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On behalf of its agency, U.S. Small Business Administration

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

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

Defendants.

) Case No. CV12-03237
)
) **OPPOSITION OF U.S.**
) **SMALL BUSINESS**
) **ADMINISTRATION TO**
) **RECEIVER'S MOTION TO**
) **APPROVE OMNIBUS AND**
) **SPECIFIC CLAIM**
) **OBJECTIONS**
)
)
) Ctrm: 4 - 5th Floor
) Judge: Hon. Edward J. Davila

I. INTRODUCTION

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2 Claimant U.S. Small Business Administration (“SBA”), an Agency of the U.S.
3 Government, respectfully submits this opposition to the Receiver’s Motion to Approve
4 Omnibus and Specific Claim Objections (the “Motion”). The Receiver’s Motion seeks to
5 extinguish SBA’s liquidated and contingent claim and SBA’s setoff rights without setting
6 forth any legal or factual basis upon which the Receiver objects to SBA’s claim. For the
7 reasons discussed below, SBA requests that a briefing schedule be established so this
8 Court can resolve this claim dispute between the Receiver and SBA.
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II. SBA’S OPPOSITION TO RECEIVER’S CLAIM OBJECTION

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12 The Receivership Entities (as defined in the Motion) were engaged primarily in the
13 business of small business lending through two SBA loan programs. One of the
14 Receivership Entities, Small Business Capital, LLC, holds a license from SBA to operate
15 as a Small Business Lending Company (“SBLC”).
16

17 SBLCs are private non-depository institutions that are licensed and regulated by SBA.
18 See, 13 C.F.R. § 120.470. SBLCs participate in and make loans under SBA’s 7(a) Loan
19 Program. The majority of the 7(a) loans made by Small Business Capital, LLC were sold
20 to investors in SBA’s 7(a) secondary market. See, 13 C.F.R. § 120.600 *et seq.* SBA has
21 unconditionally guaranteed the timely payment of those loans to the investors based upon
22 the full faith and credit of the United States. Small Business Capital, LLC has 44 SBA
23 7(a) loans on its books with a total SBA guaranty exposure of approximately \$32 million.
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26 Three other Receivership Entities, Investors Prime Fund, LLC, SBC Portfolio Fund,
27 LLC and SBC Senior Commercial Mortgage Fund, LLC, originated small business loans
28 through a separate SBA loan program. Certain of those loans were sold by the three

1 Receivership Entities to investors in SBA's 504 secondary market under a temporary
2 program (the "FMLP Program") authorized by Section 503 of the American Recovery
3 and Reinvestment Act of 2009. See, 13 C.F.R. § 120.1700 *et seq.* SBA has
4 unconditionally guaranteed the timely payment of pools of the 504 FMLP Program loans
5 to investors in SBA's 504 secondary market also based on the full faith and credit of the
6 United States. The three Receivership Entities have 12 SBA 504 FMLP Program loans
7 on their books with a total SBA guaranty exposure of approximately \$26 million.

9 In March 2013, SBA conducted a targeted review of the Receivership Entities' 7(a)
10 and 504 FMLP Program loan portfolios. Based on SBA's findings from the targeted
11 review, SBA timely filed a contingent claim in the amount of \$24,147,396.40 against the
12 receivership estate. SBA also filed liquidated claim in the amount of \$34,269.00 against
13 the receivership estate for fees incurred by SBA in connection with the targeted review.
14 See, SBA's Creditor Claim Form attached as Exhibit A to the Declaration of Brent M.
15 Ciurlino in Support of Opposition of U.S. Small Business Administration to Receiver's
16 Motion to Approve Omnibus and Specific Claim Objections. SBA's contingent claim, as
17 noted, is based upon evidence of loan irregularities that SBA discovered in the
18 Receivership Entities' SBA 7(a) and SBA 504 FMLP loan portfolios in the amount of
19 \$2,711,712 and \$21,435,684.40, respectively.

22 As set forth in SBA's Creditor Claim Form, the basis for SBA's claim is related to
23 certain regulatory and contractual obligations the Receivership Entities owe to SBA with
24 respect to the origination, sale to the secondary markets, closing, servicing and/or
25 liquidation of the SBA 7(a) and SBA 504 FMLP Program loans that are currently
26 controlled and serviced by the Receivership Entities. SBA's claim was filed in
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1 accordance with the claim procedures that were approved by this Court and provides
2 sufficient documentation and citations in support of the claim. The Receiver has
3 provided no rationale for his objection to SBA's claim nor has he stated any reason for
4 his assertion that SBA does not have a right of offset against contingent amounts owed by
5 SBA for 7(a) loans not sold in the secondary market.

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7 In the Notice of Motion, the Receiver states that he is presently in discussions with
8 the SBA concerning the SBA's claim, and that he will report to the Court prior to the
9 hearing on the Motion as to the results of these negotiations and a proposed briefing
10 schedule as to any remaining disputed claims. However, the proposed Order Approving
11 Omnibus and Specific Claim Objections submitted with the Receiver's Motion, if entered
12 by the Court, would extinguish SBA's claim.

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14 SBA requests that the Court establish a briefing schedule so that the Court can resolve
15 this claim dispute between the Receiver and SBA.

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17 Respectfully submitted,

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19 UNITED STATES ATTORNEY
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21 Chief, Civil Division

22 Date: November 26, 2013

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