

**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.)
)

**NOTICE OF NO OUTSTANDING OBJECTION AND REQUEST FOR 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.) On January 30, 2014, the Receiver withdrew her request for the Court to hold the Motion in abeyance. (Dkt. No. 309.) On February 14, 2014, the Court entered its order denying the motion to intervene filed by Mike McDaniel. (Dkt. No. 311.)

No formal objections¹ to the Receiver's Motion have been filed. (Dkt. No. 315-1, n. 1.) The deadline to object to the Receiver's Motion has long passed. *See* E.D. Mo. L.R. 7-4.01(B) (objection period is seven days); Fed. R. Civ. P. 6 (service via ECF adds three days to filing deadline).

The Receiver now requests that the Court enter an order authorizing the Receiver to sell the Shares to Pollen. Over five months ago, the Receiver and Pollen reached their agreement for the sale of the Shares that is described in the Receiver's Motion. Although various filings delayed the resolution of the Receiver's Motion, the Motion is now ripe for decision.

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 time elapses, the costs to the Receivership associated with closing the proposed sale of the Shares to Pollen may increase. These costs include the cost of monitoring, analyzing, and reporting any events pertinent to valuation of the Shares. *See* Declaration of Claire M. Schenk, Receiver, attached hereto as Exhibit A. Therefore, the Receiver respectfully requests that the Court now enter an order on the Motion. A proposed order is lodged herewith as Exhibit B.

¹ As this Court is aware, Mike McDaniel moved to intervene in this proceeding and 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.) The Receiver opposed Mr. McDaniel's motion and requests. (Dkt. No. 302 at 4-7.) On February 14, 2014, the Court denied Mr. McDaniel's motion to intervene. (Dkt. No. 311.) The Court's order denying Mr. McDaniel's motion to intervene is now final. *See* Fed. R. App. P. 4(a)(1) (thirty days to appeal final order); *see also United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 833 (8th Cir. 2009) (denial of motion to intervene as of right is immediately appealable as a final judgment); *South Dakota v. U.S. Dep't of Interior*, 317 F.3d 783, 785 n. 2 (8th Cir. 2003)

Dated: April 2, 2014

Respectfully Submitted,

THOMPSON COBURN LLP

By /s/ Kathleen E. Kraft

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 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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Counsel for Defendant Burton Douglas Morriss

Robert K. Levenson
Brian T. James
Securities and Exchange Commission
801 Bricknell Avenue, Suite 1800
Miami, Florida 33131
Attorneys for Plaintiff

I further certify that 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,)	
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Plaintiff,)	
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v.)	
)	Case No. 4:12-cv-00080-CEJ
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Defendants, and)	
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MORRISS HOLDINGS, LLC,)	
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Relief Defendant.)	
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DECLARATION OF RECEIVER CLAIRE M. SCHENK IN SUPPORT OF NOTICE OF NO OUTSTANDING OBJECTION AND REQUEST FOR ENTRY OF ORDER ON RECEIVER’S MOTION FOR SALE OF PREFERRED AND COMMON SHARES OF POLLEN, INC.

I, Claire M. Schenk, declare under oath as follows:

1. I am an individual over twenty-one years of age.
2. I am a partner with Thompson Coburn LLP.
3. On January 17, 2012, I was appointed as the receiver for Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (collectively, the “Receivership Entities”), in the above captioned proceeding.
4. On November 14, 2013, I caused the filing of the Motion for Sale of Preferred and Common Shares of Pollen, Inc. (Dkt. Nos. 293, 294) (the “Motion”), wherein I sought 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”).

5. On behalf of the Receivership, I requested that H. Edward Morris, Jr. of CliftonLarsonAllen LLP review and opine on the reasonableness of the proposed transaction with Pollen. Mr. Morris's report was filed as an exhibit to the Motion. Mr. Morris's report is valid until such time as there are significant changes involving Pollen which pertain to valuation matters.

6. I have communicated with counsel for Pollen since the filing of the Motion and have kept counsel for Pollen up-to-date on the timing and progress of the Court's consideration of the proposed transaction. Also, I have requested that Pollen's counsel keep me informed as to any significant changes involving Pollen and which pertain to valuation matters.

7. On March 26, 2014, I received an inquiry from Pollen's counsel regarding the status and timing of the Court's resolution of the Motion. Although I have not yet been advised of an expiration date pertaining to the Pollen offer, I am advised that Pollen's offer is of limited duration.

8. Additional delay in the resolution of the Motion will lead to increased costs to the Receivership estate as the result of the time and expense involved in overseeing this portfolio investment and continued monitoring of events associated with valuation issues.

9. A significant change in circumstances pertaining to valuation will result in the need to update Mr. Morris's expert report regarding the reasonableness of Pollen's offer to purchase the Shares.

10. Additional delay may cause the Receivership Entities to lose the opportunity to sell the Shares to Pollen. If this occurs, the Receivership will not only lose the benefits of the proposed transaction with Pollen, but also will incur costs associated with continued monitoring of the investment and a search for a new buyer for the Shares.

EXHIBIT B

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

SECURITIES AND EXCHANGE COMMISSION,)	
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Plaintiff,)	
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BURTON DOUGLAS MORRISS, et al.,)	
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MORRISS HOLDINGS, LLC,)	
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Relief Defendant.)	
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**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”).

In the Motion, the Receiver seeks this Court’s 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”).

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.

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE