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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

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U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
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13	UNITED STATES OF AMERICA,)	E-Filing
14)	
15	Plaintiff,)	
16	v.)	Civ. Action No. C05 4187 JF PVT
17	NEW VISTA CAPITAL FUND, LP)	(Cover Sheet)
18	Defendant.)	Stipulation on Consent Order

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CLERK
U.S. DISTRICT COURT
OMAHA

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

3 _____)
4 **UNITED STATES OF AMERICA,**)

5 **Plaintiff,**)

6 **v.**)

Civ. Action No. C05 4187 JF

7 **NEW VISTA CAPITAL FUND, LP**)

8 **Defendant.**)
9 _____)

10 **ORDER**

11
12 Before this Court is the Complaint by the United States of America, on behalf of the
13 United States Small Business Administration ("SBA"), for a permanent injunction, and the
14 appointment of the SBA as Permanent Receiver for New Vista Capital Fund, LP. The Court,
15 being fully advised in the merits, and based upon the consent of the parties, believes this relief
16 should be granted. Therefore,
17

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

19 1. Pursuant to the provisions of 15 U.S.C. § 687c, this Court shall take exclusive
20 jurisdiction of New Vista Capital Fund, LP ("New Vista"), and all of its assets, wherever located,
21 and the United States Small Business Administration ("SBA"), is hereby appointed receiver ("the
22 Receiver") of New Vista to serve without bond until further order of this Court. The Receiver is
23 appointed for the purpose of administering, marshalling and, if necessary, liquidating all of New
24 Vista's assets to satisfy the claims of creditors therefrom in the order of priority as determined by
25 this Court.
26

27 2. The Receiver shall have all powers, authorities, rights and privileges heretofore
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1 possessed by the general partner, managers, officers, and directors of New Vista under applicable
2 state and federal law and by the Charter, By-Laws and Partnership Agreement of said partnership,
3 in addition to all powers and authority conferred upon the Receiver by the provisions of
4 15 U.S.C. § 687c and 28 U.S.C. § 754. The general partner, managers, directors, officers,
5 employees and agents of New Vista are hereby dismissed. Such persons shall have no authority
6 with respect to New Vista's operations or assets, except as may hereafter be expressly granted by
7 the Receiver. The Receiver shall assume and control the operation of New Vista and shall pursue
8 and preserve all of its claims.

10 3. The past and/or present officers, directors, agents, managers, general partners,
11 accountants, attorneys and employees of New Vista, as well as all those acting in their place, are
12 hereby ordered and directed to turn over to the Receiver forthwith all books, records, documents,
13 accounts and all other instruments and papers of said partnership and all other assets and property
14 of the partnership, whether real or personal. New Vista shall furnish a written statement within
15 five (5) days after the entry of this Order, listing the identity, location and estimated value of all
16 assets of New Vista as well as the names, addresses and amounts of claims of all known creditors
17 of New Vista. All persons having control, custody or possession of any assets or property of New
18 Vista, including its former General Partner, New Vista Investment Partners, LLC, are hereby
19 directed to turn such property over to the Receiver.

22 4. The Receiver shall promptly give notice of its appointment to all known officers,
23 directors, agents, managers, general partners, employees, shareholders, creditors, debtors and
24 agents of New Vista. All persons and entities owing any obligations or debts to New Vista shall,
25 until further ordered by this Court, pay all such obligations in accordance with the terms thereof to
26 the Receiver, and its receipt for such payments shall have the same force and effect as if New Vista
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1 had received such payments.

2 5. The Receiver is hereby authorized to open such Receiver's bank accounts, at
3 banking or other financial institutions, to extend credit on behalf of New Vista, to utilize SBA
4 personnel, and to employ such other personnel as necessary to effectuate the operation of the
5 receivership including, but not limited to, attorneys and accountants, and is further authorized to
6 expend receivership funds to compensate such personnel in such amounts and upon such terms as
7 the Receiver shall deem reasonable in light of the usual fees and billing practices and procedures of
8 such personnel. The Receiver is not required to obtain Court approval prior to the disbursement of
9 receivership funds for payments to personnel employed by the Receiver or payments for expenses
10 incidental to administration of the Receivership. In addition, the Receiver is authorized to
11 reimburse the SBA or its employees for travel expenses incurred by SBA personnel in the
12 establishment and administration of the receivership. The Receiver may, without further order of
13 this Court, transfer, compromise, or otherwise dispose of any claim or asset, other than real estate,
14 which would result in net proceeds to the Receiver.
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17 6. New Vista's past and/or present officers, directors, agents, managers, general
18 partners, shareholders, employees, and other appropriate persons (including, without limitation, the
19 defendant's portfolio of small business concerns and banks or other financial institutions doing
20 business with defendant and/or defendant's portfolio of small business concerns) shall answer
21 under oath, pursuant to a Receiver's Notice or Subpoena, to the Receiver, all questions which it
22 may put to them regarding the business of said partnership, or any other matter relevant to the
23 operation or administration of the receivership or the collection of funds due to New Vista. In the
24 event that the Receiver deems it necessary to require the appearance of the aforementioned
25 persons, the production of documents, information, or any other form of discovery concerning the
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1 assets, property or business assets of New Vista or any other matter relevant to the operation or
2 administration of the Receivership or the collection of funds due to New Vista, the Receiver shall
3 direct notice for any such appearance by certified mail, and said persons shall appear and give
4 answer to the Receiver, produce documents or submit to any other form of discovery in accordance
5 with the Federal Rules of Civil Procedure.
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7 7. The parties or prospective parties to any and all civil legal proceedings wherever
8 located, including, but not limited to arbitration proceedings, bankruptcy or foreclosure actions,
9 default proceedings, or any other proceedings involving New Vista or any assets of New Vista,
10 involving New Vista or its present or past officers, directors, managers, or general partners or the
11 Receiver, sued for, or in connection with, any action taken by New Vista's officers, directors,
12 managers, or general partners while acting in such capacity whether as plaintiff, defendant, third-
13 party plaintiff, third-party defendant, or otherwise, or with respect to any assets of New Vista, are
14 enjoined from taking any action, including discovery, commencing or continuing any legal
15 proceeding of any nature in connection with any proceeding.
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17 8. All civil legal proceedings wherever located, including arbitration proceedings,
18 foreclosure activities, bankruptcy actions, or default proceedings, but excluding the instant
19 proceeding, involving New Vista or any of its assets or any action of any nature taken by New
20 Vista's present or past officers, directors, managers, or general partners sued for, or in connection
21 with, any action taken by them while acting in their official capacity whether as plaintiff,
22 defendant, third-party plaintiff, third-party defendant, or otherwise, are stayed in their entirety, and
23 all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until
24 further Order of this Court.
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26 9. New Vista and its past and/or present directors, officers, managers, general
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1 partners, agents, employees and other persons acting in concert or participation therewith be, and
2 they hereby are, enjoined from either directly or indirectly taking any actions or causing any such
3 action to be taken which would dissipate the assets and property of New Vista to the detriment of
4 the Receiver appointed in this cause, including but not limited to destruction of partnership records,
5 or which would violate the Small Business Investment Act of 1958, as amended, (the "SBIA"), 15
6 U.S.C. Section 661 et seq., or the regulations promulgated thereunder, (the "Regulations"), 13
7 C.F.R. § 107.1 et seq.

9 10. The Receiver is authorized to borrow on behalf of New Vista, from the SBA, up to
10 \$1,000,000, and is authorized to cause New Vista to issue Receiver's Certificates of Indebtedness
11 in the principal amounts of the sums borrowed, which certificates will bear interest at or about ten
12 (10) percent *per annum* and will have a maturity date no later than 18 months after the date of
13 issue. Said Receiver's Certificates of Indebtedness shall have priority over all other debts and
14 obligations of New Vista, excluding administrative expenses of the Receivership, whether
15 presently existing or hereinafter incurred, including without limitation any claims of equity holders
16 of New Vista.

18 11. This Court determines and adjudicates that New Vista has violated the SBIA and
19 the Regulations, as alleged in the Complaint filed in this matter. After completing its activities in
20 accordance with this Order, the Receiver may submit a report to this Court recommending that
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1 New Vista's license as an SBIC be revoked.

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3 **AGREED AND CONSENTED TO:**

4 **United States Small Business Administration**

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7 By: /s/ Thomas G. Morris 8/26/05
8 Thomas G. Morris, Director
9 Office of Liquidation

9

10 **New Vista Capital [Fund], LP**

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12 By: /s/ Frank S. Greene 8/26/05
13 Managing Member, LLC
14 [New Vista Capital, LLC, General Partner of
15 New Vista Capital Fund, LP]

15

16 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

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19 /s/electronic signature authorized

20 **HONORABLE JEREMY FOGEL**
21 **UNITED STATES DISTRICT JUDGE**

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22 **DATED:** this 8th day of December, 2005.

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EXHIBIT