



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

|   |   |                               |
|---|---|-------------------------------|
| <b>EMERGING EUROPE GROWTH FUND, L.P.,</b>     | ) |                               |
| <b>and HORIZON CAPITAL GP LLC, a Delaware</b> | ) | <b>C.A. No. 7936-VCP</b>      |
| <b>limited liability company,</b>             | ) |                               |
| <b>Plaintiffs,</b>                            | ) | <b>REDACTED VERSION --</b>    |
|   | ) | <b>FILED OCTOBER 31, 2012</b> |
| <b>v.</b>                                     | ) |                               |
|   | ) |                               |
| <b>IHOR FIGLUS,</b>                           | ) |                               |
| <b>Defendant</b>                              | ) |                               |

**ANSWER AND AFFIRMATIVE DEFENSES OF  
DEFENDANT IHOR FIGLUS**

Defendant Ihor Figlus, by and through his undersigned counsel, hereby responds to the Verified Complaint filed by Plaintiffs Emerging Europe Growth Fund, L.P. ("Partnership") and Horizon Capital GP LLC ("General Partner"; collectively, "Plaintiffs") as follows:

Nature Of The Action

1. The allegations of paragraph 1 state either Plaintiffs' intent or a legal conclusion, in either case to which no response is required, except Defendant admits that Exhibit A is a copy of a Partnership Agreement. Defendant denies all other averments of paragraph 1 if any answer is required.

The Parties

2. Admitted that the Partnership is a Delaware limited partnership formed to make equity and debt financing investments in acquisitions and recapitalizations of privately-held companies in Ukraine and Moldova; that the general partner of the Partnership is Horizon Capital GP LLC, a Delaware limited liability company ("Horizon

Capital" or "General Partner"); and that the General Partner and Partnership are the Plaintiffs in this action. The averments of paragraph 2 are otherwise denied.

3. Admitted that Defendant Figlus is REDACTED of the Partnership.

The Partnership Agreement

4. The averments of paragraph 4 are admitted.

5. The averments of paragraph 5 are admitted.

6. Defendant admits that the Partnership Agreement contains Section 14.14, without the emphases reflected in the Verified Complaint. The averments of paragraph 6 are otherwise denied.

Alleged Breach Of The Confidentiality Provision

7. Defendant admits that Defendant provided certain information to an investigative reporter at the REDACTED. The averments of paragraph 7 are otherwise denied.

8. Defendant does not have sufficient information to admit or deny the averments of paragraph 8.

9. Admitted that the letter marked as Exhibit D was sent to Defendant, and that Plaintiffs did not request any response from Defendant and Defendant in fact did not respond prior to Plaintiffs having filed this action. Defendant further states that the letter speaks for itself, and otherwise denies the averments of paragraph 9.

10. Admitted that the letter marked as Exhibit E was sent to Defendant, and that Defendant did not respond prior to Plaintiffs having filed this action within two days of having sent the letter Exhibit E. Defendant further states that the letter speaks for itself,

and otherwise denies the averments of paragraph 10.

11. Defendant denies the averments of paragraph 11.

Allegations That The Subscription Agreement Obligates Figlus  
To Indemnify The General Partner And The Partnership

12. Defendant denies the averments of paragraph 12.

13. Admitted that the Subscription Agreement contains the quoted words without the emphases. Defendant otherwise denies the averments of paragraph 13.

14. Defendant denies the averments of paragraph 14.

15. Admitted that Defendant contests any obligation to indemnify the General Partner and the Partnership. Defendant otherwise denies the averments of paragraph 15.

COUNT I

16. Defendant repeats and incorporates by reference each of his responses contained in the foregoing paragraphs.

17. Defendant denies the averments of paragraph 17.

18. Defendant denies the averments of paragraph 18.

19. Defendant denies the averments of paragraph 19, and specifically denies that he ever executed or signed the Partnership Agreement, or specifically authorized any attorney to commit Defendant to the Confidentiality Provision as written.

20. Defendant denies the averments of paragraph 20.

COUNT II

21. Defendant repeats and incorporates by reference each of his responses contained in the foregoing paragraphs.

22. Defendant denies the averments of paragraph 22, and specifically denies

that he ever executed or signed the Partnership Agreement, or specifically authorized any attorney to commit Defendant to the Confidentiality Provision as written.

23. Defendant denies the averments of paragraph 23.

24. Defendant denies the averments of paragraph 24.

### COUNT III

25. Defendant repeats and incorporates by reference each of his responses contained in the foregoing paragraphs.

26. Defendant denies the averments of paragraph 26.

### **AFFIRMATIVE DEFENSES**

#### FIRST AFFIRMATIVE DEFENSE

27. The Complaint fails to state a claim upon which relief can be granted. At least one reason that the Complaint fails to state a cause of action is that Defendant never signed or executed the Partnership Agreement or its Confidentiality Provision. The General Partner had no authority to execute the Partnership Agreement on behalf of the Defendant, and, specifically:

a. The power of attorney granted to the General Partner was a durable power of attorney governed by common law.

b. The power of attorney created a fiduciary relationship like the relationship created by a trust, and the General Partner's obligations are those owed under the principles of trust law.

c. The General Partner, as an attorney-in-fact, was subject to the fiduciary duties of good faith, fair dealing, and loyalty, and throughout always had and has the



obligation to act in the best interest of the Defendant as principal unless Defendant voluntarily consented to the General Partner, as an attorney-in-fact, engaging in an interested transaction after full disclosure.

d. If the purported Partnership Agreement, under which this action is filed, was executed on behalf of the Defendant by the General Partner under the power of attorney granted by Defendant to the General Partner, such execution is null and void, and or voidable, because the General Partner breached the General Partner's fiduciary obligations to Defendant in entering the Partnership Agreement, including, but not limited to, breach of the General Partner's fiduciary duties of good faith, fair dealing, and loyalty. The General Partner, as attorney for Defendant, had and has failed to carry out the duty to carry out the assigned obligations in the best interests of Defendant and refraining from self-dealing or self-aggrandizement unless the Defendant consented, after full disclosure.

#### SECOND AFFIRMATIVE DEFENSE

28. Plaintiffs are barred from the relief sought in the Complaint by the doctrines of waiver, estoppel and/or acquiescence, including, but not limited to, Plaintiffs having failed to properly advise Defendant of any confidentiality obligations in the Partnership Agreement and failing to advise Defendant of any restrictions on dissemination of materials that were provided to him, and especially and particularly when the Defendants breached their duty and obligation to advise Defendant of the confidentiality obligations.

#### THIRD AFFIRMATIVE DEFENSE

29. Plaintiff cannot show irreparable injury, and therefore is not entitled to any injunctive relief.

#### FOURTH AFFIRMATIVE DEFENSE

30. At all relevant times, Defendant acted in good faith and with justification, on matters of public interest, and particularly the inequitable conduct set forth herein where such inequitable conduct adversely affects the at least one other limited partner which is

REDACTED

, and specifically the

inequitable conduct included, in addition to the other conduct cited herein,

REDACTED

#### FIFTH AFFIRMATIVE DEFENSE

31. The Plaintiffs' action is barred, in whole or in part, by the General Partner's and Partnership's own inequitable conduct and unclean hands. The inequitable conduct included, in addition to the other conduct cited herein,

REDACTED

SIXTH AFFIRMATIVE DEFENSE

32. The Plaintiffs' claims are barred, in whole or in part, by their own material breaches of their traditional fiduciary duties of loyalty and care to the limited partnership and its partners that is owed to the partnership by the general partner and officers, affiliates and parents of the general partner in view of their control of the partnership's property, including the acts and conduct set forth in these Affirmative Defenses.

SEVENTH AFFIRMATIVE DEFENSE

33. The Plaintiffs' claims are barred, in whole or in part, by public policy, and particularly that a court in equity should not enjoin "whistle-blowing" activities on matters of public interest, and particularly the inequitable conduct set forth herein where such inequitable conduct adversely affects the at least one other limited partner

REDACTED

WHEREFORE, Defendant respectfully request that this Honorable Court enter judgment in his favor and against the Plaintiffs, dismissing all the Counts of the Verified Complaint with prejudice and awarding the Defendant his costs, attorney fees and such other relief as the Court deems appropriate.

Respectfully Submitted,

Dated: October 23, 2012

/s/ George Pazuniak  
George Pazuniak (#478)  
Pazuniak Law Office LLC  
1201 North Orange Street  
7th Floor, Suite 7114  
Wilmington, Delaware 19801-1186  
(302) 478-4230  
gp@del-iplaw.com

*Attorneys for Defendant Ihor Figlus*