

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

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

**JOHN S. WEHRLE'S ANSWER AND AFFIRMATIVE DEFENSES TO
GRYPHON INVESTMENTS III, LLC'S COMPLAINT**

COMES NOW John S. Wehrle ("Wehrle"), by and through his undersigned counsel, and for his Answer and Affirmative Defenses to the Complaint filed against him by Gryphon Investments III, LLC ("Gryphon III"), states as follows:

1. Admitted.
2. Wehrle states that the Receivership Order speaks for itself and is the best evidence of the terms and conditions thereof.
3. Wehrle states that the Receivership Order speaks for itself and is the best evidence of the terms and conditions thereof.
4. Wehrle admits the first sentence of paragraph 4. Wehrle denies the second sentence of paragraph 4, except to state that he founded Gryphon II and co-founded Gryphon III. Wehrle states that the third sentence of paragraph 4 is ambiguous as to the term "Gryphon Entities" and, therefore, denies the third sentence of paragraph 4.
5. Denied, except to admit that in his capacity as manager of Gryphon II, Wehrle raised and solicited funds from prospective investors and managed portfolio company investments and realizations with respect to Gryphon Holdings II and II "B."

6. Wehrle admits the first sentence of paragraph 6. Wehrle denies the second sentence of paragraph 6, except to state that Gryphon II is the general partner of Gryphon Holdings II.

7. Wehrle admits the first sentence of paragraph 7. Wehrle states that the second sentence of paragraph 7 is ambiguous and therefore denies the same. Wehrle admits the third sentence of paragraph 7. The fourth sentence of paragraph 7 is denied.

8. Wehrle is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 and therefore denies the allegations set forth therein.

9. The allegations set forth in paragraph 9 contain legal conclusions to which no response is required.

10. The allegations set forth in paragraph 10 contain legal conclusions to which no response is required.

11. The allegations set forth in paragraph 11 contain legal conclusions to which no response is required. However, Wehrle consents to venue in this District.

12. The allegations set forth in paragraph 12 contain legal conclusions to which no response is required. However, Wehrle consents to venue in this District.

13. Admitted.

14. Upon information and belief, admitted.

15. Wehrle states that the Operating Agreement speaks for itself and is the best evidence of the terms and conditions thereof.

16. Wehrle states that the Operating Agreement speaks for itself and is the best evidence of the terms and conditions thereof.

17. Wehrle states that the Operating Agreement speaks for itself and is the best evidence of the terms and conditions thereof.

18. Denied.

19. Denied.

20. Upon information and belief, admitted.

21. Wehrle is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 and therefore denies the allegations set forth therein.

22. Upon information and belief, admitted.

23. Wehrle states that the Subscription Agreement speaks for itself and is the best evidence of the terms and conditions thereof.

24. Wehrle states that the Summary of the Terms of the Investment speaks for itself and is the best evidence of the terms and conditions thereof.

25. Wehrle states that the Operating Agreement speaks for itself and is the best evidence of the terms and conditions thereof.

26. Denied.

27. Denied.

28. Upon information and belief, admitted.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. The allegations set forth in paragraph 34 contain legal conclusions to which no response is required. To the extent a response is required, Wehrle denies the allegations set forth therein, except to admit that the Receiver and Wehrle entered into a series of tolling agreements, the terms of which speak for themselves.

35. The allegations of paragraph 35 should be stricken pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

Count I – Breach of Contract

36. through 41. Wehrle incorporates herein his Motion to Dismiss Count I for failure to state a claim upon which relief may be granted filed contemporaneously herewith and adopts said Motion to Dismiss and Memorandum in Support as his responsive pleading to paragraphs 36 through 41 of the Complaint. To the extent any additional response is required, Wehrle denies the allegations contained in paragraphs 36 through 41.

Count II – Breach of Fiduciary Duty

42. Wehrle incorporates his answers to paragraphs 1 through 41 as if fully set forth herein.

43. The allegations set forth in paragraph 43 contain legal conclusions to which no response is required. To the extent a response is required, Wehrle denies the allegations set forth therein.

44. Denied.

45. Denied.

WHEREFORE, having fully answered, Wehrle respectfully requests that the Court dismiss Count II of the Complaint with prejudice, enter judgment in favor of Wehrle, and award Wehrle such other relief as the Court deems necessary and just.

Count III – Fraudulent Transfers

46. through 54. Wehrle incorporates herein his Motion to Dismiss Count III for failure to state a claim upon which relief may be granted filed contemporaneously herewith and adopts said Motion to Dismiss and Memorandum in Support as his responsive pleading to paragraphs 46 through 54 of the Complaint. To the extent any additional response is required, Wehrle denies the allegations contained in paragraphs 46 through 54.

Count IV – Unjust Enrichment/Quantum Meruit

55. Wehrle incorporates his answers to paragraphs 1 through 54 as if fully set forth herein.

56. Denied.

57. Denied.

58. Denied.

WHEREFORE, having fully answered, Wehrle respectfully requests that the Court dismiss Count IV of the Complaint with prejudice, enter judgment in favor of Wehrle, and award Wehrle such other relief as the Court deems necessary and just.

Count V – Money Had and Received

59. Wehrle incorporates his answers to paragraphs 1 through 58 as if fully set forth herein.

60. Denied.

61. Denied.

62. Denied.

WHEREFORE, having fully answered, Wehrle respectfully requests that the Court dismiss Count V of the Complaint with prejudice, enter judgment in favor of Wehrle, and award Wehrle such other relief as the Court deems necessary and just.

Count VI – Conversion

63. through 66. Wehrle incorporates herein his Motion to Dismiss Count VI for failure to state a claim upon which relief may be granted filed contemporaneously herewith and adopts said Motion to Dismiss and Memorandum in Support as his responsive pleading to paragraphs 63 through 66 of the Complaint. To the extent any additional response is required, Wehrle denies the allegations contained in paragraphs 63 through 66.

Count VII – Replevin

67. through 71. Wehrle incorporates herein his Motion to Dismiss Count VII for failure to state a claim upon which relief may be granted filed contemporaneously herewith and adopts said Motion to Dismiss and Memorandum in Support as his responsive pleading to paragraphs 67 through 71 of the Complaint. To the extent any additional response is required, Wehrle denies the allegations contained in paragraphs 67 through 71.

Count VIII – Action for an Accounting

72. Wehrle incorporates his answers to paragraphs 1 through 71 as if fully set forth herein.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

WHEREFORE, having fully answered, Wehrle respectfully requests that the Court dismiss Count VIII of the Complaint with prejudice, enter judgment in favor of Wehrle, and award Wehrle such other relief as the Court deems necessary and just.

ADDITIONAL AND AFFIRMATIVE DEFENSES

Without waiving his denial of liability, Wehrle alleges the following additional and affirmative defenses to the Complaint:

1. All allegations of fact and conclusions of law not specifically admitted herein are denied.
2. The Complaint, and each Count therein, fail to state a claim upon which relief can be granted.
3. The Complaint is barred, in whole or in part, by the applicable statute of limitations.
4. The Complaint is barred by laches, waiver, acquiescence, and ratification. To the extent any of the alleged activities are proven, which Wehrle 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, Wehrle will be harmed if any of those activities are found to be wrongful in any respect.
5. Gryphon III, with the exercise of reasonable diligence and effort, could have mitigated any damages alleged in the Complaint, and 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.

6. At all relevant times, all of Wehrle's conduct complied with his contractual obligations and was reasonable, lawful, and in good faith.

7. The Complaint is barred by the equitable doctrine of estoppel based on the actions of Gryphon III and its agents and representatives and/or other persons or entities affiliated with Grypon III in failing to comply with their obligations and otherwise causing their own damages.

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

9. 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 Wehrle had no control and for which Wehrle is not responsible.

10. Wehrle hereby gives notices that he 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 this pleading to assert any such defenses.

11. Gryphon III is not entitled to punitive damages, and any amount of punitive damages entered against Wehrle 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 reasons including that:

- a. 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 jury or fact-finder has total discretionary powers 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 protective 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 Sandlin 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 awarded which could result from defendants' 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 1, 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 Sandlin 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 Sandlin 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 on Sandlin is based on vague, conflicting, uncertain,

and purely subjective standards without adequate notice to defendants 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 Sandlin'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 Sandlin 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 Sandlin's right to contract.

WHEREFORE, having fully answered, Wehrle respectfully requests that the Court dismiss with prejudice all Counts of the Complaint, enter judgment in favor of Wehrle, and award Wehrle all other and further relief as is appropriate and just.

CAPES, SOKOL, GOODMAN, & SARACHAN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 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/ Sanford J. Boxerman