Case 5:15-cv-05349-NC Document 1	Filed 11/23/15 Page 1 of 8							
BENJAMIN MIZER								
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL								
BRIAN J. STRETCH, CA No. 163973								
Acting United States Attorney ALEX G. TSE, CA No. 152348								
Chief, Civil Division								
ERIC J. ADAMS, CA No. 135893 Special Assistant U.S. Attorney								
U.S. Small Business Administration 455 Market Street, Suite 600								
San Francisco, CA 94105								
Telephone: (415) 744-8440 Facsimile: (415) 744-6812								
eric.adams@sba.gov								
CHRISTOPHER J. MCCLINTOCK, VA Bar N	0. 68417							
ARLENE M. EMBREY, FL Bar No. 0125539								
Trial Attorney Office of General Counsel U.S. Small Business Administration 409 Third St., S.W. Washington, D.C. 20416 Telephone: (202) 205-7715								
					Facsimile: (202) 481-5497			
					christopher.mcclintock@sba.gov			
					Attorneys for Plaintiff			
UNITED STATES DIS								
NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION								
) UNITED STATES OF AMERICA, )	Civil Action No.							
) Plaintiff, )								
)	COMPLAINT FOR							
v. ) RED ROCK VENTURES - SBIC III, L.P.)	RECEIVERSHIP AND PERMANENT INJUNCTIVE							
)	RELIEF							
Defendant. )								
Defendant. ) )								
Defendant. ) )								
Defendant. ) ) ) COMPLAINT FOR RECEIVERSHIP AND PERMAN	NENT INJUNCTIVE RELIEF Page							

1	COMES NOW Plaintiff, the United States of America, on behalf of its agency,		
2	the U.S. Small Business Administration, and for its cause of action states as follows:		
3	PARTIES, JURISDICTION AND VENUE		
4	1. This is a civil action brought by the United States on behalf of its agency,		
5	the U.S. Small Business Administration (hereinafter, "SBA," "Agency" or "Plaintiff"),		
6	whose central office is located at 409 Third Street, S.W., Washington, DC 20416.		
7	2. Jurisdiction is conferred on this Court by virtue of the Small Business		
8	Investment Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311, and		
9	316; 15 U.S.C. §§687(d), 687c, 687h; the Small Business Act, 15 U.S.C. §634(b)(1); and		
10	28 U.S.C. §1345.		
1	3. Defendant, Red Rock Ventures - SBIC III, L.P. (hereinafter "Red Rock		
12	III" or "Licensee"), is a Delaware limited partnership that maintains its place of business		
13	and principal office at 530 Lytton Avenue, 2nd Floor, Palo Alto, CA 94301 (Santa Clara		
4	County). Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C.		
15	§1391(b).		
16	INTERDISTRICT ASSIGNMENT		
17	4. Pursuant to L.R. 3-2(c) and (e), this action is properly assigned to the San		
18	Jose Division because the Defendant's principal office is located in Santa Clara County.		
9	COMMON ALLEGATIONS		
20	Statutory and Regulatory Framework		
21	5. Red Rock III was licensed by SBA as a Small Business Investment		
22	Company ("SBIC") pursuant to Section 301(c) of the Act, 15 U.S.C. §681(c) on or about		
23	December 28, 2001, SBA License No. 09/79-0440.		
24	6. Red Rock III's general partner is RRV Partners IIIA, LLC.		
25	7. As a licensee of SBA under Section 301 of the Act, 15 U.S.C. §681(a),		
26	and pursuant to 13 C.F.R. §107.160, Red Rock III exists solely for the purpose of		
27	performing the functions and conducting the activities contemplated under the Act.		
28			
	COMPLAINT FOR RECEIVERSHIP AND PERMANENT INJUNCTIVE RELIEF Page 2		

1	8.	Section 308(c) of the Act, 1	5 U.S.C. §687(c), em	powers SBA to prescribe	
2	regulations to carry out the provisions of the Act and to govern the operations of SBICs.				
3	SBA has duly promulgated such regulations, which are codified at Title 13 of the Code of				
4	Federal Regulations, Part 107 (the "Regulations").				
5	Federal Funding of Red Rock III				
6	9. Section 303 of the Act, 15 U.S.C. §683, authorizes SBA to provide federal				
7	funding to licensed SBICs, called Leverage under SBA's regulations, 13 C.F.R.				
8	§107.1100.				
9	10. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA provided federal				
10	funding to Red Rock III through the purchase and/or guaranty of a Preferred Limited				
11	Partnership interest, a form of Participating Securities that is also a form of Leverage				
12	under 13 C.F.R. §§107.1100 and 1500.				
13	11.	Specifically, SBA provided	Leverage to Red Roc	k III as follows:	
14	Loan Number	Principal Balance	Date Disbursed	Rate	
15	02046965-09	1,069,957.73	05-04-2006	5.681	
16	02046966-07	2,500,000.00	05-04-2006	5.681	
17	02046967-05	540,237.21	05-04-2006	5.681	
18	02046968-03	3,700,000.00	08-02-2006	5.681	
19	02046969-01	3,000,000.00	09-28-2006	5.459	
20	02046970-04	2,220,000.00	09-28-2006	5.459	
21	02046971-02	2,020,000.00	09-29-2006	5.459	
22	02046972-00	2,430,000.00	09-29-2006	5.459	
23	02057151-05	4,180,000.00	03-13-2008	5.944	
24	02057152-03	2,800,000.00	06-02-2008	5.944	
25	02057153-01	4,090,000.00	01-18-2006	5.408	
26		\$28,550,194.94			
27	12.	Among other features, they	are redeemable by SE	BA at a date-certain	
28	regardless of p	performance of the SBIC and	also carry with them	other payment	
	COMPLAINT I	FOR RECEIVERSHIP AND PE	RMANENT INJUNCTIV	ve <b>relief</b> Page 3	

## Case 5:15-cv-05349-NC Document 1 Filed 11/23/15 Page 4 of 8

obligations that are dependent on earnings, such as Prioritized Payments, an "annual" 1%
 Charge, Adjustments and Profit Participation, as applicable.

3

13.

To date, Red Rock III owes SBA \$28,550,194.94 in outstanding Leverage.

14. SBA, through a third party financial institution, offers guaranteed 4 participation certificates evidencing undivided interests in pools of Participating 5 Securities to private investors pursuant to 13 C.F.R. §107.1600, et seq. SBA guarantees 6 the timely payment of principal and prioritized payments when due. In the event of 7 failure by an SBIC to make a payment, SBA will pay the investors the entire amount due 8 through the next payment date. SBA has exercised upon its guarantee to investors and 9 10 has paid the entire amount, plus prioritized payments, to the investor pool. 15. Red Rock III's obligation to repay SBA the \$28,550,194.94 is recognized 11 on Red Rock III's audited financials submitted to SBA on Form 468 as required by 13 12 C.F.R. §107.630. 13

14 16. Red Rock III's general partner attested to the accuracy of the most
15 recently filed audited Form 468 under criminal penalties.

16

#### SBA's Authority for Regulatory Enforcement Against Red Rock III

17 17. Section 308(d) of the Act, 15 U.S.C. §687(d), provides that upon
18 determination and adjudication of noncompliance or violation of the Act or the
19 Regulations, all of the rights, privileges and franchises of a Licensee such as Red Rock
20 III may be forfeited and the company may be declared dissolved.

18. Section 311 of the Act, 15 U.S.C. §687c, provides that if SBA determines
that a Licensee such as Red Rock III 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 by 15 U.S.C. §687c(c) to appoint SBA to act as
 receiver for such Licensee.

3

# **Red Rock III is in Violation of the Act and Regulations**

4 19. Red Rock III submitted quarterly financial information to SBA under the
5 requirements of 13 C.F.R. §107.630.

20. Red Rock III's quarterly financial submission for the period ending June
30, 2009 contained information that Red Rock III had a condition of capital impairment
under 13 C.F.R. §§107.1830-1850.

21. By letter dated September 8, 2009, SBA notified Red Rock III that it had a 9 condition of capital impairment of 64.26%, which exceeded Red Rock III's allowable 10 maximum of 60% under 13 C.F.R. §§107.1830-1850 of the Regulations. Pursuant to 13 11 C.F.R. §107.1820(f), SBA's letter also directed Red Rock III to cure the capital 12 impairment within 15 (fifteen) days by increasing its regulatory capital by not less than 13 \$2,158,962, plus an amount equal to any additional unrealized depreciation and operating 14 expenses incurred subsequent to June 30, 2009. SBA's letter also notified Red Rock III 15 that if it failed to cure its impairment as required by SBA, then SBA would impose 16 Restricted Operations remedies under 13 C.F.R. §107.1820(f). 17

18 22. Red Rock III failed to cure its capital impairment in the time and manner
19 required by SBA.

20 23. By letter dated February 16, 2010, SBA notified Red Rock III that it had
21 failed to cure its condition of capital impairment as required, was not in compliance with
22 the terms of its Leverage, and that SBA was transferring Red Rock III from operating
23 status to liquidation status.

24

25

24. By letter dated September 12, 2011, SBA informed Red Rock III that its Capital Impairment percentage as of June 30, 2011 was 89.27%.

26 25. Red Rock III's quarterly financial submission for the period ending

27 December 31, 2012 contained information that it had a Capital Impairment percentage of

110.11%. Red Rock III's its quarterly financial submission for the period ending

# Case 5:15-cv-05349-NC Document 1 Filed 11/23/15 Page 6 of 8

1	December 31, 2013 contained information that it had a Capital Impairment percentage of
2	119.25%. Red Rock III's its quarterly financial submission for the period ending
3	December 31, 2014 contained information that it had a Capital Impairment percentage of
4	128.87%.
5	26. Red Rock III continues to have a condition of Capital Impairment in
6	excess of its permissible maximum of 60% under the Regulations, as confirmed by its
7	most recent audited financial statements submitted to SBA on Form 468.
8	27. Under 13 C.F.R. § 107.1820, a Capital Impairment Percentage in excess of
9	100% is qualified as "extreme Capital Impairment." Pursuant to 13 C.F.R. §
10	107.1820(b)(1)(i), a licensee can only be considered to have a condition of extreme
11	Capital Impairment after the first 8 years from your first issuance of Participating
12	Securities.
13	28. Red Rock III was first issued participating securities on May 10, 2002,
14	more than 8 years ago. As such, based upon its December 31, 2014 financial statements,
15	Red Rock III currently has a condition of extreme Capital Impairment.
16	29. SBA has determined that due to Red Rock III's violation of applicable
17	regulations, it is in the best interests of SBA in protecting its investment of federal funds
18	that Red Rock III be placed into receivership in accordance with 15 U.S.C. §687c.

By execution of a Consent Order for Receivership and Stipulation for
 Entry of Consent Order for Receivership ("Consent Order") dated October 29, 2015, Red
 Rock III has already consented to the appointment of SBA as receiver of Red Rock III. A
 true and correct copy of the aforementioned executed Consent Order is attached hereto as
 Exhibit A to this Complaint.

### COUNT ONE

### **CAPITAL IMPAIRMENT**

31. Paragraphs 1 through 26 are incorporated by reference herein.

24

25

26

27

1	32.	Section §107.1830(c) of the Regulations requires that Red Rock III not			
2	have a condition of Capital Impairment of greater than 60% (sixty percent) as defined				
3	under the Regulations.				
4	33.	Based on financial information submitted by Red Rock III, SBA			
5	determined that Red Rock III had a condition of Capital Impairment as its capital				
6	impairment percentage was over its allowable maximum of 60% (sixty percent) per 13				
7	C.F.R. §107.1830-50.				
8	34.	SBA provided Red Rock III with an opportunity to cure its capital			
9	impairment as provided in SBA's regulations, 13 C.F.R. §107.1820(f).				
10	35.	Red Rock III failed to cure as required by SBA.			
11	36.	Red Rock III has violated SBA's regulations beyond the applicable cure			
12	period.				
13	37.	Red Rock III's violation of its capital impairment limitation constitutes			
14	nonperformance under the terms of its Participating Securities and is thereby also a				
15	violation of 13 C.F.R. §107.507(a).				
16	38.	In accordance with 15 U.S.C. §687c, SBA has determined that Red Rock			
17	III has engaged in or is about to engage in acts or practices which constitute or will				
18	constitute a violation of the Act or of any rule or regulation promulgated pursuant to the				
19	Act.				
20	39.	The Court is authorized under 15 U.S.C. §687c to take exclusive			
21	jurisdiction of Red Rock III and all of its assets, wherever located, and appoint SBA as				
22	receiver of Red Rock III.				
23		PRAYER FOR RELIEF			
24	WHE	REFORE, Plaintiff prays as follows:			
25	A.	That injunctive relief, both preliminary and permanent in nature, be			
26	granted restra	aining Red Rock III, its managers, general partners, directors, officers,			
27	agents, emplo	oyees, and other persons acting in concert or participation therewith from:			
28	(1) making any disbursement or distribution of any assets of Red Rock III; (2) using,				
	COMPLAINT	FOR RECEIVERSHIP AND PERMANENT INJUNCTIVE RELIEFPage 7			

### Case 5:15-cv-05349-NC Document 1 Filed 11/23/15 Page 8 of 8

investing, conveying, disposing, executing or encumbering in any fashion any assets of
 Red Rock III, wherever located; and (3) from further violating the Act or the Regulations
 promulgated thereunder.

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

C. That this Court, pursuant to 15 U.S.C. §687c, (1) take exclusive
jurisdiction of Red Rock III and all of its assets, wherever located, (2) appoint SBA as
receiver of Red Rock III for the purpose of marshaling and liquidating the assets of Red
Rock III, satisfying the claims of creditors as determined by the Court and (3) grant such
other relief as contained in the Consent Order of Receivership filed concurrently
herewith.
D. That this Court grant such other relief it deems just and proper.

**GENERAL** 

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Dated: 11/23/15

That this Court grant such other relief it deems just and proper. Respectfully submitted, BENJAMIN MIZER PRINCIPAL DEPUTY ASSISTANT ATTORNEY

> BRIAN J. STRETCH ACTING UNITED STATES ATTORNEY

ALEX G. TSE Chief, Civil Division

By: <u>/s/ Eric J. Adams</u> ERIC J. ADAMS Special Assistant United States Attorney U.S. Small Business Administration 455 Market Street, Suite 600 San Francisco, CA 94105 Telephone: (415) 744-8440 Facsimile: (415) 744-6812 <u>eric.adams@sba.gov</u>

COMPLAINT FOR RECEIVERSHIP AND PERMANENT INJUNCTIVE RELIEF

Page 8