

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

GRYPHON INVESTMENTS III, LLC,	)	
	)	
Plaintiff,	)	Case No. 4:15-CV-00464-RWS
	)	
vs.	)	<b>JURY TRIAL DEMANDED</b>
	)	
JOHN S. WEHRLE, et al.,	)	
	)	
Defendants.	)	

**ANSWER OF CIRQIT.COM, INC.**

COMES NOW Cirqit.com, Inc. (“Cirqit”) and, for its answer to the Complaint of Gryphon Investments III, LLC (“Gryphon III”), by and through its receiver, Claire M. Schenk (“Receiver”), states as follows:

**The Parties, Jurisdiction, and Venue<sup>1</sup>**

1. In regard to the averments of Paragraph 1 of the Complaint, Cirqit states that the Receivership Order speaks for itself and is the best evidence of the terms and conditions thereof.
2. In regard to the averments of Paragraph 2 of the Complaint, Cirqit states that the Receivership Order speaks for itself and is the best evidence of the terms and conditions thereof.
3. In regard to the averments of Paragraph 3 of the Complaint, Cirqit states that the Receivership Order speaks for itself and is the best evidence of the terms and conditions thereof.
4. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4 of the Complaint.

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<sup>1</sup> Cirqit has retained the captions used by the Receiver in her Complaint for the use and convenience of the reader. Such captions are not to be used in construing this Answer and Cirqit makes no admission in setting them forth herein.

5. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 5 of the Complaint.

6. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6 of the Complaint.

7. In regard to the averments of Paragraph 7 of the Complaint, Cirqit admits the first and third sentences thereof and denies the remaining averments of Paragraph 7 of the Complaint.

8. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 8 of the Complaint.

9. Cirqit denies the averments of Paragraph 9 of the Complaint.

10. Cirqit denies the averments of Paragraph 10 of the Complaint.

11. Cirqit denies the averments of Paragraph 11 of the Complaint.

12. Cirqit denies the averments of Paragraph 12 of the Complaint.

### **Factual Background**

13. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 13 of the Complaint.

14. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 14 of the Complaint.

15. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 15 of the Complaint.

16. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 16 of the Complaint.

17. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 17 of the Complaint.

18. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 18 of the Complaint.

19. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 19 of the Complaint.

20. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 20 of the Complaint.

21. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 21 of the Complaint.

22. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 22 of the Complaint.

23. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 23 of the Complaint.

24. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 24 of the Complaint.

25. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 25 of the Complaint.

26. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 26 of the Complaint.

27. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 27 of the Complaint.

28. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 28 of the Complaint.

29. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 29 of the Complaint.

30. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 30 of the Complaint.

31. Cirqit denies the averments of Paragraph 31 of the Complaint.

32. Cirqit denies the averments of Paragraph 32 of the Complaint.

33. Cirqit denies the averments of Paragraph 33 of the Complaint.

34. Cirqit denies the averments of Paragraph 34 of the Complaint.

35. Cirqit states that the averments of Paragraph 35 of the Complaint should be stricken pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

**Count I – Breach of Contract  
Against Defendant Wehrle<sup>2</sup>**

36. In answer to the averments of Paragraph 36 of the Complaint, Cirqit hereby restates and incorporates herein its answers to Paragraphs 1 through 35 of the Complaint.

37. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 37 of the Complaint.

38. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 38 of the Complaint.

39. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 39 of the Complaint.

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<sup>2</sup> Even though the averments of Count I (consisting of Paragraphs 36 through 41) and Count II (consisting of Paragraphs 42 through 45) are directed only against Wehrle, Cirqit has answered the averments set forth in those Counts because those averments are subsequently incorporated into Counts III through VIII, which are directed against it.

40. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 40 of the Complaint.

41. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 41 of the Complaint.

**Count II – Breach of Fiduciary Duty  
Against Defendant Wehrle**

42. In answer to the averments of Paragraph 42 of the Complaint, Cirqit hereby restates and incorporates herein its answers to Paragraphs 1 through 41 of the Complaint.

43. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 43 of the Complaint.

44. Cirqit denies the averments of Paragraph 44 of the Complaint.

45. Cirqit denies the averments of Paragraph 45 of the Complaint.

**Count III – Fraudulent Transfers  
Against Defendants Wehrle, Cirqit, and Gryphon II**

46. In answer to the averments of Paragraph 46 of the Complaint, Cirqit hereby restates and incorporates herein its answers to Paragraphs 1 through 45 of the Complaint.

47. Cirqit denies the averments of Paragraph 47 of the Complaint.

48. Cirqit denies the averments of Paragraph 48 of the Complaint.

49. Cirqit denies the averments of Paragraph 49 of the Complaint.

50. Cirqit denies the averments of Paragraph 50 of the Complaint.

51. Cirqit denies the averments of Paragraph 51 of the Complaint.

52. Cirqit denies the averments of Paragraph 52 of the Complaint.

53. Cirqit denies the averments of Paragraph 53 of the Complaint.

54. Cirqit denies the averments of Paragraph 54 of the Complaint.

**Count IV – Unjust Enrichment/Quantum Meruit  
Against Defendants Wehrle, Cirqit, and Gryphon II**

55. In answer to the averments of Paragraph 55 of the Complaint, Cirqit hereby restates and incorporates herein its answers to Paragraphs 1 through 54 of the Complaint.

56. Cirqit denies the averments of Paragraph 56 of the Complaint.

57. Cirqit denies the averments of Paragraph 57 of the Complaint.

58. Cirqit denies the averments of Paragraph 58 of the Complaint.

**Count V – Money Had and Received  
Against Defendants Wehrle, Cirqit, and Gryphon II**

59. In answer to the averments of Paragraph 59 of the Complaint, Cirqit hereby restates and incorporates herein its answers to Paragraphs 1 through 58 of the Complaint.

60. Cirqit denies the averments of Paragraph 60 of the Complaint.

61. Cirqit denies the averments of Paragraph 61 of the Complaint.

62. Cirqit denies the averments of Paragraph 62 of the Complaint.

**Count VI – Conversion  
Against Defendants Wehrle, Cirqit, and Gryphon II**

63. In answer to the averments of Paragraph 63 of the Complaint, Cirqit hereby restates and incorporates herein its answers to Paragraphs 1 through 62 of the Complaint.

64. Cirqit denies the averments of Paragraph 64 of the Complaint.

65. Cirqit denies the averments of Paragraph 65 of the Complaint.

66. Cirqit denies the averments of Paragraph 66 of the Complaint.

**Count VII – Replevin  
Against Defendants Wehrle, Cirqit, and Gryphon II**

67. In answer to the averments of Paragraph 67 of the Complaint, Gryphon II hereby restates and incorporates herein its answers to Paragraphs 1 through 66 of the Complaint.

68. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 68 of the Complaint.

69. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 69 of the Complaint.

70. In regard to the averments of Paragraph 70 of the Complaint, Cirqit denies that any funds are properly subject to seizure, but admits that no funds have been seized.

71. Cirqit states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 71 of the Complaint.

**Count VIII – Action for Accounting  
Against Defendants Wehrle, Cirqit, and Gryphon II**

72. In answer to the averments of Paragraph 72 of the Complaint, Cirqit hereby restates and incorporates herein its answers to Paragraphs 1 through 71 of the Complaint.

73. Cirqit denies the averments of Paragraph 73 of the Complaint.

74. Cirqit denies the averments of Paragraph 74 of the Complaint.

75. Cirqit denies the averments of Paragraph 75 of the Complaint.

76. Cirqit denies the averments of Paragraph 76 of the Complaint.

**Affirmative Defenses  
(Applicable to All Counts)**

Without waiving its denial of liability, Cirqit alleges the following additional, affirmative defenses to the Complaint:

77. Cirqit denies each and every averment and conclusion of law contained in the Complaint not specifically admitted herein.

78. Cirqit states that each and every Count of the Complaint fails to state a claim upon which relief can be granted.

79. Cirqit states that this Court lacks subject-matter jurisdiction.

80. Cirqit states that this Court lacks personal jurisdiction over it for the reasons, among others, that: (a) it is a Delaware corporation, (b) it has its principle place of business in New Jersey, (c) it does not have, and has never had, a place of, or done, business in Missouri, (d) it does not have, and has never had, any assets in Missouri, (e) it has never transacted business within Missouri, (f) it has never made any contracts within Missouri, (g) it has not committed any tortious act within Missouri, (h) it has never owned, used or possessed any real estate situated in Missouri, and (i) it has never contracted to insure any person, property or risk which was located within Missouri at the time of contracting.

81. Cirqit states that venue is improper as to it for the reasons, among others, that: (a) it does not reside in the Eastern District of Missouri in that it is a Delaware corporation, with its principle place of business in New Jersey, and has never had, a place of, or done, business in Missouri, (b) upon information and belief, the other defendants herein reside in Missouri, (c) a substantial part of the events or omissions giving rise to the claims asserted against it did not arise in the Eastern District of Missouri, (d) it does own or possess, and has never owned or possessed, any property in the Eastern District of Missouri, and (e) this action may be brought against it in the District of Delaware, where it is incorporated, or in the District of New Jersey, where it has its principle place of business.

82. Cirqit states that each and every Count of the Complaint is barred by the applicable statutes of limitation, including, without limitation, § 428.049, RSMo, and §§ 516.100 and 516.120, RSMo.

83. Cirqit states that, to the extent it may have come into possession of any assets or funds belonging to Gryphon III, Cirqit did not transfer or accept any such assets or funds, or

incur any obligation with respect thereto, with actual intent to hinder, delay, or defraud any creditor.

84. Cirqit states that, to the extent it may have come into possession of any assets or funds belonging to Gryphon III, Cirqit did not incur any obligation with respect thereto for the reason that it took the same in good faith.

85. Cirqit states that: (a) the Receiver has no need for discovery herein; (b) the nature of the accounts between Cirqit, on the one hand, and Gryphon III and/or the Receiver, on the other, is not complicated; (c) there is no fiduciary or trust relationship between Cirqit, on the one hand, and Gryphon III and/or the Receiver, on the other, and (d) Gryphon III and the Receiver have adequate remedies at law.

86. Cirqit states that each and every Count of the Complaint directed against it is barred by laches, waiver, acquiescence, and ratification. To the extent any of the alleged activities are proven, which Cirqit denies, the parties to whom the claims belonged failed to object within a reasonable time and, in fact, consented to those activities. As a result of the delay in asserting their purported rights, and, as a result of the consent by the parties in interest, Cirqit will be harmed if any of those activities are found to be wrongful in any respect.

87. Cirqit states that Gryphon III, in the exercise of reasonable diligence and effort, could have mitigated any damages alleged in the Complaint, and that some, or all, of the damages, if any, complained of in the Complaint were directly and proximately caused by the failure, neglect, and refusal of Gryphon III and its agents and representatives, to exercise reasonable diligence to mitigate the damages alleged.

88. Cirqit states that, at all relevant times, all of its conduct complied with its contractual duties, if any, and was reasonable, lawful, and in good faith.

89. Cirqit states that the Complaint is barred by the equitable doctrine of estoppel based on the actions of Gryphon III, its agents, representatives, and/or other persons or entities affiliated with Gryphon III because they failed to comply with their obligations, thereby causing Gryphon III damages.

90. Cirqit states that Gryphon III's claims are barred because Wehrle and Cirqit at all times exercised reasonable diligence, and because they had, after reasonable investigation, reasonable grounds for the alleged action, inaction, conduct, facts, and circumstances complained of in the Complaint and such actions were based upon the legitimate economic interest of all parties involved.

91. Cirqit states that Gryphon III's alleged injuries and damages, if any, were caused solely by intervening or superseding causes or by other persons, entities, forces and/or things over which Cirqit had no control and for which Cirqit is not responsible.

92. Cirqit states that each and every Count of the Complaint is barred by the statute of frauds.

93. Cirqit states that Gryphon III is not entitled to punitive damages, and any amount of punitive damages entered against Cirqit would violate the United States and Missouri Constitutions. Gryphon III cannot state a claim for punitive damages because the procedures for assessing punitive damages, facially and as applied to the facts of this case, violate numerous constitutional provisions, including Article I, Section 10 of the United States Constitution, and the First, Fifth, Sixth, Eighth, and Fourteenth Amendments thereto, and Article I, Sections 2, 3, 8, 10, 13, 14, 18a, 19, and 21 of the Missouri Constitution, for the reasons, among others:

(a) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Art. I, Section 10, and Article I, Section 2 of

the Missouri Constitution are violated because the jury or fact-finder has total discretionary power to award punitive damages, and adequate objective legal standards do not exist to guide and limit the jury's or fact-finder's discretion, thus allowing an award of punitive damages to be irrational, arbitrary and capricious and based upon vague, unpredictable, conflicting, and purely subjective standards;

(b) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 and Article I, Section 2 of the Missouri Constitution are violated because the vague and inconsistent legal standards for the imposition of punitive damages deprives Cirqit of sufficient notice of the type of conduct and mental state upon which a punitive damage award may be based, and the amount of punitive damages which may be awarded against it as the result of its alleged misconduct;

(c) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 and Article I, Section 2 of the Missouri Constitution are violated because the guidelines, standards, procedures, and instructions for the imposition of punitive damages are ambiguous, indefinite, vague, uncertain, conflicting, purely subjective, and fundamentally unfair;

(d) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 and Article I, Section 2 of the Missouri Constitution are violated because no objective limitations are established concerning the amount of severity of the punitive damages award;

(e) The Eighth Amendment of the United States Constitution and Article I, Section 21 of the Missouri Constitution are violated because punitive damages constitute penal

damages and amount to an unconstitutional criminal and excessive fine for punishment in a civil proceeding;

(f) The Fifth and Sixth Amendments of the United States Constitution and Article I, Section 18a and Section 19 of the Missouri Constitution are violated because Cirqit cannot exercise all of the constitutional and statutory rights which must be accorded to a party which is subject to imposition of a criminal penalty in the form of punitive damages;

(g) The equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 2 of the Missouri Constitution are violated because the imposition of punitive damages discriminates against Cirqit on the basis of wealth in that greater amounts of punitive damages for the identical conduct may be awarded against parties who have more economic wealth than other parties;

(h) The First Amendment of the United States Constitution and Article I, Section 8 of the Missouri Constitution are violated because the imposition of punitive damages against Cirqit is based on vague, conflicting, uncertain, and purely subjective standards without adequate notice to Cirqit and create a chilling effect on speech and expression;

(i) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 and Article I, Section 2 of the Missouri Constitution, as well as the provisions of Article I, Section 14 of the Missouri Constitution are violated because the imposition of punitive damages impairs Cirqit's rights of access to the courts to adjudicate civil disputes;

(j) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 2 of the Missouri

Constitution are violated because the imposition of punitive damages subjects Cirqit to multiple punishments and fines for the identical conduct; and

(k) Article I, Section 13 of the Missouri Constitution is violated because the imposition of punitive damages impairs Cirqit's right to contract.

94. Upon information and belief, Cirqit states: (a) the property which the Receiver seeks herein is located in different districts, (b) the Receiver failed to give bond as required by the court, and (c) the Receiver did not file copies of her order of appointment and complaint with this Court within ten days after the entry of her order of appointment as required by 28 U.S.C. § 754.

95. Cirqit hereby gives notice that it intends to rely on such other defenses as may become available or ascertained during the course of discovery in this case, and hereby reserves the right to amend its answer to assert any such defenses.

WHEREFORE, Cirqit prays that the within Complaint be dismissed; that Cirqit be awarded its reasonable attorney's fees expended herein; that all costs incurred herein be taxed against the Receiver, and for such other relief as the court may deem appropriate and just.

/s/ S. Francis Baldwin

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Attorney for Defendant  
Cirqit.com, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of May, 2015, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ S. Francis Baldwin

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