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6 Attorneys for Receiver
7 THOMAS A. SEAMAN

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

11 SECURITIES AND EXCHANGE
COMMISSION,
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Plaintiff,
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vs.
14 SMALL BUSINESS CAPITAL CORP.;
15 MARK FEATHERS; INVESTORS PRIME
FUND, LLC; AND SBC PORTFOLIOS, LLC,
16
Defendants.

Case No. CV12-03237 EJD
EX PARTE MOTION FOR ORDER
SHORTENING TIME FOR HEARING ON
MOTION TO APPROVE SALE OF 504/FMLP
LOAN PORTFOLIO AND NON SBA LOANS
[Dkt. 988]; DECLARATION OF RECEIVER,
THOMAS A. SEAMAN, IN SUPPORT
THEREOF; [PROPOSED] ORDER
Ctrm: 4 - 5th Floor
Judge: Hon. Edward J. Davila

1 Thomas A. Seaman ("Receiver"), the Court-appointed Receiver for Small Business Capital
2 Corp. ("SB Capital"), Investors Prime Fund, LLC ("IPF"), SBC Portfolio Fund, LLC ("SPF") and
3 their subsidiaries and affiliates (collectively, "Receivership Entities"), hereby applies *ex parte* for
4 an order shortening time for a hearing on the Receiver's Motion For Approval of Sale of
5 504/FMLP Loan Portfolio and Non-SBA Loans (the "Sale Motion") filed December 12, 2014,
6 Dkt. 988. This Sale Motion is filed in accordance with the prior Order Granting Approval of Sale
7 Procedures for Loan Portfolios and 7(a) License, dated May 9, 2014. [Docket 898].

8 Notice of this *ex parte* motion was provided to and discussed with the Securities and
9 Exchange Commission and they have indicated that they do not oppose.

10 This *ex parte* motion is further supported by that Declaration of Thomas A. Seaman in
11 Support of *Ex Parte* Motion For Order Shortening Time For Hearing on Motion to Approve Sale,
12 filed herewith.

13 I. INTRODUCTION

14 This *ex parte* motion seeks to set a hearing date within the next 30 days for the Sale
15 Motion which has been concurrently filed herewith and is set for February 5, 2015, the date
16 assigned by the Court's courtroom deputy. Specifically, the Receiver requests a hearing on
17 January 8, 2015, or, (at the latest, January 15, 2015.)

18 The Motion seeks authority to sell the 504 loan portfolio and the SB Capital loans for
19 110% and 60% of the principal value of the respective loans. This valuable sale opportunity is
20 jeopardized by the inability of the Receiver to obtain a hearing sooner than February 5, 2015.
21 That is, the sale is premised upon, among other things, the size and quality of the 504 loan
22 portfolio as of December 5, 2014, the date of execution of the Loan Purchase and Sale Agreement
23 executed by Western Alliance Bank, an Arizona corporation (the "Buyer"). As noted in the
24 Seaman Declaration, there are significant risks of loss associated with having to wait until
25 February 5, 2015 for Court approval.

26 By this application, the Receiver requests an order shortening the time for a hearing on the
27 Motion. The Receiver requests that the Motion be heard within the next thirty (30) days,
28 specifically on January 8, 2015.

1 **II. CAUSE FOR SHORTENING TIME**

2 There is good cause to hear the Motion within the next 30 days. As a result of extensive
3 marketing and negotiations, the Receiver has received an offer to purchase the 504 loans valued at
4 110% of the principal amount of the 504 loans being sold, plus approximately 60% of the
5 principal amount of the Non-SBA Loans. The sale has been approved the Small Business
6 Administration.

7 The parties contemplated that the sale would close within approximately 30 days of
8 execution of the Loan Purchase and Sale Agreement, albeit subject to Court approval.

9 To the extent that loans in the portfolio are paid off or the sale cannot be consummated
10 within the next 30 days, the Buyer may seek a credit for interest and servicing income. If there
11 was a substantial change in the makeup of the 504 loan portfolio, then Buyer could possibly seek
12 to withdraw from the deal. Either event could reduce the Receiver's recovery and adversely
13 impact investors and creditors. Seaman Declaration, ¶ 10-12. Furthermore, to the extent that any
14 of the loans are paid off via refinancing by borrowers while we are awaiting for the February 2015
15 hearing, further substantial losses may occur based upon the loss of the premium being paid for
16 these loans. Id. at 10-12.

17 If the Motion cannot be heard until February 5, 2015, there is a significant chance that
18 recovery by the Receiver, and thus distributions to investors, will be less than if the Motion is
19 heard in the next 30 days. Id.

20 **III. CONCLUSION**

21 Wherefore the Receiver requests an order shortening time on the Motion and setting the
22 Motion for hearing in the next 30 days, specifically on January 8, 2015.

23
24 Dated: December 12, 2014

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

25
26 By: /s/ David R. Zaro

27 DAVID R. ZARO
Attorneys for Receiver
28 THOMAS A. SEAMAN

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6 Attorneys for Receiver
7 THOMAS A. SEAMAN

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

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

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

17 Defendants.

Case No. CV12-03237 EJD

DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF EX PARTE
MOTION FOR ORDER SHORTENING
TIME FOR HEARING ON MOTION FOR
APPROVAL OF SALE OF 504/FMLP
LOAN AND NON SBA LOANS

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

1 I, Thomas A. Seaman, declare:

2 1. I am the court-appointed receiver for Small Business Capital Corp.
3 ("SB Capital"), Investors Prime Fund, LLC ("IPF"), and SBC Portfolio Fund, LLC
4 ("SPF"), and their subsidiaries and affiliates ("Receivership Entities"). I have personal
5 knowledge of the facts stated herein, and if called upon to do so, I could and would
6 personally and competently testify to them. This declaration is prepared in support of the
7 Ex Parte Motion for Order Shortening Time On Motion for Approval To Sell 504/FMLP
8 Loan Portfolio and Non-SBA Loans (the "Sale Motion"). At present, I am seeking Court
9 approval of the sale to Western Alliance Bank ("Western"), of the 504/FMLP and non-
10 SBA loans for a sale price of 110% of the principal amount of the 504/FMLP loans. As
11 noted below, I am concerned that this sale or the value of the sale may be jeopardized if we
12 cannot have a hearing on the Sale Motion in the next 30 days and specifically on
13 January 8, 2015.

14 2. During my tenure as Receiver, I have stabilized the servicing of the loans
15 and ensured that the loan portfolio generated profits. The resulting stability of the loan
16 portfolios, combined with effective marketing of the assets and the yield enhancement of
17 the servicing income, has proved to be attractive to potential bidders. As such, if the sale
18 Motion is approved, Western will pay the Receivership Entities 110% of the amounts due
19 on the 504/FMLP loans and 60% of the non-SBA loans.¹

20 3. On May 9, 2014, the Court entered the Order Granting Approval for Sale
21 Procedures for Loan Portfolios and 7(a) License; Authorizing Engagement of Voit Real
22 Estate Services LP as Broker (the "Sale Procedures Order"). After entry of the Sale
23 Procedures Order, Voit Real Estate Services LP ("Voit") and I diligently marketed the loan
24 portfolios in accordance with the process described in the Sale Procedures Order. As
25 indicated by the following statistics, the loan portfolios were widely exposed to the
26

27 _____
28 ¹ The non-SBA loans are either unsecured or undersecured. As such, they are much
riskier than SBA 504 loans. In addition, the non-SBA loans do not produce servicing
income.

1 marketplace: 7,262 parties were notified of the sale; the Receiver executed non-disclosure
2 agreements with 149 entities with access given to 191 people at those entities; and 24
3 potential bidders paid the \$500 access fee to complete full due diligence.

4 4. Upon the conclusion of the due diligence period, I received 15 indicative
5 bids. Seven were for the 504/FMLP loan portfolio only, and five were for the non-SBA
6 loans only. Eight bidders bid on both portfolios. The range of initial indicative bids were
7 approximately 88% - 100% on the 504/FMLP loans and 28% to 65% of the non-SBA
8 loans. After several rounds of bidding and review by the SBA, I selected Western based
9 on its bid of 110% of the 504/FMLP loans and 60% of the non-SBA loans. Western has
10 executed the Loan Purchase and Sale Agreement. Based upon the foregoing analysis and
11 my good faith business judgment, I recommend proceeding with the sale of the Assets to
12 Western pursuant to the Loan Purchase and Sale Agreement.

13 5. The SBA submitted a claim for over \$24 million in the receivership. This
14 claim is contingent upon the SBA proving their contention that certain of the loans in the
15 portfolio did not conform to the loan program rules and that they have suffered damages as
16 a result of the loan program deficiencies. I strongly object to the SBA claim.

17 6. Based on my discussions with the SBA, it has become clear that one way to
18 satisfy the SBA's claim may be through the sale of the loan portfolios to third parties who
19 assume the liability associated with the loans. The SBA has approved Western as the
20 purchaser of the subject loans based on Western's assumption of liabilities to the SBA.

21 7. In the course of concluding the agreement with Western, my counsel sought
22 a Court date for a hearing to approve the sale. The Court's calendar clerk provided a
23 hearing date of February 5, 2015. I informed the buyer of the date. Based upon their
24 response, I am concerned that they may either withdraw from the sale altogether or
25 demand a discount or improvement in the terms based on a closing date that is well beyond
26 the contemplated closing period.

27 8. In addition to the foregoing, I am also concerned that a February 5, 2015
28 hearing date exposes the receivership to the risk of losses that may occur as a result of loan

1 prepayments. That is, to date, several of the loans in these portfolios have been paid off.
2 If a borrower in the 504/FMLP loan portfolio were to prepay their loan, the receivership
3 estate will only receive 100% of the unpaid principal as opposed to 110% when the sale
4 concludes. Moreover, if certain of the large loans are prepaid, then the portfolio may be
5 too small to be of interest to Western and they may choose not to close the purchase and
6 sale based upon a material change in circumstances.

7 9. Part of the appeal of this loan portfolio to purchasers is the ability of the
8 purchaser to potentially refinance certain of the higher interest rate loans that are included
9 in the portfolio. If we experience additional loan prepayments prior to closing, this benefit
10 to the buyer could be diluted. In short, I am concerned that if the Court does not hear the
11 matter until February 5, 2015 that the sale could be lost or the value of the sale could be
12 reduced below the premium that has been achieved through the marketing and sale
13 process.

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

16 Executed this 12th day of December 2014, at Irvine, California.

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THOMAS A. SEAMAN

PROPOSED ORDER

Proposed Order

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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 EJD

[PROPOSED] ORDER SHORTENING
TIME ON MOTION OF RECEIVER FOR
APPROVAL OF SALE OF 504/FMLP
LOAN AND NON SBA LOAN
PORTFOLIOS

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

1 The Ex Parte Application for Order Shortening Time on Motion for Approval to
2 Sell 504/FMLP Loan Portfolio and Non-SBA Loans ("Ex Parte Motion") of Thomas A.
3 Seaman ("Receiver"), Court-appointed permanent receiver for Small Business Capital
4 Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC, and their subsidiaries and
5 affiliates, came before the Court. The Court, having received and read the Ex Parte
6 Motion and all papers in support thereof or opposition thereto, and being so advised in the
7 matter and finding good cause, orders as follows:

8 **IT IS ORDERED:**

- 9 1. The Ex Parte Motion is granted.
- 10 2. The hearing date for the Motion for Approval to Sell 504/FMLP Loan
11 Portfolio and Non-SBA Loans is hereby advanced to January 8, 2015, at 9:00 a.m.

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13 Dated: _____

14 Hon. Edward J. Davila
15 Judge, United States District Court
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PROOF OF SERVICE

Securities and Exchange Commission v. Small Business Capital Corp; Mark Feathers, et al.
USDC, Northern District of California – San Jose Division – Case No. 5:12-cv-03237-EJD

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

- **EX PARTE MOTION FOR ORDER SHORTENING TIME ON MOTION OF RECEIVER FOR APPROVAL OF SALE OF 504/FMLP LOAN PORTFOLIO AND NON-SBA LOANS**
- **DECLARATION OF THOMAS A. SEAMAN IN SUPPORT OF EX PARTE MOTION FOR ORDER SHORTENING TIME ON MOTION OF RECEIVER FOR APPROVAL OF SALE OF 504/FMLP LOAN PORTFOLIO AND NON-SBA LOANS; AND**
- **[PROPOSED] ORDER SHORTENING TIME ON MOTION OF RECEIVER FOR APPROVAL OF SALE OF 504/FMLP LOAN AND NON-SBA LOANS**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **December 12, 2014**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Eric James Adams**
eric.adams@sba.gov
- **John Brian Bulgozdy**
bulgozdyj@sec.gov,LAROFiling@sec.gov,delgadilloj@sec.gov,mitchells@sec.gov, berryj@sec.gov,irwinma@sec.gov
- **California Business Bank**
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- **Loraine L. Pedowitz**
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- **Thomas A. Seaman**
tom@thomasseaman.com
- **David Robert Zaro**
dzaro@allenmatkins.com

2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **December 12, 2014**, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit.

Pro Se Defendant

Via Overnight Mail

Mark Feather
1520 Grant Road
Los Altos, CA 94024
650.776.2496 (phone) | 650.961.2382 (fax)
markfeathers@sbcglobal.net

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **December 12, 2014** at Los Angeles, California.

/s/ Martha Díaz
Martha Diaz