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8 THOMAS A. SEAMAN

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

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

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

18 Defendants.

Case No. CV12-03237

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF DISTRIBUTION PLAN
AND AUTHORIZATION TO MAKE
INTERIM DISTRIBUTIONS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: April 25, 2013
Time: 9:00 a.m.
Ctrm: 4 - 5th Floor
Judge: Hon. Edward J. Davila

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1 **PLEASE TAKE NOTICE** that on April 25, 2013, at 9:00 a.m. in Courtroom 4, 5th Floor,
2 of the United States District Court, 280 South 1st Street, San Jose, California, 95113, the Court
3 will consider the motion of Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver
4 for Small Business Capital Corp. ("SBCC"), Investors Prime Fund, LLC ("IPF"), SBC Portfolio
5 Fund, LLC ("SPF") and their subsidiaries and affiliates, including Small Business Capital, LLC
6 ("SBC LLC") and SBC Senior Commercial Mortgage Fund, LLC ("SCMF"), for approval of
7 distribution plan and authorization to make interim distributions ("Motion").

8 The Motion and Distribution Plan are posted on the Receiver's website
9 (www.sbcapitalreceiver.com). A hard copy can also be obtained by emailing a request to the
10 Receiver through the website or by sending a written request to the Receiver at 3 Park Plaza,
11 Suite 550, Irvine, California 92614.

12 If you oppose the Motion, you are required to file your written opposition with the Office
13 of the Clerk, United States District Court, 280 South 1st Street, San Jose, California, 95113, and
14 serve the same on the undersigned not later than fourteen (14) days after the motion was filed.

15
16 Dated: November 19, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

17
18 By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Having conducted a forensic accounting of the Receivership Entities and a thorough review and analysis of claims, and the Court having determined that Defendants violated federal securities laws, the Receiver now asks the Court to approve his proposed plan of distributing receivership assets and authorize him to make interim distributions to holders of allowed claims. The relief requested will provide for an orderly, equitable and efficient distribution, will provide funds to defrauded investors on an interim and immediate basis and thus mitigate their financial hardship, and will facilitate winding up the receivership in a timely fashion.

A. Distribution Plan

The Receiver requests approval of his proposed Distribution Plan, which is attached hereto as Exhibit A. The Distribution Plan provides for priority payment of all allowed administrative expenses, while all other allowed claims – investor claims and non-investor claims – be paid *pro rata* from the remaining assets.

As detailed in the Receiver's Forensic Accounting Report (Docket No. 557), the Receivership Entities made extensive transfers of cash, loans, and investor accounts between and among themselves to create liquidity necessary to pay investor returns and make payments to SBCC. The Court found that such transfers were part of the fraudulent scheme in which Defendants used investor contributions to make Ponzi-like return payments to other investors. Docket No. 591, p. 13. Accordingly, the proposed Distribution Plan provides all receivership assets be pooled and investors receive a *pro rata* distribution from the pool in accordance with the Distribution Plan terms, rather than allowing investors in a fund that benefitted from intercompany transfers and who may have received Ponzi-like payments to receive a greater share of receivership assets at the expense of other investors. In other words, the Distribution Plan attempts to equalize investor recoveries regardless of the timing of investments and fund chosen, and takes into account pre-receivership distributions.

To accomplish this, the Distribution Plan provides that amounts investors received from the Receivership Entities be deducted from their *pro rata* distributions. This distribution method,

1 known as the "rising tide" method, allows investors who received nothing from the Receivership
2 Entities (or significantly less than other investors) to recover first. As discussed below, this method
3 has been endorsed by courts as a fair and equitable method of distributing receivership assets in
4 fraud cases. Use of the rising tide method will allow the Receiver to distribute the recommended
5 amount of \$19,000,000 discussed in further detail below, to all investors who have thus far
6 received less than 52.387% of their original investment.¹ Investors who have previously received
7 more than 52.387% will not participate in the first distribution but may participate in future
8 distributions depending on the success of the Receiver's efforts to convert assets to cash, at which
9 time the rising tide threshold will be increased, thus making more investors eligible to receive a
10 distribution.

11 For example, suppose there are three investors: Investor A invested \$100,000 and received
12 no distributions of capital or purported income; Investor B invested \$100,000 and received \$10,000
13 in distributions; and Investor C invested \$100,000 and received distributions of \$60,000.
14 Investor A would receive \$52,387 in the initial distribution, as 52.387% of its contributions.
15 Investor B already received \$10,000 and would therefore receive \$42,387. Investor C already
16 received \$60,000, or 60% of their investment, and therefore would not participate in the initial
17 distribution. Investor C would participate in future distributions once the "rising tide" brought all
18 other investors up to the 60% recovery Investor C already received.

19 Finally, to avoid unnecessary complication and expense in making distributions, the
20 Distribution Plan provides that all claims submitted to the Receiver after September 25, 2013 (of
21 which there are currently none) are automatically disallowed. The Court set the deadline to submit
22 claims as May 10, 2013. The Receiver has not objected to claims submitted after the deadline
23 because there was no prejudice to anyone in allowing these late claims. Now that approval of a
24 distribution plan and authority to make distributions has been sought, however, allowing late claims
25 will impose unnecessary costs on the receivership estate and will complicate the distribution
26 process. All investors and non-investor creditors have been given ample notice and opportunity to
27

28 ¹ If the court were to order a higher or lower amount of the first distribution, the rising tide
threshold to which all investors' recovery will be brought would increase or decrease.

1 present their claims. Therefore, all claims submitted to the Receiver after September 25, 2013 (the
2 last date a claim was received) should be automatically disallowed.

3 **B. Interim Distributions**

4 The Receiver requests authority to make interim distributions to holders of allowed claims.
5 As of October 31, 2013, there was approximately \$20,600,000 in cash on hand in the receivership
6 estate, which balance increased in October with the liquidation of certain real estate assets and loan
7 collections and payoffs. The cash balance has grown steadily throughout the receivership as the
8 Receiver has substantially reduced operating expenses and continued to service the Receivership
9 Entities' loan portfolio. The Receiver proposes that \$19,000,000, the vast majority of cash on hand,
10 be distributed at this time. The remaining cash, as well as continuing income from servicing
11 operations and asset sales (including sales to be proposed), will be reserved and will more than
12 cover unpaid administrative expenses and those that will be incurred prior to conclusion of the
13 receivership.

14 It should be noted the Receiver has objected to the claim of one significant creditor, the
15 United States Small Business Administration ("SBA"). The SBA will not be paid pursuant to this
16 Distribution Plan and no reserve is being set aside to account for its contingent unliquidated claim
17 at this time. The Receiver may seek to amend the Distribution Plan if, at some point in the future,
18 the SBA claim must be addressed.

19 As the case progresses, cash will continue to accumulate and likely exceed projections for
20 administrative expenses (even factoring in a contingency reserve.) Accordingly, and to provide for
21 this, the Receiver requests authority to make subsequent interim distributions pursuant to the terms
22 of the Distribution Plan. Such subsequent distributions will be made in the Receiver's discretion
23 after providing notice to the Securities and Exchange Commission ("Commission"). At all times,
24 the Receiver will continue to reserve sufficient cash to cover projected administrative expenses
25 through conclusion of the receivership.

26 **II. DISTRIBUTION PLAN**

27 The Distribution Plan, attached hereto as Exhibit A, lays out the Receiver's proposed
28 distribution of receivership assets to holders of allowed claims. The Distribution Plan provides for

1 the establishment of a cash reserve, in an amount approved by the Court, to cover allowed
 2 administrative expenses through completion of the receivership. As noted above, the Distribution
 3 Plan provides for (a) pooling of receivership estate assets, (b) *pro rata* distributions from the pool
 4 to all holders of allowed claims (investors and non-investors), (c) the "rising tide" method of
 5 calculating the actual amount of investor distributions, and (d) automatic disallowance of claims
 6 received after September 25, 2013 (of which there are currently none). Finally, the Distribution
 7 Plan retains exclusive jurisdiction in the Court to resolve all matters relating to the Distribution
 8 Plan and receivership case in the event such issues arise after the case is closed.

9 III. ARGUMENT

10 "The power of a district court to impose a receivership or grant other forms of ancillary
 11 relief does not in the first instance depend on a statutory grant of power from the securities laws.
 12 Rather, the authority derives from the inherent power of a court of equity to fashion effective
 13 relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity
 14 receiverships is to promote orderly and efficient administration of the estate by the district court for
 15 the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
 16 of a receiver is authorized by the broad equitable powers of the court, any distribution of assets
 17 must also be done equitably and fairly. *See SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

18 District courts have the broad power of a court of equity to determine the appropriate action
 19 in the administration and supervision of an equity receivership. *See SEC v. Capital*
 20 *Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained:

21 A district court's power to supervise an equity receivership and to
 22 determine the appropriate action to be taken in the administration of
 23 the receivership is extremely broad. The district court has broad
 24 powers and wide discretion to determine the appropriate relief in an
 25 equity receivership. The basis for this broad deference to the district
 court's supervisory role in equity receiverships arises out of the fact
 that most receiverships involve multiple parties and complex
 transactions. A district court's decision concerning the supervision of
 an equitable receivership is reviewed for abuse of discretion.

26 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999)
 27 ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold
 28 reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and

1 efficient administration of the receivership for the benefit of creditors."). Accordingly, the Court
2 has broad discretion in approving a plan of distribution and authorizing interim distributions.

3 **A. The Distribution Plan Should Be Approved**

4 The Distribution Plan is designed to provide an orderly and fair distribution of receivership
5 estate assets. Priority is given to fees and costs of the receivership approved by the Court and other
6 administrative claims, as is always the case in federal equity receiverships. All other claimants will
7 receive a *pro rata* distribution of cash in the receivership estate in accordance with the Distribution
8 Plan terms. Where the assets of a receivership estate are insufficient to pay all claims, *pro rata* is
9 the most fair and equitable method of distributing receivership estate assets to similarly situated
10 claimants. *See Capital Consultants*, 397 F.3d at 750; *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80,
11 88-89 (2d Cir. 2002) (endorsing *pro rata* distribution of receivership assets).

12 Finally, and to avoid unnecessary complication and expense in making distributions, the
13 Distribution Plan provides that all claims submitted after September 25, 2013 (of which there are
14 currently none) be automatically disallowed. The Court set the deadline to submit claims as
15 May 10, 2013. Now that approval and allowance of claims has been sought, allowing late claims
16 will impose unnecessary costs on the receivership estate and will complicate the distribution
17 process. All creditors have been given ample notice and opportunity to present their claims.
18 Therefore, all claims submitted to the Receiver after September 25, 2013, should be automatically
19 disallowed.

20 **B. The Receivership Entities' Assets Should Be Pooled For Distribution**

21 Where, as here, there is extensive movement of cash and assets between and among entities
22 involved in securities violations, equity demands that assets of all Receivership Entities be pooled
23 for purposes of distribution so as not to favor investors in one Receivership Entity that happened to
24 benefit from inter-company transfers at the expense of investors in other Receivership Entities. *See*
25 *United States v. Real Property Located at 13328 and 13324 State Highway 75 North*, 89 F.3d 551
26 (9th Cir. 1996); *In re North American Coin & Currency LTD.*, 767 F.2d 1573 (9th Cir. 1985);
27 *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80 (2d Cir. 2002); *SEC v. Forex Asset Mgmt., LLC*, 242 F.3d
28 325 (5th Cir. 2001).

1 The Receiver's Forensic Accounting Report shows large amounts of cash, loans, and
2 investor accounts transferred in numerous transactions between and among the Funds and between
3 the Funds and SBCC. Docket No. 557, pp. 11-16. In particular, the Forensic Accounting Report
4 details the following:

5 1) More than \$19.2 million in cash was transferred among IPF, its subsidiary SBC LLC,
6 and SPF. IPF was the net beneficiary from these transfers in the amount of \$4.3 million.

7 *Id.* at p. 11-13.

8 2) There were at least 47 transactions involving 19 loans that were transferred between and
9 among IPF, SPF, and SCMF. The total value of these transactions was more than
10 \$26.1 million. SPF was the net beneficiary of these transactions. *Id.* at p. 12-13.

11 3) Investor accounts with a value of more than \$6.9 million were moved back and forth
12 between IPF, SPF, and SCMF. SPF and SCMF were the net beneficiaries of these
13 transactions. *Id.* at p. 15.

14 In the aggregate, SPF was the net beneficiary of the complex web of inter-fund transfers to
15 the tune of more than \$9.9 million. *Id.* at p. 16. These transfers were made for the purpose of
16 creating liquidity in each fund at different points in time so the fund could pay monthly returns to
17 its investors and make payments to SBCC to cover SBCC's operating expenses. *Id.* at pp. 2-3.

18 Indeed, in its Order Granting Plaintiff's Motion for Summary Judgment; Denying
19 Defendants' Motion for Summary Judgment, the Court found the transfers between funds were part
20 of the fraudulent scheme, stating the "loans and money transfers between the funds and from the
21 Funds to SBCC allowed Feathers to conceal or misrepresent the true net income, performance, and
22 yield of the Funds." Docket No. 591, p. 13. The Court also found Defendants used investor
23 contributions to make Ponzi-like payments to other investors. *Id.* at 15.

24 An investor's interest in or the value of each of the funds, loans, and investor accounts, at
25 the time the Receiver was appointed was almost entirely fortuitous. Had the scheme been stopped
26 a month earlier or a month later, an investor's interest or the assets in each fund might have been
27 very different. Accordingly, the happenstance of where assets lied at the commencement of the
28 receivership should not result in one group of investors being favored over another.

1 Moreover, it would not be possible at this stage to unwind these numerous inter-fund
2 transactions. Even if it were possible, such unwinding would not produce a more equitable result
3 than creating a single pool of assets and distributing the pool on a *pro rata* basis as provided in the
4 Distribution Plan.

5 **C. The "Rising Tide" Method Should Be Approved**

6 The Distribution Plan provides that amounts investors received from the Receivership
7 Entities prior to the Receiver's appointment be deducted from their *pro rata* distributions. This
8 distribution method, known as the "rising tide" method, allows investors who received nothing on
9 account of their contributions (or significantly less than other investors) to recover first. For the
10 initial distribution, the Receiver proposes to distribute \$19,000,000, which, under the rising tide
11 method, will result in investors who received less than 52.387% of their contributions prior to the
12 receivership receiving a distribution that brings them up to a total of 52.387%, including pre-
13 receivership payments and their initial distribution from the receivership. Investors who received
14 52.387% or more of their contributions prior to the receivership will not participate in the initial
15 distribution. However, as discussed below, there will be subsequent distributions in which most
16 investors who received 52.387% or more prior to the receivership will participate. Investors who
17 received 100% or more of their contributions prior to the receivership do not have an allowed claim
18 and will not participate in any distributions.

19 In effect, this methodology levels the playing field and takes into account the disparate
20 amounts received by investors prior to the receivership. This method has been endorsed by courts
21 as a fair and equitable method of distributing receivership assets in fraud cases, especially where it
22 results in only a small percentage of investors not sharing in the distribution. *See SEC v. Huber*,
23 702 F.3d 903 (7th Cir. 2012); *United States v. Cabe*, 311 F. Supp. 2d 501, 509 (D.S.C. 2003);
24 *CFTC v. Wilson*, 2013 WL 3776902, *7 (S.D. Cal. July 17, 2013).

25 In *Huber*, the Seventh Circuit Court of Appeals compared the rising tide method to the net
26 loss method and found that rising tide "appears to be the method most commonly used (and
27 judicially approved) for apportioning receivership assets." *Huber*, 702 F.3d at 906; *see also*
28

1 *Wilson*, 2013 WL 3776902, at 7 ("the Court concludes the Rising Tide Method is the most
2 equitable remedy available"). The Seventh Circuit went on to say:

3 The more investors in a Ponzi scheme there are who would receive
4 nothing under rising tide and might therefore have difficulty paying
5 their future expenses, the more likely the net loss method is to
6 maximize the overall utility of the investors. But only 18 percent of
7 the investors in Huber's scheme receive nothing under rising tide, and
8 so in this case that method is an acceptable alternative to net loss.

9 *Huber*, 702 F.3d at 907.

10 Here, those investors who received the least returns from the funds, (*e.g.*, those receiving
11 0% to 10% of their principle investment) will receive a greater percentage of the distribution than
12 those investors who received substantially more from the funds (*e.g.*, those who already received
13 60% to 100% of their principle investment.) Only 19 investors who would receive a distribution
14 under the net loss method (because they received pre-receivership distributions totaling less than
15 100% of their contributions), will not receive a payment from the initial distribution under the
16 rising tide method. That is about 5% of the total claimants (374). Only 63 claimants will receive a
17 smaller amount under the rising tide method than they would under the net loss method and
18 292 claimants will receive a larger amount. In comparison to the net loss method, the rising tide
19 method, for the initial distribution, reallocates \$1.404 million from investors who previously
20 recovered 52.387% or more of their contributions to investors who previously recovered less than
21 52.387% of their contributions.

22 Moreover, this is only an initial distribution. Some of the 19 investors who will not receive
23 a distribution initially will receive a distribution when subsequent distributions are made as the
24 total *pro rata* distribution from the receivership estate rises above the total of their pre-receivership
25 distributions.

26 For example, if an investor invested \$100,000 with the Receivership Entities and received
27 distributions totaling \$60,000 prior to the receivership, such investor would not receive a
28 distribution in the initial round. As discussed above, the initial distribution is projected to bring all
29 investors' recoveries up to approximately 52.387% of their total contributions. However, as noted
30 below, the Receiver hopes the sale of remaining receivership assets will produce a sizable net

1 recovery and provide for substantial future distributions. If, hypothetically, the Receiver is able to
2 distribute another \$11,000,000 (which amount is by no means certain) as a second distribution, then
3 all investors who received less than approximately 77% of their contributions prior to the
4 Receiver's appointment will participate in the second distribution. In this scenario, the hypothetical
5 investor discussed above would receive a distribution of approximately \$17,000 such that the total
6 recovery, including pre-receivership and post-receivership distributions, would be \$77,000, or 77%
7 of contributions. Overall, the effect of a second distribution of \$11,000,000 would be that only
8 9 investors who would receive a distribution under the net loss method will not participate,
9 66 would have a lower distribution than under net loss, and 299 would have a higher distribution.

10 **D. The Receiver Should Be Authorized To Make Interim Distributions**

11 The Distribution Plan proposes an interim distribution be made as soon as practicable and
12 provides for the creation of a cash reserve. As of October 31, 2013, there was a total of
13 approximately \$20,600,000 on hand in the estate. The Receiver proposes a total of \$19,000,000 be
14 distributed at this time. The remaining cash, as well as all amounts received going forward from
15 loan servicing and assets sales, will go into a cash reserve. The cash reserve, as with all cash in the
16 receivership estate, will be maintained in federally-insured bank accounts and U.S. treasury
17 securities.

18 The total cash on hand has grown steadily through the receivership. The starting cash
19 balance was approximately \$10.5 million. By cutting operating expenses and servicing the
20 Receivership Entities' loan portfolio, the Receiver has increased the cash balance by more than
21 \$9.5 million over the past 16 months. The Receiver expects the cash balance to continue to
22 increase from these activities, as well as liquidation of assets and loan repayments.

23 As previously noted, the Receiver is negotiating with the SBA concerning its claim and the
24 sale of the Receivership Entities' SBA lending authority and loan portfolio. At this time no reserve
25 has been set for the SBA claim because the Receiver believes the SBA's contingent claim is tied to
26 the existing loan portfolio, if any such claim is allowed. The Receiver also intends to seek approval
27 of procedures for the eventual sale of the Receivership Entities' SBA lending authority and loan
28

1 portfolio. The Receiver hopes the sale will produce a sizable recovery for the receivership estate
 2 net of any claim of the SBA.

3 Furthermore, the Receiver requests authority to make subsequent interim distributions such
 4 that, as administration of the receivership moves closer to completion, the Receiver can review
 5 actual and projected administrative expenses and evaluate the amount necessary to cover those
 6 expenses through conclusion of the receivership. When it becomes clear the cash reserve
 7 (including cash coming in on a going forward basis) will exceed administrative expenses to a
 8 significant degree, which the Receiver believes it will, he will notify the Commission of his
 9 intention to make a further distribution, and, assuming the Commission has no objection, will issue
 10 distribution payments. Each round of interim distributions involves administrative expenses
 11 associated with processing, mailing, and tracking distribution checks. Accordingly, the Receiver
 12 will not make further interim distributions unless he is confident that at least \$2.5 million can be
 13 distributed without putting the receivership estate at risk.

14 IV. CONCLUSION

15 Based on the foregoing, the Receiver requests an order (a) approving the Distribution Plan
 16 attached as Exhibit A, (b) authorizing the Receiver to make an initial round of interim distributions
 17 totaling \$19 million, (c) authorizing the Receiver to make subsequent interim distributions in his
 18 discretion (with notice to and approval of the Commission), and (d) automatically disallowing any
 19 and all claims submitted to the Receiver after September 25, 2013.

20
 21 Dated: November 19, 2013

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

22
 23 By: /s/ Ted Fates

TED FATES
 Attorneys for Receiver
 Thomas A. Seaman

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 28

EXHIBIT A

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13 Attorneys for Receiver
14 THOMAS A. SEAMAN

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 vs.

22 SMALL BUSINESS CAPITAL CORP.;
23 MARK FEATHERS; INVESTORS PRIME
24 FUND, LLC; and SBC PORTFOLIO
25 FUND, LLC,

26 Defendants.

Case No. CV12-03237

DISTRIBUTION PLAN

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

1 Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for Small
 2 Business Capital Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC, and their
 3 subsidiaries and affiliates (collectively, "Receivership Entities"), hereby submits this Distribution
 4 Plan.

5 I. INTRODUCTION

6 This Distribution Plan, when approved by the Court, will be the vehicle by which Allowed
 7 Claims against Small Business Capital Corp. ("SBCC"), Investors Prime Fund, LLC ("IPF"),
 8 SBC Portfolio Fund, LLC ("SPF"), SBC Senior Commercial Mortgage Fund, LLC ("SCMF") and
 9 Small Business Capital, LLC ("SBC LLC") (collectively, "Receivership Entities") are satisfied.
 10 Further information about the Receivership Case and distribution of Receivership Estate assets
 11 proposed herein is contained in the Receiver's Notice of Motion and Motion for Order Approving
 12 Distribution Plan and Authorizing Interim Distributions; Memorandum of Points and Authorities.

13 II. DEFINITIONS

14 Unless the context otherwise requires, the following terms have the following meanings
 15 when used in their capitalized forms herein. Such meanings are equally applicable to both the
 16 singular and plural forms of the terms.

17 **Administrative Claim.** Claims arising from post-Receivership Date activities such as
 18 services rendered by the Receiver and for the Receiver by attorneys and accountants and goods
 19 and services provided by vendors.

20 **Allowed Claim.** Any Claim allowed by the Court pursuant to an order entered in the
 21 Receivership Case.

22 **Claims Bar Date.** May 10, 2013.

23 **Claims Cutoff Date.** September 25, 2013.

24 **Cash.** All cash and cash equivalents of the Receivership Entities held by the Receiver.

25 **Claim.** Any right to payment from the Receivership Entities whether or not such right is
 26 reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed,
 27 undisputed, legal, equitable, secured, or unsecured.

28 **Claimant.** Holder of an Allowed Claim.

1 **Court.** United States District Court for the Northern District of California.

2 **Estate or Receivership Estate.** All assets, including Cash, loans, licenses, claims, causes
3 of action, or rights of recovery held by the Receiver on behalf of the Receivership Entities.

4 **Investor Claimant.** Holder of an Allowed Claim that arises from one or more investments
5 with the Receivership Entities.

6 **Pro Rata Share.** A proportionate share such that the ratio of the consideration distributed
7 on account of an Allowed Claim to the amount of such Allowed Claim is the same as the ratio of
8 the consideration distributed on account of all Allowed Claims to the amount of all Allowed
9 Claims.

10 **Receiver.** Thomas Seaman, or any successor receiver appointed by the Court.

11 **Receivership Case.** That certain litigation, pending in the Court, known as *Securities and*
12 *Exchange Commission v. Small Business Capital Corp., et al.*, Case No. 12-03027-EJD, the
13 Honorable Edward J. Davila, presiding.

14 **Receivership Date.** June 26, 2012.

15 **Reserve Cash.** Cash in an amount approved by the Court to satisfy Administrative Claims
16 that arise on or after approval of this Distribution Plan.

17 **Rising Tide Distribution.** The method used to calculate distributions to Investor
18 Claimants. Pro Rata Share distributions to Investor Claimants are reduced by amounts paid to
19 Investor Claimants by the Receivership Entities prior to the Receivership Date.

20 **III. TREATMENT OF CLAIMS**

21 **A. Administrative Claims**

22 Administrative Claims will be paid in full from Cash after proper application and approval
23 by the Court. Notwithstanding the foregoing, Administrative Claims, not including fees and costs
24 of the Receiver and his professionals, that represent liabilities incurred in the ordinary course of
25 administration of the Receivership Estate shall be paid by the Receiver in the ordinary course,
26 without approval of the Court. Upon entry of an order approving this Distribution Plan, Reserve
27 Cash shall be established in an amount approved by the Court. Cash coming into the Receivership
28 Estate after approval of this Distribution Plan shall be added to Reserve Cash. Administrative

1 Claims arising on and after approval of the Distribution Plan, after proper application and approval
2 by the Court, shall be paid directly from Reserve Cash.

3 **B. Allowed Claims**

4 Subject to the reduction to Pro Rata Share distributions of Investor Claimants pursuant to
5 the Rising Tide Distribution, Claimants shall receive Cash in an amount equal to such Claimant's
6 Pro Rata Share of total funds to be distributed to all Allowed Claimants. The amount of cash to be
7 paid to each claimant will be determined by multiplying the amount of their investment by the
8 recommended initial threshold of 52.387% and subtracting the amount the investor received in
9 distributions prior to the appointment of the Receiver. Investors who have previously received
10 more than 52.387% will not participate in the first distribution, but may participate in future
11 distributions as a higher rising tide threshold is reached.

12 **IV. DISTRIBUTIONS**

13 **A. Distribution Payments**

14 Allowed Claimants shall be paid from Cash other than Reserve Cash as soon as practicable
15 after the Court has entered an order setting the allowed amount of all Claims, approving this
16 Distribution Plan, and authorizing the Receiver to make interim distributions ("Approval Orders").
17 Subject to the reduction to Pro Rata Share distributions of Investor Claimants pursuant to the
18 Rising Tide Distribution, Claimants shall receive an initial Pro Rata Share distribution from Cash
19 other than Reserve Cash as soon as practicable after the Court has entered the Approval Orders.
20 All distributions shall be made in Cash in the form of either a check or wire transfer in
21 U.S. dollars. Claimants shall be responsible for any and all wire charges. Unless the Claimant
22 requests otherwise, Distributions shall be directed to the name and address stated on the proof of
23 claim form submitted to the Receiver.

24 The total initial interim distribution shall be in a set amount approved by the Court. The
25 Receiver shall have the authority to make subsequent interim distributions, in his discretion and
26 consistent with the terms of this Distribution Plan, while continuing to reserve sufficient Cash to
27 satisfy Administrative Claims. Subsequent interim distributions will not be made without prior
28

1 notice to the Securities and Exchange Commission ("Commission") and confirmation that the
2 Commission does not object.

3 At or near the conclusion of the Receivership Case, the Receiver shall seek final approval
4 of all fees and costs incurred by himself and his professionals, approval of a specified amount of
5 Reserve Cash necessary to close the Receivership Case, and authority to make a final distribution
6 of all remaining Cash in the Receivership Estate.

7 **B. Uncashed Distributions**

8 The Receiver shall conduct a reasonable investigation into distribution payments that
9 remain uncashed 90 days after they were issued for the purpose of identifying correct addresses
10 for the applicable Claimants. If a correct address can be identified, the payment shall be reissued
11 as soon as practicable. If a correct address cannot be identified, the Claimant's Claim will be
12 automatically and permanently extinguished. Any funds remaining in receivership accounts
13 120 days after all final distribution checks have been issued shall be transferred to the
14 Commission.

15 **V. RETENTION OF JURISDICTION**

16 The Court shall have and retain exclusive jurisdiction of matters arising out of, and related
17 to, the Receivership Case and the Distribution Plan, among other things, for the following
18 purposes:

- 19 1. To consider any modifications to the Distribution Plan, to cure any defect or
20 omission, or reconcile any inconsistency in the Distribution Plan or any order of the Court;
- 21 2. To hear and determine any objection or other dispute with respect to Claims;
- 22 3. To protect the property of the Receivership Estate from adverse Claims or
23 interference inconsistent with the Distribution Plan;
- 24 4. To issue such orders in aid of execution of the Distribution Plan as may be
25 necessary and appropriate;
- 26 5. To hear and determine all applications for compensation and reimbursement of
27 expenses of the Receiver and his professionals;
- 28 6. To recover all assets of the Receivership Estate, wherever located;

