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

13 SECURITIES AND EXCHANGE  
COMMISSION,

14 Plaintiff,

15 vs.

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

19 Defendants.

Case No. 5:12-CV-03237-EJD

**PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S  
MEMORANDUM RE RECEIVER'S  
MOTION FOR (A) APPROVAL OF SALES  
PROCEDURES FOR LOAN PORTFOLIOS  
AND 7(a) LICENSE AND (B) AUTHORITY  
TO ENGAGE VOIT REAL ESTATE  
SERVICES LP AS BROKER**

Date: April 25, 2014

Time: 9:00 a.m.

Place: Courtroom 4, 5th Floor  
(Hon. Edward J. Davila)

1 The Securities and Exchange Commission (“SEC”) files this memorandum to support the  
2 motion of the Receiver Thomas A. Seaman for approval of a procedure to sell the loan portfolios  
3 and 7(a) license, and to engage Voit Real Estate Services LP as a broker.

4 Defendant Mark Feathers has been spreading false rumors among investors in an effort to  
5 stir up opposition to this reasonable motion. In a copy of a letter the SEC received that Feathers  
6 sent to investors, Feathers wrote in bold type: “You should be very concerned about this assets sale  
7 because the receiver is allowed to accept a bid well below market value for these assets.” (March  
8 13, 2014 communication from Mark Feathers to investors.) Mr. Feathers further asserted that  
9 hiring a “real estate broker to market the fund’s [sic] assets. . . . is unprecedented.” (*Id.*)

10 These statements are false. First, the Receiver is only allowed to take such action as the  
11 Court approves. Second, nothing in the Receiver’s motion suggests that the Receiver is planning on  
12 accepting a bid “well below market value.” To the contrary, all evidence of the Receiver’s  
13 performance to date is that he has prudently acted to preserve and protect the value of all the  
14 Receivership assets. Third, the broker the Receiver proposes to use has experience marketing and  
15 selling “loan portfolios.” (*See* Dkt. No. 762.)

16 Defendant Feathers has a history of making false statements to this Court and to the  
17 investors. For example, in his recent motion for a stay, he characterized the Receivership entities as  
18 “very viable, profitable, and well capitalized entities.” (Dkt. No. 766 at p. 5.) This statement is  
19 false. Defendant Small Business Capital Corp. (“SBCC”) was neither well-capitalized nor  
20 profitable. In fact, Defendant Feathers misappropriated over \$7 million from the Funds to pay the  
21 operating expenses of SBCC. The Funds were not profitable. In fact, Defendant Feathers  
22 manipulated the financial results of the Funds to make them seem profitable by capitalizing as an  
23 asset the \$7 million he misappropriated to pay SBCC’s operating expenses. Indeed, in its Order  
24 granting the SEC summary judgment, the Court discussed the many ways that Feathers  
25 intentionally deceived investors while perpetrating his fraud.

26 Defendant Feathers barrages the Court and investors with false statements about the  
27 Receiver and the losses that the investors will suffer at the hands of the Receiver. But at present,  
28 the single greatest cause of potential investor losses is the \$7 million plus that Feathers  
misappropriated from the Funds. Indeed, through prudent management of costs since the

1 Receivership, the Receiver has accumulated funds since he has been appointed, thus increasing the  
2 funds available to compensate defrauded investors. If Defendant Feathers paid the disgorgement  
3 judgment the Court entered against him of \$7,782,961.07, it could well be that investors could  
4 recover close to all of their principal investment. If investors are concerned about losses, they  
5 should ask Feathers to pay the judgment against him because it may well be that Feathers'  
6 misappropriation of over \$7 million from the Funds will be the single largest cause any principal  
7 losses suffered by investors.

8 Feathers chooses to ignore the Court's findings and ignores that he misappropriated the  
9 investors' money, while feeding investors yet more untruths. But while some investors may choose  
10 to continue to believe Feathers, the SEC has received comments from investors who do not support  
11 Feathers. One wrote, in pertinent part:

12 I am extremely perplexed why any investor would want to remain invested  
13 with Feathers. Maybe only those people, if they even exist, who have not  
14 read any of the court documents and are therefore completely in the dark  
15 about the absolutely awful behavior of Feathers that has cost us  
16 MILLIONS of dollars. To those investors I suggest that they take a minute  
17 and talk to their accountant and/or attorney. And if they still want to stay  
18 with Feathers, they can always send him whatever is left of their  
19 investments when they receive funds from the Receiver.

20 The Receiver has properly applied to the Court for approval of reasonable procedures to  
21 liquidate the assets of the Receivership entities. The Receiver has proposed a broker experienced at  
22 selling loan portfolios. The SEC supports the Receiver's request.

23  
24 DATED: March 26, 2014

Respectfully submitted,

25  
26 /s/ John B. Bulgozdy

John B. Bulgozdy

Lynn M. Dean

Susan F. Hannan

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

**PROOF OF SERVICE**

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648 Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On March 26, 2014 I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM RE: RECEIVER'S MOTION FOR (A) APPROVAL OF SALES PROCEDURES FOR LOAN PORTFOLIOS AND 7(a) LICENSE AND (B) AUTHORITY TO ENGAGE VOIT REAL ESTATE SERVICES LP AS BROKER** on all the parties to this action addressed as stated on the attached service list:

**OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

**PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

**EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

**HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

**UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

**ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

**E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

**FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: March 26, 2014

/s/Sarah Mitchell  
Sarah Mitchell

1  
2 **SEC v. SMALL BUSINESS CAPITAL CORP, et al.**  
3 **United States District Court – Northern District of California**  
4 **San Jose Division**  
5 **Case No. 5:12-CV-03237-EJD**  
6 **LA-4141**

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9 SERVICE LIST

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20 ***Attorney for Receiver Thomas Seaman over Defendants Small***  
21 ***Business Capital Corp.; Investors Prime Fund, LLC; And SBC***  
22 ***Portfolio Fund, LLC***