

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, )  
)  
v. )  
) Case No. 4:12-cv-00080-CEJ  
BURTON DOUGLAS MORRISS, et al., )  
)  
Defendants, and )  
)  
MORRISS HOLDINGS, LLC, )  
)  
Relief Defendant. )  
)

**REQUEST FOR CONSIDERATION OF AND ENTRY OF ORDER ON RECEIVER'S  
MOTION FOR SALE OF PREFERRED AND COMMON SHARES OF POLLEN, INC.**

On November 14, 2013, Claire M. Schenk, the court-appointed receiver ("Receiver") for Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (collectively, the "Receivership Entities") filed her Motion for Sale of Preferred and Common Shares of Pollen, Inc. (Dkt. Nos. 293, 294) (the "Motion"), seeking Court authorization to sell the Receivership's 1,656,299 shares of Series A Preferred Stock (the "Preferred Stock") and 31,764 shares of Series B Common Stock (the "Common Stock") in Pollen, Inc. (together, the "Shares") to Pollen, Inc. ("Pollen"). On November 27, 2013, the Receiver filed a Supplemental Memorandum Regarding Receiver's Motion for Sale of Preferred and Common Shares of Pollen, Inc. and Request for the Court to Hold the Receiver's Motion in Abeyance Pending a Further Filing by the Receiver (the "Supplemental Memorandum"). (Dkt. No. 299.) In the Supplemental Memorandum, the Receiver notified the Court that, after filing the Motion, she received potential material information that could impact the Receiver's expert's conclusions regarding the reasonableness of Pollen's offer. The Receiver now withdraws her

request for the Court to hold the Motion in abeyance and respectfully requests that the Court consider the Motion and enter an Order approving the Receiver's sale of the Shares to Pollen on the terms and conditions set forth in the Motion and in Exhibit A to the Motion.

### **I. Background**

On November 14, 2013, the Receiver filed the Motion. In the Motion, the Receiver requested an order approving the Receiver's sale of the Shares to Pollen. In support of her request, the Receiver submitted a report prepared by H. Edward Morris, Jr. of CliftonLarsonAllen LLP, whom the Receiver engaged to assist her in determining the reasonableness of Pollen's offer to purchase the Shares. Mr. Morris concluded that the price-per-share offered by Pollen provided the Receivership estate with a rate of return commensurate with the expected returns of venture capitalists on investments in start-up and early development companies. Further, Mr. Morris concluded that Pollen's offer provided liquidity for what would otherwise be an illiquid long-term investment.

On the basis of Mr. Morris's conclusions and given the nature, quality, and value of the Shares, the Receiver concluded that the terms and conditions of Pollen's offer were the best available to the Receivership and that the sale would benefit the investors and creditors of the Receivership Entities. The Receiver stated that the consummation of the sale would enable the Receiver to obtain cash to fund the operations of the Receivership and make a distribution to investors. The Receiver requested that the Court exercise its statutory discretion to exempt the proposed sale from the strictures of the private sale requirements of 28 U.S.C. § 2001, and authorize the Receiver to sell the Shares to Pollen, because the sale of the Shares is in the best interests of the Receivership estate and would further the objectives of the Receivership.

On November 15, 2013, the Receiver received a letter from counsel for Mike McDaniel requesting withdrawal of the Receiver's Motion and access to the unredacted report prepared by the Receiver's expert in support of the Motion. (Dkt. No. 301-2.) The letter from Mr. McDaniel's counsel stated that McDaniel believed the sale price for the Shares to be "inadequate" and the timing of the proposed sale "inappropriate." (Dkt. No. 301-2.) McDaniel's counsel, however, did not provide the Receiver with any support for his beliefs regarding the timing of the sale and the offered price. On November 20, 2013, counsel for the Receiver responded, advising that the Receiver believed the sale of the Pollen Shares to be in the best interests of the Receivership estate and therefore was not inclined to withdraw the Motion. (Dkt. No. 302-2.) The Receiver also directed Mr. McDaniel to counsel for Pollen regarding his request for an unredacted copy of the expert report submitted in support of the Motion. (Dkt. No. 302-2.)

On November 27, 2013, the Receiver filed the Supplemental Memorandum, requesting that the Court hold the Motion in abeyance to permit the Receiver time to explore potential material information of which the Receiver became aware after filing the Motion.

On December 4, 2013, Mr. McDaniel moved to intervene in this proceeding to obtain an unredacted copy of the expert report filed by the Receiver in support of her Motion. (Dkt. No. 300; Dkt. No. 301 at 3.) Mr. McDaniel also requested that the Court afford him additional time (presumably beyond the objection period applicable to the Motion) to evaluate the proposed sale, obtain other opinions on value, and present his objection to the Court. (Dkt. No. 301 at 3.)

The Receiver opposed Mr. McDaniel's motion and request on several grounds: (1) Mr. McDaniel is not entitled to intervene in the Receivership proceeding under Federal Rule of Civil Procedure 24(a) because any claim that Mr. McDaniel may assert to the property subject to the Receiver's Motion is barred due to Mr. McDaniel's failure to file a proof of claim with the

Receiver; (2) Mr. McDaniel's lack of interest in the property subject to the Receiver's Motion means that Mr. McDaniel has no interest that is "potentially impaired" by the Court's ruling on the Motion; and (3) even assuming Mr. McDaniel has an interest in the property subject to the Motion, the Receiver adequately represents the interests of the Receivership Estate and believes that consummation of the sale is in the best interests of the Receivership Estate, and by extension, creditors and investors of the Receivership Entities. (Dkt. No. 302 at 4-7.) Also, the Receiver opposed McDaniel's request for an unredacted copy of the Receiver's expert's report. The Receiver is not at liberty to disclose the confidential information in the expert report absent the consent of Pollen. When Mr. McDaniel requested an unredacted copy of the report from the Receiver, the Receiver directed Mr. McDaniel to Pollen's counsel to discuss Mr. McDaniel's request for Pollen's confidential information. The Receiver understands that Mr. McDaniel never contacted Pollen's counsel. (Dkt. No. 302 at 8.)

Following the Receiver's opposition, McDaniel filed a reply with the Court setting out, for the first time, the purported legal and factual bases for McDaniel's request to intervene. (Dkt. No. 305.) The Receiver requested and was granted leave of the Court to file a sur-reply responding to McDaniel's reply. (Dkt. No. 306.)

Objections to the relief requested in the Motion were due on or before Monday, November 25, 2013. *See* E.D.Mo. L.R. 7-4.01(B); Fed. R. Civ. P. 6. Separate and apart from the pleadings filed by Mr. McDaniel, no interested parties filed objections to the Receiver's Motion.

## **II. Request for Consideration and Order on Motion**

During the time the Motion has been pending, the Receiver has not received any information suggesting that the Receivership's proposed sale of the Shares to Pollen is not in the best interests of the Receivership estate or that another potential purchaser is ready, willing, and

able to buy the Shares at a higher price. A timely sale of the Shares to Pollen will increase the liquid assets of the Receivership estate, maximize the possibility of a distribution to investors who filed claims, help fund the Receivership's pursuit of recoveries against third parties, and reduce the cost to the Receivership estate of managing and monitoring the investment. As such, the Receiver requests that the Court consider and enter an order on the Receiver's Motion, exercise the Court's statutory discretion to exempt the proposed sale from the strictures of the private sale requirements of 28 U.S.C. §§ 2001 and 2004, and authorize the Receiver to sell the Shares to Pollen. Furthermore, the Receiver requests that the Court deny Mr. McDaniel's motion to intervene for the reasons set forth in the Receiver's Opposition (Dkt. No. 302) and Sur-Reply (Dkt. No. 306) to Mr. McDaniel's motion. A proposed order is lodged herewith as Exhibit A.

Dated: January 30, 2014

Respectfully Submitted,

THOMPSON COBURN LLP

By /s/ Kathleen E. Kraft

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2014, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

John R. Ashcroft, Esq.  
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*Attorney for Mike McDaniel*

I further certify that on January 30, 2014, I served a courtesy copy of the foregoing on the following party by electronic mail:

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/s/ Kathleen E. Kraft

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 4:12-cv-00080-CEJ
BURTON DOUGLAS MORRISS, et al.,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	
	)	

**ORDER APPROVING RECEIVER’S SALE OF  
PREFERRED AND COMMON SHARES OF POLLEN, INC.**

This matter is before the Court on the *Motion for Sale of Preferred and Common Shares of Pollen, Inc.* and memorandum in support thereof (Dkt. Nos. 293, 294; the “Motion”) filed by Claire M. Schenk, the court-appointed receiver (“Receiver”) for Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (collectively, the “Receivership Entities”) and the Receiver’s *Request for Consideration of and Entry of Order on Receiver’s Motion for Sale of Preferred and Common Shares of Pollen, Inc.* (Dkt. No. 309). On November 14, 2013, the Receiver filed the Motion, seeking Court authorization to sell the Receivership’s 1,656,299 shares of Series A Preferred Stock (the “Preferred Stock”) and 31,764 shares of Series B Common Stock (the “Common Stock”) in Pollen, Inc. to Pollen, Inc. (“Pollen”). On November 27, 2013, the Receiver filed a Supplemental Memorandum Regarding Receiver’s Motion for Sale of Preferred and Common Shares of Pollen, Inc. and Request for the Court to Hold the Receiver’s Motion in Abeyance Pending a Further Filing by the Receiver (the “Supplemental Memorandum”) (Dkt. No. 299). By her filing on January 30, 2014 (Dkt. No.

309), the Receiver requested that the Court consider the Receiver's Motion and enter an Order approving the Receiver's sale of the Preferred Stock and Common Stock to Pollen on the terms and conditions set forth in the Motion and in Exhibit A to the Motion.

Having fully considered the Motion, any oppositions thereto, and being duly advised as to the merits, the Court hereby finds that good grounds exist to authorize the Receiver's sale outside the statutory scheme set forth in 28 U.S.C. §§ 2001 and 2004. *See Tanzer v. Huffines*, 412 F.2d 221 (3d Cir. 1969); *Sec. & Exch. Comm'n v. Goldfarb*, No. C 11-00938 WHA, 2013 WL 4504271 (N.D. Cal. Aug. 21, 2013); *U.S. v. Kerner*, No. 00-75370, 2003 WL 22905202 (E.D. Mich. Oct. 24, 2003). The Court further finds that the offer by Pollen to purchase the Preferred Stock and Common Stock represents the best price for the Preferred Stock and Common Stock under the circumstances. Therefore,

**IT IS HEREBY ORDERED THAT**

1. The Motion is **GRANTED** in its entirety.
2. The Receiver is authorized to sell the Receivership's Preferred Stock and Common Stock in Pollen, Inc. to Pollen, Inc. on the terms and conditions set forth in the Motion and in Exhibit A to the Motion.

**SO ORDERED** this the \_\_\_ day of \_\_\_\_\_, 2014.

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**THE HONORABLE CAROL E. JACKSON**  
**UNITED STATES DISTRICT COURT JUDGE**