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

12 SECURITIES AND EXCHANGE
COMMISSION,
13 Plaintiff,
14 v.
15 SMALL BUSINESS CAPITAL CORP.;
MARK FEATHERS; INVESTORS PRIME
16 FUND, LLC; and SBC PORTFOLIO
FUND, LLC,
17 Defendants.

Case No. CV12-03237

**REPLY TO RESPONSES TO MOTION TO
APPROVE OMNIBUS AND SPECIFIC
CLAIM OBJECTIONS**

Date: January 31, 2014
Time: 9:00 a.m.
Ctrm: 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 submits this reply in support of his Motion to Approve Omnibus and Specific Claim Objections
5 ("Claims Motion"). The Receiver responds to the oppositions to the Claims Motion as follows:

6 **I. Small Business Administration**

7 The U.S. Small Business Administration ("SBA") submitted a claim of \$24,181,665.40, all
8 but \$34,269 of which is contingent based on the SBA's contentions certain SBA loans originated
9 by the Receivership Entities did not conform to loan program rules. The Receiver formally
10 objected to the claim, but made it clear he is discussing the claim with the SBA and would report
11 on the status of the discussions prior to the hearing. The SBA responded, arguing its claim should
12 not be extinguished and requesting a briefing schedule to resolve the dispute. Docket No. 632.

13 The Receiver is not presently seeking to extinguish the SBA's claim and is working to
14 resolve the claim with the SBA. In the meantime, it is important to recognize the alleged
15 "irregularities" with the loans on which the SBA claim is based are non-monetary in nature.
16 Rather, the SBA contends certain loans do not comply with federal regulations, including, for
17 example, that certain 504 loans which the borrowers used to purchase or renovate hotel properties
18 violate federal regulations because the loan proceeds were used to purchase hotels with swimming
19 pools. The SBA claim is not based on the performance of the loans or any assessment of risk or
20 exposure to losses.

21 The Receiver's discussions with the SBA are ongoing. The Receiver and the SBA agree
22 the SBA's contingent claim will likely be satisfied through a sale of 7(a) and 504 loan portfolios.
23 It is anticipated the buyer of each portfolio will assume any and all liability to the SBA arising
24 from such portfolio as part of the purchase. In that event, the amount of the SBA claim will not
25 need to be addressed by the Receiver or the Court. Accordingly, rather than setting a briefing
26 schedule, the Receiver proposes the Court's determination of the SBA claim be deferred until a
27 sale of each loan portfolio is proposed. If the proposed purchaser of the portfolio does not assume
28 liability to the SBA as part of the sale, and therefore it becomes necessary to address the merits

1 and amount of the SBA claim, the Receiver will propose an allowed amount for the SBA claim,
2 the SBA can respond, and the Court can consider the matter at that time. Until then, judicial
3 resources, SBA resources, and receivership estate resources should be conserved by deferring
4 determination of the SBA claim.

5 The SBA has also asserted the Receiver has made no efforts to sell the loan portfolio. In
6 fact, the Receiver has been working with the SBA over the last six months to agree on procedures
7 for the sale of the loan portfolios and the lending license. At the same time, the Receiver has been
8 working to prepare the portfolio for sale, including but not limited to working to mitigate and
9 address the issues raised by the SBA in its \$24 million claim. As soon as an agreement with the
10 SBA is reached, the Receiver will seek Court approval of the sale procedures.

11 **II. Natalie Feathers**

12 Natalie Feathers submitted a claim in the amount of \$22,500, which represents \$7,500 in
13 wages and \$15,000 in waiting time penalties. The Receiver objected to the entire claim and asks
14 that it be subordinated to the claims of investors and non-investor creditors. Mrs. Feathers filed an
15 opposition arguing her claim should be allowed. Docket No. 639.

16 Mrs. Feathers ignores the grounds for equitable subordination of her claim. *See SEC v.*
17 *American Board of Trade*, 719 F. Supp. 186, 196 (S.D.N.Y. 1989) (creditor's claim, while not
18 lacking a lawful basis, may nevertheless be subordinated due to creditor's inequitable behavior).
19 Mrs. Feathers' husband, Defendant Mark Feathers, has been found liable for defrauding investors
20 and ordered to disgorge more than \$7.7 million. Mrs. Feathers helped Mr. Feathers operate the
21 Ponzi-like scheme, was a signer on the Receivership Entities' bank accounts, and benefitted
22 substantially from the scheme in the form of her salary, Mr. Feathers' salary, amounts paid to their
23 children, personal/family expenses paid by the Receivership Entities, and amounts transferred to
24 Mr. Feathers' companies. See Docket No. 557, pp. 21-22.

25 Mrs. Feathers' compares herself to David Gruebele, another former employee of the
26 Receivership Entities, and argues she is being treated unfairly. This comparison is inapposite.
27 Not only are the benefits Mrs. Feathers derived from the fraudulent scheme very different from
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1 those Mr. Gruebele received, but Mr. Gruebele has not asserted a claim against the receivership
2 estate. If he had, such a claim may have drawn an objection from the Receiver.

3 Finally, the Receiver has objected to all claims for consequential damages, interest, finance
4 fees, and other amounts that do not represent a direct economic loss. Waiting time penalties are
5 the kind of indirect claim that should be disallowed when the assets of the receivership estate are
6 insufficient to pay all investors and non-investor creditors in full. *See Commodity Futures*
7 *Trading Commission v. Hoegh*, 205 F. 3d 1107, 1115 (9th Cir. 1999).

8 The Court should exercise its discretion to subordinate Mrs. Feathers' claim based on her
9 participation in and benefits obtained from the Ponzi-like scheme.

10 **III. Conclusion**

11 The Receiver respectfully requests the Court approve the claim amounts listed on
12 Exhibit A (Investors) and Exhibit B (Non-Investor Claimants) to the Declaration of Thomas
13 Seaman in support of the Claims Motion, and defer ruling on the SBA's claim until such time as a
14 sale of the loan portfolios is proposed.

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16 Dated: December 6, 2013

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18 By: _____ /s/ Ted Fates

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Attorneys for Receiver
THOMAS A. SEAMAN

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