

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.)	

**RECEIVER’S NOTICE OF NO OBJECTION AND
REQUEST FOR ENTRY OF AN ORDER ON
RECEIVER’S MOTION FOR
APPROVAL OF SETTLEMENT AGREEMENT BETWEEN GRYPHON
INVESTMENTS III, LLC AND JOHN S. WEHRLE,
GRYPHON INVESTMENTS II, LLC, AND CIRQIT.COM, LLC**

On January 7, 2015, Claire M. Schenk, as Receiver (“Receiver”) over Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP, and Gryphon Investments III, LLC (collectively, the “Receivership Entities”), filed the *Motion for Approval of Settlement Agreement Between Gryphon Investments III, LLC and John S. Wehrle, Gryphon Investments II, LLC, and Cirqit.com, LLC* (the “Motion”) (ECF Nos. 428, 429) (the “Motion”).

This Court’s approval of the Agreement and the sale of the Receivership’s interest in Cirqit.com as contemplated in the Agreement will enable the resolution of affirmative litigation filed by Gryphon Investments III, LLC, by and through the Receiver in *Gryphon Investments III, LLC v. John S. Wehrle, et al.*, Case No. 4:15-cv-00464-RWS (E.D. Mo.) (“Wehrle Case”). District Judge Sippel has been presiding over the Wehrle Case. No objections have been filed

opposing the settlement. Approval of the settlement will be in the best interests of the allowed claimants in the Receivership Entities. In support of this Request, the Receiver states as follows:

1. On December 23, 2015, Judge Sippel ordered counsel in the Wehrle case to file a stipulation for dismissal, a motion for leave to voluntarily dismiss, or a proposed consent judgment on or before January 22, 2016, or suffer dismissal with prejudice of the Wehrle Case (Wehrle Case, ECF No. 83).¹ Pursuant to the Agreement that is the subject of this Notice, the parties have reached a settlement of the Receiver's claims in the Wehrle Case and are poised to file a proposed consent judgment in accordance with Judge Sippel's order (a copy of which is attached to the proposed Agreement, filed as Exhibit B to the Motion). Before the parties in the Wehrle Case can proceed to file the proposed consent judgment, however, the Receiver must first secure this Court's approval of the Agreement.

2. In the Motion, the Receiver requested that this Court approve the Receiver's *Agreement to Compromise, Settle and Release Claims* (the "Agreement") 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 Cirqit.Com, Inc. ("Cirqit" and collectively, the "Wehrle Defendants"). As part of the terms of the Agreement, subject to the approval of this Court, the Receivership estate will 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 Receivership's interests in Cirqit for the planned purchase price of \$1,489,201.

¹ The Receiver, on behalf of Gryphon III, anticipates filing a motion requesting that Judge Sippel extend the January 22, 2016 deadline to allow additional time for this Court's approval of the Agreement and effectuation of the Cirqit stock redemption (which is the crux of the parties' settlement). As of this filing, however, Judge Sippel's deadline remains January 22, 2016.

3. As set forth in the Motion, the Agreement and the transactions contemplated therein, including the sale of the Receivership's interest in Cirqit, are in the best interests of the Receivership Entities, the Receivership estate, and the Receiverships' investors and creditors. Settlement of Gryphon III's claims against the Wehrle Defendants will bring the Receiver one step closer to resolution of the Receivership proceeding and distribution of accumulated funds to investors and other claimants. The Receivership will avoid additional attorneys' fees, the time and expense of oversight of the Wehrle Case by the Receiver, and expenses associated with litigation of the Wehrle Case, including but not limited to deposition costs, transcripts, travel expenses, copying costs, and expert witness fees. The proposed settlement also will reduce collectibility risks for the Receivership estate, given that Wehrle is a defendant in a federal criminal proceeding, has entered a guilty plea, and will be sentenced on April 20, 2016 (*U.S.A. v. Wehrle*, 4:15-cr-0005-RLW (E.D. Mo.)).

4. Further, the contemplated redemption (sale) of the Receiverships' interest in Cirqit (the crux of the proposed Agreement) will enable the Receiver to: (i) recover significant sums which the Receiver believes to represent a fair value; (ii) avoid further time and expense in monitoring and overseeing this asset; (iii) avoid the risk of future dilution of Receivership interests in Cirqit as additional capital is required; and (iv) gather additional funds for distribution to allowed claimants. The Receiver has requested that this Court exercise its statutory discretion to exempt the proposed sale from the strictures of Section 2001's private sale requirements and authorize the Receiver to consummate Cirqit's redemption of the Receivership's holdings in Cirqit. The sale procedure proposed in the Motion will garner the "best price" for the Cirqit interest "under the circumstances." *See Sec. & Exch. Comm'n v.*

Goldfarb, No. C 11-00938 WHA, 2013 WL 4504271, at *2 (N.D. Cal. Aug. 21, 2013); *Tanzer v. Huffines*, 412 F.2d 221, 223 (3d Cir. 1969).

5. The Receiver served a copy of the Motion upon all parties receiving notice in this case via this Court's CM/ECF system and also electronically served Receivership Entity investors whose filed claims have been recommended for allowance by the Receiver ("Interested Parties"). Objections to the relief requested in the Motion were due on or before Tuesday, January 19, 2016. *See* E.D.Mo. L.R. 7-4.01(B); Fed. R. Civ. P. 6. No objections have been filed.

6. In addition, the Receiver posted a copy of the Motion to the Receiver's external website, at http://www.thompsoncoburn.com/news-and-information/acartha-receivership-information/select_motions_and_pleadings_filed_with_the_cour.aspx. The Receiver's posting permitted claimants, investors, and other parties-in-interest access to the Receiver's Motion. The Receiver also posted an unredacted copy of the Receiver's expert's valuation report (filed in redacted form as Exhibit C to the Motion) to the Receiver's secure investor website for viewing by those investors who have executed a nondisclosure agreement.

7. The parties in the case, claimants, investors, and other parties-in-interest have had the opportunity to review the Receiver's Motion, and no objections to the relief requested in the Motion have been filed.

For each of the reasons stated herein, the Receiver respectfully requests that the Court grant the Motion and enter the proposed Order, filed simultaneously herewith as **Exhibit A** to this Notice.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: January 20, 2016

By /s/ Kathleen E. Kraft

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 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 parties receiving CM/ECF service and also served all Interested Parties, as defined above, by electronic mail.

/s/ Kathleen E. Kraft

EXHIBIT A

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
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v.)	Case No. 4:12-cv-00080-CEJ
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BURTON DOUGLAS MORRISS, et al.,)	
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Defendants, and)	
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MORRISS HOLDINGS, LLC,)	
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Relief Defendant.)	

ORDER APPROVING 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 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. 428, 429; 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 January 7, 2016, the Receiver filed the Motion, seeking Court approval of the Receiver’s *Agreement to Compromise, Settle and Release Claims* (the “Agreement”) 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 Agreement, among other things, contemplates the redemption of the Receivership’s 214,063,351 Series D shares in Circuit for the planned purchase price of \$1,489,201, which price 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 (as finally calculated, the “Receivership shares”).

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

1. The Agreement is reasonable, fair, and equitable. *S.E.C. v. Ruderman*, No. 2:09-CV-02974-ODW, 2013 WL 153266, at *2 (C.D. Cal. Jan. 15, 2013). The funds recovered pursuant to the Agreement will increase the liquid assets of the Receivership estate, 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 potential recoveries against third-parties. The Agreement also will reduce the cost to the Receivership estate of managing and monitoring ongoing litigation and the Receivership’s holding in Cirqit.

2. Good grounds exist to authorize the proposed redemption of the Receivership shares by Cirqit outside of the statutory scheme set forth in 28 U.S.C. §§ 2001 and 2004. *See Tanzer v. Huffines*, 412 F.2d 221 (3d Cir. 1969); *Sec. & Exch. Comm’n v. Goldfarb*, No. C 11-00938 WHA, 2013 WL 4504271 (N.D. Cal. Aug. 21, 2013); *U.S. v. Kerner*, No. 00-75370, 2003 WL 22905202 (E.D. Mich. Oct. 24, 2003). The Court further finds that the purchase price for redemption of the Receivership shares represents the best price for such shares under the circumstances. Therefore,

IT IS HEREBY ORDERED THAT

1. The Motion is **GRANTED** in its entirety.
2. The Agreement is approved. Furthermore, the Receiver is authorized to enter into the Agreement and to consummate the redemption of the Receivership shares in accordance with the terms of the Agreement.

SO ORDERED this the ___ day of _____, 2016.

**THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE**