

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA,

Plaintiff

v.

FIRST NEW ENGLAND CAPITAL 2, L.P.

Defendant

Civ. Action No. 3:14cv1033 (CSH)

AMENDED COMPLAINT FOR RECEIVERSHIP AND INJUNCTION

COMES NOW Plaintiff, the United States of America, on behalf of its agency, the 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 on behalf of its agency, the Small Business Administration (hereinafter, “SBA,” “Agency” or “Plaintiff”), 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, First New England Capital 2, L.P. (hereinafter “First New England” or “Licensee”), is a Delaware limited partnership that maintains its principal place of business at 100 Pearl Street, Hartford, Connecticut 06103. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. §1391(b).

Statutory and Regulatory Framework

4. First New England 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 March 25, 1988, SBA License No. 01/01-0344, 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. First New England’s Agreement of Limited Partnership expressly provides that First New England was organized for the sole purpose of operating under the Act and that First New England is subject to the Regulations issued by SBA thereunder.

7. First New England’s general partner is FINEC Corp.

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 First New England through the purchase and/or guaranty of Participating Securities, a form of Leverage, as those terms are defined under the Regulations, of which \$2,260,000 remains outstanding.

10. The Participating Securities described in paragraph 9, above, are expressly subject to and incorporated by reference in the Regulations, including but no limited to the provision of 13 C.F.R. §§107.1820-1850 and §107.507.

11. 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 First New England may be forfeited and the company may be declared dissolved.

12. Section 311 of the Act, 15 U.S.C. §687c, provides that upon a determination by SBA that a Licensee such as First New England, 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.

COUNT
ONE

NONCOMPLIANCE WITH WRITTEN AGREEMENT WITH SBA

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. SBA determined that First New England had a condition of Capital Impairment of 74.97% as of December 31, 2012.

15. Section §107.1830(c) of the Regulations requires that First New England not have a condition of Capital Impairment of greater than 60%, as that term is defined under the

Regulations.

16. By letter dated April 15, 2013, SBA afforded First New England an opportunity to cure its condition of Capital Impairment within fifteen days of the date of the letter, or by April 30, 2013.

17. First New England failed to cure its condition of Capital Impairment. By letter dated May 7, 2013, First New England was informed it had been transferred to the Office of SBIC Liquidation within SBA.

18. On or about August 21, 2013, SBA and First New England entered into a Wind Down Agreement, whereby First New England would repay SBA the outstanding Leverage within a set period of time.

19. As consideration for the Agreement, First New England executed a written consent to receivership and SBA forbore from commencing a receivership action. Under the terms of the Wind Down Agreement, SBA could proceed with a receivership action and the filing the consent order after March 1, 2014 if SBA determined First New England was no longer meeting the terms of the Wind Down Agreement.

20. On or about May 13, 2014, SBA informed First New England that it was not meeting the terms of the Wind Down Agreement as the value of First New England's assets were not sufficient to repay the Leverage as set forth in the Wind Down Agreement. On or about May 15, 2014, SBA agreed to commence the action no sooner than June 9, 2014.

21. Section 107.507 (a) of the Regulations, 13 C.F.R. §107.507(a) (2013), provides that non-performance of any written agreement with SBA is a violation of the Regulations.

22. As a consequence of First New England's violation of 13 C.F.R. §507(a) of the Regulations, 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 First New England as set forth in

he consent order filed simultaneously herewith.

PRAYER FOR

RELIEF WHEREFORE, Plaintiff prays as

follows:

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

B. That this Court determine and adjudicate First New England'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 First new England and all of its assets, wherever such assets are located, appoint SBA as receiver of First New England for the purpose of marshaling and liquidating the assets of First New England and satisfying the claims of creditors to be determined by the Court; and

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

Respectfully submitted,
DEIRDRE M. DALY
UNITED STATES ATTORNEY

Dated: July 23, 2014

By: /s/ John B. Hughes
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U.S. SMALL BUSINESS ADMINISTRATION

Dated: July 23, 2014

By: /s/ Arlene Embrey
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CERTIFICATION

I hereby certify that on this 23rd day of July, 2014, I sent a copy of the above by first-class mail, postage prepaid, to the following:

Michael Wyatt, Esq.
Foley Hoag, LLP
1717 K. Street, N.W.
Washington, DC 20006

JOHN B. HUGHES
CHIEF, CIVIL DIVISION