

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, )  
v. )  
)  
BURTON DOUGLAS MORRISS, )  
ACARTHA GROUP, LLC, )  
MIC VII, LLC, )  
ACARTHA TECHNOLOGY PARTNERS, LP, and )  
GRYPHON INVESTMENTS III, LLC, )  
)  
Defendants, and )  
)  
MORRISS HOLDINGS, LLC, )  
)  
Relief Defendant. )  
\_\_\_\_\_ )

Case No. 4:12-CV-00080-CEJ

**RECEIVER’S MOTION FOR ENTRY OF AN ORDER  
APPROVING AND CONFIRMING THE RECEIVER’S  
NINETEENTH INTERIM STATUS REPORT**

By Order entered January 17, 2012, the Court appointed Claire M. Schenk as receiver (the “Receiver”) over Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP, and Gryphon Investments III, LLC (collectively, the “Receivership Entities”).

The Receiver herein moves this Court to approve and confirm the Nineteenth Interim Status Report of Receiver—filed as Exhibit A to this Motion—and every act and transaction reported in the Nineteenth Interim Status Report.

This motion is administrative and not adversarial in nature.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: August 2, 2016

By           /s / Kathleen E. Kraft

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2016, 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:

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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.	)	
	)	
BURTON DOUGLAS MORRISS,	)	
ACARTHA GROUP, LLC,	)	
MIC VII, LLC,	)	Case No. 4:12-CV-00080-CEJ
ACARTHA TECHNOLOGY PARTNERS, LP, and	)	
GRYPHON INVESTMENTS III, LLC,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	
	)	

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**NINETEENTH INTERIM STATUS REPORT OF RECEIVER**

Claire M. Schenk (the “Receiver”), the receiver for defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MIC VII, LLC (“MIC VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively, the “Receivership Entities”), submits this **Nineteenth Interim Status Report** to update the Court on the activities of the Receiver occurring since May 3, 2016:

**A. Analysis of Affirmative Legal Claims and Related Proceedings**

Pursuant to paragraph 2 of the Order Appointing Receiver (ECF No. 16; “Receivership Order”), the Receiver is directed to investigate the manner in which the affairs of the Receivership Entities were conducted and to institute such actions and legal proceedings for the benefit and on behalf of the Receivership Entities, as the Receiver deems necessary against those individuals and entities that the Receiver may claim have directly or indirectly misappropriated or transferred monies. As authorized by paragraph 6 of the Receivership Order, the Receiver may

defend, compromise, or settle legal actions in which the Receivership Entities are parties, with authorization of the Court. In keeping with the directives of the Court, the Receiver has pursued the following litigation matters during this reporting period.

As described in previous reports, the Receiver, on behalf of Gryphon III, filed suit against John Wehrle, Gryphon Investments II LLC (“Gryphon II”), and Cirqit.Com, Inc. (“Cirqit”) (collectively referred to as the “Wehrle defendants”) alleging that funds raised from eleven Gryphon III investors were fraudulently and improperly comingled with the funds of Gryphon II and transferred to the Wehrle defendants and others (“Wehrle Litigation”) (*see* ECF No. 416). In an effort to avoid the time, expense, and risk associated with the Wehrle Litigation, the Receiver engaged in successful settlement negotiations culminating in the execution of a settlement agreement by all parties to the Wehrle Litigation (the “Settlement Agreement”).

Having finalized the Settlement Agreement, the Receiver prepared a motion and memorandum seeking Court approval of the settlement (ECF Nos. 428, 429, & 433). As stated in the Receiver’s filing, the Settlement Agreement provided that: the Receivership estate will receive a cash payment of \$125,000; Wehrle will provide a signed and sworn financial statement; a consent judgment of \$875,000 will be entered against Wehrle; Cirqit stock will be retitled in the name of Gryphon III; and the Wehrle defendants will use their best efforts to assist the Receiver to redeem the Receivership’s interests in Cirqit for the planned purchase price of \$1,489,201 (*see* ECF No. 429-2). The Court granted the Receiver’s motion on January 22, 2016 (ECF No. 435).

Since submission of the last Receiver’s Report, the Receiver continued to engage in efforts to effectuate the Settlement Agreement. As of the date of the filing of this report, Cirqit stock was retitled in the name of Gryphon III, and John Wehrle provided a financial statement as

required under the Settlement Agreement. However, the remaining terms of the Settlement Agreement have not been completed.

The Receiver's sale of its interest in Cirqit is dependent upon final redemption of Cirqit's investment in LogicSource, Inc. ("LogicSource"); this event has not yet occurred. Specifically, the Settlement Agreement requires that the shareholders of LogicSource—Cirqit's sole portfolio holding—approve the redemption of the shares in Cirqit (the "Shares") that are held by the Receivership at the price agreed to under the Settlement Agreement and as approved by the Receivership Court on January 22, 2016 (*see* Exhibit A to ECF No. 84).

LogicSource is not under the control of the Wehrle defendants or the Receiver (*see* Exhibit A to ECF No. 84, at ¶ 5). Only when LogicSource has redeemed the Shares will Cirqit be able to redeem the Receiver's interests pursuant to the Settlement Agreement. *Id.* Pursuant to the Settlement Agreement, once the redemption process has occurred, the parties to the Wehrle Litigation can file the Consent Judgment (*see* Exhibit A to ECF No. 84, at ¶¶ 3, 5 and "Consent Judgment" attached thereto), and the \$125,000 payment will be made.

While Cirqit has approved the redemption of the Receiver's investment interest in Cirqit, the CEO of LogicSource has advised the parties that he is currently uncertain as to when or if the redemption will occur. LogicSource has made clear in a number of communications during this reporting period that it continues to deal with many competing priorities, which make it difficult for the Receiver to rely upon a near-term closing date for the redemption. For this reason, the Receiver has drafted and proposed an amendment to the Settlement Agreement that would allow the Receiver to pursue one of three options: (1) the redemption resulting in a cash payment; (2) subject to a Plan of Distribution to be approved by the Receivership Court, an assignment of the Receiver's interests in Cirqit to designated and approved claimants; or (3) a redemption of the

Receiver's interests in Cirqit, which allows the Receiver to directly hold the equity interests in LogicSource. The Receiver is currently negotiating the details of this Amendment with counsel for the Wehrle defendants. The Receiver plans to submit the Amendment to the Settlement Agreement for the approval of the Court once the parties have agreed upon the final terms and language of the Amendment.

The parties to the Wehrle Litigation submitted a joint motion to Judge Sippel for an extension of the June 21, 2016 deadline to file a stipulation for dismissal, motion for leave to voluntarily dismiss, or proposed consent judgment. Judge Sippel granted the motion and entered an order extending the deadline until September 19, 2016 (Wehrle Litigation, 4:15-cv-00464-RWS, ECF No. 91). The Receiver will diligently monitor these events and exercise her best efforts to facilitate effectuation of the Settlement Agreement before September 19, 2016.

The Receiver has previously advised the Court that John Wehrle, Chairman of the Cirqit Board of Directors, was a defendant in a criminal proceeding and that he has pleaded guilty to Count I of an information stating that he presented a false promissory note to the Internal Revenue Service. Following entry of this plea and during this reporting period, on May 24, 2016, John Wehrle was sentenced to probation for a term of five years. He was also ordered to pay a special assessment of \$100, fine of \$3,000, and restitution in the amount of \$87,000.

**B. Claims and Distribution Process**

*1. Librato Distributions*

As reported in the *Sixteenth* and *Seventeenth Interim Status Reports*, on October 14, 2015, the Receiver filed a motion with the Court seeking authority for the distribution of the Librato funds reported in the *Fourteenth Interim Status Report* (see ECF Nos. 413, 414, 416). The Receiver's motion pertained to three of the special purposes vehicles ("SPVs"), which are

not part of the Receivership estate but are managed by a Receivership Entity, Acartha Group. As a result of the sale described in the Receiver's motion, funds (gross proceeds) were received as follows:

Evergrid Acquisition, LLC	\$16,270.84
Evergrid/MIC VII, LLC	\$87,404.75
Librato Acquisition II, LLC	\$752,306.99
ATP	\$164,662.33
MIC VII	\$438,998.08

The Court granted the Receiver's motion for authority to distribute the proceeds held by the three SPVs on November 9, 2015 (ECF No. 423), and the Receiver made distributions as follows: a total of \$708,240 was distributed to the 46 members of Librato Acquisition II; and a total of \$60,361 was distributed to the 18 members of Evergrid/MIC VII. The bulk of these distributions occurred on December 15, 2015. Funds held by ATP and MIC VII will be disbursed following the approval of a plan of distribution by the Court.

Based upon the information provided to the Receiver by the escrow agent, SRS Acquiom ("SRS"), there will be additional disbursements following receipt of the funds currently held in escrow. The SRS statement provided to the Receiver for the period ending June 30, 2016, indicated that the release of the escrowed funds was planned for July 29, 2016, but that processing and transfers may take up to 15 business days beyond that date. The Receiver has not been advised of any substantive claims against those funds although minor expenses are deducted from time to time. As of June 30, 2016, subject to the planned release, the escrowed amounts potentially available for distribution to the members of the three SPVs totaled approximately \$112,033.87. When these funds become available for distribution, they will be disbursed pursuant to the authority granted in the Court's Order (*see* ECF No. 423).

In addition to the funds to be released to the SPVs, the most recent SRS statement indicates that two Receivership Entities will receive the following funds: ATP, \$21,551.55; and MIC VII, \$57,457.54. As noted above, the funds received by ATP and MIC VII as a result of the sale described in the Receiver's October 14, 2015, motion (ECF No. 413) are not the subject of the relief requested in that motion. The Receiver's motion pertains only to the funds received by the Librato SPVs. The Receiver anticipates that the funds received by ATP and MIC VII (both gross proceeds and escrowed proceeds) will be disbursed in connection with a plan of distribution approved by the Court.

## *2. Claim Objections, Distributions, and Wind Up*

**Objections.** The Receiver has described the status of the objections in this matter in preceding reports (*see* ECF No. 456). As a recent development, claimant number 20, Hany Teylouni, was directed by the Court to provide information supporting his claim that he earned deferred compensation at the rate of \$9,166.67 per pay period between September 15, 2008 and April 15, 2010. The Court allowed him until September 1, 2016 to provide this information (ECF No. 472). There have been no other developments pertinent to objections during this reporting period. The claims process has been described in detail in preceding reports and will not be repeated herein (*see Receiver's Ninth, Tenth, Eleventh, and Twelfth Interim Status Reports*, ECF Nos. 315-1, 328-1, 338-1, and 358-1).

**Distributions and Wind Up.** As noted in prior reports, the Receiver has been engaged in the process of reviewing and analyzing the authority and facts relevant to a proposed plan of distribution to the Court regarding so that funds may be paid to allowed claimants of the Receivership Entities. The Receiver intends to seek approval of her recommendations for all allowed claims through the proposed distribution plan. In preparation for submission of the



proposed distribution plan, the Receiver is working closely with her accounting and legal advisors to consider obligations that may impact the availability and allocation of funds for distribution. The Receiver is organizing and analyzing information relevant to: potential classes of claimants; the source of funds and other valuable interests; expenses incurred and paid during the Receivership as well as those expenses for professional fees which remain unpaid; unresolved issues involving entries on the books and records, *e.g.*, due-to or -from items between certain SPVs and the Receivership Entities; and other legal and equitable considerations that may be relevant to the plan of distribution. Also, the Receiver continues to consider liquidation opportunities for remaining assets as well as other options (*i.e.*, a liquidating trust or assignment) for certain assets still held by the Receivership estate. These assets include interests in Tervela, Inc. (“Tervela”), Cirqit (which is subject to the Settlement Agreement), and the Morriss Holdings judgment.

**C. Liquidation Activity**

During the previous reporting period, the Receiver engaged in discussions that culminated in the sale of Receivership interests in Clearbrook Global Advisors, LLC (“Clearbrook”). Clearbrook provides investment advisory services and securities brokerage services to institutions, pension plans, endowments, foundations, family offices, and high net-worth individuals. The Receivership interests in Clearbrook were held in the names of two Receivership Entities, MIC VII and ATP, and one SPV managed by Acartha, Clearbrook Acquisition, LLC (“Acquisition”).

After seeking the advice of the Receivership valuation consultant, Ed Morris, of CliftonLarsonAllen (“CLA”) and reviewing his report recommending the sale, the Receiver sought the approval of the Court for this transaction. (ECF No. 462). Following the approval of

the Court, the redemption was completed and resulted in a total payment of \$100,000 which was allocated in the following manner:

MIC (718,750 Units)	\$52,941.21
ATP (159,722 Units)	\$11,764.69
Acquisition (479,166 Units)	\$35,294.10

Following receipt of the funds, the Receiver has worked with her accountants to develop an appropriate distribution analysis for the funds held by Acquisition. This process necessarily involves consideration of the interests held in Acquisition along with a review of expenses incurred on behalf of Acquisition by the Receivership and examination of other relevant issues, *e.g.*, handling of any due-to or -from entries on the books and records of the involved entities.

**D. Business Operations**

As directed by the Court, the Receiver continues to oversee the holdings of the Receivership Entities in the remaining portfolio company investments and assets. On July 22, 2016, the Receiver participated in a board call with Tervela management following a review of an updated report regarding operations and financials provided by Tervela by Segue and the Receiver. The Receiver also has reviewed other updates by management of Cirqit and LogicSource.<sup>1</sup>

**E. Tax Matters**

During this reporting period, the Receiver and CLA finalized K-1s and provided them to investors in the SPVs and Receivership Entities on July 27, 2016. As part of this process, the Receiver considered investor information to determine if any additional investors abandoned investment interests since the last tax year in order to determine the appropriate form of filing,

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<sup>1</sup> As explained *infra*, additional information is available to the investors on a secure site and subject to execution of an NDA. The specifics pertaining to the information discussed herein is considered confidential by the Receivership portfolio concerns.

notice, and related calculation of interests. The 2015 returns for the Receivership Entities and SPVs will be filed in the near future.

During this reporting period and prior to the due date of June 1, the Receiver reviewed and authorized payments for the annual taxes due to Delaware for the following active entities managed by the Receiver, including, Acartha Group; Acartha Merchant Partners, LLC; ATP; Clearbrook Acquisition; Clearbrook Acquisition Capital; Evergrid Acquisition; Evergrid MIC VII; Gryphon Investments III; Integrien Acquisition, LLC; Librato Acquisition II; Librato Capital II; MIC VII; Tervela Acquisition II; Tervela Acquisition III; Tervela Acquisition; Tervela Capital II; and Tervela Capital III.<sup>2</sup>

For Integrien Acquisition II, LLC and Integrien Capital II, LLC (entities for which distributions and other activity have been completed and final returns filed), payment of Delaware franchise taxes has ceased. Also, as previously reported and at the request of the Receiver, CT Corporation has resigned and the certificate of formation of these inactive entities will be canceled.

**F. Administrative Matters**

**SFAR.** An updated copy of the Standardized Fund Accounting Report (“SFAR”) will be submitted along with the Receiver’s Eighteenth Interim Fee Application for the second quarter of 2016, covering April through June). This report reflects known and current bank balances for the Receivership Entities and the accounts of the SPVs, which are managed by the Receiver. It also reflects expenses and payments during the first quarter of 2016. A final and fully detailed report will be submitted to the Court at the conclusion of the Receivership.

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<sup>2</sup> Payments were previously made to CT Corporation (“CT”), the registered agent for these entities with one correction, *i.e.*, a payment was made for Integrien Acquisition, LLC rather than Integrien Acquisition Capital II.

**Interim Applications for Fees and Expenses.** Payment of fees and expenses to the service professionals providing assistance to the Receiver are current in keeping with the Court's approval of the last Fee Application. As of the date of the filing of this report, there were no pending Fee Applications, and payments were made to the Receiver and her professionals through March 31, 2016.

**Receivership and Secure Investor Websites.** The Receiver continues to update the general website hosted by Thompson Coburn LLP (which is linked to the website for the District Court for the Eastern District of Missouri). Additionally, the Receiver continues to post documents on the extranet sites created for the investors. Access to the extranet sites is allowed subject to receipt of a nondisclosure agreement ("NDA") by the investors. Each site is periodically updated with information pertinent to business operations, *e.g.*, slide decks or presentations, and transactional documents involving additional financings or other significant events. During this reporting period, information pertaining to both Tervela, Cirqit and Clearbrook has been added. The Receiver encourages claimants, investors, and other interested parties to visit the websites that are available to them so that they will have a current understanding of Receivership operations and to avoid unnecessary expense through repeated individualized communications with the Receiver and her counsel.

**G. Unopposed Administrative Filings**

Four unopposed administrative matters were approved by the Court during the last reporting period. On May 5, 2016, the Court granted the *Sixteenth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals* ("Sixteenth Fee Application") (ECF No. 457). In the Sixteenth Fee Application (ECF No. 445), the Receiver sought approval of and authority to pay professional

fees incurred and expenses advanced for the period of October 1, 2015 to December 31, 2015. Also, on May 5, 2016, the Court approved and confirmed the activities described in the *Seventeenth Interim Status Report of Receiver* (ECF No. 441). On June 9, 2016, the Court granted the *Seventeenth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals* (“Seventeenth Fee Application”) (ECF No. 471). In the Seventeenth Fee Application, the Receiver sought approval of and authority to pay professional fees incurred and expenses advanced for the period of January 1, 2016 to March 31, 2016 (ECF No. 461). Also, on June 9, 2016, the Court approved and confirmed the activities described in the *Eighteenth Interim Status Report of Receiver* (ECF No. 470).

### **Conclusion**

The Receiver will continue to update this report on a periodic basis to summarize relevant Receivership activities.

Dated: August 2, 2016

Respectfully submitted,

/s/ Claire M. Schenk  
Claire M. Schenk, Receiver

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Case No. 4:12-CV-00080-CEJ

**ORDER**

Upon the Receiver’s Motion for Entry of an Order Approving and Confirming the Nineteenth Interim Status Report of Receiver, filed by Claire M. Schenk, the court-appointed receiver (the “Receiver”) for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC in this action; and

Having fully considered the Motion and the Nineteenth Interim Status Report and being duly advised as to the merits,

**THE COURT DOES HEREBY ORDER THAT**

1. The Receiver's Motion is granted in its entirety; and

2. The Nineteenth Interim Status Report of Receiver for the period May 3, 2016 through August 1, 2016, and every act and transaction reported therein, are hereby approved and confirmed.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

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THE HONORABLE CAROL E. JACKSON  
UNITED STATES DISTRICT COURT JUDGE