

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.)	

MEMORANDUM OF LAW IN SUPPORT OF RECEIVER’S MOTION FOR APPROVAL OF AMENDMENT TO SETTLEMENT AGREEMENT BETWEEN GRYPHON INVESTMENTS III, LLC AND JOHN S. WEHRLE, GRYPHON INVESTMENTS II, LLC, AND CIRQIT.COM, LLC

On January 7, 2016, the Receiver moved this Court (Dkt. Nos. 428, 429) for entry of an order approving a settlement agreement (the “Agreement”) between the Receiver, John S. Wehrle (“Wehrle”), individually and in his capacity as trustee of the John S. Wehrle Revocable Living Trust (the “Trust”), Gryphon Investments II, LLC (“Gryphon II”), and Cirqit.Com, Inc. (“Cirqit” and collectively, the “Wehrle Defendants”).¹ As the Receiver explained in her motion, under the Agreement, the Receivership estate is to receive a cash payment of \$125,000 along with a signed and sworn financial statement from Wehrle, a consent judgment of \$875,000 against Wehrle, additional Cirqit stock in the name of Gryphon Investments III, LLC (“Gryphon III”), and the best efforts of the Wehrle Defendants in assisting the Receiver to redeem the

¹ The Receiver submitted the motion in furtherance of the principal objectives of the Receivership, *i.e.*, to administer and manage the business affairs, funds, assets, choses in action, and other property of the Receivership Entities, to marshal and safeguard the Receivership assets, and to take such actions as are necessary for the protection of the investors. (*See* SEC Case, Receivership Order, ECF No. 16.)

Receivership's interests in Cirqit for the planned purchase price of \$1,489,201. The Agreement is intended to settle the claims of the parties in affirmative litigation brought by the Receiver, *Gryphon Investments III, LLC v. Wehrle, et al.*, 4:15-cv-00464-RWS. The Court approved the Receiver's motion on January 22, 2016 (Dkt. No. 435).

Some, but not all, of the actions required under the Agreement have taken place. The Cirqit stock has been retitled into the name of Gryphon III. Also, Wehrle has submitted his financial statement to the Receiver. And the Wehrle Defendants have supported the planned redemption of the Receivership's interests in Cirqit, but that redemption has not yet occurred due to events outside of the control of the parties. As such, the parties have negotiated an amendment to the Agreement (the "Amendment")² that will enable the Receiver to pursue additional options regarding the Cirqit interests, including a potential assignment of the Cirqit stock as part of a plan of distribution, subject to the approval of the Court, or redemption of the Receiver's interest in Cirqit which would allow the Receiver to directly hold the equity interests in LogicSource. The redemption, as described in the original motion and Agreement, remains an option as well. Importantly, upon execution of the Amendment, the Wehrle Defendants will make the cash payment of \$125,000 to the Receivership and the parties move forward with the entry of the consent judgment against Wehrle and dismissal of the Wehrle Litigation.

As such, the Receiver files this motion requesting entry of an Order³ approving the Amendment.

I. Background

A. The Receivership

² A true and accurate copy of the Amendment is attached hereto as **Exhibit A**.

³ A proposed order is attached hereto as **Exhibit B**.

On January 17, 2012, the United States Securities and Exchange Commission (the “SEC”) filed its *Complaint for Injunctive and Other Relief* (the “Complaint”) against Burton Douglas Morriss (“Morriss”), Acartha Group, LLC (“Acartha”), Acartha Technology Partners, L.P. (“ATP”), MIC VII, LLC (“MIC”), Gryphon III (collectively, the “Receivership Entities”) and Morriss Holdings, LLC (“Morriss Holdings”)⁴ in this Court as Case No. 4:12-cv-00080-CEJ (the “SEC Case”). (SEC Case, ECF No. 1.) In the Complaint and other papers filed by the SEC on January 17, 2012, the SEC alleged various securities laws violations by the SEC Defendants.

Also, on January 17, 2012, the SEC moved for the immediate appointment of a receiver over the Receivership Entities to (i) administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, (ii) act as sole and exclusive managing member or partner of the Receivership Entities, (iii) maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the Receivership Entities’ estates, (iv) marshal and safeguard all of the assets of the Receivership Entities, and (v) take whatever actions are necessary for the protection of investors. The Court entered the requested relief by order dated January 17, 2012 (the “Receivership Order”). (*See* SEC Case, Receivership Order, ECF No. 16.)

As established in the Receivership Order, the Receiver is charged with

tak[ing] immediate possession of all property, assets and estate of every kind of the [Receivership] Entities whatsoever and wheresoever located, including but not limited to all offices maintained by the [Receivership] Entities’[,] rights of action, books, papers, data processing records, evidence of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership] Entities, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further Order of this Court...”

⁴ Morriss, Acartha, ATP, MIC, Gryphon III, and Morriss Holdings are collectively referred to as the “SEC Defendants.”

(*Id.* at 2.) The Receiver also is “authorized, solely and exclusively, to operate and manage the businesses and financial affairs of [the Receivership Entities] and the Receiver Estates.” (*Id.* at 8.)

Furthermore, the Receiver is charged with investigating the manner in which the affairs of the Receivership Entities were conducted and instituting 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 to directly or indirectly misappropriated or transferred monies. (*Id.* at 2-3.) The Receiver may defend, compromise or settle legal actions in which the Receivership Entities are parties, with authorization of the Court. (*Id.* at 4.)

In keeping with the directives of the Court and the authorities granted to the Receiver, the Receiver sought and obtained the approval of the Court to compromise and settle the claims of Gryphon III against the Wehrle Defendants. These claims were described in the Receiver’s motion for approval of the Agreement and will not be repeated here (*see* Dkt. No. 429 at 4-7).

B. The Amendment to the Agreement

As described in the Receiver’s motion for approval of the Agreement, the principal terms of the Agreement are:

1. A lump sum cash payment in the amount of \$125,000;
2. Entry of a consent judgment against Wehrle in the amount of \$875,000;
3. The submission of a sworn financial statement by Wehrle with supporting documentation;
4. Retitling of 3,075,174 shares of the Series D preferred stock of Cirqit in the name of Gryphon III;

5. Cirqit's redemption of 214,063,351 shares of the Series D preferred stock of Cirqit held by the Receivership Entities (inclusive of the shares to be retitled in the name of Gryphon III) for the planned purchase price of \$1,489,201⁵; and
6. Mutual releases between the Receiver and the Wehrle Defendants.

Some, but not all, of the Agreement's terms have been completed. The Cirqit shares referenced above have been retitled in the name of Gryphon III, and Wehrle has submitted his financial statement to the Receiver. Cirqit's redemption of the Receivership's shares, however, has not occurred. Although Cirqit has approved the redemption, 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. That the planned redemption has not occurred prevents the parties from effectuating the remaining terms of the Agreement, namely entry of a consent judgment against Wehrle and dismissal of the Wehrle Litigation.⁶ Therefore, the parties have negotiated the Amendment to the Agreement to provide the Receiver with two additional options regarding the Receiver's interests in Cirqit: (1) subject to a Plan of Distribution to be approved by the Receivership Court, an assignment of the Receiver's interests in Cirqit; and (2) redemption of the Receivership's interest in Cirqit which allows the Receiver to directly hold the equity interests in LogicSource. The Wehrle Defendants will utilize their best efforts in facilitating the options regarding the Receivership's interests. Also, the Wehrle Defendants will

⁵ The purchase price stated above is calculated as of October 31, 2015 and is subject to adjustment based on additional interest accrued on certain capital call notes issued by Cirqit.

⁶ Judge Sippel has given the parties until September 19, 2016 to file a stipulation for dismissal, motion for leave to voluntarily dismiss, or proposed consent judgment. This deadline has been extended on three occasions.

move forward with payment of the funds due to the Receiver, and the parties will complete the remaining terms of the Agreement, including entry of the consent judgment against Wehrle and dismissal of the Wehrle Litigation.

The Receiver seeks this Court's approval of the proposed Amendment to the Agreement. The Receiver believes that effectuation of the Amendment under the terms and conditions stated therein is in the best interests of the Receivership estate. The Agreement allows the Receiver the discretion to select one of three options and engages the best efforts of the Wehrle Defendants. The Receiver will have the time needed to consider the available options, but yet to move forward with collection of the funds due to the estate and to conclude the Wehrle Litigation in the time period set by Judge Sippel.

II. Argument

Pursuant to the Receivership Order, the Court authorized the Receiver to, among other things, administer and manage the business affairs, funds, assets, choses in action, and other property of the Receivership Entities, marshal and safeguard the assets of the Receivership Entities, and take such actions as are necessary for the protection of investors. (SEC Case, ECF No. 16 at 1.) *See also Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (receiver's "object is to maximize the value of the [Receivership assets] for the benefit of their investors and any creditors"). The Court also authorized the Receiver to take immediate possession of all property, assets, and estates of every kind of the Receivership Entities whatsoever and wheresoever located, and hold such assets pending further order of the Court. (*See* SEC Case, ECF No. 16 at 1.)

Now, in the execution of her sole and exclusive duty to manage the assets of the Receivership Entities and maximize the value of those assets for the benefit of the investors and

any creditors, the Receiver seeks this Court's approval of the Amendment to the Agreement. The funds recovered under the terms of the Agreement, as amended by the Amendment, will either increase the liquid assets of the Receivership estate or allow an assignment of the interests, maximize the possibility of a distribution to investors, avoid the risk of future dilution and diminution of the Receivership's holding in Cirqit, and help fund the Receivership's pursuit of recoveries against third parties. It also will reduce the cost to the Receivership estate of managing and monitoring ongoing litigation and its holdings in Cirqit.

A court's "power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad." *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *Sec. & Exch. Comm'n v. Goldfarb*, No. C 11-00938 WHA, 2013 WL 4504271, at *2 (N.D. Cal. Aug. 21, 2013). Consequently, "[i]t is a recognized principle of law that a district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *Id.* In similar situations, courts have deferred to a Receiver's business and legal judgment, allowing a compromise that is fair and falls within the "range of reasonableness." *S.E.C. v. Ruderman*, No. 2:09-CV-02974-ODW, 2013 WL 153266, at *2 (C.D. Cal. Jan. 15, 2013). This range "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id.* While the court may not simply "rubber-stamp" the parties' decision to enter into a settlement agreement, it also need not "conduct an exhaustive investigation, hold a mini-trial on the merits of the claims sought to be compromised, or require that the settlement be the best that could possibly be achieved." *Id.* The trial court "need only find that the settlement was negotiated in good faith and is reasonable, fair and equitable." *Id.*; see also *S.E.C. v. Arkansas Loan & Thrift Corp.*, 427 F.2d 1171 (8th Cir. 1970) (affirming district court's approval of the

Receiver's settlement agreement); *S.E.C. v. Parish*, No. 2:07-CV-00919-DCN, 2010 WL 8347143, at *1 (D.S.C. Apr. 8, 2010) (granting Receiver's motion to approve the settlement agreement); *accord S.E.C. v. Temme*, No. 4:11-CV-655, 2014 WL 1493399, at *1 (E.D. Tex. Apr. 16, 2014).

Under the circumstances, the Receiver believes that the terms and conditions of the Amendment to the Agreement are reasonable, in the best interests of the Receivership, and will be beneficial to the investors and creditors of the Receivership Entities.

III. Service of the Motion

The Receiver is serving a copy of this motion on all counsel of record. Out of an abundance of caution, the Receiver also is serving certain interested parties (the "Interested Parties") via electronic mail. The Receiver considers the Interested Parties to be those Receivership Entity investors whose filed claims have been recommended for allowance by the Receiver. Furthermore, as she has done with previous motions, the Receiver will post a copy of the motion on the Receivership's website.

IV. Conclusion

For all the foregoing reasons, the Receiver respectfully requests that the Court enter an Order approving the Amendment to the Agreement as reasonable, fair, and equitable, authorizing the Receiver's handling of the Receivership's holdings in Circuit in accordance with any of the options set forth in the Amendment to the Agreement, and granting the Receiver such other and further relief as is just and appropriate under the circumstances.

Dated: August 8, 2016

Respectfully Submitted,

THOMPSON COBURN LLP

By /s/ Kathleen E. Kraft

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 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 all counsel of record receiving electronic service.

I further certify that I served the foregoing document via electronic mail on all Interested Parties (as defined in this Memorandum).

/s/ Kathleen E. Kraft

**FIRST AMENDMENT TO DECEMBER 30, 2015
AGREEMENT TO COMPROMISE, SETTLE AND RELEASE CLAIMS**

This First Amendment (the “Amendment”) to the December 30, 2105 Agreement to Compromise, Settle and Release Claims (the “Agreement”) is made and entered into by and among Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP, Gryphon Investments III, LLC (“Gryphon III”), and each of their subsidiaries, successors and assigns (collectively the “Receivership Entities”), by and through Claire M. Schenk as Receiver over the Receivership Entities (“Receiver”); and John S. Wehrle (“Wehrle”), Cirqit.com, Inc. (“Cirqit”), Gryphon Investments II, LLC (“Gryphon II”) and the John S. Wehrle Revocable Living Trust (the “Trust”) (collectively the “Defendants”). The Receivership Entities and the Defendants together are all hereinafter referred to as the “Parties”.

WHEREAS, on January 17, 2012, in the case captioned Securities and Exchange Commission v. Burton Douglas Morriss, et al., Case No. 4:12-cv-00080-CEJ (E.D. Mo. 2012) (the “Receivership Proceedings”), the United States District Court for the Eastern District of Missouri (the “Receivership Court”) entered an Order appointing Claire M. Schenk as Receiver over the Receivership Entities (the “Order Appointing Receiver”);

WHEREAS, on March 13, 2015, Gryphon III, by and through the Receiver and consistent with her appointment, filed a Complaint against Wehrle, Gryphon II and Cirqit in the U.S. District Court for the Eastern District of Missouri asserting a variety of claims against said Defendants, which was amended on September 23, 2015 to add a variety of claims against said Defendants and add claims against John S. Wehrle in his capacity as Trustee of the John S. Wehrle Revocable Living Trust (“Trust”);

WHEREAS, the Parties reached the December 30, 2015 Agreement as set forth on Attachment A and the Agreement was subsequently approved by the Receivership Court without objection;

WHEREAS, following many months of the Parties' attempts to finalize the second condition of the Agreement (*i.e.*, final redemption of Cirqit's investment in LogicSource, Inc. ("LogicSource")) in which the Receiver holds an equity interest), the Parties have determined that an amendment to the Agreement is necessary.

NOW, THEREFORE, in consideration of the mutual promises and undertakings, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, and intending to be legally bound, it is agreed as follows:

1. **Agreement Submitted to Receivership Court for Approval.** The Parties each acknowledge and agree that this Amendment is subject to approval by the Receivership Court. Accordingly, the Agreement will be submitted to the Receivership Court as part of the Receiver's motion for approval and will be filed within the Receivership Proceedings.
2. **Conditional Nature of Amendment.** In the event that the second condition of the Agreement (*i.e.*, final redemption of the Receiver's interests in Cirqit proposed to be funded by Cirqit's sale of a portion of its interests in LogicSource) does not occur by September 14, 2016, then the provisions of this Amendment shall apply.
3. **Receiver's Alternatives.** As an alternative to the redemption of the Receiver's interests in Cirqit as described in paragraph 2, above, the Receiver shall have the discretion to pursue the following options, subject to the terms of this Amendment and subject further to such approvals as may be required, including the approval of the Receivership Court: (a) subject to a Plan of Distribution to be approved by the Receivership Court, an assignment of the Receiver's interests

in Cirqit; (b) redemption of the Receiver's interest in Cirqit which allows the Receiver to directly hold the equity interests in LogicSource; or (c) continued efforts to redeem the Receiver's shares as described in the Agreement. Cirqit agrees that it will exercise its best efforts to facilitate the option chosen by the Receiver, provided, however that the Parties hereto, and each of them, acknowledge that each option may require the consent of persons and/or entities not parties to the Agreement or this Amendment, which persons and/or entities are not within the control of any Party, and provided further that, if the shares of the Receiver have not been redeemed pursuant to option (c), above, by December 31, 2016, then the approval of Cirqit's shareholders and/or Cirqit's board of directors may be required for the redemption of such shares from and after that date, and Cirqit cannot guarantee that such approval will be given.

4. **Cash Payment to Receiver.** Defendants shall pay to the Receiver for the benefit of the Receivership Entities, by wire transfer, the sum of One Hundred Twenty-Five Thousand Dollars and No Cents (\$125,000.00) (the "Cash Payment"), on or before September 18, 2016. The wire transfer shall be accomplished in the manner directed by the Receiver.

5. **Other Events to Conclude Settlement.** After the Receiver's receipt of the payment described in Paragraph 4, above, the following shall occur, but in no event later than September 19, 2016: (a) Entry of the Consent Judgment described in Paragraph 3 of the Agreement; (b) the Motion for Dismissal with prejudice described in Paragraph 19 of the Agreement; and (c) delivery of the fully-executed Receiver's letter described in Paragraph 7 of the Agreement.

6. **Remaining Terms of the Agreement.** The Parties agree that all other terms of the Agreement, including but not limited to the Releases set forth in Paragraphs 9 and 10 of the

Agreement, will remain in full force and effect unless a direct change is effected under the terms of this Amendment.

IN WITNESS WHEREOF, each Party has executed this First Amendment to the Agreement as of the date set forth below.

Claire M. Schenk, Receiver

ACARTHA GROUP, LLC

By: _____
Name: _____
Title: _____

MIC VII, LLC

By: _____
Name: _____
Title: _____

ACARTHA TECHNOLOGY PARTNERS, LP

By: _____
Name: _____
Title: _____

GRYPHON INVESTMENTS III, LLC

By: _____
Name: _____
Title: _____

John S. Wehrle

JOHN S. WEHRLE REVOCABLE LIVING
TRUST

By: _____
Name: _____
Title: _____ Trustee

CIRQIT, INC.

By: _____
Name: _____
Title: _____ Chairman of the Board

GRYPHON INVESTMENTS II, LLC

By: _____
Name: _____
Title: _____

EXHIBIT B

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 AMENDMENT TO SETTLEMENT AGREEMENT
BETWEEN GRYPHON INVESTMENTS III, LLC AND JOHN S. WEHRLE,
GRYPHON INVESTMENTS II, LLC, AND CIRQUIT.COM, LLC**

This matter is before the Court on the *Motion for Approval of Amendment to Settlement Agreement Between Gryphon Investments III, LLC and John S. Wehrle, Gryphon Investments II, LLC, and Circuit.com, LLC* and memorandum in support thereof (ECF Nos. __, __; 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”). On August 8, 2016, the Receiver filed the Motion, seeking Court approval of the Receiver’s *First Amendment to December 30, 2015 Agreement to Compromise, Settle and Release Claims* (the “Amendment”) against John S. Wehrle (“Wehrle”), individually and in his capacity as trustee of the John S. Wehrle Revocable Living Trust (the “Trust”), Gryphon Investments II, LLC (“Gryphon II”), and Circuit.Com, Inc. (“Circuit” and collectively, the “Wehrle Defendants”). The Court approved the Receiver’s motion on January 22, 2016 (ECF No. 435).

The Amendment would allow the Receiver to pursue one of three options in effectuating the agreement as related to the shares in Cirqit that are held by the Receivership (the “Shares”): (1) the redemption resulting in a cash payment as described in the original Settlement Agreement; (2) subject to the approval of the Court, an assignment of the Receivership’s interests in Cirqit to designated and approved claimants; or (3) a redemption of the Receivership’s interests in Cirqit, which would allow the Receivership to directly hold the equity interests in LogicSource.

Having fully considered the Motion, any opposition thereto, and being duly advised as to the merits, the Court hereby finds as follows:

The Amendment is reasonable, fair, and equitable. *U.S. Sec. & Exch. Comm’n v. Ruderman*, No. 2:09-CV-02974-ODW, 2013 WL 153266, at *2 (C.D. Cal. Jan. 15, 2013). The Amendment will allow the Receiver to exercise one of three reasonable options each of which will move this matter closer to a wind up of the entire Receivership. The Amendment also will reduce the cost to the Receivership estate of managing and monitoring ongoing litigation and the Receivership’s holding in Cirqit. Therefore,

IT IS HEREBY ORDERED THAT

1. The Motion is **GRANTED** in its entirety.
2. The Amendment is approved. Furthermore, the Receiver is authorized to execute the Amendment and to take such acts as are necessary to effectuate one of the three listed options regarding the Shares in accordance with the Amendment.

SO ORDERED this the ___ day of _____, 2016.

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE