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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
 FUND, LLC,

17 Defendants.
 18

Case No. CV12-03237

**REPLY TO DEFENDANT MARK
 FEATHERS' OPPOSITION TO
 RECEIVER'S SECOND INTERIM FEE
 APPLICATION**

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

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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, "Receivership Entities"),
4 hereby responds to Defendant Mark Feathers' Opposition ("Opposition") to the Receiver's Second
5 Interim Fee Application ("Fee Application").

6 In his Opposition, Mr. Feathers makes rash assumptions and false accusations to impugn
7 the Receiver as a litigation tactic in the SEC action against him. The Opposition presents no
8 reason to deny any portion of the fees requested by the Receiver. Aside from misleading the Court
9 in ways discussed more specifically below, Mr. Feathers repeats arguments the Court has rejected
10 regarding the Receiver not being neutral and not being a CPA. Mr. Feathers also repeats
11 arguments the Court has rejected concerning the Bay Road construction loan (on which, as a result
12 of the Court's ruling, the Receivership Entities have now been repaid).

13 Mr. Feathers makes several references to time entries in the Fee Application and the
14 accompanying billing statements. These references are vague and unsupported. Each and every
15 time entry represents necessary and appropriate work performed by the Receiver and his staff.
16 The unfounded objections are nothing more than feeble attempts to "nit pick" the Fee Application
17 and attack the Receiver.

18 For example, Mr. Feathers complains about NSF bank notices and would have the Court
19 believe that the Receiver is writing bad checks. In fact, no check written by the Receiver has ever
20 bounced. The time entry refers to a check paid to the Receiver *by a borrower* that was returned
21 for insufficient funds and taken out of a receivership estate bank account. Moreover, the Receiver
22 has filed five detailed reports showing all receipts and disbursements of the receivership estate.
23 Each report includes a detailed general ledger providing each and every receipt and disbursement.
24 These ledgers do not reflect any bounced checks. Mr. Feathers has these reports and ledgers,
25 which are posted on the Internet, and he clearly examines them. He omits this information,
26 however, in order to attack the Receiver in ways that mislead the Court.

27 Mr. Feathers complains about a notice from the California Department of Real Estate.
28 This time entry (.1 hours, \$13.50) is a non-issue. The quarterly report had been filed prior to

1 receipt of the notice. Mr. Feathers questions a time entry relating to a late payment to Colson
2 Services. This same issue was previously raised by Mr. Feathers and addressed by the Receiver.
3 Docket No. 188, p. 5. Mr. Feathers also questions a time entry relating to California Bank &
4 Trust. This reference should have been to California Business Bank, which Mr. Feathers could
5 have easily deduced from the accompanying reference to borrower Peninsula Air
6 Conditioning, Inc., a loan in which California Business Bank is a participant. Instead,
7 Mr. Feathers misleads the Court and pretends there is no conceivable explanation for the time
8 entry.

9 Mr. Feathers questions other perfectly legitimate tasks. For example, he objects to an entry
10 of .1 hours (\$13.50) for a paralegal to contact an insurance company that was providing the
11 Receiver with insurance certificates. The insurance was for a prospective borrower, Bulk
12 Transportation. It was entirely appropriate for the Receiver to make this brief inquiry.

13 Mr. Feathers criticizes the Receiver for purportedly making a loan payment twice on the
14 Natoma Street condominium loan. The Receiver did not make two loan payments. The Receiver
15 voided the October 2012 payment because SB Capital had a credit balance in the lender's trust
16 account which the lender was applying to the unpaid balance that was paid in full by the Receiver
17 at the end of November 2012.

18 Mr. and Mrs. Feathers mislead the Court by implying that Mrs. Feathers, an investor, did
19 not timely receive notice of the second fee applications. The fee applications were filed on
20 April 4, 2013, and were posted on the Internet on April 5, 2013, at which time 290 investors,
21 including Mrs. Feathers, received an email informing them of the new website postings.
22 Mrs. Feathers opened her email from the receivership website 32 minutes after receipt.

23 Mr. Feathers complains about the billing rates of the Receiver and his staff, having
24 previously acknowledged that he is not familiar with the rates of court-appointed receivers.
25 Docket No. 138, p. 14. The blended hourly rate for work performed by the Receiver and his staff
26 during this application period is \$192. This is imminently reasonable. The Securities and
27 Exchange Commission, which is very familiar with rates charged by court-appointed receivers,
28 supports the Fee Application and believes the requested fees are reasonable. Docket No. 398.

1 The Court should not be distracted by Mr. Feathers' continuous attempts to attack the
2 Receiver. Indeed, Mr. Feathers' arguments about the Receiver's fees are belied by his own
3 conduct prior to the Receiver's appointment. In May 2012, the month preceding the Receiver's
4 appointment, Mr. Feathers paid himself and his employees approximately \$258,000. The
5 Receiver is managing the Receivership Entities' assets *and* performing tasks specific to the
6 receivership (including the forensic accounting, reports to the Court, seeking Court approval of
7 certain actions, and responding to Mr. Feathers' numerous motions). The Receiver has requested
8 approval of \$195,279.50 for an entire quarter (approximately 13 weeks) and has paid SB Capital's
9 remaining employees a total of approximately \$71,500 for the quarter. Mr. Feathers would have
10 paid himself and his employees approximately \$774,000 over the same time period. Therefore,
11 Mr. Feathers' contention that the requested fees are unreasonable should be given no weight.

12 The ongoing costs to the Receivership Estate of the Receiver having to reply to
13 Mr. Feathers' unfounded objections and frivolous motions are not fair to the investors. The fees
14 requested by the Receiver are fair and reasonable considering the work performed. Accordingly,
15 the Fee Application should be approved.

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17 Dated: April 25, 2013

ALLEN MATKINS LECK GAMBLE
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By: _____ /s/ Ted Fates
TED FATES
Attorneys for Receiver Thomas A. Seaman