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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 MOTION FOR  
APPROVAL OF SALE OF 504/FMLP  
LOAN AND NON SBA LOAN  
PORTFOLIOS

Date: February 5, 2015  
Time: 10:00 a.m.  
Ctrm: 4, 5th Floor  
Judge: Hon. Edward J. Davila

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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 Motion for Approval To Sell 504/FMLP Loan and non-SBA loan portfolios (the "Sale  
8 Motion").

9 2. Since the inception of this receivership, I have continuously operated the  
10 Receivership Entities. Initially, the operations focused on servicing 72 loans, however,  
11 some of these loans have been paid off or otherwise resolved. Presently there are 52 loans  
12 being serviced and they represent the primary assets of this receivership estate. Fifteen of  
13 these loans are 504/FMLP loans and three are non-SBA loans. At present, I am seeking  
14 Court approval of the sale to Western Alliance Bank ("Western"), of the 504/FMLP and  
15 non-SBA loans, which loans are listed in Exhibit A, attached hereto and incorporated  
16 herein by this reference. The remaining 34 loans are SBA 7(a) loans. In addition, I hold a  
17 SBA small business lending company license (the "License"). The 7(a) loans and the  
18 License are being sold separately due to SBA requirements and other considerations.

19 3. During my tenure as Receiver, I have stabilized the servicing of the loans  
20 and ensured that the loan portfolios generated profits. Prior to my appointment the  
21 operating expenses of the Receivership Entities exceeded the interest and servicing  
22 income, leaving no net profit from which to make investor distributions. In the course of  
23 servicing of the loans, I have diligently managed the servicing, addressed borrower  
24 compliance with loan covenants, and enforced the rights of the lender. The resulting  
25 stability of the loan portfolios, combined with effective marketing of the assets and the  
26 yield enhancement of the servicing income, has proved to be attractive to potential bidders.

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1 As such, if the Motion is approved, Western will pay the Receivership Entities 110% of  
2 the amounts due on the 504/FMLP loans and 60% of the non-SBA loans.<sup>1</sup>

3 4. Based upon the status of the case, the condition of the loan portfolios, and  
4 the general economy, in March 2014, I proposed a process to market and sell the loan  
5 portfolios. The proposed process for marketing and selling the loan portfolios was  
6 described in detail in the Motion for (A) Approval of Sales Procedures for Loan Portfolios  
7 and 7(a) License and (B) Authority to Engage Voit Real Estate Services LP as Broker,  
8 filed in this Court on March 12, 2014. Following oral argument, on April 25, 2014, on  
9 May 9, 2014, the Court entered the Order Granting Approval for Sale Procedures for Loan  
10 Portfolios and 7(a) License; Authorizing Engagement of Voit Real Estate Services LP as  
11 Broker (the "Sale Procedures Order").

12 5. After entry of the Sale Procedures Order, the broker, Voit Real Estate  
13 Services LP ("Voit"), and I diligently marketed the loan portfolios for sale in accordance  
14 with the process described in the Sale Procedures Order. Among other things, this work  
15 included: establishing a virtual due diligence platform where prospective buyers could  
16 review the loans and loan files; providing a broad notice to interested parties; reviewing  
17 prospective purchasers for their financial capabilities; evaluating indicative bids received  
18 from interested parties; establishing a competitive ranges for bids; reviewing final bids;  
19 consulting with the Small Business Administration ("SBA"); and selecting the purchaser.

20 6. As indicated by the following statistics, the loan portfolios were widely  
21 exposed to the marketplace: 7,262 parties were notified of the sale; the Receiver executed  
22 non-disclosure agreements with 149 entities with access given to 191 people at those  
23 entities; and 24 potential bidders paid the \$500 access fee to complete full due diligence.

24 7. Upon the conclusion of the due diligence period, I received 15 indicative  
25 bids. Seven were for the 504/FMLP loan portfolio only, and five were for the non-SBA  
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28 <sup>1</sup> 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 loans only. Eight bidders bid on both portfolios. The range of initial indicative bids were  
2 approximately 88% - 100% on the 504/FMLP loans and 28% to 65% of the non-SBA  
3 loans.

4 8. The six highest bidders were submitted to the SBA for their preliminary  
5 review and approval. Thereafter, I solicited new bids from the six bidders. Five bidders  
6 decided to submit bids in this next round. The highest bid was 106% with the balance of  
7 bids clustered near 100%. At that point, I requested the SBA to approve the highest bidder  
8 at 106% of the 504/FMLP loans. After several weeks and further discussions with the  
9 SBA, the SBA stated that they would not approve of the highest bidder.

10 9. In light of the 3 remaining almost identical bidders, and with the knowledge  
11 that some of the unsuccessful bidders had indicated that they may improve their price (and  
12 with the belief that declining interest rates and the servicing income component of the  
13 loans had not been fully realized), I solicited another round of offers. This time, the offers  
14 ranged from 107.08 to 110. I selected Western based on its bid of 110% of the 504/FMLP  
15 loans and 60% of the non-SBA loans. Western executed the Loan Purchase and Sale  
16 Agreement, a true and correct copy of which is attached hereto as Exhibit B and  
17 incorporated herein by this reference.

18 10. The SBA submitted a claim for over \$24 million in the receivership. This  
19 claim is contingent upon the SBA proving their contention that certain of the loans in the  
20 portfolio did not conform to the loan program rules and that they have suffered damages as  
21 a result of the loan program deficiencies. I strongly object to the SBA claim. Based on my  
22 discussions with the SBA, it has become clear that one way to satisfy the SBA's claim may  
23 be through the sale of the loan portfolios to third parties who assume the liability  
24 associated with the loans. The sale of Assets is conditioned upon an assumption of  
25 liabilities to the SBA.

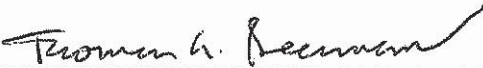
26 11. Based upon the foregoing analysis and my good faith business judgment, I  
27 recommend proceeding with the sale of the Assets pursuant to the Loan Purchase and Sale  
28 Agreement.

1           12. In the course of concluding the agreement with Western, my counsel sought  
2 a Court date for a hearing to approve the sale. The Court's calendar clerk provided a  
3 hearing date of February 5, 2015. I informed the buyer of the date. Based upon their  
4 response, I am concerned that they may either withdraw from the sale altogether or  
5 demand a discount or improvement in the terms. There is also the risk associated with  
6 prepayments. To date, several of the loans in these portfolios have been paid off. If a  
7 borrower in the 504/FMLP loan pool were to prepay their loan, the estate will only receive  
8 100% of the unpaid principal as opposed to 110% when the sale concludes. Moreover, if  
9 certain of the large loans are prepaid, then the portfolio may be too small to be of interest  
10 to Western and they may choose not to close based upon a material change.

11           13. Part of the appeal of this portfolio is the ability of the purchaser to refinance  
12 higher interest rate loans. If we experience additional prepayments prior to closing, this  
13 benefit to the buyer could be diluted. In short, I am concerned that if the Court does not  
14 hear the matter until February 5, 2015 that the sale could be lost.

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

17           Executed this 12<sup>th</sup> day of December 2014, at Irvine, California.

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THOMAS A. SEAMAN