

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
INVESTCARE PARTNERS, L.P.)
)
Defendant.)

COMPLAINT FOR RECEIVERSHIP AND INJUNCTION

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

PARTIES, JURISDICTION AND VENUE

1. This is a civil action brought by the United States on behalf of its agency, the Small Business Administration (hereinafter, "SBA," "Agency" or "Plaintiff"), whose central office is located at 409 Third Street, S.W., Washington, DC 20416.

2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, "the Act"), Sections 308(d), 311, and 316; 15 U.S.C. §§687(d), 687c, 687h; the Small Business Act, 15 U.S.C. §634(b)(1); and 28 U.S.C. §1345.

3. Defendant, InvestCare Partners, L.P. (hereinafter "InvestCare" or "Licensee"), is a Delaware limited partnership that maintains its principal place of business at 32330 W. 12 Mile Road, Farmington Hills, MI 48334. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. §1391(b).

Statutory and Regulatory Framework

4. InvestCare was licensed by SBA as a Small Business Investment Company (“SBIC”) pursuant to Section 301(c) of the Act, 15 U.S.C. §681(c), on February 5, 1999, SBA License No. 05/75-0238, solely to do business under the provisions of the Act and the regulations promulgated thereunder.

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

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

7. InvestCare’s general partner is GMA Capital Limited Partnership, L.P.

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

9. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA provided funds to InvestCare through the purchase and/or guaranty of Participating Securities, a form of Leverage, as those terms are defined under the Regulations, of which \$14,987,715.00 remains outstanding.

10. The Participating Securities described in paragraph 9, above, are expressly subject to and incorporated by reference in the Regulations, including but not limited to 13 C.F.R. §§107.1820-1850 and §107.507.

11. Section 308(d) of the Act, 15 U.S.C. §687(d), provides that upon determination and adjudication of noncompliance or violation of the Act or the Regulations, all of the rights,

privileges and franchises of a Licensee such as InvestCare may be forfeited and the company may be declared dissolved.

12. Section 311 of the Act, 15 U.S.C. §687c, provides that upon a determination by SBA that a Licensee, such as InvestCare, or any other person, has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of the Act or of any Rule or Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application to a Court for an injunction, and such Court shall have jurisdiction of such action and grant a permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts or practices. The Court is authorized to appoint SBA to act as receiver for such Licensee.

COUNT ONE

FAILURE TO HONOR A WRITTEN AGREEMENT WITH SBA

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

14. SBA determined that InvestCare had a condition of Capital Impairment of 81.45% as of March 31, 2006.

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

16. By letter dated July 28, 2006, SBA afforded InvestCare an opportunity to cure its condition of Capital Impairment within fifteen days of the date of the letter.

17. InvestCare failed to cure its condition of Capital Impairment. By letter dated February 21, 2007, InvestCare was informed it had been transferred to the Office of SBIC Liquidation within SBA.

18. On or about July 6, 2010, SBA and InvestCare entered into a Wind Down Agreement, whereby InvestCare would repay SBA all outstanding Leverage within a set period of time.

19. As consideration for the Agreement, InvestCare executed a written consent to receivership and SBA forbore from commencing a receivership action. Under the terms of the Wind Down Agreement, SBA could proceed with a receivership action and the filing the consent order after July 6, 2011 if SBA determined InvestCare was no longer meeting the terms of the Wind Down Agreement. A copy of the Consent Order of Receivership executed by InvestCare's General Partners on July 12, 2010, is attached hereto. It will also be submitted separately to the Court for entry.

20. On or about July 16, 2014, SBA informed InvestCare that it was not meeting the terms of the Wind Down Agreement, as the value of InvestCare's assets were not sufficient to repay the remaining Leverage as set forth in the Wind Down Agreement. SBA agreed to commence this action no sooner than August 1, 2014.

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

22. By failing to pay the entire amount of outstanding Leverage to SBA, InvestCare has violated its Wind Down Agreement, a written agreement with SBA.

23. As a consequence of InvestCare's violation of 13 C.F.R. §507(a) of the Regulations, SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §687(d) and 687c, including the appointment of SBA as Receiver of InvestCare, as set forth in the consent order filed simultaneously herewith.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

- A. That the Court enter the Consent Order of Receivership;
- B. That injunctive relief, both preliminary and permanent in nature, be granted restraining InvestCare, its managers, general partners, agents, and other persons acting in concert or participation therewith from: (1) making any disbursements of InvestCare's funds; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any funds or assets of InvestCare, wherever such assets are located; and (3) further violating the Act or the Regulations promulgated thereunder;
- C. That this Court determine and adjudicate InvestCare's noncompliance with and violation of the Act and the Regulations promulgated thereunder;
- D. That this Court, pursuant to 15 U.S.C. §687c, take exclusive jurisdiction of InvestCare and all of its assets, wherever such assets are located, appoint SBA as receiver of InvestCare for the purpose of marshaling and liquidating the assets of InvestCare and satisfying the claims of creditors to be determined by the Court; and
- E. That this Court grant such other relief as may be deemed just and equitable.

Respectfully submitted,

BARBARA L. McQUADE
United States Attorney

Dated: October 21, 2014

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Dated: October 21, 2014

U.S. SMALL BUSINESS ADMINISTRATION

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