

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re:	§	Chapter 11
	§	
CROSSROADS SYSTEMS, INC.	§	Case No. 17-51926
	§	
Debtor.	§	
	§	

**DEBTOR’S MOTION FOR AN ORDER (I) AUTHORIZING
THE DEBTOR TO REJECT WARRANT/OPTION AGREEMENTS
AND (II) ESTIMATING REJECTION CLAIMS**

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN 21 DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

Crossroads Systems, Inc., a Delaware corporation, as debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”), files this *Debtor’s Motion for an Order (i) Authorizing the Debtor to Reject Warrant/Option Agreements and (ii) Estimating Rejection Claims* (the “Motion”), and in support thereof the Debtor relies upon and incorporates by reference the *Declaration of Mitchell Truelock in Support of the Debtor’s Warrant/Option Motion* (the “Roth Declaration”) concurrently filed herewith and respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

A. General Background

2. On August 13, 2017 (the “Petition Date”), the Debtor commenced the above captioned case (the “Chapter 11 Case”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Case, and no committees have been appointed or designated.

3. A detailed description of the Debtor and its business, and the facts and circumstances supporting the Motion and the Debtor’s Chapter 11 Case is set forth in the *Statement of Background Information and Declaration of Jennifer Crane, Chief Financial Officer of Crossroads Systems, Inc., in Support of Debtor’s Chapter 11 Petition and First Day Motions*, filed contemporaneously herewith and incorporated herein by reference.

4. Contemporaneously with the filing of the Chapter 11 Case, the Debtor filed its Prepackaged Chapter 11 Plan of Reorganization (the “Prepackaged Plan”) and related Disclosure Statement. Solicitation on the Prepackaged Plan began prior to the filing of the Chapter 11 Case, and, prior to the Petition Date, the Debtor had received acceptances to the Prepackaged Plan from holders of more than two-thirds of equity interests in the only class impaired by the Prepackaged Plan. On the Petition Date, the Debtor also filed a motion seeking assumption of its obligations under the Restructuring Support Agreement (the “RSA”) that forms the basis for the Prepackaged Plan, including the investment by 210/CRDS Investment LLC (“210”) that provides funding for the Prepackaged Plan transactions and for operation of the Debtor after the effective date of the Plan.

B. Warrant/Option Agreements

5. The Debtor is party to certain agreements pursuant to which it has issued warrants (the “Warrants”) and options (the “Options”; together with the Warrants, the “Warrants/Options”) to third parties for the purchase of the Debtor’s common stock (such agreements, the “Warrant/Option Agreements”). Specifically, the Debtor is party to the Warrant/Option Agreements listed in Schedule 1 to the Proposed Order (as defined below), which, in the aggregate, provide for 368,765 unexercised Warrants relating to the Debtor’s common stock and 6,114 unexercised Options relating to the Debtor’s common stock.

6. The Debtor is required to reject the Warrant/Option Agreements pursuant to the RSA, and the treatment for any claims arising from the rejection of such Warrant/Option Agreements (collectively, the “Rejection Claims”) is provided for in the Prepackaged Plan. Specifically, the Rejection Claims are included within class 4 of the Prepackaged Plan and are unimpaired.

7. The RSA also requires the Debtor to obtain an order limiting total Rejection Claims to no more than \$10,000. Pursuant to a letter agreement between the Debtor and 210, dated as of August 3, 2017 (the “RSA Letter Agreement”), 210 agreed to increase the limit on Rejection Claims to \$40,000.

8. As explained in the Roth Declaration, as of the Petition Date, the Warrants were worth no more than \$21,324.88, and the Options were worth no more than \$2,340.21. As explained more fully in the Roth Declaration, these amounts were calculated by analyzing each Warrant and Option individually and applying the Black-Scholes pricing model to these instruments. Roth Decl. ¶ 8.

Relief Requested

9. The Debtor seeks the entry of an order, substantially in the form attached hereto as the “Proposed Order”, under sections 105(a), 365, and 502(c) of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (i) authorizing the Debtor to reject the Warrant/Option Agreements and (ii) estimating the aggregate Rejection Claims for all purposes, including distribution, at no more than \$23,665.09.

Basis for Relief Requested

A. Rejection of the Warrant/Option Agreements Is an Exercise of the Debtor’s Sound Business Judgment

10. Section 365 of the Bankruptcy Code provides that a debtor, subject to court approval, may assume or reject an executory contract. 11 U.S.C. § 365(a); *see also In re Univ. Med. Ctr.*, 973 F.2d 1065, 1075 (3d Cir. 1992) (“This provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.”). A decision to assume or reject an executory contact pursuant to section 365 must be based on the debtor’s business judgment. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Taylor*, 913 F.2d 102 (3d Cir. 1990); *Sharon Steel Corp. v. Nat’l Fuel Gas Distribution Corp.*, 872 F.2d 36 (3d Cir. 1989); *In re Gardinier, Inc.*, 831 F.2d 974, 975 n.2 (11th Cir. 1987). The business judgment test is not a strict standard and merely requires a showing that either assumption or rejection of the contract at issue will benefit the debtor’s estate. *See In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d sub nom, NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984).

11. Upon a finding that a debtor has exercised its sound business judgment in determining that rejection will benefit the estate, a court should approve rejection. *See Comput. Sales Int’l, Inc. v. Fed. Mogul (In re Fed. Mogul Glob., Inc.)*, 293 B.R. 124, 126 (D. Del. 2003)

(“a court should approve a debtor’s decision to reject a contract unless that decision is the product of bad faith or a gross abuse of discretion”); *Commercial Fin. Ltd. v. Haw. Dimensions, Inc. (In re Haw. Dimensions, Inc.)*, 47 B.R. 425, 427 (D. Haw. 1985) (“Under the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate.”); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (“court approval under Section 365(a), if required, except in extraordinary situations, should be granted as a matter of course”).

12. The Warrant/Option Agreements are executory contracts and subject to rejection under section 365(a) of the Bankruptcy Code. *See In re Riodizio, Inc.*, 204 B.R. 417 (Bankr. S.D.N.Y. 1997) (“Here, the Warrant is executory; each party must perform under the Warrant in order to obtain the benefits under the contingent bilateral contract of sale. To sell the shares and receive payment, the debtor must keep the offer open. To make payment and acquire the shares, [the counterparty] must first exercise the option granted under the Warrant.”); *see also In re Jackson Brewing Co.*, 567 F.2d 618, 623 (5th Cir. 1978) (holding that land purchase option was an executory contract); *but see Addison v. Langston (In re Brints Cotton Mktg., Inc.)*, 737 F.2d 1338, 1340 n.5 (5th Cir. 1984) (noting that bankruptcy court had determined cotton option contract was not executory but that neither party had appealed that ruling).

13. Under the circumstances, the Warrant/Option Agreements are burdensome executory contracts. The Debtor’s decision to reject the Warrant/Option Agreements is in the best interest of the Debtor and is a sound exercise of its business judgment. As stated above, rejection of the Warrant/Option Agreements is required under the RSA. Through the RSA, the Debtor will obtain much-needed equity capital and access to a future financing source that will allow the Debtor to continue executing on its current patent monetization strategy and to

continue to pursue other opportunities for the benefit of the Debtor, its creditors, and shareholders. The new capital and access to financing under the RSA will benefit the Debtor and its entire estate. The unimpairment of the claims arising from rejection of the Warrant/Option Agreements ensures that these claims will be paid in full.

14. Absent rejection of the Warrant/Option Agreements, 210 has the right to terminate the RSA and refuse to support the Debtor's proposed restructuring, which may irreparably harm the Debtor's estate.

15. Therefore, the Court should approve the Debtor's rejection of the Warrant/Option Agreements.

B. Estimation of the Rejection Claims

(i) The Rejection Claims Are Unliquidated and Subject to Estimation

16. Section 502(c) of the Bankruptcy Code requires a court to estimate "any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case." 11 U.S.C. § 502(c); *see also in re A.H. Robbins Co.*, 788 F.2d 994, 1011-1012 (the "duty of estimation in a proper case under section 502(c) is not a permissive one; it is a mandatory obligation of the bankruptcy court"). "Estimation of unliquidated and contingent claims is essential prior to the hearing on confirmation of a plan, in order for the court to evaluate the feasibility of the plan without delaying the confirmation process." *In re Nat'l Gypsum Co.*, 139 B.R. 397, 405 n.19 (N.D. Tex. 1992) (citation omitted).

17. Courts generally recognize that a claim is unliquidated, and therefore subject to estimation, if the amount of the claim or the date that it is due is not readily "ascertainable by reference to (1) an agreement or (2) to [sic] a simple mathematical formula." *In re Horne*, 277 B.R. 320, 322 (Bankr. E.D. Tex. 2002).

18. With respect to the Warrants/Options, there is no “amount due” to any holder under the respective Warrant/Option Agreements. Instead, the Debtor has an obligation to deliver a certain number of shares of common stock to a holder when and if the holder exercises its Warrant/Option and pays the appropriate exercise price. The value of the unexercised Warrant/Option Agreements at any given time is calculated by using a complex, but well-established, financial model that takes into account a variety of factors and assumptions, including market price of the Debtor’s common stock, exercise price of the Warrant/Option, price volatility, the time to maturity of the Warrant/Option, any dividend yield, and market interest rates. *See* Roth Decl. ¶ 8. Because the value of an unexercised option agreement like the Warrant/Option Agreements depends on various assumptions and complex calculations, courts have determined that any related claims are unliquidated. *See Addison v. Langston (In re Brints Cotton Mktg., Inc.)*, 737 F.2d 1338, 1339 (5th Cir. 1984) (determining that claim related to uncalled option contract was unliquidated and subject to estimation).

19. While the RSA and Prepackaged Plan provide that the Rejection Claims will be paid in full, the RSA and RSA Letter Agreement also provide that 210 will have a right to terminate the RSA (and its obligations thereunder) if the aggregate Rejection Claims exceed \$40,000. As set forth in the Roth Declaration, the Debtor believes that aggregate Rejection Claims are less than this amount (a total of \$23,665.09).

20. Estimation of the Rejections Claims, as requested in the Motion, will expedite administration of the Debtor’s estate and confirm that the condition precedent under the RSA can be satisfied. On the other hand, failure to estimate the Rejection Claims will delay administration of the Debtor’s estate and potentially provide 210 with a right to terminate the RSA and refuse to support the Debtor’s proposed restructuring. In the Debtor’s view, this would

not only necessarily frustrate and prolong the Debtor's reorganization efforts but destroy enterprise value which is maximized as a result of the Prepackaged Plan. Therefore, the Court should estimate the Rejection Claims under section 502(c) of the Bankruptcy Code.

(ii) The Court Should Estimate Rejection Claims at No More Than the Value of the Warrants/Options as of the Petition Date

21. Bankruptcy courts have broad discretion in determining the method to estimate a claim, and the court may use "whatever method is best suited to the circumstances." *In re Brints Cotton Mktg., Inc.*, 737 F.2d at 1341; *see also In re Adelphia Bus. Sol., Inc.*, 341 B.R. 415, 422-23 (Bankr. S.D.N.Y. 2003) (courts have discretion to use "whatever method is best suited to the contingencies of the case, so long as the procedure is consistent with the fundamental policy of chapter 11 that a reorganization must be accomplished quickly and efficiently") (citation omitted). A claim arising from a rejected option agreement is valued as of the date of the bankruptcy filing. *See* 11 U.S.C. § 365(g); *see also In re Brints Cotton Mktg., Inc.*, 737 F.2d at 1342 (valuing claim relating to uncalled option contract as of the petition date).

22. As explained in the Roth Declaration, each Warrant and Option was valued using the Black-Scholes pricing model, which takes into account the market price of the Debtor's common stock as of the Petition Date, exercise price of the Warrant/Option, price volatility, the time to maturity of the Warrant/Option, any dividend yield, and market interest rates. Roth Decl. ¶ 8. The value of each of the Warrants/Options is set forth on Exhibit 1 to the Roth Declaration. In the aggregate, the total value of the Warrants/Options as of the Petition Date is no more than \$23,665.09. Roth Decl. ¶ 9.

23. Therefore, the Debtor respectfully requests that the Court enter an order valuing each of the Rejection Claims as set forth on Exhibit 1 to the Roth Declaration and estimating the aggregate amount of Rejection Claims at no more than \$23,665.09.

Debtor's Reservation of Rights

24. Nothing contained herein is intended or should be construed as an admission as to the validity or priority of any claim against the Debtor or a waiver of the Debtor's rights to dispute any claim. The Debtor expressly reserves its rights to contest any claim and to withdraw the Motion at any time prior to approval by the Bankruptcy Court in the event that the parties are unable to reach an agreement on any objections to the Motion.

WHEREFORE, the Debtor respectfully requests that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 13th day of August, 2017.

ERIC TERRY LAW, PLLC

By: /s/ Eric Terry

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**PROPOSED ATTORNEY FOR THE
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of this document will be served via on August 14, 2017, via U.S. First Class Mail, postage paid, (or via the Court's ECF System, where applicable) to the parties on the attached service list which includes all third parties to the Warrant and Option agreements and on August 13th, 2017 via email to the known email addresses of holders of Preferred Interest.

/s/ Eric Terry

Label Matrix for local noticing
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Philadelphia Brokerage
James Allsopp
290 King of Prussia Rd.
Bldg 2, Ste. 200
Radnor, PA 19087-5107

Phyllis D. Kalista
12 Kinterra Road
Wayne, PA 19087-4717

Porter Partners, LP
300 Drakes Landing Road, Ate. 175
Greenbrae, CA 94904-3100

Promise Technology, Inc.
580 Cottonwood Dr.
Milpitas, CA 95035-7403

Proware Technology Corp
6F1, No. 4, Alley 1, Lane 235
Pao Chao Road
Hsin Tien City, Taipei Hsein, TAIWAN
R.O.C. 9

QLogic Corporation
26650 Aliso Viejo Pkwy.
Aliso Viejo, CA 92656-2674

RAID Inc.
5 Branch St.
Methuen, MA 01844-1947

Rafferty Holdings
1010 Franklin Ave.
Garden City, NY 11530-2939

Rasilient Systems, Inc.
270 Santa Ana At.
Sunnyvale, CA 94085-4512

Rave Computer Associatio, Inc.
36960 Metro Court
Sterling Heights, MI 48312-1014

Robert Brown
10402 Pinehurst Dr.
Austin, TX 78747-1228

Robert Sims
8609 Sea Ash Circle
Round Rock, TX 78681-3433

(c)SECURITIES AND EXCHANGE COMMISSION
FORT WORTH REGIONAL OFFICE
801 CHERRY ST UNIT 18
FORT WORTH TX 76102-6882

Southwell Capital, LP
1901 N. Akard St.
Dallas, TX 75201-2305

Stanley C. Finney, Jr. Revocable Living
Trust, Mary Clare Finney, TTEE
8201 Preston Rd., Ste, 440
Dallas, TX 75225-6209

Stephen Saxon
5808 Wiltshire Dr.
Bethesda, MD 20816-1226

Stonefly Networks, Inc.
6260 Sequence Dr., Ste. A
San Diego, CA 92121-4358

StorMagic Inc.
10125 Crosstown Circle, Ste. 220
Eden Prairie, MN 55344-3317

StorMagic Ltd.
16 Portland Square
Bristol BS2 8SH
UNITED KINGDOM

Storage Engine, Inc.
One Shelia Dr.
Tinton Falls, NJ 07724-2658

StrongBox Data Solutions, Inc.
505 Maisonneuve West
Montreal, Quebec H3A 3C2
CANADA

Symantec Corporation
20330 Stevens Creek Blvd.
Cupertino, CA 95014-2268

Tandberg Data Corporation
10225 Westmoor Dr., Ste. 125
Westminster, CO 80021-2773

(p)TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
REVENUE ACCOUNTING DIV - BANKRUPTCY SECTION
PO BOX 13528
AUSTIN TX 78711-3528

Texas Memory Systems, Inc.
10777 Westheimer Rd., Ste. 600
Houston, TX 77042-3478

Texas Workforce Commission
TWC Building - Regulatory Integrity Divi
101 E 15th Street
Austin, TX 78778-0001

The Delaware Dept of State
Division of Corporations
PO Box 898
Dover, DE 19903-0898

The Ecker Family Partnership
800 Newtown Road
Villanova, PA 19085-1146

The Ecker Family Partnership
c/o ACT Capital
100 W. Lancaster Ave., #110
Wayne, PA 19087-4038

The NASDAQ Stock Market
One Liberty Plaza
165 Broadway
New York, NY 10006-1404

Travis County Tax Assessor-Collector
PO Box 1748
Austin, TX 78767-1748

United States Trustee - SA12
US Trustee's Office
615 E Houston, Suite 533
PO Box 1539
San Antonio, TX 78295-1539

Virgil Balint
8110 Touch Stone Terrace
Mc Lean, VA 22102-2747

WeWork
11801 Domain Blvd Tenant LLC
11801 Domain Blvd., 3rd Floor
Austin, TX 78758-3430

Winchester Systems, Inc.
101 Billerica Ave., Bldg 5
North Billerica, MA 01862-1256

Wolverine Flagship Fund Trading Limited
Attn: Andrew Sujdak
175 W. Jackson St.
Chicago, IL 60604-3034

Wolverine Flagship Fund Trading Limited
c/o Wolverine Asset Management, LLC
Attn: John Ziegelman
175 W. Jackson Blvd., Ste. 340
Chicago, IL 60604-3042

XIOtech Corp.
6455 Flying Cloud Dr.
Eden Prairie, MN 55344-4532

Xyratex Technology Limited
Langstone Road
Havant, Hampshire PO9 1SA
UNITED KINGDOM

iStor Networks, Inc.
7585 Irvine Center Dr., Ste. 250
Irvine, CA 92618-2976

Eric Terry
Eric Terry Law, PLLC
3511 Broadway
San Antonio, TX 78209-6513

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Texas Comptroller of Public Accounts
PO Box 13528
Austin, TX 78711-3528

Addresses marked (c) above for the following entity/entities were corrected as required by the USPS Locatable Address Conversion System (LACS).

Securities and Exchange Commission
Fort Worth Regional Office
801 Cherry St.
Suite 1900, Unit 18
Fort Worth, TX 76102