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

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 vs.

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

18 Defendants.

Case No. CV12-03237

**RECEIVER'S MOTION FOR
 ADMINISTRATIVE RELIEF UNDER
 CIVIL L.R. 7-11:**

**(1) GRANTING RELIEF FROM CIVIL
 L.R. 66-5 REQUIREMENT TO FILE LIST
 OF CREDITORS;**

**(2) LIMITING NOTICE REQUIRED
 UNDER CIVIL L.R. 66-6; AND**

**(3) GRANTING PERMISSION TO
 RELEASE INVESTOR FUNDS RECEIVED
 SHORTLY AFTER ENTRY OF THE TRO**

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

[Stipulation and [Proposed] Order submitted
 concurrently herewith]

1 Pursuant to Civil L.R. 7-11, Thomas Seaman ("Receiver"), Court-appointed permanent
2 receiver for Small Business Capital Corp. ("SB Capital"), Investors Prime Fund, LLC ("IPF"),
3 SBC Portfolio Fund, LLC ("SPF"), and their subsidiaries and affiliates (collectively the
4 "Receivership Entities"), hereby moves for the following administrative relief: (1) relief from the
5 requirement under L.R. 66-5 to file a list of all creditors, their addresses, and the amounts of their
6 claims; (2) relief from L.R. 66-6(a), (c), (d) and permission to give notice under those provisions
7 via the receivership website, www.sbcapitalreceiver.com; and (3) permission to return to an
8 investor a deposit received shortly after the asset freeze was ordered. This relief will promote the
9 orderly and efficient administration of the receivership estate, maximize the assets available for
10 distribution, and minimize expenses.

11 I. BACKGROUND

12 A. The Receivership

13 On June 21, 2012, the Securities and Exchange Commission ("Commission") filed its
14 Complaint against SB Capital, Mark Feathers, IPF and SPF (collectively "Defendants"). The
15 Complaint alleges that, in violation of federal securities laws, (a) Defendants committed fraud in
16 the offer and sale of IPF and SPF securities and (b) SB Capital offered and sold securities without
17 being registered with the Commission as a broker.

18 The Commission simultaneously filed an Ex Parte Application for Temporary Restraining
19 Order and Order to Show Cause and an Ex Parte Application to Temporarily Seal the Court's File
20 for the Case. After a hearing held on June 26, 2012, the Court issued the Temporary Restraining
21 Order and Orders (1) Freezing Assets, (2) Prohibiting the Destruction of Documents, (3) Granting
22 Expedited Discovery, (4) Requiring Accountings, and (5) Appointing a Temporary Receiver; and
23 Order to Show Cause re Preliminary Injunction and Appointment of a Permanent Receiver
24 ("TRO"). The TRO appointed Thomas Seaman temporary receiver for the Receivership Entities,
25 and set an Order to Show Cause re: Preliminary Junction for July 10, 2012.

26 The Commission and Defendant Feathers stipulated to entry of the Preliminary Injunction
27 and Orders: (1) Freezing Assets; (2) Prohibiting the Destruction of Documents; (3) Requiring
28 Accountings; and (4) Appointing a Permanent Receiver ("Preliminary Injunction Order"). On

1 July 9, 2012, the Receiver filed his First Status Report and Inventory. On July 10, 2012, the Court
 2 entered the Preliminary Injunction Order and instructed the Receiver to file his next status report
 3 on August 10, 2012.

4 **B. Funds received after entry of the TRO**

5 On or around June 25, 2012, Yi Qun Zhou delivered a check made out to "Sr. Commercial
 6 Mortgage Fund" in the amount of \$45,000 to the Receivership Entities. The check was presented
 7 to Heritage Bank of Commerce for deposit into one of the Receivership Entities' bank accounts on
 8 June 26, 2012, but did not clear from Mr. Zhou's account until midnight.¹ The TRO was entered
 9 at 3:20 p.m. on June 26, 2012.

10 **II. ARGUMENT**

11 **A. The Court has broad discretion in administration of the receivership estate**

12 A district court's power to supervise an equity receivership and to determine the
 13 appropriate action to be taken in the administration of the receivership is extremely broad. *See*
 14 *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) ("The basis for this broad
 15 deference to the district court's supervisory role in equity receiverships arises out of the fact that
 16 most receiverships involve multiple parties and complex transactions. [And a] district court's
 17 decision concerning the supervision of an equitable receivership is [only] reviewed for abuse of
 18 discretion.") (internal citations omitted); *see also SEC v. Hardy*, 803 F.2d 1034, 1037-1038
 19 (9th Cir. 1986). Their power and discretion includes the authority to "make rules which are
 20 practicable as well as equitable." *Id.* at 1039 (quoting *First Empire Bank-New York v. FDIC*,
 21 572 F.2d 1361, 1368 (9th Cir. 1978)).

22 And a primary purpose of equity receiverships is to promote orderly and efficient
 23 administration of the estate by the district court for the benefit of creditors. *See SEC v. Wencke*,
 24 783 F.2d 829, 837 n.9 (9th Cir. 1986); *see also Commodities Futures Trading Comm'n. v.*
 25 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to
 26 the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the
 27

28 ¹ The check is discussed in paragraph 4 of the Declaration of John B. Bulgozdy in Support of
 Letter Brief, filed on August 10, 2012. Docket No. 52.

1 district court that serve th[e] purpose' of orderly and efficient administration of the receivership for
2 the benefit of creditors."). Accordingly, this Court has broad equitable powers and discretion in
3 formulating procedures for administration of the receivership estate.

4 **B. Relief from requirement to file list of creditors**

5 Civil L.R. 66-5 requires, in part, that within 30 days of appointment, the Receiver must
6 serve and file with the Court "a list of all creditors, their addresses and the amounts of their
7 claims." Publishing such a list would infringe on the personal privacy of the investors of the
8 Receivership Entities and could needlessly subject them to unwanted solicitation and harassment.
9 The Receiver suggests that notices be provided to investors and other creditors throughout the case
10 without their identities or home addresses being published, other than as necessary in resolving
11 disputes concerning claims. Furthermore, the proper amounts of investor and creditor claims has
12 not yet been determined. Analysis of claims cannot be performed until the Receiver's forensic
13 accounting of investor/creditor transactions has been completed. Accordingly, the Receiver
14 requests relief from the requirement to file a list of creditors, their addresses, and the amounts of
15 their claims. The Receiver will otherwise comply with the requirements of L.R. 66-5.

16 **C. Relief from certain notice requirements**

17 Civil L.R. 66-6(a), (c), and (d) require that the Receiver give all interested parties notice of
18 petitions for instructions, motions to approve sales of receivership assets, and reports of the
19 Receiver. As noted above, the Receiver has established a website and, in letters sent to investors
20 and creditors, has directed them to the website to obtain information about the receivership. The
21 website is regularly updated with motions, applications, reports, orders, and other documents filed
22 with the Court. The website also allows investors and creditors to register via a secure server to
23 receive e-mails when new documents are posted to the website. Finally, the Receiver intends to
24 send a letter to all investors reminding them that they can receive email notices by signing up at
25 the website, and also letting them know that they can receive notices by mail if they request such
26 notices in writing and provide the Receiver with their current address.

27 The Receiver proposes that notices of petitions for instructions, motions seeking approval
28 of sales of receivership assets, and Receiver reports be posted on the website and that such notice,

1 including e-mails to those who register to receive them, and mailings to those who request them,
2 be deemed sufficient. Permitting notices to be provided via the website and e-mail will
3 substantially reduce copying and mailing costs, and, therefore, preserve receivership estate
4 resources.

5 The Receiver will otherwise comply with the requirements of L.R. 66-6 and will give all
6 interested parties notice by mail of petitions to distribute receivership estate funds, fee applications
7 of the Receiver and his professionals, and motions for discharge of the Receiver.

8 **D. Permission to return funds received after entry of the TRO**

9 "Both law and equity dictate that the investors whose checks were deposited after the
10 freeze order are entitled to a full return of their funds." *See Anderson v. Stephens*, 875 F.2d 76, 79
11 (4th Cir. 1989). Here, the TRO, which includes the asset freeze, was entered on the afternoon of
12 June 26, 2012. As noted above, Mr. Zhou's check was presented to Heritage Bank of Commerce
13 for deposit into one of the Receivership Entities' bank accounts on June 26, 2012, but did not clear
14 from Mr. Zhou's account until midnight. Because the funds were not received by the Receivership
15 Entities until after the TRO had been entered, and, therefore, after the asset freeze went into effect,
16 the Receiver proposes that the \$45,000 be returned to Mr. Zhou.

17 **III. CONCLUSION**

18 Based on the foregoing, the Receiver respectfully requests that this Court enter an order
19 granting the administrative relief set forth herein.

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21 Dated: August 22, 2012

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MALLORY & NATSIS LLP

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23 By: _____ /s/ Ted Fates
24 TED FATES
25 Attorneys for Permanent
26 Receiver Thomas A. Seaman
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