

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 4:12-cv-00080-CEJ
	)	
BURTON DOUGLAS MORRISS, <i>et al.</i> ,	)	
	)	
Defendants,	)	

**MIKE MCDANIEL REQUEST FOR INFORMATION REGARDING  
RECEIVER’S MOTION FOR SALE OF  
PREFERRED AND COMMON SHARES OF POLLEN, INC.**

Mike McDaniel hereby requests additional information regarding *Receiver’s Motion for Sale of Preferred and Common Shares of Pollen, Inc.* The Receiver’s motion proposes the sale of preferred and common shares of the stock of Pollen, Inc. (“Company”) currently owned by Acartha Technology Partners, L.P. (“ATP”). Although that proposed sale directly affects McDaniel’s interests, he has received no information regarding the sale other than the substantially redacted documents filed with the Court. He is entitled to more and asks the Court to order the Receiver to provide it.

In support of this request for information, McDaniel states as follows:

1. McDaniel will be affected by the Receiver’s proposed sale of Company shares owned by ATP. ATP currently owns the 1,656,299 shares of Series A Preferred Stock and 31,764 shares of Series B Common Stock in the Company that are the subject of the Receiver’s proposed sale. (Doc. 294-1.) Gryphon Investments III, LLC (“Gryphon”) is the general partner of ATP and, on information and belief, has a “Carried Interest” equal to twenty percent (20%) of amounts realized by ATP in excess of amounts invested in portfolio investments made by ATP.

(McDaniel Decl., **Exhibit 1**, ¶2.) McDaniel owns an interest in Gryphon both as a member and as a Series A Preferred shareholder. (McDaniel Decl., ¶2.)

2. On information and belief, Gryphon will not receive any part of the proceeds of the proposed sale in compensation for its “Carried Interest,” and Gryphon investors, including McDaniel, will not receive any share of that interest. (McDaniel Decl., ¶3.)

3. Gryphon is under the control of the Receiver. No current party to this litigation adequately represents the interests of the Gryphon investors. (McDaniel Decl., ¶7.)

4. Under governing statutes, the Court may not approve this proposed private sale of shares *unless it finds that the sale is in “the best interests of the estate.”* 28 U.S.C. §2001(b); *see also* 28 U.S.C. §2004 (providing that §2001 applies to sales of personalty as well as realty). The Court must also consider whether the proposed sale price is the “*best price under the circumstances.*” *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 130772, \*4 (N.D. Cal. Aug. 21, 2013) (quoting *Tanzer v. Huffines*, 412 F.2d 221, 223 (3rd Cir. 1969)).

5. Despite these requirements, neither the Court nor, as relevant here, Company investors have been provided with adequate information to assess whether the proposed sale is either in “the best interests of the estate” or that the price offered is the “best price under the circumstances.”

6. McDaniel has received no information regarding the proposed sale other than that submitted to the Court for public review. (McDaniel Decl., ¶4.) That information included a version of the Valuation Report prepared by the Receiver’s single appraiser (yet another violation of the sale statute, which requires the appointment of three appraisers) that was so heavily redacted as to be meaningless to McDaniel and other investors. (*Id.*) Only the Court received unredacted copies, submitted by the Receiver under seal. (Docs. 291, 292, 295.) This is

typical of the Receiver's method of operating since her appointment: prior to her appointment, McDaniel regularly received information regarding his investments in the Acartha entities; since her appointment, he's received almost nothing about any aspect of his investments, and nothing about this sale. (McDaniel Decl., ¶4.) But in order adequately to assess his interests and properly frame a complete objection to the sale, if necessary, McDaniel needs additional time and access to an unredacted version of the information submitted by the Receiver, as well as any other information the Receiver used to assess ATP's interests. (McDaniel Decl., ¶8.)

7. In an attempt to obtain the information McDaniel needs, on November 15, 2013, his undersigned attorney requested from the Receiver's counsel an unredacted version of the Valuation Report. (Corwin Decl., **Exhibit 2**, ¶3.) On November 20, that request was denied. (Corwin Decl., ¶4.)

Based on these facts and his need for information that directly affects his investment interests, McDaniel respectfully asks that this Court order that he be provided with an unredacted copy of the Valuation Report and its attachments, as well as any other information reviewed by the Receiver in evaluating this sale (subject to appropriate confidentiality protective order, if necessary), and that McDaniel be given thirty (30) days thereafter in which to evaluate the proposed sale, obtain other opinions of value, and present his objection to the Court if appropriate.

Respectfully submitted,

**SHER CORWIN WINTERS, LLC**

/s/ David S. Corwin

David S. Corwin, #38360MO

Richard P. Sher, #4351

Vicki L. Little, #3690

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St. Louis, Missouri 63105

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*Attorneys for Mike McDaniel*

**CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing on December 4, 2013 with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

Stephen B. Higgins  
Brian A. Lamping  
Kathleen E. Kraft  
THOMPSON COBURN, LLP  
One US Bank Plaza  
St. Louis, MO 63101

Robert K. Levenson  
Brian T. James  
Securities and Exchange Commission  
801 Brickell Ave.  
Suite 1800  
Miami, FL 33131

John R. Ashcroft  
222 South Central Ave., Suite 110  
St. Louis, MO 63105

/s/ David S. Corwin

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

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 4:12-cv-00080-CEJ
	)	
BURTON DOUGLAS MORRISS, <i>et al.</i> ,	)	
	)	
Defendants,	)	

**DECLARATION OF MIKE MCDANIEL**

I, Mike McDaniel, declare under oath as follows:

1. I am an individual, of lawful age, residing in St. Louis County, Missouri.
2. I own an interest in Gryphon Investments III, LLC (“Gryphon”), both as a member and as a Series A Preferred shareholder. Gryphon is the general partner of Acartha Technology Partners, L.P. (“ATP”), the entity whose shares in Pollen, Inc. (the “Company”) are the subject of the Receiver’s current motion in this case. Based on the most recent information available to me, I believe that Gryphon has a “Carried Interest” in ATP equal to twenty percent (20%) of amounts realized by ATP in excess of amounts invested in portfolio investments made by ATP.
3. Based on the most recent information available to me, Gryphon will not receive any part of the proceeds of the sale proposed by the Receiver in compensation for its “Carried Interest” in ATP, and Gryphon investors, including myself, will not receive any share of that interest.
4. Prior to the appointment of the Receiver, I received regular updates concerning my investments in the Acartha entities. Since the Receiver took control, I along with many

investors have received little or no information about my investments. In fact, the Receiver has taken numerous actions without my knowledge. The most recent is the proposed sale of ATP's interest in the Company. I have received no information regarding that sale other than the information submitted to the Court for public review. That information included a version of the appraiser's Valuation Report that was so heavily redacted as to be meaningless to me and other investors.

5. Because I have not been provided with even the basic information needed to assess this deal, I asked my attorney, David Corwin, to request this information from the Receiver. His simple request was refused.

6. Because the relevant information is not available to me, I cannot assess whether this deal makes any sense when taking into account the performance of the Company, its prospects for success, and thus the value of the interest being sold.

7. No current party to this litigation adequately represents the interests of the Gryphon investors.

8. In order adequately to assess my interests and properly frame a complete objection, if necessary, I need additional time and access to all of the information reviewed by the Receiver in an unredacted form.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of December, 2013, in St. Louis County, Missouri.

  
\_\_\_\_\_  
Mike McDaniel

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

SECURITIES AND EXCHANGE )  
COMMISSION, )  
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Plaintiff, )  
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vs. )  
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BURTON DOUGLAS MORRISS, *et al.*, )  
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Defendants, )

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

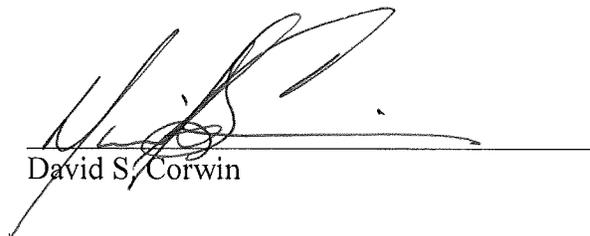
**DECLARATION OF DAVID S. CORWIN**

I, David S. Corwin, declare under oath as follows:

1. I am an individual, of lawful age, residing in St. Louis County, Missouri.
2. I am an attorney representing Mike McDaniel in this case.
3. On Friday, November 15, 2013, I requested from counsel for the Receiver an unredacted version of the appraiser's Valuation Report that was submitted to this Court in support of the Receiver's motion to approve the proposed sale of Pollen, Inc. stock. I also requested all information provided by Pollen Inc. My letter to Receiver's counsel is attached hereto.
4. By letter dated November 20, 2013, my request for information was denied.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 4th day of December, 2013, in St. Louis County, Missouri.



David S. Corwin

SHER | CORWIN  
WINTERS

David S. Corwin  
[dcorwin@scwstl.com](mailto:dcorwin@scwstl.com)

November 15, 2013

VIA FACSIMILE 314-552-7047  
AND E-MAIL [shiggins@thompsoncoburn.com](mailto:shiggins@thompsoncoburn.com)

Steve Higgins  
ThompsonCoburn  
One US Bank Plaza  
St. Louis, MO 63101

RE: Securities and Exchange Commission v. Morriss, et al.  
Case No. 4:12-cv-00080-CEJ

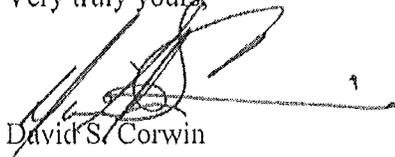
Dear Steve:

I have been retained to represent Mike McDaniel to object to your recent Motion for Leave to Sell Preferred and Common Shares of Pollen Inc., which was filed on November 14, 2013. As you know, Mr. McDaniel has an interest in Acartha Technology Partners L.P. ("ATP"). Based on the limited documentation provided to my client, he believes not only that the price for which you intend to sell the shares is inadequate and does not take into account the members' interests and preferences, including Mr. McDaniel's, but also that the timing of this sale is inappropriate. In any event the members have not had sufficient time or information to evaluate the proposal.

We would like to avoid litigation costs and arrive at an amicable resolution of this matter. At your convenience, please give me call so we may discuss same. In the interim, we would ask that you withdraw your motion for leave to sell the Pollen Inc. stock so that a solution which could potentially bring substantially more to the receivership entities can be achieved. Furthermore, we would ask that you provide us with access to the appraiser's un-redacted report and information provided by Pollen Inc., which formed the basis of Ms. Schenk's decision to sell the interest.

Thank you for your attention to this matter.

Very truly yours,

  
David S. Corwin

DSC/bap

cc: Mike McDaniel  
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