

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
2015 OCT 21 PM 1:26
OFFICE OF THE CLERK

1 BENJAMIN MIZER
2 PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL

3 BRIAN STRETCH, CA No. 163973
Acting United States Attorney
4 ALEX G. TSE, CA NO. 152348
Chief, Civil Division

5 ERIC J. ADAMS, CA NO. 135893
6 Special Assistant United States Attorney
455 Market Street, Suite 600
7 San Francisco, CA 94105
Telephone: (415) 744-8440
8 Facsimile: (415)744-6812
9 Eric.Adams@SBA.Gov

10 ARLENE M. EMBREY, FL NO. 125539
11 Trial Attorney
U.S. Small Business Administration
12 409 3rd Street, S.W., 7th Floor
Washington, D.C. 20416
13 Telephone: (202) 205-6976
14 Fax: (202) 481-0324
15 Arlene.Embrey@SBA.Gov

16 Attorneys for Plaintiff
United States of America

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

8:15 MC 114

20 _____)
21 **UNITED STATES OF AMERICA,**)
22 **Plaintiff,**)
23 **v.**)
24 **EAST GATE PRIVATE EQUITY**)
25 **FUND III, L.P.**)
26 **Defendant.**)
27 _____)
28

No. 15-cv-03315-PSG
Stipulation for
Consent Order
of Receivership
(Cover Page)

RECEIVED

OCT 21 2015

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP

CLERK
U.S. DISTRICT COURT
No. 15-cv-03315-PSG
OMAHA

1 1. Pursuant to the provisions 15 U.S.C. §687c, this Court hereby takes
2 exclusive jurisdiction of East Gate Private Equity Fund III, L.P. ("East Gate"), and all of
3 its assets and property, of whatever kind and wherever located, and the United States
4 Small Business Administration ("SBA") is hereby appointed Receiver ("the Receiver") of
5 East Gate to serve without bond until further order of this Court. The Receiver is
6 appointed for the purpose of marshaling and liquidating all of East Gate's assets and
7 satisfying the claims of creditors therefrom in the order of priority as determined by this
8 Court.
9

10 2. The Receiver shall have all powers, authorities, rights and privileges
11 heretofore possessed by the directors, managers and general and limited partners of East
12 Gate under applicable state and federal law, by the Articles of Limited Partnership, and
13 By-Laws of said limited partnership, in addition to all powers and authority of a receiver
14 at equity, and all powers and authority conferred upon the Receiver by the provisions of
15 15 U.S.C. § 687c and 28 U.S.C. § 754. The trustees, directors, managers, employees,
16 investment advisors, accountants, attorneys and other agents of East Gate are hereby
17 dismissed and the powers of any general partners are hereby suspended. Such persons
18 and entities shall have no authority with respect to East Gate's operations or assets,
19 except to the extent as may hereafter be expressly granted by the Receiver. The Receiver
20 shall assume and control the operation of East Gate and shall pursue and preserve all of
21 its claims.
22

23 3. The Receiver is entitled to take immediate possession of all assets, bank
24 accounts or other financial accounts, books and records and all other documents or
25 instruments relating to East Gate. The past and/or present officers, directors, agents,
26
27
28

1 managers, general and limited partners, trustees, attorneys, accountants, and employees
2 of East Gate, as well as all those acting in their place, are hereby ordered and directed to
3 turn over to the Receiver forthwith all books, records, documents, accounts and all other
4 instruments and papers of and relating to East Gate and all of East Gate's assets and all
5 other assets and property of the limited partnership, whether real or personal. The
6 general partner of East Gate shall furnish a written statement within ten (10) days after
7 the entry of this Order, listing the identity, location and estimated value of all assets of
8 East Gate, a list of all employees (and job titles thereof), other personnel, attorneys,
9 accountants and any other agents or contractors of East Gate, as well as the names,
10 addresses and amounts of claims of all known creditors of East Gate. Within thirty (30)
11 days following the entry of this Order, the general partner of East Gate shall also furnish
12 a written report describing all assets. All persons and entities having control, custody or
13 possession of any assets or property of East Gate are hereby directed to turn such assets
14 and property over to the Receiver.
15
16
17

18 4. The Receiver shall promptly give notice of its appointment to all known
19 officers, directors, agents, employees, shareholders, creditors, debtors, managers and
20 general and limited partners of East Gate, as the Receiver deems necessary or advisable
21 to effectuate the operation of the receivership. All persons and entities owing any
22 obligation, debt, or distribution with respect to a partnership interest to East Gate shall,
23 until further ordered by this Court, pay all such obligations in accordance with the terms
24 thereof to the Receiver and its receipt for such payments shall have the same force and
25 effect as if East Gate had received such payments.
26
27
28

1 5. The Receiver is hereby authorized to open such Receiver's accounts at
2 banking or other financial institutions to extend credit on behalf of East Gate, to utilize
3 SBA personnel, and to employ such other personnel as it may deem necessary to
4 effectuate the operation of the receivership including, but not limited to, attorneys,
5 accountants, consultants and appraisers, and is further authorized to expend receivership
6 funds to compensate such personnel in such amounts and upon such terms as the
7 Receiver shall deem reasonable in light of the usual fees and billing practices and
8 procedures of such personnel. The Receiver is not required to obtain Court approval
9 prior to the disbursement of receivership funds for payments to personnel employed by
10 the Receiver or for expenses that the Receiver deems advantageous to the orderly
11 administration and operation of the receivership. In addition, the Receiver is authorized
12 to reimburse the SBA for travel expenses incurred by SBA personnel in the establishment
13 and administration of the receivership. The Receiver may, without further order of this
14 Court, transfer, compromise, or otherwise dispose of any claim or asset in the ordinary
15 course of business, other than real estate.

19 6. East Gate's past and/or present officers, directors, agents, attorneys,
20 managers, shareholders, employees, accountants, debtors, creditors, managers and
21 general and limited partners of East Gate, and other appropriate persons or entities
22 (including without limitation, the defendant's portfolio of small business concerns and
23 financial institutions doing business with defendant and/or defendant's portfolio of small
24 business concerns) shall answer under oath to the Receiver all questions which the
25 Receiver may put to them and produce any documents as required by the Receiver
26 regarding the business of said limited partnership, or any other matter relevant to the
27
28

1 operation or administration of the receivership or the collection of funds due to East Gate.

2 In the event that the Receiver deems it necessary to require the appearance of the
3 aforementioned persons or entities, the Receiver shall make its discovery request(s) in
4 accordance with the Federal Rules of Civil Procedure.
5

6 7. The parties or prospective parties to any and all civil legal proceedings
7 wherever located, including, but not limited to arbitration proceedings, bankruptcy or
8 foreclosure actions, default proceedings, or any other proceedings involving (i) East Gate
9 (ii) any assets of East Gate, (iii) the Receiver for East Gate, and (iv) East Gate's present or
10 past directors, general partners or managers, to the extent said civil legal proceedings
11 involve any action taken by them while acting in their official capacity for East Gate, are
12 enjoined from taking any action, including discovery, commencing or continuing any legal
13 proceeding of any nature without further order of this Court.
14

15 8. All civil legal proceedings wherever located, including arbitration
16 proceedings, foreclosure activities, bankruptcy actions, or default proceedings, but
17 excluding the instant proceeding, involving (i) East Gate, (ii) any of assets of East Gate,
18 (iii) the Receiver for East Gate or (iv) East Gate's present or past general partners, directors,
19 or managers to the extent said civil legal proceedings involve any action taken in their
20 official capacity for East Gate, are stayed in their entirety, and all Courts having any
21 jurisdiction thereof are enjoined from taking or permitting any action in such proceedings
22 until further Order of this Court.
23

24 9. Further, as to a cause of action accrued or accruing in favor of East Gate
25 against a third person or party, any applicable statute of limitation is tolled during the
26
27
28

1 period in which this injunction against commencement of legal proceedings is in effect as
2 to that cause of action.

3 10. East Gate and its past and/or present directors, officers, managers, general
4 or limited partners, agents, employees and other persons or entities acting in concert or
5 participating therewith be, and they hereby are, enjoined from either directly or indirectly
6 taking any actions or causing any such action to be taken which would dissipate the
7 assets and/or property of East Gate to the detriment of East Gate or of the Receiver
8 appointed in this cause, including but not limited to destruction of corporate records, or
9 which would violate the Small Business Investment Act of 1958, as amended, 15 U.S.C.
10 §661 et. seq., or the regulations promulgated thereunder. ("Regulations"), 13 C.F.R.
11 §107.1 et. seq.

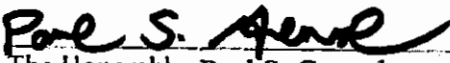
12
13
14 11. The Receiver is authorized to borrow on behalf of East Gate, from the
15 SBA, up to \$500,000 and is authorized to cause East Gate to issue Receiver's Certificates
16 of Indebtedness in the principal amounts of the sums borrowed, which certificates will
17 bear interest at or about 10 percent per annum and will have a maturity date no later than
18 18 months after the date of issue. Said Receiver's Certificates of Indebtedness shall have
19 priority over all other debts and obligations of East Gate, excluding administrative
20 expenses of the Receivership, whether currently existing or hereinafter incurred,
21 including without limitation any claims of general or limited partners of East Gate.

22
23 12. This Court determines and adjudicates that SBA has made a sufficient
24 showing that East Gate has violated the Act and the Regulations, as alleged in the
25 Complaint filed against East Gate in the instant action, to obtain the relief so requested.
26
27
28

1 13. After completing its activities in accordance with this Order, the Receiver
2 may recommend that East Gate's license as an SBIC be revoked and that control of the
3 limited partnership be returned to East Gate's general partner and/or its designee or
4 successor in interest.
5

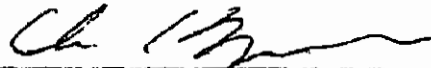
6 SO ORDERED

7 DATED this 14th day of Oct. 2015

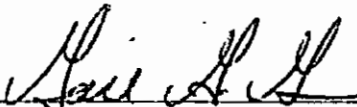
8
9 
10 The Honorable Paul S. Grewal
11 United States District Court Judge Magistrate Judge

12 **SEEN AND AGREED BY EAST GATE PRIVATE EQUITY FUND III, L.P. AND**
13 **THE U.S. SMALL BUSINESS ADMINISTRATION, THROUGH THEIR DULY**
14 **AUTHORIZED REPRESENTATIVES:**

15 EAST GATE PRIVATE EQUITY FUND III, L.P.

16 Dated: _____ By: 
17 Name: Ken Choi,
18 Title: Managing Member,
19 East Gate Private Equity Partners LLC
20 General Partner of East Gate Private Equity Fund III, L.P.

21 U.S. SMALL BUSINESS ADMINISTRATION

22
23 Dated: _____ By: 
24 Name: Gail G. Green, Chief
25 Title: Accounts Resolution Branch
26 SBA Investment Division
27 Office of SBIC Liquidation
28