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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ART INTELLECT, INC., a Utah corporation, d/b/a MASON HILL and VIRTUAL MG, PATRICK MERRILL BRODY, LAURA A. ROSER, and GREGORY D. WOOD,</p> <p style="text-align: center;">Defendants.</p>	<p><b>RECEIVER’S MEMORANDUM IN OPPOSITION TO DEFENDANT ROSER’S MOTION TO REMOVE RECEIVER</b></p> <p>2:11-cv-00357 TC</p> <p>Judge Tena Campbell</p>
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R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of Art Intellect, Inc. d/b/a Mason Hill and VirtualMG, by and through counsel of record, submits this memorandum in opposition to Defendant Laura Roser’s Motion to Remove Receiver (Doc. 110) (the “Defendant’s Motion”), which was filed on August 19, 2011. The Securities and Exchange Commission filed a Memorandum in Opposition to Motion to Remove Receiver (the “SEC

Memorandum”), on August 31, 2011. (Doc. 115). For the reasons stated herein, the Receivership should be continued and Mr. Klein should continue as receiver.

### **INTRODUCTION**

The gist of Defendant Roser’s motion is that the Receiver should be removed because he failed to intervene in the Receivership in the case of *Securities and Exchange Commission v. Merrill Scott & Associates, LTD.*, Case No. 2:02-cv-0039-TC (D. Utah) (the “Merrill Scott Litigation”). (See Defendant’s Motion at 7, “The failure of the [sic] Mr. Klein to so intervene in that case is cause for his removal.”) The alleged value of such an intervention would be that Defendant Brody has assets in the receivership in that case and that by asserting a claim against that receivership, money could be taken from that receivership estate and placed in this receivership estate.

There is no factual connection between the Merrill Scott Litigation and this case. Similarly, there is no legal basis for the Receiver to assert a claim in the Merrill Scott Litigation. Therefore, failure to assert a claim does not warrant removal of the Receiver.

### **ARGUMENT**

#### **I. The Receiver’s Mandate Does not Allow for Intervention in Unrelated Litigation**

The Receiver was appointed by this Court in an order giving him specific responsibilities and associated powers. (Doc. 5 at 4-5). The order did not provide the Receiver latitude to pursue unrelated litigation on behalf of the Defendants.

There is no apparent connection between Defendant Brody’s involvement with Merrill Scott & Associates and the present receivership estate. The Receiver is aware of no evidence that any funds related to Mason Hill were diverted by Defendant Brody in such a way that they are currently held by the Merrill Scott receiver. Certainly, if Defendant Roser is aware of and wishes

to inform the Court or the receiver of assets that were diverted from Mason Hill investment funds to the personal use of Defendant Brody, the Receiver welcomes such evidence. Additionally, if the Merrill Scott Litigation results in residual funds that would be returned to Defendant Brody, such funds would become part of this receivership estate and could be used to fund any disgorgement ordered by this Court. However, there is no indication that the Merrill Scott receivership will result in a return of funds to Defendant Brody.

There is no indication that the funds diverted from Mason Hill for Defendant Brody's personal use are presently held by the Merrill Scott receiver. There is also no likelihood that the Merrill Scott receivership will make a distribution to Defendant Brody. As noted in the SEC Memorandum, Brody has abandoned the Merrill Scott Litigation. Consequently, the only purpose of intervention in the Merrill Scott Litigation would be to further Defendant Brody's apparent desire to delay that litigation and avoid having the funds in that receivership estate be distributed to the victims of that fraudulent scheme.

Neither the Court's order nor common sense would justify the Receiver intervening in unrelated litigation on behalf of Defendant Brody when Defendant Brody appears to have abandoned that litigation.

## **II. Replacing the Present Receiver Would Not Advance the Interests of the Receivership.**

Defendant Roser also proposes that the present Receiver be replaced by John L. Brough. Replacing the present Receiver with Mr. Brough would not advance the interests of the receivership estate for two reasons: First, there is no reason to believe the Mr. Brough would more capably represent the interests of the receivership than the Receiver; second, any new

receiver would have to spend time, money, and resources in order to become sufficiently familiar with this case and the receivership estate to be effective as the present Receiver.

The Receiver has served this Court ably since his appointment. He has filed a detailed report to the Court making recommendations for the future of the receivership. Those recommendations have been neutral and have included multiple options, giving the Court reasons for the preferred option. In short, the Receiver has not been deficient in any way. The Defendant's motion provides no basis to conclude that Mr. Brough is better suited to serve the Court than the present Receiver. Without evidence that Mr. Brough would be better, the Court should not disrupt the receivership by appointing a new receiver.

Appointing a new receiver would be disruptive and costly. The Receiver has personally spent more than 200 hours working on this receivership. He has communicated with investors and established relationships with former employees of Mason Hill who have provided, and may continue to provide, information about assets that are properly part of the receivership estate. Appointing a new receiver would require that receiver to spend substantial amounts of time to familiarize himself with the receivership estate and to establish contacts with individuals who have information about the estate. In short a new receiver would duplicate the efforts of the Receiver.

Thus, based upon the present record, replacing the receiver would provide no meaningful benefit but would involve substantial additional costs. Such a step is not in the interests of the receivership estate.

### **CONCLUSION**

For the reasons explained herein the Court should deny Defendant Roser's Motion to Remove Receiver.

Respectfully submitted this 2nd day of September 2011.

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/s/ Jennifer A. James

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above was served via email on this 2nd day of September 2011 on the following:

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*Court-Appointed Receiver*

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