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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

GLR CAPITAL MANAGEMENT, LLC, CHRISTOPHER
A. LUCK, and KEITH E. RODE

Defendants

and

GLR GROWTH FUND, L.P.,
Relief Defendant.

Case No. CV12-2663 (EJD)

~~REVISED PROPOSED~~ SECOND
ORDER APPOINTING SPECIAL
MASTER

WHEREAS the Court entered an order on February 11, 2014 appointing Gregory Sterling as Special Master in this matter and charged him with certain duties regarding the preparation and filing of the 2012 and 2013 tax returns of Relief Defendant GLR Growth Fund, L.P. (the “Fund”) and “[s]uch other and further duties as may be ordered by the Court” (ECF No. 151);

WHEREAS the Special Master performed his duties and the Court entered a further order on August 19, 2014 discharging the Special Master “from performing any additional work unless and

1 | until the Court enters a subsequent order defining new specific tasks for the Special Master to
2 | perform”;

3 | **WHEREAS** Defendant Christopher A. Luck, one of two managing members of the Fund’s
4 | general partner, Defendant GLR Capital Management, LLC (“GLR Capital”), pleaded guilty to
5 | conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349, mail fraud in violation of
6 | 18 U.S.C. § 1341, and securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. §§
7 | 240.10b-5 and 240.10b5-2 in connection with his involvement in the Fund’s operation, in the case
8 | pending before this Court captioned United States v. Geringer, Case No. 12-cr-888-EJD, and was
9 | sentenced to 130 months imprisonment to begin on April 9, 2015 (12-cr-888-EJD ECF No. 132);

10 | **WHEREAS** Defendant Keith E. Rode, the other managing member of the Fund’s general
11 | partner, pleaded guilty to mail fraud in violation of 18 U.S.C. § 1341 in connection with his
12 | involvement in the Fund’s operation, in United States v. Geringer, Case No. 12-cr-888-EJD, and is
13 | scheduled to be sentenced on June 9, 2015 (12-cr-888-EJD ECF Nos. 1, 113 & 140);

14 | **WHEREAS** the Court finds that, based on the record in these proceedings, the appointment
15 | of the Special Master to perform additional tasks in this action is necessary and appropriate for the
16 | purposes of preserving, monitoring and managing Fund’s assets; and

17 | **WHEREAS** this Court has subject matter jurisdiction over this action and personal
18 | jurisdiction over Defendant GLR Capital, Defendant Luck, Defendant Rode and the Relief Defendant
19 | Fund, and venue properly lies in this district, and good cause appearing:

20 | 1. **IT IS HEREBY ORDERED** that Gregory Sterling of Receivers Incorporated, 15700
21 | Winchester Boulevard, Los Gatos, California 95030 is reappointed by the Court as Special Master in
22 | this matter (the “Special Master”) to serve without bond, and that his duties are as follows:

- 23 | A. Assume management of the Fund from its current general partner, Defendant GLR
24 | Capital Management, LLC, including all powers, authorities, rights and privileges
25 | of the Fund’s general partner.
- 26 | B. Determine the Fund’s interest in Digital Delivery Networks, Inc. (“DDNi”) and
27 | monitor such interest. Should the Special Master determine that the Fund has a
28 | right to membership on the Board of Directors of DDNi and that it is in the best

1 interest of the Fund for the Special Master, or one or more persons on his behalf,
2 to assume such membership, the Special Master shall seek authorization from the
3 Court before assuming such membership on the Board of Directors of DDNi.

4 C. With respect to the Fund's 2014 tax returns:

- 5 i. Determine whether it is in the best interest of the Fund to request an
6 extension of time to file its 2014 tax returns and if so, request or cause such
7 a request to be made to the appropriate taxing authorities;
8 ii. Prepare the 2014 tax returns of the Fund; and
9 iii. Execute the 2014 tax returns on behalf of the Fund, file them with the
10 appropriate taxing agencies, and mail copies of the appropriate tax returns
11 to the investors of the Fund.

12 D. File with the Court and serve on the parties to this action no later than 45 days
13 after the entry of this Order a report:

- 14 i. Describing the status of the Fund's interest in DDNi, including whether the
15 Fund has a right to membership on the Board of Directors of DDNi;
16 ii. Recommending a future course of action with respect to the Fund's interest
17 in DDNi, the funds in the Fund's bank account at Santa Cruz County Bank
18 (taking into consideration, among other things, whether the funds in such
19 account are adequately insured by the Federal Deposit Insurance
20 Corporation) and any other asset of the Fund, and the reasons for such
21 recommendation; and
22 iii. Proposing, if necessary, any additional powers the Special Master requires
23 for the continued and future management of the Fund.

24 2. **IT IS HEREBY FURTHER ORDERED** that, subject to the approval of this Court,
25 the Special Master is empowered to hire an accountant or other professional ("Tax Professional") to
26 assist him with the tasks outlined in section 1.C. above (relating to the Fund's 2014 tax returns), and
27 any fees charged or expenses incurred by any Tax Professional shall be included in the Special
28 Master's billings and shall be reimbursed by the Fund, subject to the approval of this Court.

1 3. **IT IS HEREBY FURTHER ORDERED** that the Special Master and any Tax
2 Professional shall, to the best of his/her ability, prepare the Fund's 2014 tax returns in conformance
3 with normal accounting practices, but the Special Master and any Tax Professional and his/her firm
4 shall have no personal liability for the truthfulness or authenticity of the financial information
5 provided by the Fund or obtained from records of the Fund for the purposes of preparing, signing,
6 filing, and mailing the tax returns of the Fund.

7 4. **IT IS HEREBY FURTHER ORDERED** that the Special Master and any Tax
8 Professional are authorized to release to the investors in the Fund and their respective counsels and
9 representatives copies of the Fund's 2014 tax returns, but NOT including the Schedule K-1s filed in
10 connection with those returns, except that each investor is entitled to receive a copy of his or her
11 individual Schedule K-1.

12 5. **IT IS HEREBY FURTHER ORDERED** that the Special Master and any Tax
13 Professional are authorized to release to the parties to this action and to the related criminal action
14 (United States v. Geringer, Case No. 12-cr-888-EJD) and their respective counsels and
15 representatives copies of the Fund's 2014 tax returns including the Schedule K-1s filed in connection
16 with those returns.

17 6. **IT IS HEREBY FURTHER ORDERED** that the Special Master and any Tax
18 Professional are authorized to engage in general discussions of the accounting concepts used in the
19 preparation of the tax returns with the investors in the Fund, with the parties to this action and to the
20 related criminal action (United States v. Geringer, Case No. 12-cr-888-EJD) and with their respective
21 counsels and representatives.

22 7. **IT IS HEREBY FURTHER ORDERED** that, subject to the approval of this Court,
23 the Special Master and any Tax Professional and his/her firm shall charge at his/her normal hourly
24 rate(s), and that the Fund shall pay the Special Master's and any Tax Professional's necessary and
25 reasonable fees charged and expenses incurred (including the \$800 annual tax due from the Fund on
26 or about April 15, 2015 to the California Franchise Tax Board, if required), subject to the approval of
27 this Court (see ECF No. 139 at page 6 of 19), and that the Special Master shall review any Tax
28 Professional's fee and expense billings and shall promptly submit them to the Court, for payment

1 subject to the approval of the Court.

2 8. **IT IS HEREBY FURTHER ORDERED** that the Special Master and any Tax
3 Professional shall follow as guidelines the “Billing Instructions For Receivers In Civil Actions
4 Commenced By The U.S. Securities And Exchange Commission” (“Guidelines”) contained in
5 Exhibit 1 to [Proposed] Order Appointing Special Master (ECF No. 150). The Court recognizes that
6 the duties of the Special Master and any Tax Professional are narrower than the receiver duties set
7 forth in the Guidelines, and that therefore not all provisions of the Guidelines are literally applicable
8 to the Special Master and any Tax Professional, but the Court expects that the Special Master and any
9 Tax Professional shall follow the Guidelines to the extent practicable and applicable to their duties,
10 and consistent with the Court’s concern for efficient work and preservation of capital for the benefit
11 of investors.

12 9. **IT IS HEREBY FURTHER ORDERED** that, subject to the approval of this Court,
13 the Special Master is empowered to hire his own legal counsel should the Special Master conclude, in
14 his own professional discretion, that he needs legal advice beyond his own legal knowledge; provided
15 however, that the Court shall approve the hiring of legal counsel and legal counsel’s billing rates
16 prior to any such engagement and any legal fees incurred by the Special Master shall be included in
17 his billings and shall be reimbursed by the Fund, subject to the approval of this Court.

18 10. **IT IS HEREBY FURTHER ORDERED** that the Special Master and any Tax
19 Professional have access to the documents and records concerning the Fund in the possession,
20 custody, or control of the Securities and Exchange Commission (“SEC”) that may be reasonably
21 necessary to perform his duties, provided the Special Master and any Tax Professional agree to
22 comply with the SEC’s policy regarding access to non-public information, and specifically that the
23 Special Master and any Tax Professional establish and maintain such safeguards as are necessary and
24 appropriate to protect the confidentiality of the information, documents, and information derived
25 from such documents to which access is granted. Other than as set forth above, the Special Master
26 and any Tax Professional will:

- 27 A. Make no public use of these files or information without prior approval of the
28 SEC;

- 1 B. Notify the SEC of any legally enforceable demand for the files or information
2 prior to complying with the demand, and assert such legal exemptions or privileges
3 on the SEC's behalf as the SEC may request; and
4 C. Not grant any other demand or request for the files or information without prior
5 notice to and lack of objection by the SEC.

6 11. **IT IS HEREBY FURTHER ORDERED** that the Special Master and any Tax
7 Professional shall carry out his/her duties consistent with due regard for the preservation of the
8 Fund's capital, the maximum realization of the value of the Fund's assets, and the maximum recovery
9 to the Fund's limited partners as a whole in light of the risks involved in various courses of action.

10 12. **IT IS HEREBY FURTHER ORDERED** that the Special Master shall seek from
11 DDNi details of the Fund's interest in DDNi and copies of all agreements, notes, evidences of
12 indebtedness, warrants, stock or other securities, and all other documents that evidence the Fund's
13 interest in DDNi, and that in seeking this information, the Special Master shall express to DDNi the
14 Court's desire that the Special Master be provided with this information within ten business days of
15 his request so that this matter may proceed expeditiously.


16 13. **IT IS HEREBY FURTHER ORDERED** that the Special Master has a continuing
17 duty to ensure that there are no conflicts of interest among the Special Master, any Tax Professional,
18 any legal counsel retained pursuant to paragraph 9, above, and the Fund.

19 14. **IT IS HEREBY FURTHER ORDERED** that in the event the Special Master decides
20 to resign, the Special Master shall first give written notice to the Commission's counsel of record and
21 the Court of his intention, and the resignation shall not be effective until the Court discharges the
22 Special Master or appoints a successor. The Special Master shall then follow such instructions as the
23 Court may provide.

1 15. **IT IS HEREBY FURTHER ORDERED** that the Court shall supervise the
2 performance of this Order and will adjudicate any disputes or disagreements, if any, concerning the
3 performance or interpretation of this Order.
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5 IT IS SO ORDERED.

6 DATED this 3rd day of April, 2015
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10 Edward J. Davila
11 United States District Judge
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