

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 DEVELOPMENT CAPITAL)
 VENTURES, L.P.,)
)
 Defendant.)

Civil No. 1:10cv 763

ATT/TCB

**COMPLAINT FOR RECEIVERSHIP, JUDGMENT,
AND INJUNCTION UNDER 15 U.S.C. §687c**

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

PARTIES, JURISDICTION AND VENUE

1. This is a civil action brought by the United States on behalf of its agency, the U.S. Small Business Administration (hereinafter, "SBA"), whose central office is located at 409 Third Street, S.W., Washington, DC 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; the Small Business Act, 15 U.S.C. §634(b)(1); and 28 U.S.C. §1345.

3. Defendant, Development Capital Ventures, L.P. (hereinafter, "DCV", "Licensee" or "Defendant"), is a Delaware limited partnership formed on or about August 9, 1999 and maintains its principal office at 5820 Fitzhugh Street, Burke, Virginia 22015. Venue is therefore

proper under 15 U.S.C. §§687(d), 687h, and 28 U.S.C. §1391(b).

Statutory and Regulatory Framework

4. DCV was licensed by SBA as a Small Business Investment Company (“SBIC”) pursuant to Section 301(c) of the Act, 15 U.S.C. §681(c), on November 17, 1999, SBA License No. 03/73-0216, solely to do business under the provisions of the Act and the regulations promulgated thereunder.

5. Section 308(c) of the Act, 15 U.S.C. §687(c), empowers SBA to prescribe regulations to carry out the provisions of the Act and to govern the operations of SBICs. SBA has duly promulgated such regulations, which are codified at Title 13 of the Code of Federal Regulations, Part 107 (the “Regulations”).

6. DCV’s Limited Partnership Agreement expressly provides that DCV was organized for the purpose of operating under the Act and subject to the Regulations issued by SBA thereunder.

7. DCV’s general partner is DCC Operating, Inc., a Delaware Corporation formed on or about August 9, 1999.

8. Section 303 of the Act, 15 U.S.C. §683, authorizes SBA to provide financing to licensed SBICs.

9. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA provided funds to DCV through the purchase of Participating Securities, a form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$10,820,000, of which \$10,488,340 remains outstanding, as follows:

<u>Loan Number</u>	<u>Principal O/S</u>	<u>Date Issued</u>
02031257-00	\$318,340	11/09/2001
02031258-09	\$510,000	1/11/2002
02031259-07	\$1,235,000	7/24/2002
02031260-10	\$2,000,000	10/31/2002
02031261-08	\$360,000	11/29/2002
02031262-06	\$1,345,000	2/25/2003
02031263-04	\$300,000	7/11/2003
02052151-08	\$460,000	7/11/2003
02052152-06	\$1,540,000	8/14/2003
02052153-04	\$320,000	8/22/2003
02052154-02	\$665,000	12/19/2003
02052155-00	\$1,025,000	12/24/2003
02052156-09	\$410,000	3/12/2004

Total Principal Balance Due of Participating Securities: \$10,488,340

10. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA also provided funds to DCV through the purchase or guaranty of Debentures, another form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$2,845,000, all of which remains outstanding, as follows:

<u>Loan Number</u>	<u>Principal O/S</u>	<u>Date Issued</u>
04666751-04	\$1,285,000	11/29/2002
04666752-02	\$940,000	3/14/2003
04666753-00	\$310,000	5/16/2003
04666754-09	\$310,000	12/12/2003

Total Principal Balance Due of Debentures: \$2,845,000

11. DCV has made interest payments on the Debentures through March 1, 2010.
12. SBA is owed accrued interest on the Debentures at the per diem rate of \$433.47 from March 2, 2010 through June 4, 2010 in the amount of \$41,179.33.
13. Therefore, DCV owes SBA on the Debentures the principal amount of \$2,845,000, plus interest and fees from March 2, 2010 through June 4, 2010 of \$41,179.33, for a

total of \$2,886,179.33, plus additional interest on the Debentures up until the date of entry of judgment at the per diem rate of \$433.47.

14. Among other requirements, SBICs are subject to capital requirements under the Regulations. Compliance with the terms of Leverage provided by SBA required that DCV not have a condition of Capital Impairment, as that term is defined under the Regulations. 13 C.F.R. § 107.1830.

15. According to audited financial information provided by DCV to SBA on SBA Form 468 as required under the Regulations, 13 C.F.R. §107.630, DCV has a condition of Capital Impairment.

16. Based upon information provided by DCV to SBA, SBA determined that DCV had exceeded its then maximum allowable Capital Impairment Percentage of 60%. SBA notified DCV of that fact, and of "Restricted Operations Conditions" of 13 C.F.R. §107.1820(f), by letter dated August 26, 2005 and provided DCV fifteen (15) days to cure its condition of Capital Impairment to SBA's satisfaction. In the Notice of Violation, SBA further informed DCV that it would be placed in Restricted Operations and that SBA would implement the available remedies if it failed to cure its condition of Capital Impairment in the period specified by SBA.

17. DCV did not cure its condition of Capital Impairment as required by SBA.

18. By letter dated December 1, 2008, SBA notified DCV that it was transferring DCV from operating status to liquidation status at SBA due to its failure to cure its condition of Capital Impairment. SBA also notified DCV in the December 1, 2008 letter that due to DCV's failure to cure, the Debentures were being accelerated and DCV was required to remit payment

in full for the Debentures, including interest and fees, within fifteen (15) days, pursuant to 13 C.F.R. § 1810.

19. DCV failed to remit full payment to SBA on the accelerated Debentures.

20. DCV's failure to pay SBA in full on the Debentures is a failure to make payment under 13 C.F.R. §107.1810(e)(3) and nonperformance of its obligation to pay them when due in violation of 13 C.F.R. §107.507(a).

21. DCV's failure to cure its condition of Capital Impairment is a violation of the Regulations, 13 C.F.R. §107.1830(b).

22. DCV's non-compliance with its terms of Leverage under 13 C.F.R. § 107.1830(b) is a violation of the Regulations, 13 C.F.R. §107.507(a), for nonperformance of the terms of its Participating Securities and Debentures.

23. 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 such as DCV may be forfeited and the company may be declared dissolved.

24. Section 311 of the Act, 15 U.S.C. §687c, provides that upon a determination by SBA that a Licensee such as DCV, 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 Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for an 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 is authorized to appoint SBA to act as receiver for such Licensee.

25. DCV first issued Participating Securities to SBA more than 8 years ago and has a capital impairment percentage that remains in excess of 100%. 13 C.F.R. §107.1820. DCV defaulted on its Debentures when DCV failed to cure its condition of Capital Impairment pursuant to 13 C.F.R. 107.1810(f)(5) and failed to make payments on the accelerated Debentures. DCV has already consented to the appointment of SBA as its receiver under 13 C.F.R. § 107.1820 and 13 C.F.R. § 107.1810.

26. DCV has already consented to entry of judgment for the principal amount of the debentures, plus interest and fees, and also to the appointment of SBA as its receiver to liquidate DCV.

COUNT ONE

Violation of SBA Regulations

13 C.F.R. §§107.1830(b), 1810(e)(3) and 507(a)

27. Paragraphs 1 through 26 are adopted herein by reference.

28. DCV has an uncured condition of Capital Impairment as that term is defined under the Regulations.

29. DCV is in default of its obligation to pay its Debentures in full to SBA.

30. SBA has determined that DCV is not in compliance with its terms of Leverage due to its uncured condition of Capital Impairment and its failure to pay SBA in full on the Debentures.

31. SBA has determined that DCV is in violation of the Regulations, 13 C.F.R. §§107.1830(b), 1810(e)(3) and 507(a).

32. SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §§687(d) and 687c, including the appointment of SBA as Receiver of DCV for the purpose of liquidating DCV and all of its assets.

33. SBA is entitled to judgment against DCV in the amount of the Debentures, plus applicable accrued interest through entry of judgment and post-judgment interest allowed by law.

WHEREFORE, Plaintiff prays as follows:

A. That injunctive relief under 15 U.S.C. §687c be granted restraining DCV, its officers, directors, general partners, managers, agents, employees, and other persons acting in concert or participation therewith from: (1) making any disbursements of Defendant's funds; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any funds or assets of DCV, wherever located; and (3) violating the Act or the Regulations promulgated thereunder.

B. That this Court determine and adjudicate DCV's noncompliance with and violation of the Act and the Regulations promulgated thereunder.

C. That this Court, pursuant to 15 U.S.C. §687c, take exclusive jurisdiction of DCV and all of its assets, wherever located, appoint SBA as receiver of DCV for the purpose of marshaling and liquidating the assets of DCV and satisfying the claims of creditors as determined by the Court, and such other relief as contained in the Proposed Order filed herewith.

D. That this Court enter Judgment in favor of Plaintiff, United States of America, on behalf

of its agency, U.S. Small Business Administration against Defendant, Development Capital Ventures, L.P., in the principal sum of \$2,845,000.00, plus interest and fees from March 2, 2010 through June 4, 2010 in the amount of \$41,179.33, totaling \$2,886,179.33 as of that date, plus additional interest on the Debentures up until the date of entry of judgment at the per diem rate of \$433.46, together with post-judgment interest pursuant to 28 U.S.C. §1961 as of the date of entry of judgment.

E. That upon the liquidation of DCV and the completion of the receivership, DCV's SBIC license may be revoked.

F. That this Court grant such other relief as may be deemed just and equitable.

Respectfully submitted,

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