of the Whiskey Junction Property and also purchased some restaurant equipment. In November 2011, the loan was transferred to SPF and SPF advanced another $364,000 to SB Capital. In December 2011, the loan, which at the time totaled $1,023,089.23, was transferred back to IPF.

11. Rico Espana, an acquaintance of Mr. Feathers, borrowed a total of $1,155,000 from IPF to purchase the Whiskey Junction Property from SB Capital. The property was sold to Mr. Espana on May 31, 2012, for $1,054,500. IPF was granted a first position deed of trust on the property to secure the loan.

12. Mr. Espana intended to open a restaurant/bar on the property called Whiskey Junction. Mr. Espana, however, had no liquor license, no working capital, no inventory, and no ability to service the debt. Prior to my appointment, the Receivership Entities obtained a liquor license and formed an entity called Whiskey Junction, LLC, which holds the license. The understanding was that Mr. Espana would be permitted to operate the restaurant/bar under the Whiskey Junction, LLC liquor license. After I was appointed, Mr. Espana stated he was willing to either do a short sale or a deed in lieu of foreclosure.

13. After consulting with counsel, I determined that a foreclosure was the best course of action. The foreclosure was completed on March 8, 2013. I engaged a broker to list the property and also engaged a consultant with extensive expertise in transferring liquor licenses. I will seek to sell the property and transfer the license to one buyer who will operate the restaurant/bar under the license.

14. I obtained an appraisal of the Whiskey Junction Property in September 2012, which estimates the value to be $230,000. However, I believe a price closer to $300,000 is attainable, based on the value of the restaurant equipment recently installed (estimated at $50,000) and the liquor license, as well as interest expressed by potential purchasers to date. I currently have one

offer for the property, equipment and liquor license for $275,000. I am working with the broker to counter this offer, subject to Court authorization to complete the sale.

The Four Brothers Inns, LLC ("TFBI")

15. TFBI owns and operates The Brannan Cottage Inn in Calistoga, California. The Brannan Cottage Inn is a six-room bed and breakfast, listed on the National Register of Historic Places. It was built in 1860 by Samuel Brannan, Calistoga's founder. Calistoga is in the heart of California's wine country, and the inn is well located and well maintained. The loan of $950,000 was made by IPF in March 2008. The loan is guaranteed by TFBI's principals, Douglas and Judith Cook ("Guarantors"). The total advanced was subsequently increased to $1,215,500 via modifications to the loan. The loan has been in default since October 1, 2011, and subsequently matured on January 31, 2012. IPF recorded a Notice of Default on April 18, 2012.

16. The property was listed for sale in April 2009 with a list price of $1,350,000. In October 2009, the price was reduced to $1,195,000. In September 2011, the price was further reduced to $1,085,000, and later to $995,000. Throughout this period and during the receivership, there has been some interest in the property, but no offers have been made. I consulted with the broker (who specializes in the hospitality industry in the Calistoga/Napa Valley area) about the property and market conditions. The broker advised that selling the property as an ongoing business rather than as a vacant building, and using experienced B&B managers, will increase the value of the property by 20%. Accordingly, I determined it was in the best interest of the receivership estate to not foreclose, enter into a forbearance agreement, and keep TFBI in place to manage the business while the property is marketed for sale.

17. I executed a Forbearance and Discounted Payoff Agreement ("Forbearance Agreement") with TFBI which provides for the owners to continue to operate the business and turn over net operating income on a bi-monthly basis to be applied toward interest, while the property is being marketed. TFBI has been providing the bi-monthly reports as agreed and has paid a total of $13,926.10 in interest to date. The Forbearance Agreement requires TFBI to pay the greater of the net proceeds from the sale or $890,000 ("Discounted Payoff Amount") no later than May 31, 2013. If the Discounted Payoff Amount is paid on or before the deadline, and TFBI

has complied with all other requirements under the Forbearance Agreement, the payoff will fully satisfy the loan.

18. Following execution of the Forbearance Agreement, the borrower reduced the asking price from $995,000 to $975,000 and the broker initiated a new marketing program to ignite renewed interest in the property. One problem is that the property does not include "owner's quarters." Most B&Bs include an owner's apartment, which provides a significant benefit to owners/managers. While this has already been factored into the list price, it appears to be a significant impediment for some potential buyers.

19. In March 2013, TFBI received an offer for the property in the amount of $750,000. The parties negotiated and agreed on a price of $895,000. I anticipate that the net proceeds from the sale will be approximately $838,000. I have conducted a preliminary investigation into the assets of the Guarantors. My investigation indicates that the Guarantors have no assets of significant value that would be a source of recovery. Furthermore, TFBI has no assets other than the property. Accordingly, I believe the proposed payoff will produce a higher net recovery for the receivership estate than enforcing IPF's rights under the loan documents.

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

Executed this 24th day of April, 2013, at Irvine, California.

Thomas A. Seaman

THOMAS A. SEAMAN