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U.S. DISTRICT COURT
DISTRICT OF COLORADO

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GREGORY C. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.)
)
 BERTHEL SBIC, LLC)
)
 Defendant)

BY _____ DEP. CLK

Civ. Action No.

09-MC-0001

**COMPLAINT FOR RECEIVERSHIP, INJUNCTIVE RELIEF
AND MONEY JUDGMENT**

COMES NOW Plaintiff, the United States of America, on behalf of its agency,
the United States Small Business Administration, and for its cause of action states as
follows:

PARTIES, JURISDICTION AND VENUE

1. This is a civil action brought by the United States of America on behalf of its agency, the United States Small Business Administration (hereinafter, "SBA," "Agency" or "Plaintiff"), whose central office is located at 409 Third Street, S.W., Washington, D.C., 20416.
2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311, and 316; 15 U.S.C. §§ 687(d), 687c, 687h; and 28 U.S.C. § 1345.
3. Defendant, Berthel SBIC, LLC, (hereinafter "Berthel" or "licensee") is a limited liability company that was licensed by SBA as a Small Business Investment Company on May 4, 1998, SBA license number 07/07-0100 and maintains its principal office and/or principal place of business at 701 Tama Street, Building B,

Marion, Iowa 52303-0609. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h, and 28 U.S.C. § 1391(b).

4. The plaintiff, the United States Small Business Administration (hereinafter "SBA") is an Agency of the United States of America with its central office located at 409 Third Street S.W., Washington, D.C. 20416.

STATEMENT OF FACTS AND APPLICABLE LAW

5. Defendant, Berthel, was licensed by SBA as a small business investment company ("SBIC") on May 4, 1998, SBA License No 07/07-0100 under Section 301(c) of the Act, 15 U.S.C. § 681(c), solely to do business under the provisions of the Small Business Investment Act, 15 U.S.C. § 661 (hereinafter the "Act") and the regulations promulgated thereunder.

6. The purpose of the Small Business Investment Act (hereinafter the "Act") is to improve and stimulate the national economy, and small business in particular, by stimulating and supplementing the flow of private equity capital and long-term loan funds which small businesses need for sound financing of their operations and growth. 15 U.S.C. § 661.

7. Congress authorized the SBA to carry out the provisions of the Act and to prescribe regulations governing the operations of Small Business Investment Companies (hereinafter "SBIC") 15 U.S.C. § 687(c). SBA duly promulgated such regulations which are set forth at Title 13 of the Code of Federal Regulations, Part 107 (hereinafter the "Regulations").

8. Section 308(d) of the Act, 15 U.S.C. § 687(d), provides that upon determination and adjudication of noncompliance or violation of the Act or the

regulations, all of the rights, privileges and franchises of a Licensee may be forfeited and the company may be declared dissolved.

9. Section 311 of the Act, 15 U.S.C. § 687c, provides that whenever in the judgment of SBA, a Licensee, or any other person, has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or of any Rule or Regulations promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for any injunction, and such Court shall have jurisdiction of such action and grant a permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts or practices. The Court may also appoint SBA to act as receiver for such Licensee.

10. As of July 1, 2003, the Licensee was indebted to the in the amount of \$9,500,000 ("the Indebtedness") consisting of principal and interest on twenty-eight SBA guaranteed debentures..

11. Because of a violation of the Regulations by the Licensee, SBA accelerated Licensee's indebtedness to SBA. SBA and Licensee agreed to enter into a Loan Agreement effective September 1, 2003 ("the Agreement"). The Agreement provided that Licensee would liquidate its portfolio assets in order to pay its Indebtedness to SBA. SBA agreed to restructure the Indebtedness pursuant to the terms of the Loan Agreement. The Loan Agreement is part of the Loan Documents which consist of the Loan Agreement, the Secured Note, the Security Agreement, the Guaranty, the Stipulated Settlement and the Consent Order and Judgment.

12. The Loan Agreement provided that the Indebtedness was to be evidenced

by a secured note, effective September 1, 2003, duly executed on behalf of Licensee, payable to SBA in the principal amount of \$8,100,000 and having a term of 48 months. As part of the Loan Agreement, the assets of Licensee are pledged to SBA pursuant to a Security Agreement.

13. The Loan Agreement, also includes the Consent Order and Judgment which provides in part, that pursuant to the "provisions of 15 U.S.C. section 687c, this Court take exclusive jurisdiction of Berthel and all of its assets and property, of whatever kind and wherever located, and the United States Small Business Administration is hereby appointed Receiver of Berthel..." The Order also provides for the entry of judgment against Berthel. The Consent Order and Judgment has been signed by Thomas J. Berthel, President of Berthel. Berthel remains subject to SBA's regulations.

14. Paragraph 12 enumerates the Events of Default for the Loan Agreement and provides that if any one or more of the stated Events of Default enumerated in the agreement occur and remain uncured for a period of thirty days after the Licensee shall have received written notice and such default shall have remained uncured, the entire unpaid balance of the principal and interest of the Secured Note and all other obligations and indebtedness of the Licensee to SBA shall become immediately due and payable without the necessity of any demand, presentment, protest or notice upon the Licensee, all of which are expressly waived by Licensee. As a result of a default, SBA may, in its sole discretion, enforce the previously signed Consent to receivership and Judgment and apply to the U.S. District Court for the appointment of SBA as Receiver and for a money judgment.

15. On August 2, 2007, in anticipation of a default on September 1, 2007 SBA

entered into a First Amendment Letter Agreement with Berthel which extended the maturity date of Loan Agreement until September 1, 2008.

16. Pursuant to Section 12(a) of the Loan Agreement, Berthel agreed that "Failure by the Licensee to make any payment of interest or principal scheduled pursuant to the terms of this Loan Agreement" was considered an event of default whereby the entire unpaid balance of interest would become immediately due and payable and allowing SBA to enter the Consent Order to Receivership and Judgment after the 30 day cure period had expired.

17. As of September 2, 2008, the Licensee was indebted to SBA in the amount of \$2,758,923 plus accrued interest in the amount of \$19,023.26. On September 3, 2008 SBA made demand for payment in full and initiated the 30 day cure period as stated in the Secured Note. As of November 14, 2008, Berthel continues to owe SBA \$2,758,923.04 in principal and \$32,050.36 in interest for a total indebtedness to SBA of \$2,790,973.40 plus daily interest of \$566.15 for each day thereafter.

COUNT ONE

DEFAULT OF A LOAN AGREEMENT AND FAILURE TO COMPLY WITH THE TERMS OF A WRITTEN AGREEMENT

18. Paragraphs 1 through 18, above, are hereby incorporated by reference as though set forth in their entirety herein.

19. Section 107.1810(f)(7) provides that nonperformance of any terms or conditions of any agreement with SBA will constitute an event of default with an opportunity to cure.

20. As described above, Berthel has violated SBA's regulations. As a result, SBA and Berthel entered into a loan agreement and SBA agreed to restructure Berthel's

indebtedness to SBA in the form of a secured note.

21. Berthel admits that there is a default of the Loan Agreement and Note by their failure to make the required payment. This failure to pay constitutes an event of default and a violation of the Regulations and entitles SBA to the requested and agreed upon relief of the appointment of SBA as a receiver of Berthel and the entry of the consent judgment against Berthel.

WHEREFORE, Plaintiff prays as follows:

A. That injunctive relief, both preliminary and permanent in nature, be granted restraining Berthel, its partners, managers, officers, agents, employees and other persons acting in concert or participation therewith from: (1) making any disbursements of Berthel's funds; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any or all funds or assets of Berthel, wherever located; or (3) further violating the Act or the Regulations promulgated thereunder;

B. That this Court determines and adjudicates Berthel's noncompliance with the requirements of the Loan Agreement and noncompliance and violation of the Act and the Regulations promulgated thereunder;

C. That this Court take exclusive jurisdiction of Berthel, and all of its assets, wherever located and appoint SBA as permanent receiver of Berthel for the purpose of liquidating all of Berthel's assets and satisfying the claims of its legitimate creditors therefrom in the order of priority as determined by this Court, and pursuing causes of action available to Berthel, as appropriate.

D. That this Court orders that Berthel's license to operate as an SBIC shall be revoked upon the wind-up and conclusion of the receivership thereof.

E. That this Court enter judgment against Berthel and grant such other and further relief as may be deemed just and proper.

Respectfully submitted,

UNITED STATES ATTORNEY

Dated: 12/10/2008 By: /s/
LAWRENCE D. KUDEJ
Assistant United States Attorney
Office of the United States Attorney

U.S. SMALL BUSINESS ADMINISTRATION

Dated: 12/10/2008 By: /s/
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Complaints and Other Initiating Documents1:08-cv-00151 USA v. Berthel SBIC, LLC

U.S. District Court

Northern District of Iowa

Notice of Electronic Filing

The following transaction was entered by Kudej, Lawrence on 12/10/2008 at 11:57 AM CST and filed on 12/10/2008

Case Name: USA v. Berthel SBIC, LLC**Case Number:** 1:08-cv-151**Filer:** USA**Document Number:** 1**Docket Text:**

COMPLAINT against all defendants (Scheduling Report due by 4/22/2009), COMPLAINT against all defendants (Dismissal Deadline 4/22/2009), filed by USA. (Attachments: # (1) Civil Cover Sheet) (Kudej, Lawrence)

1:08-cv-151 Notice has been electronically mailed to:

Lawrence D Kudej larry.kudej@usdoj.gov, usaian.ecfcivcr@usdoj.gov

1:08-cv-151 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1025896836 [Date=12/10/2008] [FileNumber=671726-0]
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Document description:Civil Cover Sheet**Original filename:**n/a**Electronic document Stamp:**

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