

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
COLUMBUS DIVISION**

_____	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civ. Action No. 2:14-cv-461</b>
	)	
<b>ADENA VENTURES, L.P.,</b>	)	
	)	
<b>Defendant</b>	)	
_____	)	

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

The United States of America states the following cause of action on behalf of its agency, the United States Small Business Administration:

**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 363 and 364; and 15 U.S.C. §§ 689l and 689m, and 28 U.S.C. § 1345.

3. Defendant, Adena Ventures, L.P., (hereinafter, "Adena" or "Defendant") is a Delaware limited partnership that was formed on March 11, 2002. Adena was designated with final approval by SBA as a New Markets Venture Capital Company

(hereinafter “NMVCC”) and entered into a participation agreement with SBA signed on April 24, 2002. Adena was assigned NMVCC number 05/85-0001. Adena maintains its principal office and/or principal place of business at 20 E. Circle Drive, Athens, Ohio 45701. Venue is therefore proper under Section 363 of the Act, 15 U.S.C. § 689, and 28 U.S.C. § 1391(b).

**STATUTORY AND REGULATORY FRAMEWORK**

4. The purposes of the Act and the New Markets Venture Capital Program are 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, and to further economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas. 15 U.S.C. § 689a.

5. Congress authorized the SBA to carry out the provisions of the Act and to prescribe regulations governing the operations of NMVCCs. SBA duly promulgated such regulations which are set forth at Title 13 of the Code of Federal Regulations, Part 108 (hereinafter, the “Regulations”).

6. Adena is a limited partnership organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act and Regulations. SBA enters into participation agreements with NMVCCs and provides financing for them to accomplish the purposes of the Act.

7. SBA is authorized to provide Leverage to NMVCCs through the guarantee

of debentures (hereinafter, “Debentures”) issued by NMVCCs. 15 U.S.C. § 689d.

8. Leverage provided to an NMVCC in the form of Debentures is subject to the Regulations, including but not limited to the provisions of 13 C.F.R. §§ 108.1810-1840. Section 108.1830 of the Regulations states that a condition of capital impairment exists if the capital impairment percentage exceeds 70 percent.

9. If an NMVCC violates, or fails to comply with, any of the provisions of the Act or Regulations, all of its rights, privileges, and franchises may be forfeited and the company may be declared dissolved. 15 U.S.C. § 689m.

10. Section 363 of the Act and Section 108.1810(g)(ii) of the Regulations provide that if SBA determines that an NMVCC has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of the Act or Regulations, the SBA may seek, from the appropriate United States District Court, an order enjoining such act or practices. Upon a showing by the SBA that such NMVCC has engaged, or is about to engage, in any such act or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond. In addition, the Court is authorized to appoint SBA to act as receiver for such NMVCC. 15 U.S.C. § 689l.

### **STATEMENT OF FACTS**

11. Adena was approved and designated by SBA as an NMVCC and entered into a participation agreement with SBA signed on April 24, 2002. Adena was assigned NMVCC number 05/85-0001, solely to do business under the provisions of the Act and regulations promulgated thereunder.

12. Adena Partners, L.L.C., is the general partner of Adena.

13. Adena's Agreement of Limited Partnership, submitted to SBA by Adena, expressly provides that Adena is being organized solely for the purpose of operating as an NMVCC under the Act and that the operations of the partnership and the actions taken by the partnership and the partners shall be conducted in compliance with the Act.

14. In accordance with Section 355 of the Act, 15 U.S.C. § 689d, SBA provided Leverage to Adena through the guarantee of the following Debentures totaling \$18,750,000:

<u>Loan Number</u>	<u>Amount</u>	<u>Date</u>	<u>Interest Rate</u>
03000051-02	\$ 1,150,000.00	9/23/02	4.986%
03000052-00	\$ 1,180,000.00	1/10/03	5.1670%
03000053-09	\$ 4,230,000.00	2/09/04	5.090%
03000054-07	\$ 3,000,000.00	12/27/05	5.552%
03000055-05	\$ 4,200,000.00	12/29/06	5.635%
03000056-03	\$ 2,495,000.00	6/12/07	6.174%
03000057-01	\$ 2,495,000.00	6/22/07	6.174%

15. Compliance with the terms of the Leverage provided by SBA required that Adena not have a condition of Capital Impairment, as that term is defined under the Regulations, 13 C.F.R. § 108.1830, which provides that an NMVCC such as Defendant has a condition of Capital Impairment if its Capital Impairment percentage exceeds seventy percent (70%).

16. SBA determined that Adena had a condition of Capital Impairment as its Capital Impairment percentage exceeded 70%. By letter dated August 24, 2009 (the "Notice of Violation"), SBA informed Adena that it had a condition of Capital Impairment in violation of 13 C.F.R. §108.1830, and pursuant to Section 108.1810(f)(5) of the Regulations, was in default with an opportunity to cure its impairment within 15 days of the date of that letter.

17. Adena continues to have and has failed to cure its condition of Capital Impairment in a violation of the Regulations, 13 C.F.R. §§108.1830 and 108.1810(f)(5). Further, Adena acknowledged that it had a condition of Capital Impairment and that it was given an opportunity to cure and failed to do so.

18. Adena's condition of Capital Impairment constitutes non-compliance with the terms of its Leverage under 13 C.F.R. §108.1830(a) and is a violation of and an event of default under the Regulations, 13 C.F.R. §108.1810(f)(5). These continuing violations of the Regulations and Act entitle SBA to the remedies thereunder.

19. Section 364(b) of the Act, 15 U.S.C. § 689m, provides that upon determination and adjudication of noncompliance or violation of the Act or the Regulations, all of the rights, privileges and franchises of an NMVCC may be forfeited and the NMVCC may be declared dissolved.

20. Section 363 of the Act, 15 U.S.C. § 689l, provides that whenever in the judgment of SBA, an NMVCC, 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 under this Act, or of any order issued under the Act, then SBA may make application to the proper district court of the United States or a United State Court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions. Upon a showing that such NMVCC or other person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond. The Court may also appoint SBA to act as receiver for

such NMVCC.

**COUNT ONE**

**Violation of SBA Regulations  
Capital Impairment  
13 C.F.R. §§ 108.1830(b) and 108.1818(f)(5)**

21. Paragraphs 1 through 20 are incorporated herein by reference.
22. Adena has an uncured condition of Capital Impairment as that term is defined under the Regulations, 13 C.F.R. § 108.1830(b), which provides that an NMVCC such as Defendant has a condition of Capital Impairment if its Capital Impairment percentage exceeds seventy percent (70%).
23. SBA has determined and Adena does not dispute that its Capital Impairment is in excess of 70%.
24. SBA has determined that Adena is not in compliance with its terms of Leverage due to its uncured condition of Capital Impairment.
25. Adena has failed to cure its Capital Impairment and SBA has determined that Adena is in violation and default of the Regulations, 13 C.F.R. § 108.1810(f)(5).
26. As a consequence of Defendant's continuing violation of the Regulations, SBA is entitled to the injunctive relief provided under the Act, including the appointment of SBA as Receiver of Adena, and Adena has signed a consent judgment and order agreeing to the relief requested by SBA.

WHEREFORE, Plaintiff prays as follows:

- A. That injunctive relief, both preliminary and permanent in nature, be granted restraining Adena, its partners, managers, officers, agents, employees, and other persons acting in concert or participation therewith from: (1) making any disbursements

of Adena's funds; (2) using, investing, conveying, disposing, executing, or encumbering in any fashion any or all funds or assets of Adena, wherever located; or (3) further violating the Act or the Regulations promulgated thereunder;

B. That this Court determines and adjudicates Adena's noncompliance with the requirements of the NMVCC participation agreement and Debentures and violation of the Act and the Regulations promulgated thereunder;

C. That this Court take exclusive jurisdiction of Adena, and all of its assets, wherever located, and appoint SBA as permanent receiver of Adena for the purpose of liquidating all of Adena'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 Adena, as appropriate.

D. That this Court orders that Adena shall no longer be able to operate pursuant to the participation agreement with SBA as an NMVCC upon the wind-up and conclusion of the receivership thereof.

E. That this Court grants such other and further relief as may be deemed just and proper.

F. That this Court enter the Consent Judgment in the amount of \$20,825,230.24 and Order executed by Adena agreeing to the requested relief, including the appointment of SBA as Receiver of Adena.

Respectfully submitted,

CARTER M. STEWART  
United States Attorney

s/John J. Stark

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE