

Venture Capital Litigation Reporter

*The national monthly journal that tracks Venture
Capital litigation from initial filing to final appeal*

Written for VCs, attorneys, and major investors

APRIL 2007
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***** This issue includes court activity through May 1, 2007 *****

NEW CASES

**INTERWEST PARTNERS HIT WITH LIBEL/SLANDER
ACTION BY FORMER EMPLOYEE OF PORTFOLIO COMPANY**

Amber J. Morphis
v.
LoanCity, Inc., et al.

U.S. District Court (N.D. Cal.)
Case No. 07-1501
Honorable Ronald M. Whyte

Complaint filed on Mar. 15, 2007

PLAINTIFF'S COUNSEL

Thorton Davidson, Esq.
Davidson & Hawkins
(Fresno, Cal.)

DEFENDANTS' COUNSEL

No appearance

CAUSES OF ACTION

1. Breach of contract
2. Breach of contract
3. Breach of contract
4. Breach of contract
5. Value of services
6. Libel and slander
7. An accounting
8. Declaratory relief

CASE HISTORY

Compl. filed: Mar. 15, 2007
Pl.'s dismissal with prejudice filed: Apr. 17, 2007

PLAINTIFF

This action was brought solely by Amber J. Morphis, a former employee of LoanCity, Inc.

DEFENDANTS

- LoanCity, Inc. (San Jose, Cal.)
- **InterWest Partners** (Menlo Park, Cal.)
- Blackberry Capital, Inc. (San Jose, Cal.)
- E*TRADE Group, Inc. (Menlo Park, Cal.)
- Marsh & McLennan Capital (New York, N.Y.)
- BankAmerica, Inc. (Charlotte, N.C.)
- Rick Soukoulis (Founder, President & COO of LoanCity)

BACKGROUND

Defendant Rick Soukoulis founded LoanCity in 1987. In 1999, the firm began a major shift to the Internet and away from brick-and-mortar operations. However, the firm closed in March 2007.

At various stages of its development, LoanCity received investments from InterWest Partners, InSight Capital Partners, Morgan Stanley, Dean Witter, E*TRADE, Century Capital Management, New Enterprise Associates, Bank of America, Marsh & McLennan Capital, and Robertson Stephens.

CASE SUMMARY

Plaintiff Morphis asserts in her first amended complaint that she served as LoanCity's Senior Vice President, National Sales Manager, and COO from 2001 to December 2005, at which time she (apparently) resigned from the company voluntarily. Plaintiff's basis for the complaint arises from knowledge of alleged wrongdoing she gained after her resignation.

Since departing LoanCity's employ in December 2005, Plaintiff has discovered that defendant Rick Soukoulis, President of LoanCity and its largest shareholder, has utilized numerous social security numbers, financial identities, and hidden accounts to siphon off money from LoanCity in avoidance of his duties to other stockholders in the company and in violation of local, state and federal law(s). Defendant Soukoulis may also [have] utilized Defendant Blackberry Capital, Inc., in which Plaintiff holds stock, as a conduit for his illegal schemes.

Among the evidence uncovered to date by Plaintiff is Defendant Soukoulis's use of at least three different social security numbers ..., only one of which is accurate. On information and belief, Plaintiff contends that Defendant Soukoulis used one of the false social security numbers to report Blackberry's income to the Internal Revenue Service. Defendant Soukoulis may also have utilized his illegal profits to fund one or more personally held assets, including construction of 8108 Bertram Rd., San Jose, CA.

Named defendants E*Trade Group, Inc., InterWest Partners, Marsh & McLennan Capital, Inc., BankAmerica, Inc., as investors in Defendant

(continued on next page)

LoanCity, Inc., knew or should have known about Defendant Soukoulis's illegal activities.

Docket No. 4 at 10 (emphasis omitted).

Plaintiff does not assert that defendants retaliated against her for whistleblowing. In fact, she makes no mention of whistleblowing or related activities. (Had she made such contentions, her case would have been distinguished from classic whistleblowing actions largely because she admitted learning of the alleged wrongdoing after she ceased working at LoanCity. Such a claim would certainly have permitted defendants to avail themselves of a wide range of defenses.)

Still, plaintiff asserts she suffered from defendants' post-employment actions against her. "Since her departure, Plaintiff has been subject to factual misrepresentations about her job performance with LoanCity, including untrue and malicious allegations that she was unethical in said performance[.]" *Id.* at 11 (emphasis omitted).

However, the true controversy – and the essential reason plaintiff filed the action – arises later in the complaint, when plaintiff requests judicial vindication.

An actual controversy has arisen and now exists between Plaintiff and named Defendants with respect to whether Plaintiff participated in the scheme to make false reports to local, state, and federal agencies, attempted to avoid taxation of profits from both LoanCity and Blackberry, and/or assisted Defendant Soukoulis in depriving LoanCity of monies to which it was lawfully entitled. Plaintiff contends she had no involvement in such schemes; Defendant Soukoulis contends otherwise. Plaintiff desires a judicial determination of Defendant Soukoulis's allegation and a declaration as to which party's contentions are correct.

Id. (emphasis omitted).

In addition to declaratory relief, plaintiff seeks an award of \$2.5 million.

RECENT EVENTS

On April 17, 2007, plaintiff requested dismissal of the action with prejudice, noting that she had not served any defendant. Docket No. 7.

ADDITIONAL READING

Sue McAllister, *San Jose Mortgage Lender Stops Funding Loans*, SAN JOSE MERCURY NEWS, March 21, 2007, <www.mercurynews.com/search/ci_5490326?nclick_check=1>

Since this case has terminated, VCLR will no longer provide monthly coverage. ■

SBA ACTS TO SHUT DOWN NORTHWEST VENTURE PARTNERS II

<p style="text-align: center;">USA v. Northwest Venture Partners II, LP</p> <p style="text-align: center;">U.S. District Court (E.D. Wash.) Case No. 07-139 Honorable Robert H. Whaley</p> <p style="text-align: center;">Complaint filed on May 2, 2007</p> <hr style="width: 80%; margin: 10px auto;"/> <p style="text-align: center;"><u>PLAINTIFF'S COUNSEL</u> Arlene M. Embrey, Esq. SBA (Washington, D.C.)</p>	<p style="text-align: center;">PLAINTIFF</p> <p>The U.S. Attorney's Office brought this action on behalf of the SBA.</p> <p style="text-align: center;">DEFENDANTS</p> <p>Spokane, Wash.-based Northwest Venture Associates (NWVA) was founded in 1986 and raised \$3 million for its first fund, Northwest Venture Partners I. It is NWVA's second fund – Northwest Venture Partners II ("NVP II") – that is the sole defendant in the instant action. NVP II started operations in 1988 and was licensed by the SBA to operate as an SBIC in 1998. Thereafter, it received SBA-backed funding totaling \$20.8 million.</p> <p>According to its website, NWVA "is one of the oldest and most successful private equity firms in the Northwest. Since our founding in 1986, we have organized four partnerships with aggregate capital commitments of over \$175 million. Our</p> <p style="text-align: right;"><i>(continued on next page)</i></p>
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<p>Rolf H. Tangvald, Esq. James A. McDevitt, Esq. U.S. Attorney's Office (Spokane, Wash.)</p> <p><u>DEFENDANT'S COUNSEL</u></p> <p>No appearance (as of May 31, 2007)</p> <hr/> <p><u>CAUSES OF ACTION</u></p> <ol style="list-style-type: none"> Capital impairment Non-performance with terms of leverage <hr/> <p><u>CASE HISTORY</u></p> <p>Compl. filed: May 2, 2007 Joint motion to appoint receiver filed: June 1, 2007</p>	<p>investment activities are focused predominantly in three industries: information and business services, communications and consumer [products].”</p> <p>NWVA was founded by Thomas Simpson, and it now has five other partners.</p> <ul style="list-style-type: none"> • Bob Wolfe • Kevin Barber • Mark Mecham • Joe Herzog • Jean Balek-Miner <p>NWVA's investments include NetMotion Wireless, Packet Engines (sold to Alcatel), Pet's Choice (sold to VCA Antech), Tegic (sold to AOL), and World Wide Packets.</p> <p style="text-align: center;"><i>CASE SUMMARY</i></p> <p>On May 23, 2005, the SBA notified defendant NVP II that the firm's capital impairment figure was 115%, which value exceeded that permitted under 13 C.F.R. §§ 107.1830(c)(2) and 107.1850(a). By law, NVP II then had 15 days to cure the default, which it failed to do. Upon that failure, the SBA placed the fund under restrictive operations. Thereafter, NVP II's continuing operations under conditions of capital impairment resulted in the filing of the instant complaint.</p> <p>On June 1, 2007, the parties filed a joint motion to appoint the SBA as defendant NVP II's receiver. Docket No. 3.</p> <p style="text-align: center;"><i>CALENDAR</i></p> <p>The aforementioned motion to appoint a receiver is scheduled to come for hearing on June 6, 2007.</p> <p>This case appears to be a standard SBA capital impairment complaint, and NVP II has given no indication that it will contest the action. Hence, since the case will likely terminate with NVP II's liquidation, VCLR will no longer provide monthly coverage. ■</p>
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**PRINTING FIRM SUES TECHNOLOGY
FUNDING OVER PORTFOLIO COMPANY'S DEBT**

<p><i>Publishers Press, Inc.</i> v. <i>Technology Funding, Inc.</i></p> <p>U.S. District Court (W.D. Ky.) Case No. 07-48 Honorable Jennifer B. Coffman</p> <p>Complaint filed in Super. Ct. (Jefferson Cty., Ky.) on Dec. 28, 2006</p> <p>Removed to U.S. District Court (W.D. Ky.) on Jan. 29, 2007</p> <hr/> <p><u>PLAINTIFF'S COUNSEL</u></p> <p>Mark A. Smedal, Esq. Smith & Helman (Louisville, Ky.)</p>	<p style="text-align: center;"><i>PLAINTIFF</i></p> <p>Founded in 1866, sole plaintiff Publishers Press (Shepherdsville, Ky.) is a family-owned printing firm whose primary revenue stream stems from printing and distributing magazines and journals.</p> <p style="text-align: center;"><i>DEFENDANT</i></p> <p>Sole defendant in this action, Technology Funding, was founded in 1979 and subsequently created and managed 21 venture funds. The firm is currently headquartered in Santa Fe, N.M., but its venture capital operations – whose activities are involved in the instant lawsuit – are managed from El Dorado Hills, Cal.</p> <p>Technology Funding currently has two active partners: Charles Kokesh (Founder & Managing GP) and Peter Bernardoni.</p> <p style="text-align: center;"><i>CASE SUMMARY</i></p> <p>The complaint is a sparsely detailed, four-page pleading that provides minimal information on the dispute, other than alleging the following (in simple, declarative sentences). Docket No. 1.</p> <ol style="list-style-type: none"> In July 2004, Technology Funding engaged plaintiff to print certain (unspecified) documents. <p style="text-align: right;"><i>(continued on next page)</i></p>
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<p><u>DEFENDANT’S COUNSEL</u> Dustin E. Meek, Esq. James R. Craig, Esq. Tachau, Maddox, Hovious & Dickens (Louisville, Ky.) Todd C. Pearson, Esq. Dorsey & Whitney (Minneapolis, Minn.)</p> <hr/> <p><u>CAUSES OF ACTION</u> Causes of action not specified</p> <hr/> <p><u>CASE HISTORY</u></p> <p>Compl. filed: Dec. 28, 2006 Case removed to district court: Jan. 29, 2007 Answer filed: Feb. 9, 2007 Scheduling order issued: Mar. 29, 2007</p>	<ol style="list-style-type: none"> 2. Technology Funding requested – and received – a credit account for 100% of the printing cost. 3. Plaintiff printed the documents and delivered a \$90,000 invoice to Technology Funding. 4. Technology Fund failed to pay the invoice. <p>Plaintiff initially filed the complaint in Super. Ct. (Jefferson Cty., Ky.), but Technology Funding removed the case to U.S. District Court (W.D. Ky.).</p> <p>In answering the complaint on February 9, 2007, defendant categorically denied plaintiff’s version of events and instead offered the following affirmative defense, among others.</p> <p style="padding-left: 40px;">The proper defendant, if any, is Dakota Arms, Inc.[,] an entity that is currently in bankruptcy in the United States Bankruptcy Court for the District of Minnesota. Venue in this matter should be transferred to [that court].</p> <p style="padding-left: 40px;">Docket No. 7 at 2.</p> <p>Documents filed with the SEC in October 2006 reflect that Technology Funding sold its stock in Dakota Arms, effective October 9, 2006, to entities associated with Industry Ventures Acquisition Fund. (See Form 8-K filed by Technology Funding Partners III LP on October 26, 2006.)</p> <p style="text-align: center;">CALENDAR</p> <p>On March 29, 2007, the court issued a scheduling order that calls for the case to go to trial on February 19, 2008. Docket No. 15.</p> <p>No motions are before the court.</p> <p>This summary includes docket entries through May 31, 2007. ■</p>
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COVERAGE OF ON-GOING CASES

**KINGDOM VENTURES
(DEFENDANT)**

<p style="text-align: center;">Chandra S. Pandula v. Kingdom Venture Partners, et al.</p> <p style="text-align: center;">U.S. District Court (C.D. Cal.) Case No. 06-5678 Honorable Otis D. Wright, II</p> <p style="text-align: center;">Complaint filed on Sept. 11, 2006</p> <hr/> <p><u>PLAINTIFF’S COUNSEL</u> <i>Pro se</i></p> <p><u>DEFENDANTS’ COUNSEL</u> David T. Biderman, Esq. Steven K. Hwang, Esq. Perkins Coie (Santa Monica, Cal.)</p>	<p style="text-align: center;">PLAINTIFFS</p> <p><i>Pro se</i> plaintiff Chandra S. Pandula is a Los Angeles-based playwright.</p> <p style="text-align: center;">DEFENDANTS</p> <p>Defendant Kingdom Venture Partners is a new entrant in the VC community, having been founded in January 2006 by Bruce Cook. Cook was later joined by partners John De Puy and Rob Moss.</p> <p>Kingdom’s publicly disseminated information provides minimal details on the fund’s size, although the fund purports to have a 120-member advisory board and to focus on investments in the \$500,000 to \$5,000,000 range.</p> <p style="text-align: center;">CASE BACKGROUND</p> <p>Plaintiff asserts that he is the author and copyright owner of a movie screenplay entitled, <i>A Pencil in God’s Hand</i> (“Script”), which is a biographical work about Mother Teresa. According to the complaint, plaintiff delivered a copy of the Script to defendant Kingdom in early 2006, and Kingdom then “misused and continued to misuse the Script by reproducing, copying, file sharing, transmitting, distributing, disseminating, shopping and pitching the story line to third</p> <p style="text-align: right;">(continued on next page)</p>
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Stacy Allen, Esq.
Jackson Walker
 (Austin, Tex.)

CAUSES OF ACTION

1. Copyright infringement
2. Permanent injunction
3. Breach of contract
4. Misrepresentation, fraud, and deceit
5. Breach of the implied covenant of good faith and fair dealing
6. Detrimental reliance

CASE HISTORY

Compl. filed:	Sept. 11, 2006
Def. Cook dismissed:	Nov. 29, 2006
Def. Kingdom's answer filed:	Dec. 11, 2006
Pl.'s appeal filed:	Feb. 12, 2007
Pl.'s appeal dismissed:	Mar. 16, 2007
Pl.'s motion for sanctions filed:	Apr. 9, 2007

parties, without the permission or license of the Plaintiff[.]” Docket No. 1 at 4. Plaintiff argues that such alleged actions violated federal copyright laws.

The issues in this case are relevant to the VC community to the extent that Kingdom's alleged actions are similar to those most venture funds take when they receive a business plan. That the “business plan” in the instant case is alleged to have been a copyrighted work raises issues relevant to the day-to-day operation of every venture fund.

Plaintiff also asserts that, after Kingdom reviewed the Script, the parties entered into negotiations that eventually culminated in a written agreement dated May 13, 2006, under which Kingdom would fund film production.

Among the material terms, the parties agreed that Defendant [Kingdom] shall invest a total sum of up to five million U.S. dollars, towards the cost of production of the Film, of which a sum of \$750,000 [would be invested] on or before June 30, 2006 to lock in the lead actors, crew and pre-production expenses and the balance sum of \$4.25 million to be arranged by August 15, 2006.

Id. at 5-6.

Plaintiff alleges, however, that Kingdom defaulted on the agreement almost immediately.

In material breach of the agreement, Defendants failed to arrange the funds on the scheduled dates and thereby committed breach of contract. After the breach of the contract, Defendants started to negotiate for [an] extension of time for funding, but did not result in any agreement. When negotiations failed to settle amicably to reschedule the funding and the production, Defendants on August 28, 2006, expressed that they have no money now and may never have any money[.]

Id. at 6.

A large portion of the complaint contains scathing allegations that question if, indeed, Kingdom is a funded venture capital firm or a non-funded shell.

Defendants intentionally made false statements to Plaintiff that they are established Venture Capital Financiers [and have] funded major film project[s,] and in support of their statements sent their website to Plaintiff as reference . . . , for the purpose of inducing Plaintiff to believe that they are major Venture Capital Financiers and have the capacity to fund Plaintiff[s] project. Defendants knew at the time of the agreement and at all times they made promises to Plaintiff, that the Defendant Corporation lacks adequate capital to operate as Venture Capital Financiers[.]

Id. at 8.

COURT ACTIVITY

On November 29, 2006, the court dismissed (without prejudice) the complaint as to Kingdom's founder, Bruce Cook. Docket No. 21. The only remaining defendant, Kingdom Ventures, answered the complaint on December 11, 2006. Docket No. 33.

Plaintiff Pandula then moved to have the court reconsider, alter, or amend its decision to dismiss Cook. Docket Nos. 21 and 34. The court denied that motion on January 5, 2007. Docket No. 38.

On January 25, 2007, Pandula filed a *Notice of Appeal*, stating that he was appealing the court's decision to the U.S. Court of Appeals (9th Cir.). Docket No. 41. The appellate case was opened on February 12, 2007, as Case No. 07-55162. Then, on March 16, 2007, the appeals court dismissed the appeal on the ground that the “order challenged in the appeal is not final or appealable.”

RECENT EVENTS

On April 9, 2007, plaintiff Pandula moved for sanctions against defendant Kingdom for “contempt and vexatious discovery.” Docket No. 47. On April 12, 2007, however, the court refused to consider the motion because plaintiff had failed to comply with Local Rules in submitting it. Docket No. 44.

This summary includes docket entries through May 1, 2007. ■

**WHI VENTURES
(PLAINTIFF)**

WHI Ventures

v.

Jane M. Sutton

U.S. District Court (D. Minn.)

Case No. 05-3007

Honorable Franklin L. Noel

Complaint filed on Dec. 30, 2005

PLAINTIFF'S COUNSEL

Steve A. Brand, Esq.

Thomas C. Mahlum, Esq.

Robins, Kaplan, Miller & Ciresi

(Minneapolis, Minn.)

DEFENDANT'S COUNSEL

Andrew M. Luger, Esq.

Jeanette M. Bazis, Esq.

Green Espel

(Minneapolis, Minn.)

CAUSE OF ACTION

1. Fraud

CASE HISTORY

Compl. filed: Dec. 30, 2005

Answer filed: Feb. 10, 2006

Judgment entered and case dismissed: May 1, 2007

PLAINTIFF

IntraVantage, a manufacturer of dental anesthesia delivery systems, was founded by John Sutton, who served as the firm's President and CEO.

Sole plaintiff **WHI Ventures** is a small, Chicago-based venture fund that is the primary investor in IntraVantage.

DEFENDANT

Sole defendant is Jane M. Sutton, widow of John Sutton.

CASE SYNOPSIS

On April 21, 2003, WHI and IntraVantage entered into an agreement whereby WHI would purchase up to \$2 million of IntraVantage's Series A Preferred Stock. The investment was to have been made in multiple tranches.

As a condition of obtaining WHI's investment, IntraVantage agreed to purchase a \$2.5 million, key-man life insurance policy on Sutton. In the event of Sutton's death, the policy's proceeds were to be paid to IntraVantage and then used to repurchase WHI's shares. At closing, Sutton allegedly signed a compliance certificate representing that IntraVantage had purchased the insurance policy.

During 2003 and 2004, WHI invested a total of \$937,500 under the terms of the stock purchase agreement. However, on May 19, 2005 – 25 months after IntraVantage entered into that agreement – Sutton committed suicide.

Upon Sutton's death, WHI sought information on the insurance policy.

WHI Ventures discovered that life insurance policies insuring Sutton's life in the amount of \$2,500,000, naming IntraVantage as the beneficiary, never were obtained as previously represented by Sutton and IntraVantage.

Docket No. 1 at 6.

THE COMPLAINT

WHI's complaint, which was lodged solely against Sutton's wife (as representative of Sutton's estate), contains but a single count – fraud – with WHI alleging Sutton intentionally deceived the fund.

Sutton made material false representations to WHI Ventures that key-person life insurance insuring Sutton's life had been obtained when it had not for the explicit purpose of inducing WHI Ventures to purchase preferred stock of IntraVantage and enter into the Stock Purchase Agreement.

Id. at 8.

Although IntraVantage had obtained a \$250,000 policy on Sutton's life in 2003, that policy had lapsed.

Moreover, WHI Ventures learned that the GTL [Guaranteed Trust Life] policy had lapsed as Sutton previously instructed IntraVantage's CFO, Jerry Posey, to cease making payments on the policy[.]

Id. at 7.

WHI seeks damages of twice its \$937,500 investment, arguing that Sutton's alleged fraud prevented it from receiving the stock purchase agreement's 2x liquidation preference.

COURT ACTIVITY

Defendant answered the complaint on February 10, 2006, denying all allegations and stating that John Sutton's estate is insolvent. Docket No. 5.

On May 1, 2007, pursuant to the parties' stipulation, the court: (1) ordered the entry of a \$1,000,000 judgment in favor of plaintiff WHI Ventures and against the estate of John Sutton; and (2) dismissed the case with prejudice. Docket No. 20.

Since this case has terminated, VCLR will no longer cover it. ■

**FORTE CAPITAL
(PLAINTIFF)**

Forte Capital Partners

v.

Harris Cramer, et al.

U.S. District Court (N.D. Cal.)

Case No. 07-1237

Honorable Martin J. Jenkins

Complaint filed in Super. Ct. (San Francisco Cty., Cal.)
on Oct. 27, 2006, as Case No. CGC-06-457399

Removed to U.S. District Court (N.D. Cal.)
on Mar. 1, 2007

PLAINTIFF'S COUNSEL

Robert A. Spanner, Esq.
Trial & Technology Group
(Menlo Park, Cal.)

DEFENDANTS' COUNSEL

Russell S. Roeca, Esq.
Roeca Haas Hager
(San Francisco, Cal.)

Jeffrey M. Vucinich, Esq.
Clapp, Moroney, Bellagamba & Vucinich
(San Bruno, Cal.)

CAUSES OF ACTION

1. Professional negligence
2. Negligent referral
3. Negligent misrepresentation
4. Breach of written contract
5. Breach of written contract

CASE HISTORY

Compl. filed:	Oct. 27, 2006
FAC filed:	Feb. 5, 2007
Case removed to district court:	Mar. 1, 2007
Def's. motion to dismiss filed:	Mar. 19, 2007
Def's. motion to transfer case filed:	Mar. 19, 2007
Pl.'s motion to strike filed:	Apr. 26, 2007

PLAINTIFF

According to its website, San Francisco-based **Forte Capital Partners** is a merchant bank that focuses on "private equity, leveraged buyouts, management buyouts, and other unique opportunities primarily in the information technology, communications, and homeland security industries."

DEFENDANTS

The complaint names three law firms as defendants:

1. Harris Cramer (West Palm Beach, Fla.)
2. The recently dissolved firm of Frank, Rosen, Snyder & Moss
3. Alan Frank Law Associates (Elkins Park, Pa.), which is the successor-interest to Frank, Rosen, Snyder & Moss.

The complaint also names two principals of the law firms as defendants, Alan Frank and Marc Snyder.

SUMMARY

This case concerns actions defendants allegedly failed to take regarding Forte's investment in SmartVideo Technologies.

CASE SYNOPSIS

In May 2005, Forte held stock and warrants in SmartVideo but became displeased with that firm's issuance of new shares and dilution of existing shareholders. Forte then engaged defendants to conduct a proxy solicitation to replace SmartVideo's board. Allegedly upon defendants' advice (and in conjunction with the proxy solicitation), Forte filed a lawsuit against SmartVideo in July 2005. See *Forte Capital Partners, LLC v. Richard E. Bennett, Jr., et al.*, C.A. No. 1495-N (Del. Ch.).

In the instant case's FAC, Forte alleges that matters rapidly accelerated in a disastrous fashion due to defendants' multiple failures to act competently.

Prior to a telephonic hearing in Delaware Chancery Court on November 17, 2005[,] the Frank Rosen Defendants had failed to provide motion papers to the judge concerning the subject matter of the hearing, which nonfeasance angered the Vice-Chancellor.

The Frank Rosen Defendants failed to arrange to have a Delaware-licensed attorney present for the November 17, 2005[,] telephonic hearing in violation of the Delaware rules of court, which so angered the Vice-Chancellor that, on information and belief, he imposed disciplinary sanctions on the Frank Rosen Defendants during the hearing.

During the telephonic hearing held on November 17, 2005, the Frank Rosen Defendants admitted to the Vice-Chancellor that Forte's counsel had failed to request ... an Omnibus Proxy[.] The Vice-Chancellor, having been informed that the Defendants had failed to obtain an Omnibus Proxy, stated that it was the first time he had ever been informed of a proxy solicitation being conducted without issuance of an Omnibus Proxy [and] that obtaining an Omnibus Proxy is a fundamental step in a proxy solicitation[.] ...

The Vice-Chancellor informed the Frank Rosen Defendants ... that they did not belong in a proxy solicitation action, and that Forte should dismiss its action or risk an award of attorneys fees [*sic*] against it for prosecuting a frivolous action.

FAC at 9 – 10.

On March 1, 2007, defendants removed the case to U.S. District Court (N.D. Cal.).

(continued on next page)

	<p style="text-align: center;">MOTIONS</p> <p>Defendants moved to dismiss on March 19, 2007. Docket No. 5. Plaintiff filed its opposition on April 17, 2007, and defendants replied on April 23, 2007. Docket Nos. 14 and 18, respectively.</p> <p>On March 19, 2007, defendants moved to transfer the case to U.S. District Court (D. Del.). Docket No. 7. Then, on April 13, 2007, plaintiff filed its opposition, and defendants replied on April 23, 2007. Docket Nos. 13 and 20, respectively.</p> <p>On April 26, 2007, plaintiff moved to strike portions of defendants' pleadings on both the motion to dismiss and the motion to transfer. Docket No. 25.</p> <p style="text-align: center;">CALENDAR</p> <p>Both the motion to dismiss and the motion to transfer are scheduled for hearing on May 8, 2007.</p> <p>This summary includes docket entries through May 1, 2007. ■</p>
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**SIERRA VENTURES
(PLAINTIFF)**

<p style="text-align: center;">Charles T. Madden, et al. v. Cowen & Company, et al.</p> <p style="text-align: center;">U.S. District Court (N.D. Cal.) Case No. 06-4886 Honorable Jeffrey S. White</p> <p style="text-align: center;">Complaint filed in Super. Ct. (San Francisco Cty., Cal.) on June 28, 2006, as Case No. 06-453608</p> <p style="text-align: center;">Removed to U.S. District Court (N.D. Cal.) on Aug. 14, 2006</p> <hr/> <p style="text-align: center;"><u>PLAINTIFFS' COUNSEL</u></p> <p style="text-align: center;">Philip Borowsky, Esq. Norman P. English, Esq. Christopher J. Hayes, Esq. Borowsky & Hayes (San Francisco, Cal.)</p> <p style="text-align: center;"><u>DEFENDANTS' COUNSEL</u></p> <p style="text-align: center;">David M. Jolley, Esq. Margaret G. May, Esq. Covington & Burling (San Francisco, Cal.)</p> <p style="text-align: center;">Linda C. Goldstein, Esq. Kimberly Zelnick, Esq. Covington & Burling (New York, N.Y.)</p> <hr/> <p style="text-align: center;"><u>CAUSES OF ACTION</u></p> <ol style="list-style-type: none"> 1. Negligent misrepresentation 2. Professional negligence <hr/> <p style="text-align: center;"><u>CASE HISTORY</u></p> <p>Compl. filed: June 28, 2006</p> <p>Case removed to district court: Aug. 14, 2006</p>	<p style="text-align: center;">PLAINTIFFS</p> <p>Plaintiffs are Sierra Ventures (San Francisco, Cal.) and more than 60 physicians who were shareholders of Orange Coast Managed Care Services ("OCMCS") when that firm was acquired in 1997.</p> <p style="text-align: center;">DEFENDANTS</p> <p>Defendants are: (1) S.G. Cowen Securities Corporation; (2) Cowen & Company LP; and (3) Cowan & Company, Inc., all of New York City (collectively "Cowen").</p> <p style="text-align: center;">COMPLAINT</p> <p>In 1997, OCMCS sought to be acquired and engaged Cowen to identify potential buyers. Plaintiffs allege that, based upon Cowen's recommendation, they exchanged their OCMCS stock for stock in publicly traded FPA Medical Management, but that problems arose almost immediately after the deal closed.</p> <p>Following Cowen's advice, Plaintiffs agreed to the acquisition by FPA. Although Cowen immediately collected a percentage fee in cash based on the total transaction value of \$60 million, Plaintiffs received FPA stock under resale restrictions barring many of them from reselling the stock for periods ranging from 90 days to two years.</p> <p>Within eight weeks, FPA announced that it had severe financial problems. FPA disclosed plummeting earnings, massive asset write-offs, and the prospect of running out of the cash needed to fund operations within another six weeks. The market for FPA stock crashed as FPA rapidly spiraled into bankruptcy. Within four months of the transaction[,] FPA had become worthless, wiping out Plaintiffs' interest that Cowen had valued at \$40 million.</p> <p>Docket No. 1 at 3.</p> <p style="text-align: center;">MOTION TO DISMISS</p> <p>On August 17, 2006, defendants moved to dismiss the case, and their pleading reveals that this matter has been much litigated.</p> <p>Plaintiffs' two claims against Cowen arise under state law and should be dismissed because they are preempted by SLUSA [Securities Litigation Uniform Standards Act]. In <i>Madden v. Deloitte & Touche</i>, Plaintiffs litigated the applicability of SLUSA to their claims extensively, resulting in three decisions by two different district court judges, a Ninth Circuit ruling on a mandamus petition, and the Ninth Circuit decision affirming the dismissal of Plaintiffs' claims. The chief issue litigated in the prior case – whether the</p> <p style="text-align: right;">(continued on next page)</p>
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Defs.' motion to dismiss filed: Aug. 17, 2006
 Defs.' motion to remand filed: Sept. 8, 2006
 Defs.' motion to dismiss granted in part: Mar. 8, 2007
 Defs.' motion to remand denied: Mar. 8, 2007
 Joint motion to dismiss filed: Apr. 13, 2007
 Case dismissed: May 7, 2007
 Pls.' notice of appeal filed: May 22, 2007

defendants' alleged misrepresentations and omissions were made in connection with a "covered security" – is the same issue at stake here. Basic principles of collateral estoppel prohibit Plaintiffs from trying to get a different ruling from this Court.

Docket No. 13 at 1-2.

(Also, see *Madden v. Deloitte & Touche*, 118 Fed. Appx. 150 (9th Cir. 2004); *Madden v. Deloitte & Touche*, 234 F.3d 1277, 2000 WL 1171169 (9th Cir. 2000); and U.S. District Court (S.D. Cal.) Case No. 99-1516.)

Defendants then argue that plaintiffs simply have no standing to bring an action against Cowen.

Plaintiffs also have no standing to bring these claims against Cowen. The California Supreme Court's seminal decision in *Bily v. Arthur Young & Co.*, 3 Cal. 4th 370 (1992), holds that professional advisors can be liable in negligence only to their clients, such as OCMCS, not to third parties, such as Plaintiffs.

Moreover, negligent misrepresentation claims may be brought against professional advisors only by intended beneficiaries of the advice. [citation] Cowen's opinion stated that it was *only* for the benefit of OCMCS and *not* its shareholders.

Id. at 2 (italics in original).

In their opposition to defendants' motion to dismiss, plaintiffs argue that, if SLUSA applies, then the complaint's two claims fall within a specific exemption, or "carve out," in the SLUSA statutes themselves.

Even if Cowen could prove all the elements for SLUSA preemption, which plaintiffs dispute, Plaintiffs' claims fall within the "Delaware carve-out." Cowen authorized the issuance of its fairness opinion as part of a Proxy Statement/Prospectus issued to Plaintiffs to guide their decisions how to vote their Orange Coast [...] securities in response to FPA's exchange offer and whether to exercise dissenters' or appraisal rights.

Plaintiffs have now sued Cowen for malpractice and negligent misrepresentation, claims recognized under the laws of the states where Orange Coast and St. Joseph were incorporated. Under these circumstances the carve-out applies, preserving Plaintiffs' claims against preemption and requiring this Court to deny Cowen's motion to dismiss.

The carve-out preserves certain "covered class action[s]" alleging misrepresentations "in connection with the purchase or sale of a covered security" that are "based upon the statutory or common law of the State in which the issuer is incorporated[.]"

Docket No. 26 at 8.

MOTION TO REMAND

The complaint was originally filed in Super. Ct. (San Francisco Cty., Cal.) on June 28, 2006, but it was removed to U.S. District Court (N.D. Cal.) by defendants on August 14, 2006. On September 8, 2006, plaintiffs moved the district court to remand the case to state court.

COURT ORDERS

In an order issued on March 8, 2007, the court denied plaintiffs' motion to remand and granted defendants' motion to dismiss (with leave to amend). Docket No. 41. Although the order interprets several aspects of SLUSA, it is not precedent-setting insofar as it is heavily dependent upon the case's unique factors, among which is an opinion letter issued by defendant Cowen regarding OCMCS.

For attorneys arguing SLUSA cases, however, the order may be valuable since it clarifies the meaning of the phrase "on behalf of," which Congress failed to define when it passed SLUSA. To infer the definition of that phrase, the court looked toward the previously passed PSLRA, in which Congress did embed such a definition. *Id.* at 11.

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	<p>In making the association between SLUSA and PSLRA, the court relied upon <i>Smith v. City of Jackson</i>, 544 U.S. 228 (2005) (“when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended the text to have the same meaning in both statutes.”)</p> <p>In the instant case, the issue was whether Cowen’s aforementioned opinion letter was issued “on behalf of” OCMCS, with the court finding that it was not. The court based its conclusion on the fact that plaintiffs “have not alleged any wrongful conduct by [OCMCS], but rather, they are suing Cowen directly for its opinion and advice regarding the [sale of OCMCS].” Docket No. 41 at 11.</p> <p style="text-align: center;">DISMISSAL</p> <p>On April 13, 2007, the parties filed a <i>Stipulation for Entry of Final Judgment</i>, wherein they requested the court to dismiss the case with prejudice. Docket No. 42. The court so ordered the dismissal on May 7, 2007. Docket No. 45. Noteworthy in the ruling is that the court ordered “that plaintiffs take nothing, that the action be dismissed on the merits, and that <u>Defendants recover of Plaintiffs their costs of action.</u>” <i>Id.</i> at 2 (underlining added). This wording was in the proposed order the parties submitted to the court. Docket No. 44.</p> <p style="text-align: center;">APPEAL</p> <p>On May 22, 2007, plaintiffs appealed the court’s order of dismissal to the U.S. Court of Appeals (9th Cir.), where it was lodged as Case No. 07-15900. The electronic record is devoid of reasons for the appeal, but those reasons will be ascertained and reported in a future VCLR issue.</p> <p style="text-align: center;">CALENDAR</p> <p>Plaintiffs-appellants’ opening brief is due by October 10, 2007.</p> <p>This summary includes docket entries through May 22, 2007. ■</p>
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**FT VENTURES
(DEFENDANT)**

<p style="text-align: center;"><i>Richardson Roberts</i> v. <i>Financial Technology Ventures, et al.</i></p> <p style="text-align: center;">U.S. District Court (M.D. Tenn.) Case No. 06-55 Honorable Aleta A. Trauger</p> <p style="text-align: center;">Complaint filed on Jan. 26, 2006</p> <hr/> <p style="text-align: center;"><u>PLAINTIFF’S COUNSEL</u></p> <p style="text-align: center;">John M. Gillum, Esq. Brett A. Oeser, Esq. Manier & Herod (Nashville, Tenn.)</p> <p style="text-align: center;"><u>DEFENDANTS’ COUNSEL</u></p> <p style="text-align: center;">Christopher Keegan, Esq. Jay S. Bowen, Esq. Bowen, Riley, Warnock & Jacobson (Nashville, Tenn.)</p>	<p style="text-align: center;">PLAINTIFF</p> <p>Sole plaintiff Richardson Roberts is president of Verus Financial Management.</p> <p style="text-align: center;">DEFENDANTS</p> <p>Defendants are four entities associated with San Francisco-based Financial Technology Ventures.</p> <ul style="list-style-type: none"> • Financial Technology Ventures • Financial Technology Ventures (Q) • Financial Technology Ventures II • Financial Technology Ventures II (Q) <p>Although the first-named defendant is registered with the California Secretary of State as “Financial Technology Ventures,” the firm and its various partnerships are better known within the venture community as FT Ventures, or simply FTV.</p> <p>FTV is the primary venture investor in Verus Financial Management.</p> <p>James Hale III and Bob Huret founded FTV in 1998, while Richard Garman joined the firm a year later and now serves as its Managing Partner. According to FTV’s website, the firm “invests in companies that create software or provide business services which enable financial institutions worldwide to expand and to operate more efficiently.”</p> <p>FTV has \$600 million under management across at least six partnerships. FTV’s LPs are largely drawn from the financial sector and include Visa, Washington Mutual, Wells Fargo, JP Morgan Chase, Citigroup, Charles Schwab, Freddie Mac, Sallie Mae, Bank of America, Wachovia, and Nomura.</p> <p style="text-align: right;">(continued on next page)</p>
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CAUSES OF ACTION

1. Request for emergency and injunctive relief
2. Breach of contract
3. Promissory estoppel
4. *Quantum meruit*
5. Fraud

CASE HISTORY

Compl. filed:	Jan. 26, 2006
Pl.'s motion for TRO filed:	Jan. 26, 2006
Pl.'s motion for TRO denied:	Jan. 30, 2006
Answer filed:	Apr. 7, 2006
Defs.' motion for summary judgment filed:	June 30, 2006
Defs.' motion for summary judgment denied:	July 13, 2006

FTV's pre-2004 investments include e-Loan (acquired by Popular), Synchrologic (acquired by Intellisync), BlueGill, IDS (acquired by CheckFree), KVS (acquired by Veritas Software), 7-24 Solutions and Corillian (both of which had IPOs), and ValiCert (acquired by Tumbleweed Communications).

Since 2004, FTV has initiated investments in Actimize, Ambiron TrustWave, CloudMark, Digital Harbor, Freeborders, Global Document Solutions, GMI, MedSynergies, PowerShares Capital Management, and ProfitLine.

VERUS FINANCIAL MANAGEMENT

Verus received the vast majority of its start-up capital from FTV, and Garman was placed on the firm's board. Immediately upon funding, Verus embarked upon an extremely aggressive growth-by-acquisition strategy. Indeed, within 18 months of its formation, Verus had acquired five financial industry firms, most notably Network 1 Financial in July 2002 and Global eTelecom in December 2003.

For the 2005 calendar year, Verus's revenue and EBITDA were \$64 million and \$21 million, respectively.

In a press release dated January 9, 2006, Verus's position within the financial services industry was described as follows.

Verus is a leading provider of merchant services in North America. Merchant services support retail, business to business, and e-commerce businesses in processing customer transactions through credit cards, debit cards and checks. Verus has a customer base of 101,000 small and medium-sized merchants in the U.S., including retailers, gas stations, restaurants, property managers and automotive dealerships. Verus revenues come from service fees linked to processed sales transactions.

THE COMPLAINT

In his verified complaint, Roberts alleges that he and FTV had originally agreed to sell Verus no earlier than 2007, but that FTV was strapped for cash in 2005 and needed to realize the profits from an accelerated sale. Roberts alleges that he then entered into a handshake deal with Garman, under which Roberts would receive \$10 million if he found a company to purchase Verus in 2006.

Roberts was successful in finding a buyer – the Sage Group of London, England. In January 2006, Sage announced it would purchase Verus for \$325 million, effective January 31, 2006. Roberts now alleges that FTV has renege on his handshake agreement with Garman and has offered to pay him just \$4 million for agreeing to sell Verus earlier than initially planned.

In his complaint, Roberts provides the following synopsis of his dispute with FTV.

FTV's Managing Partner, Richard Garman, approached Roberts in Fall 2005 about putting Verus on the market earlier than had been contemplated: FTV's agreement with Verus provided only for a binding exit strategy in the Spring of 2007. FTV, as a minority shareholder, needed Roberts to agree to a sale of his shares as well. For Roberts, the timing was not personally favorable. To persuade Roberts to sell, FTV promised that Roberts would receive an additional \$10 million from the proceeds of the sale of Verus. FTV promised that, if these funds did not come directly from the buyer, FTV itself would pay them. Roberts agreed.

In Fall 2005, Roberts put Verus on the market and was successful in finding a buyer by late in the year. Verus is now due to be sold to Sage Group ... for \$325 million. After FTV had secured Roberts' performance of his side of the agreement, however, it decided to renege. FTV told Roberts that, since the sale had been such a success and had garnered substantially more than the minimum FTV would have been willing to accept [allegedly \$250 million], FTV would not make the full payment it had promised. ... FTV offered to pay Roberts only approximately \$4 million of the \$10 million it had agreed to pay.

Docket No. 1 at 2 – 3.

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	<p style="text-align: center;">TRO</p> <p>Filed contemporaneously with the complaint – five days before the sale to Sage was to be completed – was plaintiff’s motion for a TRO enjoining defendants from “distributing in any form or by any method an amount not less than ten million dollars (\$10,000,000) derived in any way from funds received from the sale of Verus[.]” Docket Nos. 2 and 3.</p> <p>The court denied the motion for a TRO on January 30, 2006, and Verus’s sale was completed on schedule. Docket Nos. 23 and 24.</p> <p style="text-align: center;">DEFENDANTS’ ANSWER</p> <p>Defendants answered the complaint on April 7, 2006. Docket No. 40.</p> <p style="text-align: center;">MOTION FOR SUMMARY JUDGMENT</p> <p>Defendants moved for summary judgment on June 30, 2006. Docket No. 58. Then, on July 13, 2006, following an evidentiary hearing, the court denied the motion. Docket No. 72.</p> <p>On July 27, 2006, defendants moved to alter or amend the court’s order, arguing the court had: “(I) exceeded its power and authority and invaded the role of the jury; (II) subjected Defendants to procedural inequity by denying Defendants’ meaningful discovery on the issues this court decided; and (III) unnecessarily established disputed facts[.]” Docket No. 77. The court granted the motion in (minor) part on August 7, 2006. Docket No. 85. (The court’s ruling did not materially affect the proceeding; indeed, the motion was so inconsequential that plaintiff did not oppose it.)</p> <p style="text-align: center;">CALENDAR</p> <p>The parties are proceeding toward trial, which is scheduled to commence on October 30, 2007.</p> <p>This summary includes docket entries through May 1, 2007. ■</p>
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**CRAWFORD VENTURES
(PLAINTIFF)**

<p style="text-align: center;"><i>Crawford Ventures, Inc.</i> v. <i>H. Tomkins O’Connor</i></p> <p style="text-align: center;">U.S. District Court (S.D.N.Y.) Case No. 06-779 Honorable Deborah A. Batts</p> <p style="text-align: center;">Complaint filed on Feb. 2, 2006</p> <hr/> <p style="text-align: center;"><u>PLAINTIFF’S COUNSEL</u></p> <p style="text-align: center;">Julian W. Wells, Esq. Riker, Danzig, Scherer, Hyland & Perretti (New York, N.Y.)</p> <p style="text-align: center;"><u>DEFENDANT’S COUNSEL</u></p> <p style="text-align: center;">Thomas F. Clauss, Jr., Esq. Christopher Giordano, Esq. Wiggin and Dana (Stamford, Conn.)</p>	<p style="text-align: center;">PLAINTIFF</p> <p>Plaintiff Crawford Ventures (New York, N.Y.) provides consulting services to start-up and mid-sized companies in the medical industry.</p> <p style="text-align: center;">DEFENDANT</p> <p>Sole defendant H. Tomkins O’Connor is a former employee of plaintiff Crawford.</p> <p style="text-align: center;">THE COMPLAINT</p> <p>In 2003, Mekanika, a medical technology company, engaged plaintiff Crawford to develop a financial restructuring plan. Crawford then hired O’Connor to lead the effort.</p> <p>[In April 2003,] Mekanika retained Plaintiff to provide consulting services, including to help it secure a twenty to forty million dollar venture capital raise, in exchange for: (a) a total consulting fee of \$90,000; and (b) at the closing of any Mekanika financing, [8% of the cash raised and warrants to purchase stock equivalent to 8% of the stock sold at the financing.]</p> <p>Docket No. 1 at 6.</p> <p>Crawford asserts that O’Connor expropriated the results of the Mekanika effort and that he is now trying to raise funds directly for that firm.</p> <p>Defendant, after working for Plaintiff with regard to Mekanika, and after having made confidentiality and non-competition commitments to Plaintiff, now has flagrantly usurped Plaintiff’s proprietary and confidential</p> <p style="text-align: right;">(continued on next page)</p>
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<p style="text-align: center;"><u>CAUSES OF ACTION</u></p> <ol style="list-style-type: none"> 1. Breach of contract 2. Breach of the covenant of good faith and fair dealing 3. Declaratory relief under 28 U.S.C. § 2201 4. <i>Quantum meruit</i> 5. Breach of fiduciary duty 6. Breach of duty of loyalty 7. Usurpation of corporate opportunity 8. Tortious interference with prospective economic relations 9. Misappropriation of trade secrets 10. Unfair competition 11. Unjust enrichment 12. Constructive trust 13. An accounting 	<p>documents, information deal flow and investor relationships in order to attempt to consummate his <u>own</u> deals with Mekanika and to arrange financing with investors, some already identified and solicited by Plaintiff.</p> <p><i>Id.</i> at 4 (underlining in original)</p> <p>Plaintiff alleges defendant surreptitiously began to deal directly with Mekanika in mid-2005, after working for plaintiff on the Mekanika financing plan for more than a year. At that time, defendant allegedly “began attempting to arrange or consummate his own deals with and/or for Mekanika and to arrange financing with prospective Mekanika investors, acquirers and/or merger partners, some of whom had been identified and solicited by Plaintiff, all the while using Plaintiff’s proprietary and confidential materials and information.” <i>Id.</i> at 13.</p> <p>Plaintiff further alleges that after “being caught red-handed attempting to steal Plaintiff’s proprietary and confidential documents, information, and deals, Defendant then bizarrely denied that Plaintiff was or is entitled to anything from Defendant with respect to the Mekanika financing that has or may result from Defendant’s nefarious activities.” <i>Id.</i> at 4.</p> <p>Plaintiff requests monetary damages of \$1 million.</p>
<p style="text-align: center;"><u>CASE HISTORY</u></p> <p>Compl. filed: Feb. 2, 2006</p>	<p style="text-align: center;"><i>COURT ACTIVITY</i></p> <p>The court issued an <i>Order to Show Cause for Preliminary Injunction and Expedited Discovery</i> on February 3, 2006. Docket No. 3.</p> <p>On February 13, 2006, plaintiff’s attorney informed the court that the parties had reached a settlement-in-principle, and the court continued a hearing on the order to show cause. Docket No. 5. The court subsequently granted continuances on two other occasions. Docket Nos. 7 and 8.</p> <p>The last docket entry was made on May 16, 2006. Docket No. 8.</p> <p style="text-align: center;"><i>CALENDAR</i></p> <p>The status of the case is unclear from the court record. However, VCLR will track the case until the file is closed.</p> <p>This summary includes docket entries through May 1, 2007. ■</p>

**HOPKINS CAPITAL
(PLAINTIFF)**

<p style="text-align: center;"><i>Hopkins Capital Group II</i> v. <i>Frank Speight, et al.</i></p> <p style="text-align: center;">U.S. District Court (M.D. Fla.) Case No. 06-329 Honorable Gary R. Jones</p> <p style="text-align: center;">Complaint filed on Sept. 8, 2006</p>	<p style="text-align: center;"><i>PLAINTIFF</i></p> <p>Plaintiff Hopkins Capital was founded in 1997 by Frank O’Donnell, Jr., who now serves as the fund’s managing director. Hopkins invests exclusively in medical and biotech companies, and its portfolio includes Accentia Biopharmaceuticals, Adventrx, RetinaPharma Technologies, ApoTech, Theranutrients, Viral Oncotherapies, Revimmune, Pen2Net, and Sublase, as well as the subject of this lawsuit, publicly traded Biodelivery Sciences International (BDSI).</p>
<p style="text-align: center;"><u>PLAINTIFF’S COUNSEL</u></p> <p style="text-align: center;">Moein Marashi, Esq. Robert L. Rocke, Esq. Rocke, McLean & Sbar (Tampa, Fla.)</p> <p style="text-align: center;"><u>DEFENDANTS’ COUNSEL</u></p> <p style="text-align: center;">J. Andrew Fine, Esq. Lewis & Roberts (Raleigh, N.C.)</p>	<p style="text-align: center;"><i>DEFENDANTS</i></p> <p>Defendants are American Capital and its president, Frank Speight, as well as American’s predecessor-in-interest, Dunhill Capital.</p> <p style="text-align: center;"><i>THE COMPLAINT</i></p> <p>By virtue of its venture investments, Hopkins owns a significant block of shares in BDSI. In October 2003, Hopkins entered into a loan agreement with defendant American, under which Hopkins borrowed \$794,000, which loan was collateralized by 500,000 BDSI shares. According to the loan agreement, Hopkins was to make semi-annual, interest-only payments to American.</p> <p>Concurrent with the loan agreement’s execution, Hopkins delivered certificates representing the stock collateral to Raymond James & Associates, which firm was to act as escrow agent and retain the shares until the loan was repaid.</p> <p style="text-align: right;">(continued on next page)</p>

<p style="text-align: center;"><u>CAUSES OF ACTION</u></p> <ol style="list-style-type: none"> 1. Violation of Florida’s Uniform Commercial Code (Fla. Stat. ch. 679) 2. Violation of Florida’s Deceptive and Unfair Trade Practices Act (Fla. Stat. ch. 501) 3. Conversion 4. Breach of contract 5. Securities fraud under Fla. Stat. ch. 517.301 <hr/> <p style="text-align: center;"><u>CASE HISTORY</u></p> <p>Compl. filed: Sept. 8, 2006 Answer filed: Oct. 10, 2006</p>	<p>According to Hopkins, it timely made the first payment on the loan by check in April 2004, but American failed to negotiate the check. Hopkins then alleges that, in September 2004, American claimed it had never received the payment and declared the loan to be in default, asserting that Hopkins no longer held any claim to the BDSI shares. Hopkins claims, however, that it never received any prior notice of default from American.</p> <p>Complicating the matter is the fact that BDSI had removed the restrictive legends on the stock certificates at or about the time the loan agreement was signed.</p> <p>As a pre-loan requirement, defendants American and Speight executed and mailed a certificate to the law firm of Foley & Lardner (the “Certificate”) to induce Foley and Lardner to render legal opinions which would cause BDSI to remove the restrictive legends on the BDSI shares owned by Hopkins, and which were to be pledged as collateral to secure the proposed loan transaction to Hopkins.</p> <p>The Certificate was intentionally false and misleading in that, without limitation, paragraphs 2, 3, and 4 of the Certificate represented that the transaction was intended to be a true and <i>bona fide</i> secured loan transaction. Instead, the defendants intended merely to obtain a removal of the restrictive legends on the BDSI stock so as to be able to easily convert and liquidate those BDSI shares in the marketplace.</p> <p>Docket No. 1 at 3.</p> <p>Hopkins also alleges that American disposed of the BDSI shares long before Hopkins learned in September 2004 that its first payment had not been negotiated.</p> <p style="text-align: center;"><i>COURT ACTIVITY</i></p> <p>Defendants answered the complaint on October 10, 2006. Docket No. 8.</p> <p style="text-align: center;"><i>CALENDAR</i></p> <p>The parties are proceeding with discovery, and trial is tentatively set for May 2008. This summary includes docket entries through May 1, 2007. ■</p>
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**MANHATTAN INVESTMENT ADVISORS
(PLAINTIFF)**

<p style="text-align: center;"><i>Manhattan Investments, Inc.</i> <i>v.</i> <i>SmartVideo Technologies, Inc.</i></p> <p style="text-align: center;">U.S. District Court (N.D. Ga.) Case No. 06-2824 Honorable Horace T. Ward</p> <p>Complaint filed in U.S. District Court (N.D. Cal.) on July 18, 2006, as Case No. 06-4379</p> <p>Transferred to U.S. District Court (N.D. Ga.) on Nov. 21, 2006, as Case No. 06-2824</p> <hr/> <p style="text-align: center;"><u>PLAINTIFF’S COUNSEL</u></p> <p style="text-align: center;">C. Todd Norris, Esq. Bullivant Houser Bailey (San Francisco, Cal.)</p> <p style="text-align: center;"><u>DEFENDANT’S COUNSEL</u></p> <p style="text-align: center;">Michael L. Smith, Esq. Manning, Marder, Kass, Ellrod & Ramirez (San Francisco, Cal.)</p>	<p style="text-align: center;"><i>PLAINTIFF</i></p> <p>Sole plaintiff Manhattan Investment Advisors is a Nevis-based venture capital fund whose holdings and activities are not publicly advertised.</p> <p style="text-align: center;"><i>DEFENDANT</i></p> <p>Sole defendant SmartVideo Technologies is a publicly traded electronics firm headquartered in Duluth, Ga. (Effective May 14, 2007, SmartVideo changed its name to uVuMobile, Inc. Commencing June 4, 2007, the firm will trade under the symbol UVUM.OB.)</p> <p style="text-align: center;"><i>CASE SYNOPSIS</i></p> <p>In 2000, Manhattan made a \$125,000 working capital loan to ASPI, the predecessor-by-merger of SmartVideo Technologies. That loan was later converted to 49,795 shares of Common Stock in SmartVideo. Pursuant to SEC Rule 144(a)(3), the stock certificate representing those shares carries a legend restricting the stock’s sale.</p> <p>Manhattan, however, now contends that the SEC’s stock-sale exemptions apply to the stock in question, but that SmartVideo has refused Manhattan’s requests to remove the restrictive legend.</p> <p>Manhattan Investments has lawfully made written demand that SmartVideo remove the restrictive legend from stock certificate number SV05152 representing the 49,795 Manhattan Shares without registration under the Securities Act of 1933 (the “Act”), in reliance upon the exemption</p> <p style="text-align: right;"><i>(continued on next page)</i></p>
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<p style="text-align: center;"><u>CAUSES OF ACTION</u></p> <ol style="list-style-type: none"> 1. Breach of fiduciary and statutory duties 2. Conversion 3. Fraud <hr/> <p style="text-align: center;"><u>CASE HISTORY</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Compl. filed:</td> <td>July 18, 2006</td> </tr> <tr> <td>Answer filed:</td> <td>Sept. 5, 2006</td> </tr> <tr> <td>Case transferred to U.S. District Court (N.D. Ga.):</td> <td>Nov. 21, 2006</td> </tr> <tr> <td>Compl. refiled:</td> <td>Nov. 21, 2006</td> </tr> <tr> <td>Answer refiled:</td> <td>Nov. 21, 2006</td> </tr> <tr> <td>Joint motion to stay filed:</td> <td>Mar. 30, 2007</td> </tr> <tr> <td>Joint motion to stay granted:</td> <td>Apr. 3, 2007</td> </tr> </table>	Compl. filed:	July 18, 2006	Answer filed:	Sept. 5, 2006	Case transferred to U.S. District Court (N.D. Ga.):	Nov. 21, 2006	Compl. refiled:	Nov. 21, 2006	Answer refiled:	Nov. 21, 2006	Joint motion to stay filed:	Mar. 30, 2007	Joint motion to stay granted:	Apr. 3, 2007	<p>therefrom contained in Section 4(l) of the Act and Rule 144 promulgated by the Securities and Exchange Commission (the "Commission") thereunder.</p> <p>Rule 144(k) permits the resale of restricted securities if the applicable conditions of the Rule are met.</p> <p style="text-align: center;">...</p> <p>However, to date, SmartVideo, by and through its attorneys, has unreasonably, negligently, recklessly, willfully, maliciously and intentionally breached its fiduciary and statutory duties to Manhattan Investments [sic, Investments] by failing and refusing to remove the restrictive legend on the stock certificate number SV05152.</p> <p>Docket No. 1 at 3 – 4 (capitalization omitted).</p> <p>Manhattan alleges that it initially made its demand to have the legend removed on June 16, 2004, at which time SmartVideo's market capitalization exceeded \$100 million. As of the date the complaint was filed, however, that figure had dropped in half, and plaintiff expressed concern about SmartVideo's viability.</p> <p>Plaintiff Manhattan claims it has suffered damages of \$448,000 by being unable to sell its SmartVideo shares.</p> <p style="text-align: center;"><i>COURT ACTIVITY</i></p> <p>SmartVideo answered the complaint on September 5, 2006. Docket No. 6.</p> <p>On October 2, 2006, SmartVideo filed a <i>Motion to Transfer Case for Inconvenient Venue</i>. After briefing, but without oral argument, the court granted the motion on November 13, 2006. Docket Nos. 7 and 19. The case was thereupon transferred to U.S. District Court (N.D. Ga.).</p> <p>Manhattan filed its complaint in the new jurisdiction on November 21, 2006. Case No. 06-2824, Docket No. 1. (Hereinafter, all docket numbers refer to the case filed in the Northern District of Georgia.) Defendant answered on same date. Docket No. 2. The complaint and answer are duplicates of those that were filed in the case's prior jurisdiction.</p> <p>The parties jointly moved to stay the action on March 30, 2007, and on April 3, 2007, the court granted the motion, thereby staying the case until May 11, 2007. Docket Nos. 27 and 28, respectively.</p> <p style="text-align: center;"><i>CALENDAR</i></p> <p>There are no motions before the court.</p> <p>This summary includes docket entries through May 1, 2007. ■</p>
Compl. filed:	July 18, 2006														
Answer filed:	Sept. 5, 2006														
Case transferred to U.S. District Court (N.D. Ga.):	Nov. 21, 2006														
Compl. refiled:	Nov. 21, 2006														
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Joint motion to stay granted:	Apr. 3, 2007														

**SOUTHWARD INVESTMENTS
(PLAINTIFF)**

<p style="text-align: center;"><i>Southward Investments</i> v. <i>V-GPO, Inc.</i></p> <p style="text-align: center;">U.S. District Court (W.D.N.Y.) Case No. 05-6309 Honorable Marian W. Payson</p> <p style="text-align: center;">Complaint filed on June 14, 2005</p> <hr/> <p style="text-align: center;"><u>PLAINTIFF'S COUNSEL</u></p> <p style="text-align: center;">Warren B. Rosenbaum, Esq. Woods, Oviatt & Gilman (Rochester, N.Y.)</p>	<p style="text-align: center;"><i>PLAINTIFF</i></p> <p>Sole plaintiff Southward Investments (Rochester, N.Y.) is a promoter of publicly traded, reverse merger shells. According to its website, Southward Investments promotes the sale of shell corporations as a method for small and mid-size companies to raise funds without the expense and delay associated with IPOs.</p> <p>We provide clean, public corporation shells that are ready for merger. A complete package, that has been submitted to the required regulatory agencies enumerable [sic, innumerable] times, is provided. This package includes: an opinion letter from an independent attorney, audited financial statements, state filing documents and the necessary documents for SEC and exchange commission filings.</p> <p>Southward also advertises reverse mergers as an alternative to dealing with VCs.</p> <p>Venture Capital groups who underwrite offerings have two exit strategies: drive the business to a major IPO or sell it off to a larger corporation.</p> <p style="text-align: right;">(continued on next page)</p>
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<p style="text-align: center;"><u>DEFENDANT'S COUNSEL</u></p> <p style="text-align: center;">Larry Kerman, Esq. Blair & Roach (Tonawanda, N.Y.)</p> <hr/> <p style="text-align: center;"><u>CAUSES OF ACTION</u></p> <ol style="list-style-type: none"> 1. Breach of contract (for V-GPO's alleged failure to deliver 3 million shares to Southward) 2. Conversion (arising from Jaszewski's alleged cancellation of 3 million shares) <hr/> <p style="text-align: center;"><u>CASE HISTORY</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Compl. filed:</td> <td style="text-align: right;">June 14, 2005</td> </tr> <tr> <td>Answer filed:</td> <td style="text-align: right;">July 18, 2005</td> </tr> <tr> <td>Amended answer filed:</td> <td style="text-align: right;">Aug. 8, 2005</td> </tr> <tr> <td>Countercl. filed:</td> <td style="text-align: right;">Aug. 8, 2005</td> </tr> <tr> <td>Countercl. answer filed:</td> <td style="text-align: right;">Aug. 16, 2005</td> </tr> <tr> <td>Def.'s motion for summary judgment filed:</td> <td style="text-align: right;">Aug. 21, 2006</td> </tr> <tr> <td>Def.'s motion for summary judgment denied:</td> <td style="text-align: right;">Dec. 14, 2006</td> </tr> <tr> <td>Def.'s motion for summary judgment refiled:</td> <td style="text-align: right;">Dec. 27, 2006</td> </tr> <tr> <td>Def.'s motion for summary judgment heard:</td> <td style="text-align: right;">Feb. 22, 2007</td> </tr> </table>	Compl. filed:	June 14, 2005	Answer filed:	July 18, 2005	Amended answer filed:	Aug. 8, 2005	Countercl. filed:	Aug. 8, 2005	Countercl. answer filed:	Aug. 16, 2005	Def.'s motion for summary judgment filed:	Aug. 21, 2006	Def.'s motion for summary judgment denied:	Dec. 14, 2006	Def.'s motion for summary judgment refiled:	Dec. 27, 2006	Def.'s motion for summary judgment heard:	Feb. 22, 2007	<p>Either one will generate maximum ROI and that's what they're in it for. Using a shell corporation and a reverse merger strategy puts the control of the entire process into your hands. ... Acquiring a shell corporation, completing the merger and 504 or 505 offering documents can be done for less than \$60K.</p> <p style="text-align: center;"><i>DEFENDANT</i></p> <p>The only defendant in this action is V-GPO (Sarasota, Fla.), a shell company Southward sold to entrepreneur Casimer Jaszewski in 2001.</p> <p style="text-align: center;"><i>COMPLAINT</i></p> <p>Southward alleges that it entered into an agreement with Jaszewski in 2001 in which Jaszewski's company, Epicure Investments, would merge with V-GPO, a Southward-controlled public shell that trades under the symbol VGPO.OB. As partial consideration for supplying the shell, Southward alleges it was to receive 3 million post-merger shares in V-GPO. The dispute arises from Jaszewski's alleged failure to delivery those shares to Southward.</p> <p>According to Yahoo!Finance, V-GPO repositioned itself as a healthcare firm (following Jaszewski's assumption of control).</p> <p>V-GPO, Inc., through its wholly owned subsidiary, International Healthcare Investments, Ltd., engages in the ownership, operation, and/or management of non-urban healthcare facilities in the southwestern United States. The company creates programs, services, and facilities for patients in the communities where its facility is located.</p> <p>The complaint requests that the court order V-GPO to deliver 3 million of its shares to Southward, as well as pay Southward \$1 million in damages.</p> <p style="text-align: center;"><i>COURT ACTIVITY</i></p> <p>V-GPO answered the complaint on July 18, 2005, and then filed an amended answer on August 8, 2005. Accompanying the amended answer was a counterclaim for fraud, with V-GPO alleging Southward failed to divulge that the shell company's stock was not freely tradable. Docket No. 6. Plaintiff (and counterdefendant) Southward answered the counterclaim on August 16, 2005. Docket No. 8.</p> <p>On August 21, 2006, defendant V-GPO filed a motion for summary judgment, but defendant neglected to file a supporting memorandum. Docket No. 24. On December 14, 2006, the court denied the motion (without prejudice), citing Loc. R. Civ. Proc. 7.1(e), which requires the moving party to file such a document. Docket No. 36.</p> <p>On December 27, 2006, defendant V-GPO renewed its motion for summary judgment and filed the corresponding memorandum. Docket No. 37. A hearing was held on February 22, 2007, with the court taking the matter under submission. Docket No. 39.</p> <p style="text-align: center;"><i>CALENDAR</i></p> <p>Except for the motion for summary judgment, there are no matters before the court. This summary includes docket entries through May 1, 2007. ■</p>
Compl. filed:	June 14, 2005																		
Answer filed:	July 18, 2005																		
Amended answer filed:	Aug. 8, 2005																		
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Def.'s motion for summary judgment denied:	Dec. 14, 2006																		
Def.'s motion for summary judgment refiled:	Dec. 27, 2006																		
Def.'s motion for summary judgment heard:	Feb. 22, 2007																		

**NEXTPPOINT PARTNERS
(RELATED PARTY)**

<p style="text-align: center;"><i>Jonathan E. Peskoff</i> v. <i>Michael A. Faber</i></p> <p style="text-align: center;">U.S. District Court (D.D.C.) Case No. 04-526 Honorable Henry H. Kennedy</p> <p style="text-align: center;">Complaint filed on Mar. 31, 2004</p>	<p style="text-align: center;"><i>THE PARTIES</i></p> <p>Plaintiff Peskoff and defendant Faber were managing members of NextPoint GP, which is the general partner of NextPoint Partners, a seed fund they formed in 1999. NextPoint Partners manages \$27 million and has offices in Boston, New York City, and Washington, D.C. Peskoff and Faber are also the sole owners and officers of a related firm – NextPoint Management Company.</p> <p style="text-align: right;">(continued on next page)</p>
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<p style="text-align: center;"><u>PLAINTIFF'S COUNSEL</u></p> <p style="text-align: center;">Paul Y. Kiyonaga, Esq. Kiyonaga & Soltis (Washington, D.C.)</p> <p style="text-align: center;"><u>DEFENDANT'S COUNSEL</u></p> <p style="text-align: center;">William A. Davis, Esq. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo (Washington, D.C.)</p> <hr/> <p style="text-align: center;"><u>CAUSES OF ACTION</u></p> <ol style="list-style-type: none"> 1. Fraud in the inducement 2. Breach of fiduciary duty 3. Breach of contract 4. Conversion 5. Common law fraud and deceit 6. Unjust enrichment 7. Civil RICO 8. Declaratory judgment (that Peskoff "is fully vested in his proportionate share of the General Partner's 20% interest in the Carried Interest in the Fund") <hr/> <p style="text-align: center;"><u>CASE HISTORY</u></p> <p>Compl. filed: Mar. 31, 2004</p> <p>Answer filed: May 4, 2004</p>	<p>Prior to founding the NextPoint firms, Peskoff was VP of Investment Banking at CSFB. Faber had previously founded Plaza Street Holdings, a venture fund he still manages.</p> <p>NextPoint Partners' website describes the fund's operations.</p> <p>NextPoint Partners ... is a seed and early-stage venture capital fund that invests primarily in the Mid-Atlantic region[.] Initial investment amounts typically range from \$250,000 – \$2 million, with total investment in a company up to \$6 million. NextPoint focuses on the following industries: enterprise software and related services, telecommunications, networking, Internet infrastructure, and semiconductors.</p> <p>For managing funds invested in it, NextPoint Partners annually pays 3.5% of its committed funds to a combination of NextPoint GP and NextPoint Management Company. NextPoint GP also maintains a 20% carried interest in NextPoint Partners.</p> <p style="text-align: center;"><i>COMPLAINT</i></p> <p>In February 2004, plaintiff Peskoff resigned as managing member of NextPoint GP, and he shortly thereafter filed the instant lawsuit. In his complaint, Peskoff alleges Faber fraudulently diverted certain investment management fees that had been paid by NextPoint Partners. (Peskoff remains associated with NextPoint Partners and NextPoint Management Company.)</p> <p>Peskoff specifically accuses Faber of "diverting a substantial portion of [NextPoint Management Company's] funds to pay fees for bogus consulting services to Faber-affiliated entities, to discharge his own personal expenses, and to make personal investments unrelated to [NextPoint Partners]." Docket No. 1 at 4.</p> <p>Peskoff further alleges that defendant Faber:</p> <ul style="list-style-type: none"> • Paid \$400,000 to Plaza Street Holdings "for nonexistent consulting services ... for the sole purpose of diverting funds from the Management Company and the General Partner to Faber individually." <i>Id.</i> at 10. • Submitted \$50,000 in fraudulent expenses under the name of one of NextPoint Partners' portfolio companies. <i>Id.</i> at 11. • Paid \$290,000 to an investment firm to satisfy his personal funding obligation to that firm. <i>Id.</i> <p style="text-align: center;"><i>COURT ACTIVITIES</i></p> <p>Defendant Faber answered the complaint on May 4, 2004. Docket No. 3. Since then, the parties have spent substantial resources arguing over a plethora of discovery issues. In a memorandum opinion issued on February 21, 2007, the court ruled on eight discovery motions that the parties had placed before it. Thereafter, however, the parties raised other issues for which the court has scheduled – and repeatedly rescheduled – evidentiary hearings. Docket No. 57.</p> <p style="text-align: center;"><i>CALENDAR</i></p> <p>The next evidentiary hearing is scheduled for June 19, 2007.</p> <p>This summary includes docket entries through May 1, 2007. ■</p>
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**VANTAGEPOINT
(DEFENDANT)**

<p style="text-align: center;"><i>Brad Greenspan</i> v. <i>InterMix Media, Inc., et al.</i></p> <p style="text-align: center;">Super. Ct. (Los Angeles Cty., Cal.) Case No. BC-338786 Honorable Carolyn B. Kuhl</p> <p style="text-align: center;">Complaint filed on Aug. 24, 2005</p>	<p style="text-align: center;"><i>PLAINTIFF</i></p> <p>Sole plaintiff Brad Greenspan founded defendant InterMix Media ("InterMix") in 1999.</p> <p>Initially incorporated as eUniverse, InterMix was established to develop and manage websites catering to teens and adults. Four months after its founding, the firm went public on the OTC Bulletin Board; it later moved to the NASDAQ SmallCap Market.</p> <p style="text-align: right;"><i>(continued on next page)</i></p>
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PLAINTIFF’S COUNSEL

Gregory R. Smith, Esq.
Benjamin T. Wang, Esq.
Irell & Manella
(Los Angeles, Cal.)

DEFENDANT’S COUNSEL

Michael D. Torpey, Esq.
Stephen M. Knaster, Esq.
Orrick, Herrington & Sutcliffe
(San Francisco, Cal.)

CAUSES OF ACTION

1. Intentional interference with prospective economic advantage
2. Unfair business acts and practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*
3. Breach of fiduciary duty (duty of loyalty)
4. Breach of fiduciary duty (duty of disclosure)
5. Breach of fiduciary duties in the context of a change of control transaction
6. Aiding and abetting breach of fiduciary duty
7. Indemnification (arising from defendant InterMix’s alleged failure to indemnify Greenspan against certain third-party legal actions)

CASE HISTORY

Compl. filed:	Aug. 24, 2005
FAC filed:	Feb. 21, 2006
Court’s partial dismissal with prejudice filed:	Nov. 28, 2006
Pl.’s appeal filed:	Jan. 24, 2007

DEFENDANTS

Defendants include InterMix, many of InterMix’s officers and directors, and the following venture funds:

- **VantagePoint Venture Partners** (VantagePoint Venture Partners IV, VantagePoint Venture Associates IV, and VantagePoint Venture Partners IV Principals Fund)
- **Alpha Holdings** (Alpha Holdings IV)

Also named as defendants are several of the venture funds’ principals and professional advisors, including:

- David Carlick, Andrew Sheehan, and Alan Salzman, all of whom are managing directors of one or more of the VantagePoint funds; and
- Richard Harroch, Esq., who is a Partner at Orrick, Herrington & Sutcliffe (San Francisco, Cal.).

InterMix encountered financial difficulties in 2002 and was delisted in 2003, after which it re-established itself with funding from VantagePoint. InterMix merged with a subsidiary of Rupert Murdoch’s News Corporation in September 2005.

LITIGATION HISTORY

Over the past two years, InterMix has been the target of several lawsuits over the manner in which VantagePoint gained control of the company and then merged the firm into News Corporation.

- *Greenspan v. Salzman, et al.*, Case No. BC 328558 (Cal. Super. Ct., Los Angeles Cty., filed Feb. 10, 2005)
- *Friedmann v. Internix Media, et al.*, Case No. BC 339083 (Cal. Super. Ct., Los Angeles Cty., filed Aug. 30, 2005)
- *Sheppard v. Rosenblatt, et al.*, Case No. BC 338945 (Cal. Super. Ct., Los Angeles Cty., filed Aug. 26, 2005)

THE COMPLAINT

In his complaint, Greenspan alleges that he was forced out of InterMix in 2003 because of events related to VantagePoint’s investment. What makes the case of particular interest are the potential damages. That is, after Greenspan left InterMix, one of the firm’s websites – MySpace.com – underwent exponential growth and now ranks as one of the Internet’s most popular websites. In his complaint, Greenspan argues that he had a key role in establishing MySpace.com and that defendants unfairly deprived him of his stock and options.

Greenspan filed the instant action less than 30 days before InterMix’s deal with News Corporation closed. In his initial complaint, however, he brought only a single cause of action – for breach of fiduciary duty – against the firm’s directors, managers, and investors.

At the time of the filing, Greenspan was represented by Girardi & Keese (Los Angeles, Cal.) and Wasserman, Comden, Casselman & Pearson (Tarzana, Cal.). Greenspan subsequently brought on new counsel, who amended the complaint on February 21, 2006, five months after the merger closed.

Although Greenspan’s complaint alleges a continuous temporal spectrum of wrongdoing by InterMix’s management team, directors, and investors, the case coalesces along just two key event sequences: (1) events associated with Greenspan’s allegedly forced resignation from InterMix in 2003; and (2) defendants’ alleged failure to act in the best interests of InterMix’s shareholders in the 2005 merger.

ALLEGATIONS REGARDING PLAINTIFF’S RESIGNATION

In 2003, InterMix encountered a host of financial problems that resulted in the firm’s delisting by NASDAQ. Allegedly to help solve those problems, Greenspan “voluntarily reduced his salary, forfeited his bonus, deferred his salary during

(continued on next page)

certain months, and allowed his stock to be used as collateral for the Company for no consideration[.]”

In mid-2003, InterMix entered into a two-phase agreement with the VantagePoint defendants. Under the first phase of that agreement, VantagePoint: (1) provided InterMix with debt financing of \$2 million; and (2) acquired an option to purchase approximately \$4 million of InterMix stock at \$1.10/share from a third-party shareholder. This phase of the deal closed in July 2003.

The agreement’s second phase allegedly called for VantagePoint: (1) to purchase \$8 million in additional stock at \$1.50/share; and (2) to provide InterMix with a \$20 million line of credit. According to the complaint, problems arose when InterMix and VantagePoint negotiated the line of credit’s final terms and conditions.

In September and October 2003, Greenspan became concerned that VantagePoint was attempting to delay the negotiation and due diligence process in order to weaken the Company and obtain better terms. . . . Contrary to representations during the negotiations of Phase One, [defendants] Salzman and Harroch informed Greenspan that VantagePoint would not provide a traditional line of credit, but would only consider extending capital in its sole discretion and only in exchange for equity[.]

Greenspan alleges that VantagePoint, in order to impose its financing plan on InterMix, conspired with certain directors, who then voted to accept VantagePoint’s financing offer. Greenspan contends that he was thus placed in a position in which he was forced to resign as Chairman and CEO, which he did in October 2003.

ALLEGATIONS REGARDING THE MERGER

Greenspan alleges that InterMix was again faced with financial problems in mid-2005, and that it then sold a 25% interest in MySpace.com “to venture capital firm RedPoint Ventures for the relative pittance of \$11.5 million.”

Thereafter, InterMix apparently sought to sell the entire firm, and it then entered into preliminary discussions with several companies, including News Corporation. Greenspan contends, however, that InterMix’s directors acted only to better their own finances.

Instead of initiating an auction, contacting the suitors that had expressed an interest in the Company earlier in the spring, pursuing other options such as spinning off MySpace to maximize value to shareholders, or even hiring an investment bank to provide independent financial advice to the Company to ensure that it would maximize shareholder value, the Board of Directors focused on a deal with News Corporation that would serve their own interests at the expense of the interests of the Company’s shareholders.

In July 2005, News Corporation offered to acquire InterMix’s common stock at \$12/share and to pay premiums to owners of preferred stock. InterMix’s board voted to accept the offer in September 2005, shortly after rejecting an offer tendered by a group of investors led by Greenspan.

Greenspan’s complaint details events surrounding the acceptance of News Corporation’s offer and alleges that InterMix’s directors and venture backers used their power to obtain financial rewards for themselves, at the expense of the firm’s shareholders.

COURT ACTIVITIES

In a ruling on November 28, 2006, the court left plaintiff with but a shell of a complaint. (In its ruling, however, the court made it clear that it was not dismissing the entire complaint.)

On January 24, 2007, plaintiff Greenspan appealed the court’s ruling to the Court of Appeal of the State of California, Second Appellate District, where it was lodged as Case No. B196434.

CALENDAR

Greenspan has yet to file his opening brief in the matter on appeal.

This summary includes docket entries through May 1, 2007. ■

**PIEDMONT VENTURES
(DEBTOR)**

*In re Piedmont Venture Management
In re Piedmont Venture Capital Management
In re PVP of Charlotte*

U.S. Bankruptcy Court (W.D.N.C.)
Case Nos. 05-32242, 05-32243, 05-32244,
05-3517, 05-3519 & 06-3251
Honorable J. Craig Whitley

Bankruptcies filed on May 27, 2005

BANKRUPTCY CASES

DEBTORS' COUNSEL

Anna C. Wright, Esq.
Grier & Furr
(Charlotte, N.C.)

TRUSTEE

R. Keith Johnson, Esq.
Office of the U.S. Trustee
(Charlotte, N.C.)

**LIQUIDATOR'S ADVERSARY PROCEEDING
(CASE NO. 06-3251)**

PLAINTIFFS' COUNSEL

Arcangela M. Mazzariello, Esq.
L/O of Arcangela M. Mazzariello
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Brannon J. Buck, Esq.
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Walker P. Badham, III, Esq.
Maynard, Cooper & Gale
(Birmingham, Ala.)

Gary W. Jackson, Esq.
The Jackson Law Group
(Charlotte, N.C.)

DEFENDANTS' COUNSEL

John N. Cox, Esq.
Dickie, McCamey & Chilcote
(Charlotte, N.C.)

Adrienne Huffman, Esq.
Hamilton, Moon, Stephens, Steele & Martin
(Charlotte, N.C.)

CAUSES OF ACTION

(LIQUIDATOR'S ADVERSARY PROCEEDING)

1. Breach of investment contracts
2. Fraud
3. Gross negligence
4. Negligence
5. Breach of fiduciary duty

BACKGROUND

Two affiliated VC firms – **Piedmont Venture Management** and **Piedmont Venture Capital Management** – voluntarily filed separate Chapter 7 bankruptcies on May 27, 2005. Both firms are based in Charlotte, N.C., and were founded by Stacy Anderson. At their zenith, the firms managed \$45 million.

1. Debtor Piedmont Venture Management is GP of Piedmont Venture Partners, a \$19 million fund started in 1996. The fund's LPs number in excess of 100 and include Bank of America, Duke Energy, and Travelers Insurance.

Debtor's bankruptcy schedules disclose:

- Assets of \$2.25 million, all but \$25,000 of which are accounts receivable from the other Piedmont entities.
- Liabilities of \$4.0 million, including \$1.68 million owed to Bank of America and \$2.25 million owed to Anderson and her relatives.
- The company's income during the period from January to May 2005 was \$21.
- Anderson owns 95% of the company's stock.

2. Debtor Piedmont Venture Capital Management is GP of Piedmont Venture Partners II, a \$26 million fund Anderson started in 2000. Many of the fund's LPs are investors in Anderson's first fund, including Bank of America, Travelers Insurance, and scores of individuals. Blue Cross and Duke University are also LPs.

Debtor's bankruptcy schedules show assets of \$76,000 and liabilities of \$1.95 million, although the liability total includes the aforementioned \$1.68 million loan from Bank of America, for which both Piedmont debtors are liable. The filings also show that Anderson owns 100% of the firm's stock.

PIEDMONT'S INVESTMENT FOCUS

The Piedmont funds typically made \$1 million to \$2 million investments in medium to high technology companies headquartered in North Carolina. The funds' portfolio companies include BuildNet, Adhesion Technologies, Entegra, MultiNet Communications, 58k.com, Ischemia Technologies, and Regeneration.

However, the funds occasionally broke the technology mold to invest in sports-related firms, such as Total Sports, which went public in 1999. [Anderson's husband is Mike Gminski, former Duke University basketball standout who went on to average 11.7 points/game in 14 NBA seasons.]

Signs of financial problems with the Piedmont funds surfaced in early 2004, and the funds were the focus of an investigative article in the *Charlotte Business Journal* on May 14, 2004.

LPS' ADVERSARY PROCEEDING

On November 11, 2005, LPs Delores and William Ray lodged an adversary proceeding against the five Piedmont corporate entities, as well as against Anderson and Neal. Case No. 05-3517, Docket No. 1. The suit was brought as a derivative action under FRCP 23.1 on behalf of all LPs. The nine-count complaint alleged gross misconduct, fraud, suppression, breach of fiduciary duty, and flagrant self-dealing.

In December 2005, the court consolidated the Ray action with another adversary filing (Case No. 05-3519) under Case No. 05-3517. However, on May 19, 2006, the court dismissed the consolidated adversary action without prejudice. Case No. 05-3517, Docket No. 63.

(continued on next page)

- 6. Suppression and concealment
- 7. Breach of duty of care
- 8. Breach of duty of loyalty
- 9. Violation of the North Carolina Unfair and Deceptive Trade Practices Act
- 10. Violation of the North Carolina Securities Act

CASE HISTORY

Bankruptcy petitions filed:	May 27, 2005
LP's adversary proceeding filed:	Nov. 11, 2005
LP's adversary proceeding dismissed:	May 19, 2006
Liquidator's adversary proceeding filed:	Sept. 1, 2006
Def. Anderson's motion to dismiss Liquidator's adversary proceeding filed:	Oct. 20, 2006

LIQUIDATOR'S ADVERSARY PROCEEDING

On September 1, 2006, the Liquidator for Piedmont Venture Partners and Piedmont Venture Partners II filed an adversary proceeding against Anderson, Neal, Piedmont Venture Management, and Piedmont Venture Capital Management. [The Liquidator is William Ray, the LP who filed the first adversary complaint.]

Opened as Case No. 06-03251, the adversary proceeding focuses on the personal liability Anderson and Neal may have for certain actions they took while operating the Piedmont funds. The adversary proceeding is brought by the plaintiff funds (Piedmont Venture Partners and Piedmont Venture Partners II) directly; it is not a derivative action. (On August 29, 2005, several LPs filed a derivative action on behalf of the funds in the North Carolina Superior Court (Mecklenburg Cty.), Case No. 05-CVS-15862. However, the case was dismissed without prejudice on April 21, 2006, with the court ruling that the parties had failed to pursue the intracorporate remedies available to them.)

The allegations in the Liquidator's complaint are numerous and wide-ranging, with both Anderson and Neal accused of grossly mismanaging all of the now-bankrupt Piedmont funds and causing investors to lose millions of dollars.

This action is brought against the defendants for their abuse of authority, their willful failure to fulfill the fiduciary duties owed to the Funds and/or Limited Partners, their breaches of good faith and fair dealing and for their acts of fraud and suppression. Among other things, the Defendants utilized their positions of authority for their own financial gain, all while they suppressed information related to the Funds' deteriorating financial conditions and, in particular, the devastating losses these funds suffered at the hands of these actors. As a result, the Funds have suffered substantial financial losses totaling in the tens of millions of dollars as a direct result of the Defendants' wrongful acts.

Complaint at 3.

The complaint contends that defendants' alleged wrongdoing ran along the following three primary paths.

1. Failure to establish sufficient internal controls
2. Entry into transactions with related parties and commingling of funds
3. Failure to exert a reasonable duty of care

Plaintiffs contend that the controls defendants set up to monitor and manage investment decisions were essentially intended to disguise and, indeed, encourage fraud.

[T]he defendants took advantage of their positions of authority and engaged in various acts of malfeasance. Upon information and belief, the Defendants failed to set up and maintain internal controls to ensure proper oversight of the Funds' assets, including, without limitation, controls to ensure the integrity of the Funds' financial statements, controls to detect and prevent related-party transactions and controls to prevent co-mingling of the Funds' assets. Furthermore, the Defendants represented both in sales materials and in insurance applications that there was an active Board of Directors and Executive Review Board. This proved to be untrue, however, as such Boards met only one known occasion and never provided any guidance or oversight to the Defendants as management.

Complaint at 12.

These allegations are classic within actions to pierce the corporate veil, and they serve to emphasize that all of a fund's boards – be they corporate, compensation, or investment review – should not merely be Potemkinesque constructs whose members are but figureheads.

Also, the above excerpt's reference to defendants' representations made "in insurance applications" is interesting, and it is surprising that firms that insure venture groups do not play a larger role in making certain that a venture firm's various boards do indeed provide the support and advice for which they are intended.

The complaint, however, goes far beyond mere lack-of-oversight allegations, with plaintiffs contending, "Defendants used the lack of internal controls to actively

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engage in fraud and suppression, as well as other misconduct contrary to the best interests of the Funds and the Limited Partners.” *Id.* Plaintiffs come only a tad shy of contending fraud *ab initio*, but nonetheless allege that defendants ran the internal boards to defraud investors, not protect them.

The complaint also alleges defendants used the Piedmont funds’ capital to invest in companies in which defendants had a prior personal interest. The complaint, however, cites only one such example – a firm called “Persimmon IT” – and fails to provide any statement of evidence surrounding the alleged investment.

Even less evidence is provided regarding defendants’ alleged commingling of funds, with the complaint simply reciting perfunctory assertions that defendants’ “actions included taking the capital of one Fund and, for no purpose other than concealing the losses suffered at the hands of the Defendants, transferring such capital to the other Fund.” *Id.* at 15.

Overall, plaintiffs’ allegations are especially strong and certainly alert the court to the potential of wrongdoing, but the complaint provides minimal evidence supporting many of the allegations.

Plaintiffs do, however, present one particular event in support of their allegations that defendants failed to exert an adequate duty of care. If true, the action caused the funds to lose – in short order – \$2 million of the \$45 million under management.

Fund II invested \$2 Million in portfolio company WestStar. In contravention of a standard practice of venture capital investing, the Defendants, upon information and belief, failed to obtain any type of forbearance agreement before making the WestStar investment. Upon information and belief, WestStar owed in excess of \$2 Million to BB&T, a North Carolina bank. Without a forbearance agreement, the \$2 Million invested was immediately used to pay the debt to BB&T. Shortly thereafter, WestStar filed for bankruptcy protection.

Id. at 15-16.

The complaint’s 10 causes of action are listed in the sidebar. Each claim is brought against all defendants.

MOTION TO DISMISS

Anderson moved to dismiss on October 20, 2006. Case No. 06-3251, Docket Nos. 9, 10, and 11. In that motion, defendant Anderson provides a particularly good summary of the dispute, as well as an insight into the operating history and demise of the Piedmont funds.

The Funds had been created to raise capital for investment in start-up high technology and bio-technology firms. These venture capital investments sought to incubate start-up companies, often with new technology. As a result, they were high risk investments. Only one of the companies was eventually profitable and several more were on the verge of being profitable when the technology segment of the stock market collapsed. As the capital markets contracted, many of the companies in which the Funds had invested began to struggle and ultimately closed down. Currently there are only six companies left in the portfolio of companies in which the Funds have investments.

Plaintiffs allege that in the aftermath of the collapse of the technology stock market bubble, the Defendants engaged in various negligent and intentional acts that breached the limited partnership agreements and breached the fiduciary duty which Plaintiffs allege were [*sic*, was] owed to them by the Defendants. The complaint primarily alleges that quarterly and annual reports on the status of the investments were not sent out in a regular manner for the years 2001 to 2004 (some one to three years following the losses and the notification to the investors of these very circumstances). The Complaint also alleges that the Defendants had unauthorized and prohibited dealings with companies in which they had undisclosed interests. Additionally, [Liquidator] Ray asserts that the Defendants failed to keep the monies invested in the two limited partnerships from being intermingled with personal finances. Defendant Anderson

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vehemently denies that she engaged in any activity that caused any financial losses to the Funds or that she in any way inappropriately commingled funds or inappropriately engaged in self-dealing or in dealings in companies in which she had an interest and maintains such losses were the result of the vicissitudes of the market in and around 2001. Additionally, Anderson asserts that Plaintiff Ray was a sophisticated investor made aware of the attendant risk involved in the investments made by the Funds; and that her conduct in connection with the Funds cannot form the basis of any claim against her. Contrary to Plaintiffs' contentions that the Defendants improperly removed money from the Funds, Defendant Anderson and her family pumped more than \$1.8 million into the funds after their precipitous decline, in an effort to salvage the investors' interests.

Docket No. 10 at 2-3 (footnotes omitted).

In her motion, defendant Anderson also proffers multiple quasi-standard arguments for dismissal, including that: (1) plaintiffs lack standing to bring suit; (2) plaintiffs fail to state a cause of action under FRCP 12(b)(6); (3) plaintiffs' filing was outside the statute of limitations; and (4) plaintiffs have failed to plead certain matters with the particularity required under FRCP 9(b).

Of interest to the VC community are plaintiffs' claims brought under North Carolina's Securities Act (N.C. Gen. Stat. § 78A-1, *et seq.*) and Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. § 75-1.1, *et seq.*, or "UDTPA"). Defendant contends, however, that UDTPA does not regulate securities and other financial transactions, and that plaintiffs' remedies, if any, lie solely under the Securities Act.

Count IX of Plaintiffs' Complaint should be dismissed as North Carolina's Unfair and Deceptive Trade Practices Act ... does not apply to cases involving securities or other financial instruments involved in raising capital. *White v. Consolidated Planning, Inc.*, 166 N.C. App. 283 (N.C. App. 2004); *Skinner v. E.F. Hutton & Co.*, 314 N.C. 267, 275 (N.C. 1985) (UDTPA does not apply to securities transactions as they are already subject to "pervasive and intricate regulation" under the Securities Act).

Docket No. 10 at 16.

CALENDAR

The only matter of significance before the court in any of the open cases is the adversary proceeding brought by the Liquidator. Defendant Anderson's motion to dismiss will come for hearing on July 26, 2007. Docket No. 28.

This summary includes docket entries through May 1, 2007. ■

**DIAMOND VENTURES
(PLAINTIFF)**

Diamond Ventures
v.
Hector Baretto

U.S. District Court (D.D.C.)
Case No. 03-1449
Honorable Gladys Kessler

Complaint filed on June 30, 2003

PLAINTIFF'S COUNSEL

Joshua N. Rose, Esq.
Rose & Rose
(Washington, D.C.)

PLAINTIFF

Plaintiff **Diamond Ventures** is an Atlanta-based seed VC firm that was formed in 2001 by two African-American males, C. Earl Peek and Lonnie Saboor.

DEFENDANT

Defendant Hector Baretto is Administrator of the SBA.

COMPLAINT OVERVIEW

Diamond filed suit against the SBA on June 30, 2003, alleging the organization discriminates against minorities.

Of interest to the venture community is that Diamond is suing the SBA for violation of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 *et seq.* (ECOA). Diamond specifically argues that all SBIC applications are "credit applications" and are thus subject to ECOA.

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DEFENDANT’S COUNSEL

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 Alan Burch, Esq.
 Kenneth L. Wainstein, Esq.
 Roscoe C. Howard, Jr., Esq.
U.S. Attorney’s Office
 (Washington, D.C.)

CAUSES OF ACTION

1. Discrimination
2. Discrimination based on plan to serve minority customers

CASE HISTORY

Compl. filed:	June 30, 2003
SAC filed:	Dec. 12, 2003
SAC answer filed:	Jan. 16, 2004
Def.’s motion to dismiss SAC filed:	Feb. 18, 2004
Def.’s motion to dismiss SAC denied:	June 8, 2004
Pl.’s motion to compel filed:	Feb. 8, 2005
Pl.’s motion to compel granted:	Apr. 18, 2005
Def.’s appeal of order to compel filed:	June 16, 2005
Appellate court ruling on order to compel issued:	July 7, 2006

CASE BACKGROUND

Peek and Saboor formed Diamond with the goal of qualifying as an SBIC and then using the company and its resources to fund “companies in low income, high minority population areas.” In the SAC, which is the complaint currently before the court, Diamond maintains this strategy complied with the long-standing intent of the SBIC program.

Under the SBIC program, the SBA provides capital commitments to licensed [SBICs] ... A licensed SBIC can borrow up to 300% of its regulatory capital under the program. The SBIC then identifies a client and structures a deal whereby the client will have use of the funds during a specified term. The SBIC then asks the SBA for a draw ... to fund the deal.

Docket No. 47 at 3.

Plaintiff Diamond states it first applied to the SBA for participation in the SBIC program in December 2001, but that its application was rejected. In all, Diamond applied for SBIC status four times and was rejected each time, with the SBA concluding that Diamond’s experience “is not sufficiently similar to SBIC activity to meet the minimum requirements of the program.”

CAUSES OF ACTION

Plaintiff Diamond’s causes of action are intimately predicated on the novel theory that the SBA is a credit-granting institution subject to ECOA, and that plaintiff’s “efforts to secure an SBA invitation to submit an SBIC license application and the SBA responses to it were all part of a credit transaction within the meaning of 15 U.S.C. 1691.” *Id.* at 8.

To plaintiff Diamond’s benefit, ECOA’s definition of a “creditor” is expansive.

The term “creditor” means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

15 U.S.C. § 1691a(e).

On February 18, 2004, defendant SBA filed a motion to dismiss the SAC under FRCP 12(b)(6) (“failure to state a claim upon which relief can be granted”). The SBA based its motion on the assertion that plaintiff’s theory is simply invalid.

[T]he SBIC program does not involve an extension of credit. The statute was not designed to reach the capital markets generally, but any interpretation of the statute to reach this case would inevitably pull in a broad portion of the nation’s financial markets. Accordingly, it is important to limit the scope of ECOA to its statutory definition of credit.

Docket No. 21 at 14.

In its opposing papers, plaintiff Diamond summarizes its position.

The SBA is a creditor within the meaning of the ECOA because it decides whether the SBIC will have the right to incur debt and defer repayment within the SBIC program. It is a creditor because it arranges for the refinancing of and repayment of the debt once it is incurred. It is a creditor because it refers licensed SBIC’s with leverage to its agents who carry out the mechanics of the transaction. Any of these roles is sufficient to subject defendant to the anti-discrimination requirements of the ECOA. Defendant plays all of those roles. It is a creditor.

Docket No. 23 at 9.

On June 8, 2004, the court denied defendant’s motion to dismiss.

POTENTIAL IMPACT ON VCS

Extension of ECOA to the SBA might affect VC firms indirectly. To wit, if the SBA is a “creditor” under ECOA, then could a VC fund also be construed to be a creditor? Could bridge loans fall under ECOA? Is this a backdoor to federal regulation of VC funds?

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	<p style="text-align: center;">DISCOVERY</p> <p>Plaintiff Diamond sought to obtain SBIC applications that had been submitted to the SBA by applicants during 2001 and 2002. The SBA objected to this demand and moved for a protective order prohibiting such discovery on the basis that the applications contain proprietary and confidential information. The court, however, denied that motion on January 18, 2005.</p> <p>Then, plaintiff Diamond moved the court to compel the SBA to produce the documents that had been the subject of the SBA's denied motion for a protective order. On April 18, 2005, the court granted plaintiff's motion to compel, thereby ordering the SBA to produce more than 300 applications that had been submitted by SBIC applicants during 2001 and 2002. Docket No. 41. Then, on April 22, 2005, the SBA moved to stay the order until the Solicitor General could evaluate the merits of pursuing an interlocutory appeal. The SBA argued the stay would be in the public interest.</p> <p>The public interest favors the stay because there are hundreds of other applicants to the SBIC program who have a keen interest in the protection of the trade secrets and confidential commercial information in their SBIC applications. [Citation] At the same time, it would be grossly unfair not only to the other applicants, but also to those who have considered applying, if Mr. Peek [of plaintiff Diamond] were to receive, by virtue of this lawsuit, an unprecedented opportunity to study the core business strategies, tactics, sources, ideas, and investors of what amounts to an entire industry. The public interest factor overwhelmingly favors the stay.</p> <p>Docket No. 42 at 3 – 4.</p> <p>On June 16, 2005 – while awaiting a ruling on its motion to stay the order to compel – defendant SBA appealed the order to the U.S. Court of Appeals (D.C. Cir.), which appeal was lodged as Case. No. 05-5258. Docket No. 45. On July 19, 2005, the district court denied defendant SBA's motion to stay as moot, since the SBA had filed its interlocutory appeal. Docket No. 46.</p> <p>On July 7, 2006, the U.S. Court of Appeals (D.C. Cir.) ruled on defendant SBA's appeal, holding that the district court had abused its discretion in permitting both plaintiff Diamond <u>and</u> its counsel to view the SBIC applications that other firms had filed. The result of this ruling is that the applications will be reviewed only by plaintiff's counsel. Following the ruling, the parties filed proposed discovery schedules, and the court has several times thereafter stayed or otherwise delayed the proceedings.</p> <p style="text-align: center;">CALENDAR</p> <p>The parties are proceeding toward the discovery cut-off date of September 21, 2007. This summary includes docket entries through May 1, 2007. ■</p>
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**CSFB
(DEFENDANT)**

<p>Frank Scognamillo, et al. v. Credit Suisse First Boston, et al.</p> <p>U.S. District Court (N.D. Cal.) Case No. 03-2061 Honorable Thelton E. Henderson</p> <p>Complaint filed in Super. Ct. (Maricopa Cty., Ariz.) on Mar. 2, 2002 Removed to U.S. District Court (D. Ariz.) on Apr. 8, 2002 Transferred to U.S. District Court (N.D. Cal.) on May 2, 2003</p>	<p style="text-align: center;">PLAINTIFFS</p> <p>Plaintiffs Frank Scognamillo and David Shein were the founders and majority shareholders of UVN, a provider of credit-card customer loyalty programs to brick-and-mortar companies.</p> <p style="text-align: center;">DEFENDANTS</p> <p>The following defendants were named in the initial complaint that was filed on March 2, 2002.</p> <ul style="list-style-type: none"> • CSFB (Credit Suisse First Boston) • JP Morgan Chase and JP Morgan Securities, as successors-in-interest to Hambrecht & Quist <p style="text-align: right;">(continued on next page)</p>
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CAUSES OF ACTION

NO.	CAUSE OF ACTION	AGAINST:	
		CSFB	Indiv.
1	Breach of fiduciary duty	X	X
2	Aiding & abetting breach of fiduciary duty		X
3	Negligence	X	
4	Negligence		X
5	Negligent misrepresentation	X	
6	Negligent misrepresentation		X
7	Fraud	X	X
8	Cal. Civ. Code §§ 1709 and 1710	X	X
9	Cal. Corp. Code §§ 25400 & 25500	X	X
10	Cal. Corp. Code § 25504.1	X	X

CASE HISTORY

Compl. filed: Mar. 2, 2002
Case removed to U.S. District Court (D. Ariz.): Apr. 8, 2002
Case transferred to U.S. District Court (N.D. Cal.): May 2, 2003
SAC filed: Dec. 12, 2003
TAC filed: May 3, 2004
Def. Longinotti, Quattrone, and Shell dismissed with prejudice: Aug. 25, 2005
Pls.' appeal (of dismissal) filed: Dec. 2, 2005
Fourth amended compl. filed: Oct. 12, 2005
Fifth amended compl. filed: Nov. 23, 2005
Def. CSFB, Boutros, and Duncan's answer to fifth amended compl. filed: Feb. 3, 2006

- Thomas Weisel Partners
- Frank Quattrone
- George Boutros
- Storm Duncan
- West Shell, III
- John Longinotti

Over the past five years, however, several defendants have been dismissed, and now only three remain:

- CSFB
- George Boutros
- Storm Duncan

CASE SYNOPSIS

In a deal facilitated by CSFB (San Francisco, Cal.), UVN merged with Netcentives (San Francisco, Cal.), a developer of Internet-based customer loyalty programs. Plaintiffs sued CSFB and its managers (including former Managing Director Frank Quattrone) for allegedly misrepresenting the particulars of the deal, including the financial condition of Netcentives.

THE DISPUTE

Plaintiffs founded UVN in 1997 and thereafter managed numerous customer loyalty programs, including the shopping programs for United Airlines' Mileage Plus® and Delta Airlines' SkyMiles®. In 1999, seeking a potential business relationship, plaintiffs contacted Netcentives, which marketed the Internet-based ClickRewards promotion and rewards program. Netcentives had recently had its IPO, which CSFB had underwritten.

In early 2000, allegedly relying upon information and advice provided by CSFB, UVN agreed to merge with Netcentives in a deal calling for UVN shareholders and officers to receive \$27 million in restricted Netcentives stock. Plaintiffs also allege, however, that on March 1, 2000 – 36 hours before the agreement was to be signed – CSFB changed the terms of the deal.

[Defendant] Duncan telephoned [plaintiffs] Shein and Cresto, and stated that the equity portion of the UVN merger had to be reduced by \$5 million – from \$27 million to \$22 million (the “haircut”).

Docket No. 174 at 30.

Allegedly still acting upon the advice of CSFB, UVN agreed to the haircut and signed the merger agreement on March 3, 2000. After the merger, however, the general decline of the Internet market adversely affected both Netcentives and plaintiffs.

Shortly after the Merger, the market price of the Netcentives shares declined precipitously. A year later on 3 March 2001, when Plaintiffs' holding period under Rule 144 matured, the market price for Netcentives shares was well under \$2 per share. Plaintiffs had not been able to mitigate any of their damages due to the holding period restrictions on their Netcentives shares under Rule 144 of the Securities Act of 1933.

Docket No. 174 at 39.

Netcentives filed for bankruptcy in October 2001, and the company's assets were shortly thereafter liquidated.

COURT ACTIVITY

The initial complaint was filed in Superior Court (Maricopa Cty., Ariz.) on May 2, 2002, and the case was thereafter removed to U.S. District Court (D. Ariz.). Then, on May 2, 2003, the case was transferred to U.S. District Court (N.D. Cal.). Plaintiffs then spent the next two years reworking their claims through a series of amended complaints. (Several of the corporate defendants were dismissed along the way.)

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On August 25, 2005, the court dismissed individual defendants Longinotti, Quattrone, and Shell with prejudice, thereby leaving only CSFB, Boutros, and Duncan as defendants. Docket No. 144. (Also, see Docket Nos. 158 and 163.) On December 2, 2005, plaintiffs appealed this dismissal to the U.S. Court of Appeals (9th Cir.), where it was lodged as Case No. 05-17343. Docket No. 175. The matter has been fully briefed.

On November 23, 2005, plaintiffs filed a 10-count, fifth amended complaint. (See sidebar.) Docket No. 174. CSFB, Boutros, and Duncan answered the complaint on February 3, 2006. Docket No. 186.

CALENDAR

The parties are proceeding with discovery, while awaiting the Ninth Circuit's ruling in the aforementioned appeal. The discovery cut-off date is June 9, 2008.

This summary includes docket entries through May 1, 2007. ■

**VENROCK, CHASE & JP MORGAN
(DEFENDANTS)**

CDX Liquidating Trust
v.
Venrock Associates, et al.

U.S. Bankruptcy Court (N.D. Ill.)
Case No. 04-3018
Honorable Eugene R. Wedoff

Bankruptcy petition filed on June 17, 2002,
as Case No. 02-23467

Adversary complaint filed on June 16, 2004

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Thomas L. Campbell, Esq.
S. Raja Krishnamoorthi, Esq.
Kirkland & Ellis
(Chicago, Ill.)

PLAINTIFF

This lawsuit was filed by the CDX Liquidating Trustee on behalf of the CDX Liquidating Trust, which contains the assets and liabilities of CDX Corp. (formerly Cadant, Inc.).

DEFENDANTS

The complaint names the following corporate defendants:

- **Venrock Associates** (New York, N.Y.)
- **H&Q Employee Venture Fund** (Boston, Mass.)
- **Chase Equity Associates** (New York, N.Y.)
- **JP Morgan Partners** (New York, N.Y.)
- **KB Partners Venture Fund** (Chicago, Ill.)
- The Venture Law Group (now Heller Ehrman) (dismissed on January 6, 2005)

The complaint also names Cadant's former directors: Eric Copeland, Keith Bank, C. H. Randolph Lyon, Stephan Oppenheimer, and Charles Walker.

COMPANY BACKGROUND

Venkata Majeti founded Cadant in 1998 to design, develop, and market cable modems. By 1999, the company had raised \$10.2 million from approximately 100 investors, most of whom were minor, individual investors. The company raised its first professional-level funds in 2000, when the defendant venture firms (save KB Partners) invested \$12.4 million to purchase Series A Preferred Stock.

The complaint states that Cadant neared insolvency in September 2000, but that it nonetheless received an offer from Apex Venture Partners (Boston, Mass.) to invest \$40 million at a pre-funding valuation of \$350 million.

The complaint alleges that the defendant VCs failed to act in good faith by rejecting the investment offer, and that they instead exploited their positions to obtain further control of Cadant. Specifically, the complaint alleges the VCs sought to gain that control through a series of bridge loans that were made on terms unilaterally determined by the VCs.

The defendant VCs made the first bridge loan in February 2001.

The First Convertible Loan Agreement provided a loan of \$11,000,000 with a 105 day repayment date and gave the lenders a first priority security interest in virtually all of Cadant's assets[.]

Docket No. 1 at 18.

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<p style="text-align: center;"><u>CAUSES OF ACTION</u></p> <ol style="list-style-type: none"> 1. Breach of fiduciary duty (against Copeland) 2. Breach of fiduciary duty (against Walker) 3. Breach of fiduciary duty (against Oppenheimer) 4. Breach of fiduciary duty (against Lyon) 5. Breach of fiduciary duty (against Bank) 6. Aiding and abetting breach of fiduciary duties breach of fiduciary duty (against corporate entities) 7. Dismissed 8. Dismissed 9. Fraud (against certain VC defendants) 10. Fraud (against certain VC defendants) 11. Fraud (against certain VC defendants) 12. Fraud (against individual defendants) 13. Dismissed 14. Negligence (against certain VC defendants) 15. Negligence (against individual defendants) 16. Civil conspiracy (against all defendants) 17. Equitable subordination (against VC defendants) <hr/> <p style="text-align: center;"><u>CASE HISTORY</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Bankruptcy filed:</td> <td style="text-align: right;">June 17, 2002</td> </tr> <tr> <td>Adversary compl. filed:</td> <td style="text-align: right;">June 16, 2004</td> </tr> <tr> <td>Venture Law Group dismissed:</td> <td style="text-align: right;">Jan. 6, 2005</td> </tr> <tr> <td>Answer filed:</td> <td style="text-align: right;">Jan. 20, 2005</td> </tr> </table>	Bankruptcy filed:	June 17, 2002	Adversary compl. filed:	June 16, 2004	Venture Law Group dismissed:	Jan. 6, 2005	Answer filed:	Jan. 20, 2005	<p>Plaintiff states that the next bridge loan – for \$9 million – followed three months later and contained terms “reducing the likelihood that the Cadent common stockholders would ever receive back the amount they invested even though the lenders in the First Bridge and Second Bridge would receive a 100% profit.” Docket No. 1 at 23.</p> <p>Cadant’s business declined further, and its assets were sold to the Arris Group in 2002 in exchange for \$55 million in Arris stock. However, the price of that stock declined sharply, leaving Cadant insolvent. Cadant filed bankruptcy on June 17, 2002.</p> <p style="text-align: center;"><i>COURT ACTIVITY</i></p> <p>This adversary action, which was filed on June 16, 2004, presents 17 causes of action. (See sidebar.)</p> <p>The bankruptcy court dismissed the complaint with prejudice as against Venture Law Group on January 6, 2005. The remaining defendants (<i>i.e.</i>, the VC funds and CDX’s former directors) answered the complaint on January 20, 2005.</p> <p style="text-align: center;"><i>CALENDAR</i></p> <p>On May 10, 2005, the court ordered a bifurcated proceeding and scheduled trial in the liability phase to commence in May 2006. However, the proceeding has been much delayed, and the parties are now moving toward the liability phase’s (latest) discovery cut-off date of October 1, 2007.</p> <p>This summary includes docket entries through May 1, 2007. ■</p>
Bankruptcy filed:	June 17, 2002								
Adversary compl. filed:	June 16, 2004								
Venture Law Group dismissed:	Jan. 6, 2005								
Answer filed:	Jan. 20, 2005								

**WOOD RIVER
(DEFENDANT)**

<p style="text-align: center;"><i>SEC</i> v. <i>Wood River Capital, et al.</i></p> <p style="text-align: center;">U.S. District Court (S.D.N.Y.) Case No. 05-8713 Honorable Naomi R. Buchwald</p> <p style="text-align: center;">Complaint filed on Oct. 13, 2005</p> <hr/> <p style="text-align: center;"><u>PLAINTIFF’S COUNSEL</u></p> <p style="text-align: center;">Peter H. Bresnan, Esq. Kevin O’Rourke, Esq. C. Joshua Felker, Esq. SEC (Washington, D.C.)</p>	<p style="text-align: center;"><i>PLAINTIFF</i></p> <p>The SEC is the sole plaintiff.</p> <p style="text-align: center;"><i>DEFENDANTS</i></p> <p>The complaint names the following defendants:</p> <ul style="list-style-type: none"> • Wood River Capital Management • Wood River Associates • Wood River Partners • Wood River Partners Offshore • John Whittier (Founder & Owner of the Wood River entities) <p style="text-align: center;"><i>BACKGROUND</i></p> <p>In 2003, defendant John Whittier began operating the Wood River entities, which included two hedge funds: Wood River Partners and Wood River Partners Offshore. He allegedly thereafter raised \$265 million, while assuring investors he would invest across a broad spectrum of industries, with no more than 10% of the invested funds placed in any single company.</p> <p style="text-align: right;"><i>(continued on next page)</i></p>
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DEFENDANTS' COUNSEL

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RECEIVER

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RECEIVER'S COUNSEL

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Marc D. Rosenberg, Esq.
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Kaye Scholer
(New York, N.Y.)

CAUSES OF ACTION

1. Violation of § 10(b) of the Securities Exchange Act of 1934
2. Violation of § 17(a) of the Securities Act of 1933
3. Violation of §§ 206(1) and (2) of the Investment Advisers Act of 1940
4. Violation of §§ 13(d) and 16(a) of the Securities Exchange Act of 1934 and related SEC Rules

CASE HISTORY

Compl. filed: Oct. 13, 2005
Receiver appointed: Oct. 31, 2005

THE COMPLAINT

In a complaint filed on October 13, 2005, the SEC alleged that the Wood River funds were actually Ponzi schemes and that Whittier had committed numerous securities violations in operating the funds. Among the specific violations alleged is one regarding the defendant funds' accumulation of a large stock position in EndWave Corporation [NASDAQ: ENWV] without filing required documents.

By July 2005, ... the common stock of EndWave Corporation accounted for more than sixty-five percent of Wood River Partners' claimed \$265 million assets under management. Wood River Partners purchased so many shares of EndWave stock that at one point the fund owned more than forty percent of the issuer's outstanding shares. But until last week, the Defendants never disclosed the size of their position in EndWave. The Defendants filed neither the stock ownership reports that were required to be filed when the fund's position exceeded five percent of the issuer's outstanding shares, nor the reports required to be filed when the fund's position exceeded 10 percent.

Docket No. 1 at 2.

COURT ACTIVITIES

On October 31, 2005, the court froze defendants' assets and appointed Arthur J. Steinberg (Kaye Scholer) as Receiver. Docket No. 7. The court later granted plaintiff's motion to have the Receiver liquidate certain assets and terminate certain leases. Docket No. 25.

Since early 2006, court activities have largely involved the following agreements between the Receiver (on behalf of Wood River) and various third parties.

1. On April 17, 2006, the court approved an agreement between the Receiver and non-litigant JonesTrading Institutional Services (Boston, Mass.) under which JonesTrading agreed to pay the Receiver \$500,000 in exchange for a release from any liability the firm may have had in the Wood River matter, including any liability Wood River might have asserted in bankruptcy. Docket No. 70.
2. On January 17, 2007, the court approved a settlement between Wood River and non-litigant Millennium Partners, a firm whose funds Wood River managed from November 2004 to mid-2005. Under the terms of the agreement, Millennium will pay Wood River \$1,000,000 to settle all claims Wood River may have had against Millennium for unpaid management fees. Docket No. 95.
3. On February 16, 2007, the court approved a settlement between Wood River and non-litigant JPMorgan Chase, whereby the parties resolved matters related to \$11.8 million that JPMorgan Chase held on behalf of Wood River. Docket No. 97.
4. On April 20, 2007, the court approved the stipulation that had been reached by Lehman Brothers and Wood River on an \$8.3 million claim Lehman Brothers had filed regarding EndWave stock it had purchased on behalf of Wood River. Docket No. 103.

RELATED CRIMINAL CASE

A criminal action was filed against Whittier on February 1, 2007. See Case No. 07-CR-087 filed in U.S. District Court (S.D.N.Y.).

CALENDAR

On April 18, 2007, the court stayed the proceeding pending resolution of the criminal action against Whittier. Docket No. 102.

This summary includes docket entries through May 1, 2007. ■

**VSP CAPITAL
(PLAINTIFF)**

Venture Strategy Mgmt. Co. II, et al.
v.
Matthew Crisp, et al.

Super. Ct. (San Francisco Cty., Cal.)
Case No. 05-444880
Honorable Arlene T. Borick

Complaint filed on Sept. 14, 2005

PLAINTIFFS' COUNSEL

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DEFENDANTS' COUNSEL

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**CAUSES OF ACTION
COMPLAINT**

1. Breach of fiduciary and aiding and abetting breach of fiduciary duty (I)
2. Constructive fraud (I)
3. Breach of fiduciary and aiding and abetting breach of fiduciary duty (II)
4. Constructive fraud (II)
5. Misrepresentation and deceit

**CAUSES OF ACTION
SECOND AMENDED CROSS-COMPLAINT**

1. Breach of contract
2. Wrongful discharge in violation of public policy
3. Constructive discharge
4. Invasion of privacy (intrusion into private affairs)
5. Invasion of privacy (public disclosure of private facts)
6. Defamation
7. Conspiracy

BACKGROUND

Joanna Rees-Gallanter and Steve Abbott formed **VSP Capital** in 1996 to invest in consumer-product and electronic-commerce companies. From 1996 to 2003, VSP Capital formed three venture funds.

Abbott left VSP Capital in 1999 and, over the course of several years, Rees-Gallanter was joined by partners John Hamm, Matthew Crisp, Christopher Vannelli, and Tony Conrad.

THE LITIGANTS

There are two plaintiffs in the instant case.

- Venture Strategy Mgmt. Co. II, which is GP of VSP Fund II
- Venture Strategy Mgmt. Co. III, which is GP of VSP Fund III

The defendants named in the initial complaint were Matthew Crisp and Christopher Vannelli, both of whom later filed separate cross-complaints against Rees-Gallanter, Hamm, and several of the VSP entities. (On March 22, 2006, plaintiffs' complaint and Vannelli's cross-complaint were dismissed with prejudice with respect to those parties. Crisp is the sole remaining defendant.)

The relationships between the VSP entities and relevant individuals are shown in the figure on the following page. (The litigants are shown in color.)

VSP CAPITAL'S FUNDS

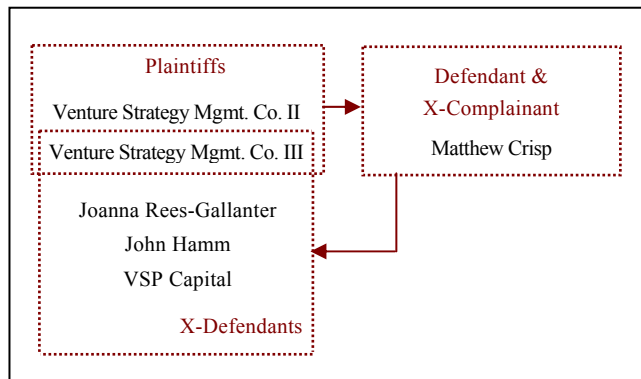
Venture Strategy Partners, VSP Capital's first fund, was managed by Venture Strategy Mgmt. Co. The fund got off to a humble start and by 1997 had raised just \$150,000; two years later, however, it had grown to \$25 million. The fund terminated in 2004. Neither Venture Strategy Partners nor Venture Strategy Mgmt. Co. is involved in the instant case.

VSP Capital's second fund was Venture Strategy Partners II ("VSP Fund II"), which started in 1999 and raised \$200 million from 75 investors. The fund's GP was (and remains) Venture Strategy Mgmt. Co. II, which had three managing directors – Rees-Gallanter, Hamm, and Crisp – but Crisp resigned in 2005.

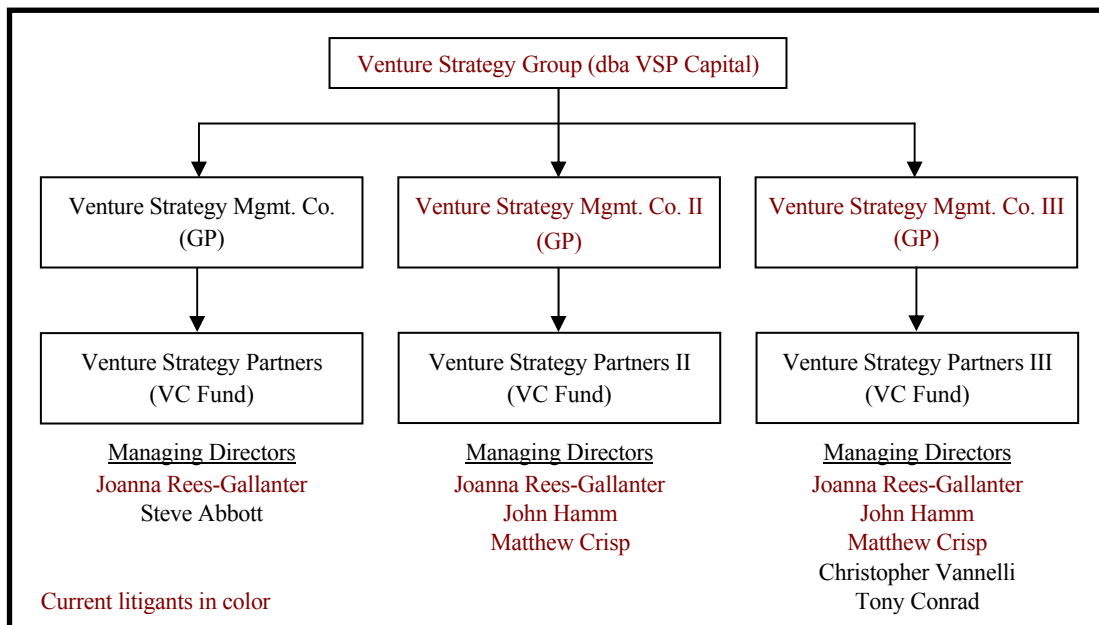
VSP Capital's third fund was Venture Strategy Partners III ("VSP Fund III"), which began in March 2005. The fund's GP was Venture Strategy Mgmt. Co. III, whose managing directors were Rees-Gallanter, Hamm, Crisp, Vannelli, and Conrad. Crisp, Vannelli, and Conrad are no longer associated with the VSP entities.

According to VSP Capital's website, VSP Fund III raised \$185 million, and it was intended to be an early-stage fund that would invest up to \$5 million in a company's first round and reserve up to \$5 million for follow-on rounds.

The relationships between the current litigants in this action are illustrated below.



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<u>CASE HISTORY</u>	<u>THE COMPLAINT</u>
Compl. filed: Sept. 14, 2005	Plaintiffs' essential allegations, as expressed in the complaint, are as follows:
Answer filed: Oct. 5, 2005	Defendants Crisp and Vannelli have engaged in a pattern of concealment, duplicity, misrepresentation, misappropriation of partnership opportunities, and wrongful appropriation of partnership assets. ...
Def. Vannelli's cross-complaint filed: Oct. 5, 2005	The tortious pattern of conduct engaged in by defendants Crisp and Vannelli occurred continuously over a several month period, and consisted of, <i>inter alia</i> , a number of breaches of their obligation to fully disclose partnership matters to VSP Mgmt. Co. III – in which they were principals and by which they were paid – as well as the wrongful use of VSP Mgmt. Co. III facilities and time to engage in activities that were competitive with and undisclosed to, and damaged, VSP Mgmt. Co. III.
Def. Vannelli's cross-complaint dismissed: Mar. 22, 2006	Plaintiffs also allege that Crisp conspired with both his father and Vannelli to deprive VSP Capital of its opportunities.
Def. Vannelli dismissed: Mar. 22, 2006	Defendant Crisp intentionally concealed from VSP Mgmt. Co. III that he and his father secretly appropriated a "partnership" opportunity to invest in a business funded by VSP Mgmt. Co. III, and thereby reduced the ability of VSP Mgmt. Co. III to earn carried interest in connection with profits made on that investment; and defendant Crisp intentionally concealed this from VSP Mgmt. Co. III and its partners[.]
Def. Crisp's initial cross-complaint filed: June 9, 2006	Defendant Crisp secretly purchased shares of securities from defendant Vannelli in another business entity that VSP Mgmt. Co. III funded[.]
Def. Crisp's FACC filed: Oct. 16, 2006	VANNELLI'S CROSS-COMPLAINT
Def. Crisp's SACC filed: Feb. 13, 2007	On October 5, 2005, Vannelli cross-complained against Rees-Gallanter, Hamm, VSP Capital, and Venture Strategy Mgmt. Co. III. In his pleading, Vannelli alleges that the following chronology of events led to his departure from the VSP entities.
	<ul style="list-style-type: none"> • Vannelli joined Venture Strategy Mgmt. Co. II in late 2002 on a part-time basis. He states he did not want to work full-time because he had on-going commitments for business and volunteer work. • In late 2004, Rees-Gallanter sought to bring Hamm into VSP Capital, and she informed Vannelli (and others at the firm) that she had personally conducted due diligence on Hamm. Rees-Gallanter then hired Hamm with little input from Vannelli or others.

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- In late 2004, Conrad left VSP Mgmt. Co. III and Vannelli was named to replace him as a managing director.
- In March 2005, Vannelli became concerned that Rees-Gallanter had withheld knowledge of his part-time status from the LPs of VSP Fund III, which knowledge he considered material.
- Vannelli alleges that Rees-Gallanter had also withheld from the LPs the material information that she and Hamm were “actively involved in a clandestine extramarital affair.” Vannelli further states that he later confronted Hamm with this allegation and that Hamm “immediately confessed that he and Rees-Gallanter were having an affair and apologized for not having told Vannelli[.]”
- Vannelli resigned on March 24, 2005, allegedly after becoming “greatly concerned about what appeared to be a pattern of dishonesty by Rees-Gallanter and Hamm toward VSP Mgmt. Co. III’s members and Fund III’s limited partners[.]”
- Defendant Crisp resigned from the firm in May 2005, and his departure triggered the LP investment agreement’s “key man” provision. This clause identified four key individuals and permitted the LPs to liquidate the fund if two of the individuals departed. (Conrad, who left the firm in 2004, was the first key man to leave.)
In May 2005, the LPs voted unanimously to dissolve VSP Fund III.

During its brief existence, VSP Fund III made three investments, one of which was in Evil Twin Studios (San Francisco, Cal.). Upon liquidation of the fund, both Rees-Gallanter and Vannelli bid on the stock the fund held in the firm. In his cross-complaint, Vannelli alleges Rees-Gallanter and Hamm interfered with his bid.

Although Vannelli had made the highest bid for Fund III’s Evil Twin Studios investment, Rees-Gallanter and Hamm proceeded to interfere with Vannelli’s purchase of those assets by causing him to be sued and served with the complaint in this action on the eve of the closing of his stock purchase. ... [Vannelli believes] that Rees-Gallanter’s true aim in bringing this lawsuit was to prevent him from purchasing the Evil Twin Studios assets by threatening him with potential liability arising out of the sale.

Vannelli’s cross-complaint presents causes of action for breach of fiduciary duty, constructive discharge, breach of the implied covenant of good faith and fair dealing, and constructive fraud.

On March 22, 2006, plaintiff VSP dismissed the complaint with prejudice as against Vannelli. On same date, Vannelli dismissed his cross-complaint with prejudice as against all cross-defendants.

CRISP’S CROSS-COMPLAINT

On June 9, 2006, defendant Crisp answered the complaint and filed a cross-complaint against all plaintiffs. On August 9, 2006, the VSP plaintiffs demurred to the cross-complaint, and Crisp filed his opposition on August 29, 2006. On October 4, 2006, the court largely sustained the demurrer (with leave to amend), and Crisp responded by filing the first amended cross-complaint (FACC) on October 16, 2006.

Similarly, in January 2007, the court sustained cross-defendants’ demurrer to the FACC, and Crisp responded with a seven-claim SACC on February 13, 2007.

The SACC has two primary foci:

- Crisp’s alleged wrongful termination (Claim Nos. 1, 2, and 3)
- Cross-defendants’ alleged intrusion into Crisp’s personal life (Claim Nos. 4, 5, and 6)

Then, a catch-all conspiracy claim follows (as Claim No. 7), with Crisp alleging that Rees-Gallanter and Hamm conspired to commit the preceding six alleged wrongs.

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In March 2007, plaintiffs: (1) moved to strike allegations in the SACC; and (2) demurred to the SACC. Oppositions and replies were filed in April 2007.

CALENDAR

In parallel with SACC-related motions, the parties are proceeding with discovery, and several discovery-related motions are before the court.

This summary includes docket entries through May 1, 2007. ■

**BAKER CAPITAL
(DEFENDANT)**

Flying Disc Investments LP, et al.
v.
Wine.com, et al.

Super. Ct. (San Francisco Cty., Cal.)
Case No. 05-447294
Honorable Arlene T. Borick

Complaint filed on Dec. 2, 2005

PLAINTIFFS' COUNSEL
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Raymond Loughrey, Esq.
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DEFENDANTS' COUNSEL
Michael A. Sitzman, Esq.
Michael Cecchini, Esq.
Gibson, Dunn & Crutcher
(San Francisco, Cal.)

- CAUSES OF ACTION**
1. Breach of fiduciary duties by controlling shareholders
 2. Breach of the implied covenant of good faith and fair dealing
 3. Unjust enrichment
 4. Fraud
 5. Violation of Cal. Corp. Code § 25401

CASE HISTORY

Compl. filed:	Dec. 2, 2005
FAC filed:	Dec. 15, 2005
SAC filed:	Dec. 14, 2006
TAC filed.:	Mar. 27, 2007

OVERVIEW

Three shareholders of Wine.com have filed an action against the company and its primary venture backer, New York City-based **Baker Capital Partners** (BCP).

The suit centers about allegations that BCP: (1) blocked a \$68 million buy-out offer for Wine.com; and (2) then exploited Wine.com's dire financial situation to increase BCP's ownership of the firm from 40% to 70% and gain full control of its board.

Plaintiffs lodged this complaint as a shareholders' derivative action. They did not make a pre-litigation demand of the company's board.

- PLAINTIFFS**
- Plaintiffs are:
- Flying Disc Investments LP
 - Chris Kitze (Wine.com shareholder & GP of Flying Disc Investments)
 - Peter Ekman (Wine.com shareholder & former CEO)

- DEFENDANTS**
- The complaint names the following defendants:
- Wine.com
 - Baker Capital Partners II
 - Baker Communications Fund II
 - Baker Communications Fund II (QP)

BCP was founded in 1995 by brothers John and Henry Baker. According to the fund's website, BCP manages \$1.5 billion and primarily invests in firms manufacturing communications equipment or providing communications-based services and applications. (John Baker was a named defendant in the initial complaint, the FAC, and the SAC, but he was dropped from the TAC.)

BCP currently holds investments in Action Engine, Adaptix, Bandalong, Broadview Networks, Dotster, EM4, Expert Realty, Interxion, Message Secure, MusicNet, Offermatica, Permabit, RiverOne, Turin Networks, and Wine.com.

WINE.COM

Founded in 1995 as eVineyard, Wine.com sells wine and related products over the Internet.

One of the last survivors of the Internet-heyday online wine market, Wine.com ran into financial difficulty and, in early 2004, sought to raise additional capital to position itself for either an acquisition or an IPO. In August of that year, BCP provided the needed mezzanine financing by investing \$17 million on a pre-funding valuation of \$22 million, purchasing Series F Preferred Stock. Upon investment, BCP owned more than 40% of Wine.com's stock. However, BCP also had certain privileges, including the right to appoint two of the firm's seven directors and the right to approve certain corporate actions, including mergers and acquisitions.

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In early 2005, Wine.com engaged the services of investment banker S. G. Cowen to identify and solicit potential buyers. In May 2005, that effort culminated in publicly traded Liberty Media issuing a letter of intent to purchase Wine.com for \$75 million. That offer – which was reduced to \$68.5 million after Liberty completed its due diligence – was to have exchanged Wine.com’s stock for freely tradable stock in Liberty.

According to the complaint, BCP then stepped in and blocked the deal. (The operative complaint is the TAC, which was filed on March 27, 2007.)

The Wine.com management and S.G. Cowen as its investment bankers advised the Board of Directors of their opinions that the second Liberty Letter of Intent proposed a transaction that would serve the best interests of the company and all of its stakeholders. After receiving that recommendation, the Board of Directors (including one Baker director; the other being absent) unanimously approved the second Liberty Letter of Intent and authorized management and the investment bankers to conclude a sale on those terms. Before that could be done, however, the Baker defendants announced that they were exercising their “blocking rights” under the Shareholders Agreement to preclude any sale or merger with Liberty on the terms proposed.

TAC at 10.

Plaintiffs also allege that BCP wielded its veto power over the proposed acquisition at a time when Wine.com was financially vulnerable.

When they blocked any opportunity for a sale to Liberty, the Baker defendants knew that Wine.com only had financial resources sufficient to continue operations for a matter of weeks. The Baker defendants also knew that they could use their power as controlling shareholders to prevent the company from obtaining additional funds (whether through borrowing money or selling stock) from any source other than the Baker defendants.

Id. at 11.

Plaintiffs also contend that the “Baker defendants then stalled presentation of their own financing proposal until the company was within a week of being forced to declare bankruptcy,” and that the Baker defendants then forced Wine.com’s board to accept BCP’s proposed reorganization of the company in August 2005.

Id. That reorganization included the following:

- BCP’s purchase of Series G Preferred Stock at a price “somewhere between one half and one fifth of the value established by the Liberty proposals and letters of intent only three months earlier[.]” *Id.* at 12.
- A reduction in the number of directors from seven to three, with “two sitting Baker directors and one more director who would also be elected by the Baker defendants as a result of the increase in their overall ownership of the equity and voting control in Wine.com from about 40% at the time of the Liberty letter of intent to nearly 70% after the reorganization.” *Id.* at 12.

Plaintiffs argue that BCP’s action alienated Wine.com’s employees, officers, former directors, and other shareholders in a manner that detrimentally affected the company.

As a direct and foreseeable result of the Baker defendants’ misconduct which permitted them to coerce the minority shareholders into acquiescing in unfair terms for the Series G round of financing in September 2005, four of the top five managers of Wine.com left the company. The Baker defendants’ actions in blocking the Liberty sale and using economic coercion to impose the onerous Series G financing terms rendered worthless all stock options held by these key managers, and made the common stock they held of questionable value as well. The value of the company and its business was further diminished by this departure of key managers on the eve of the busiest season of the year, when the company has traditionally earned about 50% of its annual revenues.

Id. at 13.

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	<p>The TAC brings five causes of action.</p> <ol style="list-style-type: none"> 1. <u>Breach of Fiduciary Duties</u>. Plaintiffs allege that defendants breached their fiduciary duties by abusing “their powers as controlling shareholders by blocking the Liberty sale in order to seize a greater share of the company at the expense of the plaintiffs and all other stakeholders[.]” TAC at 14. <p>Plaintiffs then contend defendants blocked “the company from obtaining essential operating funds through other sources in order to ensure that the Baker defendants could be the sole providers of the financing necessary to save the company from bankruptcy after they had blocked the sale to Liberty, and using the coercion of a threatened bankruptcy to force the other shareholders to acquiesce in unfair financing terms that were extremely favorable to the Baker defendants.” <i>Id.</i></p> <ol style="list-style-type: none"> 2. <u>Breach of the Implied Covenant of Good Faith and Fair Dealing</u>. Defendants allegedly breached said covenant by taking “advantage of their position as controlling shareholders to advance their own self interest, by depriving Wine.com and its other shareholders of the benefits of the bargain embodied in the Shareholders’ Agreement[.]” <i>Id.</i> at 15. 3. <u>Unjust Enrichment</u>. Plaintiffs allege that defendants intended to unjustly enrich themselves by coercing the non-BCP shareholders to accept BCP’s financing package, which package was allegedly the only way Wine.com could have averted bankruptcy. <i>Id.</i> at 15 – 16. 4. <u>Fraud</u>. 5. <u>Violation of Cal. Corp. Code § 25401</u>. <p style="text-align: center;">RELATED CASE</p> <p>Another case against BCP that involves largely the same underlying events was lodged in Super. Ct. (San Francisco, Cal.), as Case No. CGC-05-447293, on December 2, 2005.</p> <p style="text-align: center;">CALENDAR</p> <p>As of May 1, 2007, defendants had not responded to the TAC.</p> <p>This summary includes docket entries through May 1, 2007. ■</p>
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**HUMMER WINBLAD
(DEFENDANT)**

<p style="text-align: center;"><i>UMG Recordings, et al.</i> v. <i>Hummer Winblad Venture Partners, et al.</i></p> <p style="text-align: center;">U.S. District Court (N.D. Cal.) Case No. 04-1166 Honorable Marilyn H. Patel</p> <p style="text-align: center;">Complaint filed in U.S. District Court (C.D. Cal.) on Apr. 21, 2003, as Case No. 03-2785</p> <p style="text-align: center;">Transferred to U.S. District Court (N.D. Cal.) on Mar. 24, 2004</p> <p style="text-align: center;">Part of MDL: <i>In re Napster, Inc. Copyright Litigation</i> All documents are filed under Case No. 00-1369</p> <hr/> <p style="text-align: center;"><u>PLAINTIFFS’ COUNSEL</u> Stephen D. Alexander, Esq. Fried, Frank, Harris, Shriver & Jacobson (Los Angeles, Cal.)</p>	<p>This case has recently settled, and this VCLR summary reviews several of the case’s major turning points.</p> <p style="text-align: center;">PLAINTIFFS</p> <p>Plaintiffs are a multitude of music companies, including UMG Recordings, Capitol Records, Caroline Records, EMI Christian Music Group, Higher Octave Music, Interscope Records, Jubilee Communications, Motown Records, Narada Productions, and Virgin Records America. The nature of the litigation bifurcated the plaintiffs into two camps: the “EMI plaintiffs” and the “UMG plaintiffs.”</p> <p style="text-align: center;">DEFENDANTS</p> <p>The complaint names the following defendants:</p> <ul style="list-style-type: none"> • Hummer Winblad Venture Partners • Hummer Winblad Venture Partners IV • Hummer Winblad Equity Partners IV • Hummer Winblad Technology Fund IV • John Hummer • Hank Barry <p style="text-align: right;">(continued on next page)</p>
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(San Francisco, Cal.)

**COMPLAINT'S
CAUSES OF ACTION**

1. Contributory infringement of copyrights
2. Vicarious infringement of copyrights
3. Violation of Cal. Civ. Code § 980(a)(2) [75-year protection of certain pre-1972 sound recordings] and common law misappropriation
4. Statutory and common law unfair competition
5. Civil conspiracy

**COUNTERCLAIM'S
CAUSES OF ACTION**

1. Restraint of trade in violation of § 1 of the Sherman Act (15 U.S.C. §§ 1 *et seq.*) and § 4 of the Clayton Act (15 U.S.C. §§ 12 *et seq.*; treble damages).
2. Violation of Cal. Bus. & Prof. Code §§ 16726 and 16750. (Cartwright Act – restraint of trade and related actions)
3. Violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.* (California Unfair Business Practices Act)

CASE HISTORY

Compl. filed:	Apr. 21, 2003
Case transferred to U.S. District Court (N.D. Cal.):	Mar. 24, 2004
Def. Hummer Winblad dismissed with prejudice:	May 11, 2007

VENUE

This case was originally filed in U.S. District Court (C.D. Cal.) on behalf of numerous record-industry firms, as against several of the principals and partnerships associated with Hummer Winblad Venture Partners (San Francisco, Cal.).

Upon defendants' motion, the case was transferred to U.S. District Court (N.D. Cal.) on March 24, 2004, for inclusion in the centralized pre-trial proceedings in *In re Napster*. See *In re Napster, Inc., Copyright Litigation*, MDL-1369, 2000 U.S. Dist. LEXIS 15493 (J.P.M.L. Oct. 11, 2000). As such, the action was included for pre-trial proceedings with the following cases.

- *In re Napster, Inc. Copyright Litigation* (Case No. 00-1369)
- *UMG Recordings, Inc. v. Bertelsmann AG* (Case No. 04-1351)
- *Leiber v. Bertelsmann AG* (Case No. 04-1671)
- *Capitol Records, Inc. v Bertelsmann AG* (Case No. 04-2121)

THE CORE DISPUTE

In a five-claim complaint (see sidebar), plaintiffs alleged that defendants – through their backing and financial support of Napster – deliberately facilitated the “inducement, perpetuation, and expansion of the mass infringement” of plaintiffs’ numerous copyrights.

As conceived and implemented, the Napster system provided a safe haven for the rampant piracy of copyrighted works on an epic and unprecedented scale. The Napster system provided Internet users worldwide with the site and facilities to connect to one another’s computer files, to conduct nearly instantaneous searches for digital files containing copyrighted sound recordings, and to exchange these files unlawfully, anonymously, and repeatedly. As intended, infringement flourished on the Napster system, which was responsible on a daily basis for making millions of sound recordings widely available for unauthorized copying and distribution by countless individuals in the United States and around the world.

Plaintiffs sought statutory damages under 17 U.S.C. § 504(c), which permits a court to award up to \$150,000 per copyrighted work infringed.

Defendants answered the complaint on August 13, 2004, which answer was accompanied by three anti-trust counterclaims against all plaintiffs. (See sidebar.)

PLAINTIFFS ACCUSE HUMMER OF SPOILIATION

One of the case’s major turning points involved evidence of Hummer’s spoliation.

On April 28, 2006, two days before discovery cut-off, Hummer attorney Katherine Florey (Keker & Van Nest) produced a 106-page set of documents. In the letter accompanying that delivery, Ms. Florey noted, “we have found a handful of documents that should have been produced previously. ... We have also found a few documents that were accidentally omitted from our privilege and redaction logs.” Docket No. 981, Exh. 1.

Among the newly produced documents was an e-mail Ann Winblad had written in 2000, the pertinent portion of which reads as follows.

Please also be aware of our e-mail policy. As we have all been required to surrender Napster e-mails, this should reinforce compliance with our long standing policies. (1) we do not retain e-mails, it is your responsibility to delete your handled e-mails immediately ... (3) we do not retain written copies of e-mails in our files.

On June 9, 2006, plaintiffs moved for sanctions against Hummer for spoliation. See *Motion for Terminating Sanctions or, Alternatively, for Evidentiary Sanctions for Intentional Spoliation of Evidence* (“Motion”). Docket No. 977. The issue at bar was not simply a matter of neglecting to deliver a few subpoenaed documents. Rather, plaintiffs made the extraordinarily strong allegation that Hummer was guilty of mass spoliation. Plaintiffs specifically alleged that Ann Winblad, herself, ordered spoliation in the above e-mail that was sent to Hummer employees after litigation was filed against Napster.

(continued on next page)

From the inception of the Napster case, discovery was a hotly contested issue, as is evidenced by the fact that more than 500 of the case's 1,000 docket entries relate solely to discovery. Thematic in these filings was plaintiffs' oft-expressed puzzlement with the apparent paucity of documents produced by Hummer.

The Motion quantified this long-standing complaint, showing that plaintiffs UMG and EMI, as well as defendant Bertelsmann, had each produced more than ten times the documents Hummer had produced.

The truth finally came out on April 28, 2006. On that day – the very last business day before the April 30 close of discovery and after millions of dollars had already been spent on discovery – Hummer Winblad's counsel mailed out a “handful of documents that should have been produced previously,” but that counsel said had been “found” in the course of complying with [Special Master] Judge Cahill's orders. Buried in that stack of late-produced documents was the answer to the missing documents. On June 3, 2000 – in the middle of the Napster I litigation, just two weeks after Hummer Winblad invested in Napster, and one week after Hummer Winblad received its first subpoenas from the Napster I plaintiffs – Hummer Winblad name partner Ann Winblad sent an email on instructions from defendant and fellow partner Hank Barry (by then also installed as Napster's CEO) advising every Hummer Winblad partner and employee involved with Napster to delete all relevant emails so that they would not have to be turned over in litigation.

Motion at 1 – 2.

On October 25, 2006, the court issued a 26-page order (“Order”) in which it ruled on all aspects of the Motion's requested sanctions, finding that Hummer had a duty to preserve Napster-related documents at all times after June 2000. Docket No. 1134.

While declining to impose terminating sanctions, the court did conclude that Hummer's acts were sufficiently wrongful to justify lesser sanctions, including reimbursement of certain of plaintiffs' costs and fees. On November 22, 2006, UMG and EMI submitted separate applications for such cost items. UMG requested reimbursement of \$120,270 (Docket No. 1214), while EMI requested \$66,385 (Docket No. 1215).

UMG AND EMI'S SETTLEMENT AGREEMENT WITH HUMMER

On November 29, 2006, UMG and EMI reached a tentative settlement agreement with Hummer. The agreement, however, was conditioned upon satisfactory resolution of a discovery-related order the court had issued on April 21, 2006.

During January 2007, plaintiffs sought to resolve the issue by requesting that the court vacate the order in question. Specifically, on January 8, 2007, plaintiffs filed a motion entitled, *UMG and EMI Plaintiffs' Unopposed Motion to Vacate April 21, 2006 Memorandum and Order*. Docket Nos. 1238 and 1241.

The UMG Plaintiffs, EMI Plaintiffs, and Hummer Winblad Defendants (the “Parties”) have agreed to settle the disputes between them – both the claims for copyright infringement and the antitrust counterclaims – but the settlement is subject to a condition: the Parties' settlement is not effective unless and until either this Court or the Ninth Circuit enters a final, non-appealable Order that (1) vacates or reverses the April 21, 2006 Memorandum and Order re the Hummer Winblad Parties' Motion to Compel Production of Privileged Documents (the “April 21 Order”), and (2) eliminates to the Parties' reasonable satisfaction any preclusive effect of the April 21 Order in any other proceeding. ... On December 21, 2006, the Ninth Circuit granted the Parties' joint motion for a limited remand “to allow district court consideration of vacatur[.]” ... Pursuant to the Ninth Circuit's limited remand, UMG and EMI now request that this Court issue an order holding that the April 26 Order is vacated and should be denied preclusive effect in any other proceeding.

In a nutshell, the April 26 Order – the so-called “crime-fraud order” that directed the production of certain privileged documents concerning the Department of Justice investigation into digital licensing of music –

(continued on next page)

stands as an obstacle to settlement. UMG and EMI firmly believe that no crime or fraud occurred and, respectfully, that the April 21 Order was in error (which is why we appealed). However, the crime-fraud issue is collateral to the core issues in this case, and UMG, EMI, and Hummer Winblad have reached a business resolution with respect to those core issues. Months of litigation (including summary judgment hearings and Phase II discovery) may take place with respect to those issues before the Ninth Circuit rules on the appeal filed by UMG and EMI, and the Parties would much prefer to put this dispute behind them without further delay. Therefore, UMG and EMI, unopposed by Hummer Winblad (or any of the other parties in this MDL proceeding), request that the April 1 Order [*sic*, April 21 Order] be vacated now, so that finality can be achieved and the settlement can be concluded.

....

Hummer Winblad has said that it does not oppose our request to vacate the April 21 Order, and the other parties in this MDL proceeding (Bertelsmann and the Leiber plaintiffs) have likewise said they do not oppose our request.

Docket No. 1238 at 1 – 2 (second pair of brackets added).

Defendant Hummer filed a statement of non-opposition to UMG and EMI's motion on January 16, 2007. Docket No. 1245. Thereafter, the court deemed the matter submitted on the papers. Docket No. 1246.

On March 20, 2007, the court vacated the order in question.

UMG, EMI and Hummer Winblad have informed the court that they have now settled their disputes, but that settlement by its terms is not effective unless and until either this Court or the Ninth Circuit enters a final, non-appealable Order that (1) vacates or reverses the April 21 Order, and (2) eliminates to the Parties' reasonable satisfaction any preclusive effect of the April 21 Order in any other proceeding. The Ninth Circuit has issued a limited remand to this Court to allow it to decide whether to vacate the April 21 Order.

The Court has considered the parties' arguments in their papers submitted in support of their motion to vacate, and has weighed the relevant considerations as outlined in *DHX, Inc. v. Allianz AGF Mat. Ltd.*, 425 F.3d 1169 (9th Cir. 2005) and *American Games, Inc. v. Trade Products, Inc.*, 142 F.3d 1164 (9th Cir 1998). Balancing those factors, the Court concludes that it is appropriate to vacate the April 21 Order.

Accordingly, it is ORDERED that the April 21, 2006 Memorandum and Order granting the Hummer Winblad Parties' Motion to Compel Production of Privileged Documents from the UMG and EMI plaintiffs ... is hereby VACATED, de-published, and designated "NOT FOR CITATION" pursuant to Local Rule 7-14. It is the Court's express intention that the vacated Order shall have no preclusive effect in this or any other proceedings.

Docket No. 1262 at 1 (emphasis in original).

On May 10, 2007, plaintiffs EMI and UMG and defendant Hummer filed a *Stipulation of Dismissal with Prejudice*. Docket No. 1275. Then, on May 11, 2007, the court approved the stipulation. Docket No. 1276.

CALENDAR

Since this case has terminated – as against the Hummer Winblad defendants – VCLR will no longer track it.

This summary includes docket entries through May 15, 2007. ■

STOCK OPTION BACKDATING LAWSUITS INVOLVING VCS

The Venture Capitalists listed in the following table are named defendants in on-going lawsuits involving allegations of stock option backdating.

COMPANY	VC DEFENDANT	CASE
ATMEL San Jose, Cal. www.atmel.com	T. Peter Thomas (ATA Ventures)	<i>In re ATMEL Corporation Derivative Litigation</i> U.S. District Court (N.D. Cal.), Case No. 06-4592
CNET NETWORKS San Francisco, Cal. www.cnet.com	John "Bud" Colligan (Accel Partners) Peter Currie (Currie Capital)	<i>In re CNET Networks, Inc. Shareholder Derivative Litigation</i> U.S. District Court (N.D. Cal.), Case No. 06-3817 <i>In re CNET Networks, Inc.</i> Super. Ct. (San Francisco Cty., Cal.), Case No. CGC-06-452728 (consol. with Case Nos. CGC-06-452908, CGC-06-453290, and CGC-06-456430)
JUNIPER NETWORKS Sunnyvale, Cal. www.juniper.net	Vinod Khosla (Kleiner, Perkins, Caufield & Byers)	<i>In re Juniper Networks, Inc. Derivative Litigation</i> Super. Ct. (Santa Clara Cty., Cal.), Case No. 1-06-CV-064294 (consol. with Case No. 1-06-CV-064853) <i>In re Juniper Derivative Actions</i> U.S. District Court (N.D. Cal.), Case No. 06-3396
NOVELL Waltham, Mass. www.novell.com	Richard Crandell (Arbor Partners) James Robinson (RRE Ventures)	<i>In re Novell, Inc. Derivative Litigation</i> U.S. District Court (D. Mass.), Case No. 06-11625
NVIDIA Santa Clara, Cal. www.nvidia.com	Tench Coxe (Sutter Hill Ventures) James Gaither (Sutter Hill Ventures) Brooke Seawell (New Enterprise Associates and Dakota Capital)	<i>In re Nvidia Corp. Derivative Litigation</i> Super. Ct. (Santa Clara Cty., Cal.), Case No. 1-06-CV-073475 (consol. with Case No. 1-06-CV-073479) <i>Edward J. Goodman Life Income Trust v. Huang</i> U.S. District Court (N.D. Cal.), Case No. 06-6110 <i>Park v. Huang</i> U.S. District Court (N.D. Cal.), Case No. 06-6544 <i>Alaska Electrical Pension Fund v. Huang</i> U.S. District Court (N.D. Cal.), Case No. 06-6952 <i>McCarthy v. Huang</i> U.S. District Court (N.D. Cal.), Case No. 06-7035 <i>LIUNA Staff & Affiliate Pension Fund v. Huang</i> U.S. District Court (N.D. Cal.), Case No. 06-7061 <i>Markewich v. Huang</i> U.S. District Court (N.D. Cal.), Case No. 06-7416
PMC-SIERRA Santa Clara, Cal. www.pmc-sierra.com	Donald Valentine (Sequoia Capital) Alexandre Balkanski (Benchmark Capital)	<i>In re PMC-Sierra, Inc. Derivative Litigation</i> U.S. District Court (N.D. Cal.), Case No. 06-5330 <i>Meissner v. Bailey</i> Super. Ct. (Santa Clara Cty., Cal.), Case No. 1-06-CV-071329 (Donald Valentine is not a defendant)

COMPANY	VC DEFENDANT	CASE
<p>POWER INTEGRATIONS San Jose, Cal. www.powerint.com</p>	<p>E. Floyd Kvamme (Kleiner, Perkins, Caufield & Byers)</p>	<p><i>Quaco v. Balakrishnan</i> U.S. District Court (N.D. Cal.), Case No. 06-2811 <i>In re Power Integrations, Inc.</i> Super. Ct. (Santa Clara Cty., Cal.), Case No. 1-06-CV-064517</p>
<p>RAMBUS Los Altos, Cal. www.rambus.com</p>	<p>Bruce Dunlevie (Benchmark Capital) Michael Farmwald (Skymoon)</p>	<p><i>In re Rambus, Inc. Derivative Litigation</i> U.S. District Court (N.D. Cal.), Case No. 06-3513 <i>In re Rambus Inc. Securities Litigation</i> U.S. District Court (N.D. Cal.), Case No. 06-4346</p>
<p>SONUS NETWORKS Chelmsford, Mass. www.sonusnet.com</p>	<p>Paul Ferri (Matrix Partners) Edward Anderson (North Bridge Ventures)</p>	<p><i>In re Sonus Networks, Inc. Derivative Litigation</i> U.S. District Court (D. Mass.), Case No. 06-12068</p>
<p>SYCAMORE Chelmsford, Mass. www.sycamorenet.com</p>	<p>Paul Ferri (Matrix Partners) Timothy Barrows (Matrix Partners)</p>	<p><i>Ariel v. Barrows</i> U.S. District Court (D. Mass.), Case No. 06-12118 <i>Vanpraet v. Deshpande</i> U.S. District Court (D. Mass.), Case No. 06-11130 <i>Patel v. Deshpande</i> U.S. District Court (D. Mass.), Case No. 06-11207 <i>Weisler v. Barrows</i> U.S. District Court (D. Mass.), Case No. 06-12149</p>
<p>VITESSE SEMICONDUCTOR Camarillo, Cal. www.vitesse.com</p>	<p>Pierre Lamond (Sequoia Capital)</p>	<p><i>In re Vitesse Semiconductor Corp. Derivative Litigation</i> U.S. District Court (C.D. Cal.), Case No. 06-2639</p>

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