

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,

Plaintiff

v.

FCA VENTURE PARTNERS III SBIC,
LIMITED PARTNERSHIP

Defendant

Civ. Action No.

CONSENT ORDER

Before this Court is the Complaint by the United States of America, on behalf of the United States Small Business Administration ("SBA"), for a preliminary and permanent injunction and the appointment of the SBA as Permanent Receiver for FCA Venture Partners III SBIC, Limited Partnership ("FCA") The Court, being fully advised in the merits and having been informed that FCA does not challenge entry of this Order, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. Pursuant to the provisions 15 U.S.C. §687c, this Court hereby takes exclusive jurisdiction of FCA and all of its assets and property, of whatever kind and wherever located, and the United States Small Business Administration ("SBA") is hereby appointed Receiver of FCA ("Receiver") to serve without bond until further order of this Court. The Receiver is appointed for the purpose of marshaling and liquidating all of FCA's assets and satisfying the claims of creditors therefrom in the order of priority as determined by this Court. The Receiver is also authorized to sell or transfer the interest of SBA, the federal agency, and/or other limited partners in the Fund, provided the Receiver

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has obtained the express written consent of the parties whose interest is to be sold or transferred.

This Order shall be entered without further notice upon the default of FCA under the terms of the Letter Agreement Wind-Down Plan executed between FCA and the Office of SBIC Liquidation

2. The Receiver shall assume and control the operation of FCA and shall pursue and preserve all of its claims. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of FCA under applicable state and federal law, by the Agreement of Limited Partnership, and Charter and/or By-Laws of said limited partnership, in addition to all powers and authority of a receiver at equity, and all powers and authority conferred upon the Receiver by the provisions of 15 U.S.C. § 687c and 28 U.S.C. § 754. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of FCA are hereby dismissed and the powers of any general partners are hereby suspended. Such persons and entities shall have no authority with respect to FCA operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The former management and any former employees or agents of FCA dismissed by this Order may, at the Receiver's discretion, be retained by the Receiver to assist the Receiver with any activities the Receiver deems necessary and appropriate. Such former managers, employees or agents may be compensated for such activities, as approved by the Receiver, from the receivership estate

3. The Receiver is entitled to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or

instruments relating to FCA. The past and/or present general partner(s), managers, management company, officers, directors, agents, trustees, attorneys, accountants, and employees of FCA , as well as all those acting in their place, are hereby ordered and directed to turn over to the Receiver forthwith all books, records, documents, accounts and all other instruments and papers of and relating to FCA and all of FCA 's assets and all other assets and property of the limited partnership, whether real or personal. FCA shall furnish a written statement within five (5) days after the entry of this Order, listing the identity, location and estimated value of all assets of FCA, a list of all agents, employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of FCA, as well as the names, addresses and amounts of claims of all known creditors of FCA. Within thirty (30) days following the entry of this Order, FCA shall also furnish a written report describing all assets. All persons and entities having control, custody or possession of any assets or property of FCA are hereby directed to turn such assets and property over to the Receiver.

4. The Receiver shall promptly give notice of its appointment to all known general partner(s) , managers, management companies, officers, directors, agents, employees, shareholders, creditors, debtors, and limited partners of FCA , as the Receiver deems necessary or advisable to effectuate the operation of the receivership. All persons and entities owing any obligation, debt, or distribution with respect to a partnership interest to FCA shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if FCA had received such payments.

5. The Receiver is hereby authorized to open such Receiver's bank accounts, at banking or other financial institutions, to extend credit on behalf of FCA , to utilize SBA personnel, and to employ such other personnel as it may deem necessary to effectuate the operation of the receivership including, but not limited to, attorneys, accountants, consultants and appraisers, and is further authorized to expend receivership funds to compensate such personnel in such amounts and upon such terms as the Receiver shall deem reasonable in light of the usual fees and billing practices and procedures of such personnel. The Receiver is not required to obtain Court approval prior to the disbursement of receivership funds for payments to personnel employed by the Receiver or for expenses that the Receiver deems advantageous to the orderly administration and operation of the receivership. In addition, the Receiver is authorized to reimburse SBA for travel expenses incurred by SBA personnel in the establishment and administration of the receivership. The Receiver may, without further order of this Court, transfer, compromise, or otherwise dispose of any claim or asset, other than real estate, in the ordinary course of business. The Receiver will also obtain Court approval for any sale, liquidation or transfer of FCA's entire portfolio of assets or the sale or transfer of the interests of SBA, the federal agency, and/or other limited partners in FCA.

6. FCA 's past and/or present general partners, managers, management companies, officers, directors, agents, attorneys, shareholders, employees, accountants, debtors, creditors, managers, limited partners and any other appropriate persons or entities (including without limitation, the defendant's portfolio of small business concerns and financial institutions doing business with defendant and/or defendant's portfolio of small business concerns) shall answer under oath to the Receiver all questions which the

Receiver may put to them and produce any documents as required by the Receiver regarding the business of said limited partnership, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to FCA . In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery request(s) in accordance with the Federal Rules of Civil Procedure.

7. The parties to any and all civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving the Receiver for FCA , FCA or any assets of FCA , including subsidiaries and partnerships, wherever located, and excluding the instant proceeding, or involving any of FCA 's past or present general partners, managers, management companies, officers, directors, agents, or limited partners sued for, or in connection with, any action taken by them while acting in such capacity, whether sued as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise, are enjoined from commencing or continuing any such legal proceeding or from taking any action in connection with any such proceeding or any such asset.

8. All civil legal proceedings of any nature, including but not limited to bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other action of any nature involving the Receiver for FCA or any assets of FCA , including subsidiaries and partnerships, wherever located, and excluding the instant proceeding, or any of FCA 's past or present general partners, managers, management companies, officers, directors, agents, or limited partners sued for, or in connection with, any action taken by them while acting in such capacity, whether as

plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise, are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.

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

10. The Receiver is authorized to borrow on behalf of FCA, from the SBA, up to \$1,000,000 and is authorized to cause FCA to issue Receiver's Certificates of Indebtedness in the principal amounts of the sums borrowed, which certificates will bear interest at or about 10 percent per annum and will have a maturity date no later than 18 months after the date of issue. Said Receiver's Certificates of Indebtedness shall have priority over all other debts and obligations of FCA, excluding administrative expenses of the Receivership, whether currently existing or hereinafter incurred, including without limitation any claims of general or limited partners of FCA.

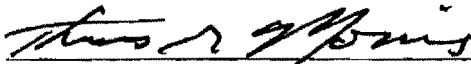
11. This Court determines and adjudicates that FCA has committed the violations as alleged in the Complaint filed against FCA in the instant action, and that SBA is entitled to the relief requested in its complaint. After completing its activities in

accordance with this Order, the Receiver may request and recommend that FCA's license as an SBIC be revoked.

AGREED TO AND ACKNOWLEDGED EFFECTIVE THE 7th DAY OF ¹⁰October, 2009:

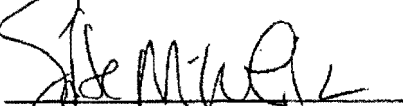
United States Small Business Administration

By:



Thomas G. Morris, Director
Office of Liquidation

FCA VENTURE PARTNERS III SBICS, LIMITED PARTNERS

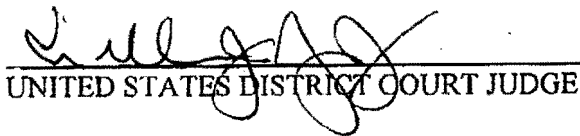


Stuart C. McWhorter, President

By: Stuart C. McWhorter, President

SO ORDERED

this 6th day of December, 2009 in Nashville, Tennessee


UNITED STATES DISTRICT COURT JUDGE