

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

WAVE SYSTEMS CORP.,

Debtor.

Chapter 7

Case No. 16-10284 (KJC)

**Re: Docket No. 29, 68,73, 74, 75, 76, 77, 86,
90, 94, and 96**

**ORDER PURSUANT TO U.S.C. §§ 105(a) AND 363, AND FEDERAL RULES OF
BANKRUPTCY PROCEDURE 2002, 6004, 6006 AND 9014 (I) APPROVING THE SALE
OF CERTAIN OF THE DEBTOR'S ASSETS; (II) AUTHORIZING CONSUMMATION
OF THE TRANSACTIONS CONTEMPLATED THEREIN; AND
(III) GRANTING RELATED RELIEF**

Upon the motion [Docket No. 29], dated February 26, 2016 (the "Motion"), of David W. Carickhoff, the chapter 7 trustee (the "Trustee") of the estate of Wave Systems Corp. (the "Debtor"), for Entry of an Order Pursuant To U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014 (I) Approving the Sale of Substantially All of the Debtor's Assets; (II) Approving the Assumption and Assignment of Executory Contracts; (III) Authorizing Consummation Of The Transactions Contemplated Therein; And (IV) Granting Related Relief; and an initial hearing having been held on April 7, 2016; and a subsequent hearing having been held on April 14, 2016 (the "Sale Hearing") to consider approval of the sale of the wave.com Domain Name (the "Acquired Assets") to Buyer (as defined below) pursuant to the terms and conditions of the Asset Purchase Agreement by and between the Trustee and Chime Inc. ("Buyer") (the "Purchase Agreement")¹; and adequate and sufficient notice of the Motion, the Purchase Agreement and this Sale Order having been given to all known parties in

¹ Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion or Purchase Agreement, as applicable. The Purchase Agreement is attached to the Amended Notice of Successful Bids and Bidders filed on April 12, 2016 at Docket No. 90.

interest in this case; and all such parties having been afforded an opportunity to be heard with respect to the Motion and all relief requested therein; and the Court having reviewed and considered: (i) the Motion; (ii) the objections thereto, if any; and (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing or submitted in advance of the Sale Hearing; and after due deliberation thereon; and good and sufficient cause appearing therefor, it hereby is

FOUND AND DETERMINED THAT:²

A. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (N). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are sections 105(a) and 363 of the Bankruptcy Code, as complemented by Bankruptcy Rules 2002, 6004, 6006 and 9014.

C. As evidenced by the affidavits or certificates of service filed with this Court:
(i) due, proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, and the other relief granted herein, and a substantially similar form of this Sale Order, have been provided in accordance with Bankruptcy Code sections 102(1), 105(a), and 363 and Bankruptcy Rules 2002, 6004 and 6006; (ii) such notice was good, sufficient and appropriate under the circumstances, and reasonably calculated to reach and apprise all known holders of Interests (as hereinafter defined), and all other parties in interest about the Motion, the Sale Hearing, and the other relief granted herein; and (iii) no other or further notice of the Motion, the Sale Hearing, and the other relief granted herein is or shall be required.

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

D. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been afforded to all known interested persons and entities, including: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for the Buyer; (iii) all entities known to have, or to have asserted, any lien, claim, encumbrance, right of first refusal, or other Interest (as hereinafter defined) in or upon the Acquired Assets which are to be sold pursuant to the Purchase Agreement; (iv) all taxing authorities for those jurisdictions in which the Acquired Assets are located; (v) the District Director of the Internal Revenue Service; (vi) all entities that filed a notice of appearance and request for service of papers in this case in accordance with Bankruptcy Rule 2002; and (vii) all known creditors of the Debtor.

E. The Limited Objection and Reservation of Rights of SuperCom, Inc. and SuperCom Ltd. to Chapter 7 Trustee's Motion for Entry of Order Approving the Sale of Certain IP and Related Assets (the "Limited Objection") does not relate to or have an impact on the sale of the Acquired Assets to the Buyer. Nonetheless, the Trustee and SuperCom are working through the issues raised in the Limited Objection and have reached a general understanding to resolve the Limited Objection.

F. As demonstrated by the testimony and/or other evidence proffered or adduced at the Sale Hearing or submitted by affidavit or declaration before the Sale Hearing, (1) the Trustee has appropriately marketed the Acquired Assets; and (2) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Acquired Assets.

G. The Buyer (i) is purchasing the Acquired Assets in good faith and (ii) is a good faith purchaser for value within the meaning of section 363(m) of the Bankruptcy Code and therefore is entitled to the full protections of that provision and any other applicable or similar

bankruptcy or non-bankruptcy law. The Buyer has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (a) the Buyer recognized that the Trustee was free to deal with any other party interested in acquiring the Acquired Assets, (b) the Buyer was subjected to an auction process designed to solicit competitive bids, (c) all payments to be made by the Buyer in connection with the Purchase Agreement have been disclosed, (d) the Buyer has not violated section 363(n) of the Bankruptcy Code by any action or inaction, and (e) the Purchase Agreement was negotiated, proposed and entered into in good faith and from arm's-length bargaining positions with the parties represented by competent counsel of their choosing.

H. The consideration provided by the Buyer pursuant to the Purchase Agreement, including the Purchase Price (as defined therein), is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory or possession thereof or the District of Columbia (including the Uniform Fraudulent Transfer Act and the Uniform Fraudulent Conveyance Act). The Purchase Agreement was not entered into, and neither the Trustee nor the Buyer has entered into the Purchase Agreement or proposes to consummate the sale transaction for the purpose of hindering, delaying or defrauding the Debtor's present or future creditors.

I. The Buyer is not a mere continuation of the Debtor or its estate, and there is no continuity between the Buyer, on the one hand, and the Trustee or Debtor, on the other. To the fullest extent permitted by applicable law, the Buyer is not a successor to the Debtor or its estate. Consummation of the sale transaction does not constitute a consolidation, merger or *de facto* merger of the Buyer and the Debtor. Immediately prior to the Closing, the Buyer was not an "insider" or "affiliate" of the Debtor or the Trustee, as those terms are defined in the Bankruptcy

Code, and no common identity of incorporators, directors or controlling shareholders existed between the Buyer and the Debtor or Trustee.

J. Subject to the entry of this Sale Order, the Trustee has full power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the sale transaction has been duly and validly authorized. No consents or approvals other than those provided for in the Purchase Agreement are required for the Trustee to consummate the sale transaction described therein.

K. The transfer of the Acquired Assets to the Buyer shall be a legal, valid and effective transfer of the Acquired Assets, and shall vest the Buyer at Closing with all right, title and interest of the Debtor in and to the Acquired Assets, free and clear of all claims (as defined in section 101(5) of the Bankruptcy Code, "Claims"), liens (as defined in section 101(37) of the Bankruptcy Code, "Liens"), encumbrances and all other interests (collectively including each of the foregoing, "Interests"). For the avoidance of doubt, the Buyer is not assuming any liabilities under the Purchase Agreement.

L. The Buyer (and its successors and assigns) shall have no obligations with respect to any liabilities of the Debtor.

M. The Buyer would not have entered into the Purchase Agreement and the Buyer will not consummate the sale transaction contemplated by the Purchase Agreement if the sale of the Acquired Assets is not free and clear of all Interests of any kind or nature whatsoever, or if the Buyer upon the closing of the sale transaction would, or in the future could, be liable for any such liens, claims and interests. The total consideration to be provided for the Acquired Assets reflects the Buyer's reliance on the entry of an order providing it, pursuant to sections 105 and

363 of the Bankruptcy Code, with title and possession of the Acquired Assets free and clear of all claims, liens, encumbrances and all other interests.

N. The Trustee may sell the Acquired Assets to the Buyer free and clear of all Encumbrances in accordance with, and to the extent permitted by, section 363(f) of the Bankruptcy Code because, in each case, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests against the Debtor, its estate, the Acquired Assets who did not object, or who withdrew their objections, to the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Except as otherwise set forth in the Purchase Agreement or in this Sale Order, the transfer of the Acquired Assets to the Buyer does not and will not subject the Buyer to any liability whatsoever with respect to the operation of the Debtor's business and/or the ownership of the Acquired Assets prior to the Closing.

O. It is a reasonable exercise of the Trustee's business judgment to consummate the sale transaction contemplated by the Purchase Agreement, and such actions are in the best interests of the Debtor's estate and its creditors. The consummation of the sale transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), and 363(m) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the sale transaction.

P. The Purchase Agreement is a valid and binding contract between the Trustee and the Buyer, which is and shall be enforceable according to its terms.

Q. The Trustee has articulated good and sound business reasons for waiving the stay otherwise imposed by Bankruptcy Rules 6004(g), and 6006(d).

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted as set forth herein.
2. Any objections to the entry of this Sale Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are denied and overruled.

Approval of the Purchase Agreement and the Transactions

3. The Purchase Agreement and the transactions contemplated thereunder are hereby approved.
4. The Purchase Price paid by the Buyer shall be Four Hundred and Twenty Thousand Dollars (\$420,000.00).
5. The Trustee is authorized and directed to execute and deliver, and empowered to perform under, consummate and implement the Purchase Agreement, together with all additional instruments and documents that the Buyer reasonably deems necessary or appropriate to implement the Purchase Agreement and effectuate the transactions, and to take all other and further actions as may be reasonably requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to Buyer or reducing to possession the Acquired Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement.
6. The transfer of the Acquired Assets to the Buyer pursuant to the Purchase Agreement constitutes a legal, valid and effective transfer of the Acquired Assets, and shall vest the Buyer with all right, title and interest of the Debtor in and to the Acquired Assets, free and clear of all Interests of any kind or nature whatsoever, with all such Interests attaching to the net cash proceeds of the sale in the order of their priority, with the same validity, force and effect

that they now have as against the Acquired Assets, subject to any claims and defenses the Trustee or estate may possess with respect thereto. All holders of Interests fall within one or more subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their interests attach to the net proceeds received by the Trustee.

7. Subject to the timing set forth in paragraph 20 below, the Acquired Assets shall be transferred to Buyer, and upon the Closing, the Buyer shall take title to and possession of the Acquired Assets upon consummation of the Purchase Agreement.

8. Upon the Closing of the sale, each of the Debtor's creditors and any other holder of an Interest is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Acquired Assets, if any, as such Interests may have been recorded or may otherwise exist.

9. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens or other documents or agreements evidencing Interests in the Debtor or the Acquired Assets and has not delivered to the Trustee prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction or releases of all Interests that the person or entity has with respect to the Debtor or the Acquired Assets or otherwise, then: (a) the Buyer is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Debtor or the Acquired Assets, and (b) the Buyer is hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which shall constitute conclusive evidence of the release of all Interests in the Debtor or the Acquired Assets of any kind or nature whatsoever. Each governmental agency or department is hereby directed to accept any and all

documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

10. This Sale Order: (a) shall be effective as a determination that, at Closing, all Interests of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing have been unconditionally released, discharged and terminated to the Acquired Assets being sold (but not, for the avoidance of doubt, released, discharged or terminated as to the proceeds of those Acquired Assets), and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets.

11. All entities who are presently, or at Closing may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Buyer within forty-five (45) calendar days after Closing as contemplated in paragraph 20 hereof.

12. The Buyer shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Acquired Assets. Without limiting the generality of the foregoing, the purchase of the Acquired Assets by the Buyer, the fact that the Buyer is using the Acquired Assets previously owned by the Debtor or the Trustee, or any other reason will not result in the Buyer being liable for any Claims against the Debtor or any of its predecessors or affiliates, and, to the greatest extent allowed by applicable law, the Buyer shall

have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, successor or transferee liability, labor law, *de facto* merger or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing. The Buyer has given substantial consideration under the Purchase Agreement for the benefit of holders of Interests.

13. The sale, transfer, assignment and delivery of the Acquired Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtor and its estate. All persons holding Interests against or in the Debtor or the Acquired Assets of any kind or nature whatsoever hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Interests of any kind or nature whatsoever against the Buyer or the Buyer's officers, directors, shareholders or partners, its property or its successors and assigns or the Acquired Assets, as an alleged successor or otherwise (to the greatest extent allowed by applicable law), with respect to any Interest of any kind or nature whatsoever such person or entity had, has or may have against or in the Debtor, its estate, its respective officers, directors or shareholders or the Acquired Assets. Following the Closing, no holder of an Interest in or against the Debtor or the Acquired Assets shall interfere with Buyer's title to or use and enjoyment of the Acquired Assets based on or related to such Interest.

14. The Buyer shall have no liability or responsibility for any liability or other obligation of the Debtor or Trustee arising under or related to the Acquired Assets. Without

limiting the generality of the foregoing, the Buyer shall not be liable for any claims against the Debtor or any of its predecessors or affiliates for any obligations of the Debtor arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, or in connection with, or in any way relating to the Acquired Assets or the Debtor or Trustee prior to the Closing.

15. Nothing in this Sale Order or the Purchase Agreement authorizes the transfer to any entity of any licenses, permits, registrations or other governmental authorizations and approvals without that entity's compliance with all applicable requirements under non-bankruptcy law governing such transfers. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under applicable non-bankruptcy law.

Additional Provisions

16. The consideration provided by the Buyer for the Acquired Assets under the Purchase Agreement is fair and reasonable and may not be avoided under Bankruptcy Code section 363(n).

17. The transactions are undertaken by the Buyer without collusion and in good faith, in accordance with Bankruptcy Code sections 363(m) and 363(n). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transactions shall not affect the validity of the sale of the Acquired Assets to the Buyer, unless such authorization is duly stayed pending such appeal. The Buyer is a good-faith purchaser of the Acquired Assets and is entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m) and other applicable law.

18. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

19. The failure specifically to include any particular provisions of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement is hereby authorized and approved in its entirety, as it may be amended or supplemented in accordance with its terms and this Sale Order.

20. The Trustee shall proceed with the closing of the sale with the Buyer by no later than April 30, 2016, and provide the Buyer with access to the wave.com Domain Name within forty-five (45) calendar days after the closing with the Buyer.

21. With respect to the transfer of the Domain Name to the Buyer, the Debtor or the Trustee shall cooperate with the Debtor's Domain Name registrar to initiate and complete the electronic transfer process from the Debtor's account to the Buyer's account, including, without limitation, executing and delivering to the Buyer such documents, authorization codes, electronic mail messages, or other correspondence, and taking such actions as reasonably requested by the Buyer, to implement and finalize the Domain Name transfer to the Buyer.

22. To the extent of any conflict between the Purchase Agreement and this Sale Order as they relate to the rights and obligations of the Debtor, the Trustee, and the Buyer with respect to each other, the Sale Order shall govern. To the extent of any conflict between the Purchase Agreement and this Sale Order not within the scope of the immediately preceding sentence,

including, without limitation, as they relate to the rights and obligations of third parties and the rights and obligations of the Buyer with respect to third parties, this Sale Order shall govern.

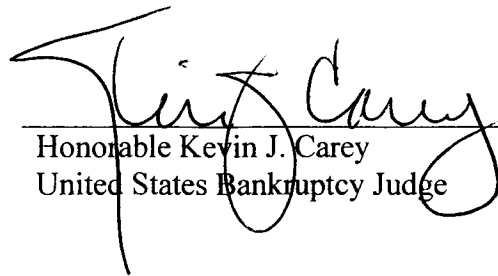
23. This Sale Order and the Purchase Agreement: (a) shall be binding in all respects upon all creditors of and holders of equity interests in the Debtor (whether known or unknown), any holders of Interests, the Buyer and all successors and assigns of the Buyer, the Trustee, the Debtor and its estate, and the Acquired Assets; and (b) shall not be subject to rejection.

~~24. The winning bidder for the Debtor's operating technology is ESW Capital, LLC ("ESW"). ESW's winning bid contemplates acquiring the Debtor through a chapter 11 plan process, as more fully set forth in its revised offer letter dated April 13, 2016 (the "Revised Offer Letter"), attached hereto as **Exhibit 1**. In the event that the chapter 11 plan process fails, ESW is required to purchase the operating technology for \$3,800,000.00 on the terms more fully set forth in the Revised Offer Letter. For the avoidance of doubt, the operating technology that ESW contemplates acquiring (either through a chapter 11 plan process or an asset purchase) excludes the wave.com Domain Name, which is being sold to the Buyer, and patent numbers 7036020 and 7426747 (the "SED Patents"). ESW, however, shall obtain a license for the SED Patents, upon the terms set forth in the Revised Offer Letter. ~~Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions~~~~

25. The fourteen-day stay otherwise imposed by Bankruptcy Rules 6004(h), 6006(d) and 7062 is hereby waived, and this Sale Order shall be effective immediately upon entry.

26. This Court shall retain jurisdiction to interpret, implement and enforce this Sale Order.

Dated: April 14, 2016
Wilmington, Delaware



Honorable Kevin J. Carey
United States Bankruptcy Judge

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