

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
BURTON DOUGLAS MORRISS,	)	
ACARTHA GROUP, LLC,	)	
MIC VII, LLC,	)	
ACARTHA TECHNOLOGY PARTNERS, LP, and	)	
GRYPHON INVESTMENTS III, LLC,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	
	)	

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Case No. 4:12-CV-00080-CEJ

**RECEIVER’S RESPONSE TO OBJECTION OF HANY TEYLOUNI**

Claire M. Schenk (the “Receiver”), the Receiver for Defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MIC VII, LLC (“MIC VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively, the “Receivership Entities”), respectfully submits her *Response to the Objection of Hany Teylouni* (the “Objection”) (ECF No. 337).<sup>1</sup>

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<sup>1</sup> As stated in the Receiver’s Final Notice of Determination, the Receiver reserves her right to assert claims held by the Receivership Entities against Mr. Teylouni whether such claims are asserted as independent claims or to offset any alleged liability of the Receivership Entities to Mr. Teylouni (the “Claims”). **By filing this response to the Objection, the Receiver reserves and does not waive any affirmative claims that the Receivership Entities may hold against Mr. Teylouni.**

### Introduction

On January 17, 2012, this Court appointed the Receiver as receiver over the Receivership Entities (ECF No. 16). Among other things, this Court charged the Receiver with:

full and exclusive power, duty and authority to: administer and manage the business affairs, assets, choses in action and any other property of the [Receivership] Entities; operate as the sole and exclusive managing member or partner of the [Receivership] Entities; maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the estates of [the Receivership Entities]; marshal and safeguard all of the assets of the [Receivership] Entities and take whatever actions are necessary for the protection of investors[.]

Order Appointing Receiver (ECF No. 16). In furtherance of her duties as receiver, the Receiver sought and obtained authority from this Court to establish a Claims Bar Date and to require that all Claimants of the Receivership Entities file proofs of claim with the Receiver for evaluation and recommendation for allowance or disallowance by the Receiver in connection with a proposed plan of distribution. Claims Bar Date Order, as amended (ECF Nos. 234, 278). The Objection arises out of the Court's approved claim-review process.

This Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *Sec. & Exch. Comm'n v. Capital Consultants, LLC*, 397 F.3d 733, 750 (9th Cir. 2005) ("a district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad . . . [and] the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership") (internal citations omitted); *Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *see McFarland v. Winnebago South, Inc.*, 863 F. Supp. 1025, 1034 (W.D. Mo. 1994) ("A federal district court presiding over an equity receivership has extremely broad power to supervise the receivership and protect receivership assets."); *Sec. & Exch. Comm'n v. Lincoln*

*Thrift Ass'n*, 577 F.2d 600, 606 (9th Cir. 1978) (“The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.”). As such, in consideration of the equities, and for the reasons and authority set forth herein, the Receiver respectfully requests that the Court reject the Objection and affirm the Receiver’s disallowance of Hany Teylouni’s claim as appropriate and proper in this Receivership case.

### **Standard of Review**

The goals of receivership are to “safeguard the assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary.” *Sec. & Exch. Comm’n v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) (quoting *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006)); see *United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996) (“Sitting in equity, the district court is a ‘court of conscience.’”) (internal citation omitted). In executing these goals, receivers appointed by a court sitting in equity determine courses of action that they find to be the most prudent and equitable. *Sec. & Exch. Comm’n v. Byers*, 637 F. Supp. 2d 166, 168 (S.D.N.Y. 2009).

As stated above, the receivership court has a great deal of discretion in conducting receivership proceedings, and the court’s actions will not be disturbed absent a clear abuse of such discretion. *Sec. & Exch. Comm’n v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (“Therefore, ‘(a)ny action by a trial court in supervising an equity receivership is committed to [the trial court’s] sound discretion and will not be disturbed unless there is a clear showing of abuse.’”) (quoting *Sec. & Exch. Comm’n v. Ark. Loan & Thrift Corp.*, 427 F.2d 1171, 1172 (8th Cir. 1970)); see also James Wm. Moore et al., *Moore’s Federal Practice* ¶ 66.07[3] (3d ed. 2014). It follows that the receivership court has great discretion in reviewing actions of the receiver and determining whether the receiver’s actions comport with the goals and objectives of

equity. Further, when reviewing a receiver's determination to disallow a claim, the court considers the record and whether the claimant has provided sufficient evidence to prove its claim. *See Sec. & Exch. Comm'n v. Merrill Scott & Assocs., Ltd.*, No. 02-CV-39-TC, 2008 WL 2787401, at \*5 (D. Utah July 15, 2008).

### **Facts**

#### **A. Mr. Teylouni's Claim**

On May 2, 2013, Hany Teylouni ("Mr. Teylouni") filed a proof of claim with the Receiver in the amount of \$352,532.15 against Acartha and ATP for deferred salary plus interest thereon, for the period August 1, 2008 through April 15, 2010. Teylouni Proof of Claim Form (attached hereto as Exhibit A). The Receiver designated Mr. Teylouni's claim as Claim No. 20. In support of his claim, Mr. Teylouni included an explanation of his claim, some tax documents, his employment agreement, some email correspondence from 2008 and 2009, and a calculation of the claim amount. *Id.*

The Receiver and Mr. Teylouni exchanged correspondence regarding Mr. Teylouni's claim prior to the Receiver's issuance of her final determination regarding Mr. Teylouni's claim. *See* Notice of Deficiency dated July 3, 2013 (attached hereto as Exhibit B); Letter Regarding Teylouni Claim dated August 28, 2013 (attached hereto as Exhibit C); Initial Notice of Determination dated January 13, 2014 (attached hereto as Exhibit D); Letter Regarding Teylouni Claim dated January 31, 2014, with attachments (attached hereto as Exhibit E).

On February 12, 2014, the Receiver issued her final determination disallowing Mr. Teylouni's claim (the "Final Notice of Determination"). *See* Final Notice of Determination dated February 12, 2014 (attached hereto as Exhibit F). Mr. Teylouni objected to the Notice of Determination, which objection the Receiver reviewed and denied. *See* Letter Regarding



Teylouni Claim Objection dated April 28, 2014 (attached hereto as Exhibit G); Letter Regarding Teylouni Claim Objection dated May 13, 2014 (attached hereto as Exhibit H).

Counsel for the Receiver and Mr. Teylouni worked in good faith following the Receiver's determination on Mr. Teylouni's objection to resolve their differences regarding Mr. Teylouni's claim.<sup>2</sup> To that end, Mr. Teylouni participated in an interview and provided additional documents to the Receiver. The parties, however, were unable to reach an agreement regarding the resolution of Mr. Teylouni's claim. *See* Letter Regarding Teylouni Claim Objection dated July 10, 2014 (attached hereto as Exhibit I). On July 31, 2014, Mr. Teylouni lodged his objection with the Court (ECF No. 337).

#### **B. Mr. Teylouni's Employment with the Receivership Entities**

Mr. Teylouni began to work for Acartha, and in particular for ATP, in July 2005.<sup>3</sup> Mr. Teylouni served as Managing Director of ATP. While at ATP, Mr. Teylouni reported directly to Ameet Patel, partner and Chief Technology Officer with Acartha and Chief Executive Officer of ATP. According to Mr. Teylouni, he provided strategic technical, systems, and systems implementation expertise to Acartha Group's portfolio companies and conducted technology due diligence for ATP.

Mr. Teylouni left his position at ATP in February 2010 to join a technology company, in which ATP invested, as that company's Chief Technology Officer.<sup>4</sup> Acartha and ATP, however,

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<sup>2</sup> As allowed under the Claims Bar Date Order, the parties agreed to extend Mr. Teylouni's deadline to file his objection with the Court up to and including July 31, 2014.

<sup>3</sup> Mr. Teylouni's employment agreement reflects his date of hire as July 3, 2005. The employment agreement, however, was not executed until June 2006. *See* Exhibit A.

<sup>4</sup> Between October 2009 and February 2010, Mr. Teylouni advised this same technology company in his role at ATP. During his interview with Receiver's counsel, Mr. Teylouni stated that he was paid separately from his ATP paycheck for the services he provided to the technology company.

did not have confirmation of Mr. Teylouni's departure until after April 2010. Email Regarding Teylouni Employment Status dated April 28, 2010 (attached hereto as Exhibit I-1); Email Regarding Teylouni Employment Status dated May 17, 2010 (attached hereto as Exhibit I-2).

### **C. Mr. Teylouni's Alleged Deferred Compensation**

As Managing Director, Mr. Teylouni was a highly-paid employee of Acartha and ATP. As reflected in his employment agreement, Mr. Teylouni began his employment at an annual **base** compensation rate of \$300,000 per year. Exhibit A. His employment agreement also provided for certain benefits, including incentive compensation benefits. *Id.* Mr. Teylouni had the opportunity to earn cash incentive compensation of up to \$60,000 based on a performance review conducted at the end of his first full year of hire, provided that Mr. Teylouni was an employee when the cash incentive compensation was awarded. *Id.* Also, Mr. Teylouni was granted a profits interest in Morris Enterprises, LLC. *Id.* Mr. Teylouni had the opportunity to participate in funds managed by ATP, with the possibility of an award of a portion of carried interest from such funds. *Id.* Finally, Acartha's Compensation Committee could decide to award Mr. Teylouni the opportunity to participate in or receive carried interest with respect to special purpose vehicle investment entities created by Acartha or its affiliates. *Id.*

The Receivership Entities experienced financial difficulties that made it difficult, if not impossible, for the Receivership Entities to meet their payroll obligations. Thus, the Receivership Entities reduced the salaries for certain employees, including Mr. Teylouni. In 2007, the Receivership Entities asked Mr. Teylouni to agree to reduce his salary to \$65,000. Email Regarding Teylouni Salary dated December 12, 2007 (attached hereto as Exhibit I-3). At least by June 2008, for instance, Mr. Teylouni's salary was reduced to \$80,000. *See* Teylouni Change of Status Form (attached hereto as Exhibit J). Mr. Teylouni received more than his

agreed-upon \$80,000 per year salary in 2009. *See* Acartha Group Compensation Data Spreadsheet, at 2 (attached hereto as Exhibit J-1)

According to the documents attached to Mr. Teylouni's claim, the Receivership Entities did keep track of the difference between Mr. Teylouni's original rate of compensation and his reduced compensation rate, and in two instances, updated Mr. Teylouni with the amount of his salary deferrals. *See* Exhibit A. These communications, however, did not contain a promise to pay Mr. Teylouni the alleged deferred compensation and did not provide Mr. Teylouni with the circumstances under which such compensation would be paid.<sup>5</sup>

In fact, the deferred compensation allegedly promised to Mr. Teylouni and other Acartha employees was conditioned on the improvement of the financial status of the Receivership Entities. The Receivership Entities did not enter into agreements with their employees regarding payment of deferred compensation and conditioned such payments on both sufficient cash reserves and management discretion. *See* Acartha Information Request List (attached hereto as Exhibit K).

In December 2011, former management confirmed the state of deferred compensation payments in a letter to investors. *See* Letter to Investors dated December 8, 2011 (attached hereto as Exhibit L). The letter stated that lost compensation due to salary reductions for senior personnel like Mr. Teylouni would be recovered "if and when either a successful portfolio company liquidity event occurred or Acartha was able to raise additional funds." Exhibit L, at 3. Through the Letter to Investors, former management admitted that the deferred salary amounts

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<sup>5</sup> In January and August 2009, Mr. Teylouni received bonus payments of \$8,985 and \$20,806, respectively. *See* Exhibit J-1, at 1. To the extent such payments were improper under insolvency or other theories, such payments could be the subject of a demand for return by the Receiver.

did not appear on Acartha's financial statements as a liability,<sup>6</sup> "although it has been the understanding of [Acartha] and the employees whose salaries had been reduced that the deferred balance would be paid at such time as Acartha had sufficient recourses as a result of fundraising or portfolio company liquidation." Exhibit L, at 3 n.1.

Further, the letter made clear that, as of December 2011, Acartha did not have sufficient resources to reimburse employees for the salary reductions. *See* Exhibit L, at 1 (describing the financial situation as "grave" and stating "**ABSENT SUPPORT FROM INVESTORS TO FINANCE ACARTHA THROUGH Q1 . . . AND ABSENT RECEIPT OF FUNDING BY DECEMBER 21, 2011, THE COMPANY WILL BE FORCED TO COMMENCE WIND-DOWN AND CEASE OPERATIONS ON DECEMBER 31, 2011.**" (emphasis in original)); *see also* Acartha Group, LLC, Voluntary Petition, Jan. 8, 2012 (showing assets of less than \$50,000 and liabilities exceeding \$1,000,001) (attached hereto as Exhibit M). Acartha did not have the funds to pay employees for any differentials in pay, and in fact, had "insufficient revenues for Acartha to support its operations." Exhibit L, at 3. The Receivership Entities also had to borrow funds to cover payroll.<sup>7</sup>

ATP was failing at least by December 2011. ATP was intended to be a \$250,000,000 fund. Exhibit L, at 2. However, ATP never reached its initial size, much less its final fund size. *Id.* ATP's lackluster performance directly impacted Acartha because Acartha's operating budget was funded by management fees and carried interest from ATP and other related entities. As a result of the underfunding of ATP, "the management fees which were payable to Acartha Group

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<sup>6</sup> Mr. Teylouni has not contested former management's statement that the deferred salary amounts were not listed as liabilities on Acartha's financial statements.

<sup>7</sup> ATP's general ledger shows that on at least two occasions, ATP borrowed funds from an Acartha employee and/or the relative of an Acartha employee to cover payroll.

as service provider for the general partner of ATP were a small fraction of what had been anticipated.” *Id.*

### Argument

#### **A. The Objection Is Moot Because It Seeks Allowance of an Employee Claim Subject to Subordination Against a Receivership Estate With Insufficient Funds to Pay All Investor Claims in Full.**

The Receiver’s ultimate objective is to administer the Receivership Estate to maximize the recovery for investors. *Sec. & Exch. Comm’n v. Wealth Mgmt. LLC*, 628 F.3d 323, 336 (7th Cir. 2010) (“the ultimate goal of a receivership is to maximize the recovery of the investor class”). To that end, the Receiver has many avenues available to her to help ensure that the Receivership Entities’ investors obtain the maximum recovery possible from the Receivership’s assets, including but not limited to elevating investor payments over non-investor creditor payments in a plan of distribution. *See U.S. Commodity Futures Trading Comm’n v. RFF GP, LLC*, No. 4:13-cv-382, 2014 WL 491639, at \*1-2 (E.D. Tex. Feb. 4, 2014) (overruling objection of non-investor creditor to prioritization of investor claims and stating that “courts regularly grant defrauded investors a higher priority than defrauded creditors”) (citing *Quilling v. Trade Partners, Inc.*, No. 1:03-cv-236, 2006 WL 3694629, at \*1 (W.D. Mich. 2006) (noting that “an equitable matter in receivership proceedings arising out of a securities fraud, the class of fraud victims takes priority over the class of general creditors with respect to proceeds traceable to the fraud.”)).

Currently, the Receivership Estate has approximately \$4.3 million in its accounts. *See* Receiver’s Tenth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals (ECF No. 341). The Receivership has immediate administrative liabilities owed to professionals and others employed to assist the

Receiver in excess of \$175,000 (which number does not include the 20 percent holdback on fees required by the SEC). *See id.* More importantly, however, current estimated investor liabilities of the Receivership Estate exceed \$55 million. *See* Eleventh Interim Status Report of Receiver (ECF No. 338). Although the Receiver has not yet filed a proposed plan of distribution and is still working to recover funds for eventual distribution to investors, the current financial status of the Receivership Estate suggests that it is improbable, that the Receivership Estate will have sufficient funds available to satisfy claims of non-investor creditors after providing for an equitable distribution of funds to investors. Mr. Teylouni is a non-investor creditor subject to subordination to the claims of investors. For this reason, it is unlikely that he will recover anything from the Receivership Estate.

Furthermore, to the extent that Mr. Teylouni is an insider of the Receivership Entities or his employment with the Receivership Entities in any way perpetuated the harm caused to investors, Mr. Teylouni has no equitable right to a claim.<sup>8</sup> *See, e.g., Sec. & Exch. Comm'n v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2009 WL 1854671, at \*2 (M.D. Fla. June 29, 2009) (disallowing vice-president/board member's claims because "[a]s equitable theories govern distribution plans in S.E.C. receiverships, [the claimant's] status as an insider whose actions furthered the fraud defeat[ed] his claim"); *Sec. & Exch. Comm'n v. Pension Fund of Am. L.C.*, 377 Fed. Appx. 957, 963 (11th Cir. 2010) (circuit court upheld decision to disallow regional director's claim for payment of commission, finding that director was "responsible for recruiting the investors who ultimately suffered losses due to the . . . fraud"); *Byers*, 637 F. Supp. 2d at 173, 184 (approving receiver's proposal to disqualify defendants, defendants' relatives, and

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<sup>8</sup> Insider status justifies not only disallowance, but also equitable subordination of a claim. *See Sec. & Exch. Comm'n v. Am. Bd. of Trade*, 719 F. Supp. 186, 198-99 (S.D.N.Y. 1989) (holding that even if certain claims were not disallowed, they could be subordinated).

employees that actively participated in the development, implementation, and marketing of the fraudulent scheme as “eminently reasonable and [ ] supported by caselaw”); *see also* *Sec. & Exch. Comm’n v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 660 (6th Cir. 2001); *Sec. & Exch. Comm’n v. Enter. Trust Co.*, No. 08-C-1260, 2008 WL 4534154, at \*3 (N.D. Ill. Oct. 7, 2008); *Sec. & Exch. Comm’n v. Merrill Scott & Assocs.*, No. 02-CV-39-TC, 2006 WL 3813320, at \*6-7 (D. Utah Dec. 21, 2006)).

“Insiders” are individuals who have a fiduciary relationship with the entity (*i.e.*, directors, officers), *United States v. Evans*, 486 F.3d 315, 321 (7th Cir. 2007), and persons in control of the entity, 11 U.S.C. § 101(31). Although a finding as to Mr. Teylouni’s status as an insider is not necessary to dispose of the Objection in the Receiver’s favor, the Receiver notes that as Managing Director of ATP, a high-level employee, Mr. Teylouni may be seen as an insider of the Receivership Entities. In his certification to the Receiver, Mr. Teylouni states that he had no knowledge of the fraud, *see* Teylouni Certification (attached hereto as Exhibit N). Lack of knowledge, however, is not determinative. *See Byers*, 637 F. Supp. 2d at 173 (showing although knowledge of the fraud may support a determination of disallowance, knowledge is not a requirement; rather, the determination turns on whether the claimant participated in the fraud by being an inside part of the organization); *Aquacell Batteries, Inc.*, 2009 WL 1854671, at \*2 (declining to accept insider claimants’ assertions of a lack of knowledge as viable support for their claims).

**B. The Equitable Purposes of this Receivership Supports the Receiver’s Determination.**

A federal receivership is equitable in nature and is instituted to serve equitable purposes. *See United States v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th Cir. 1993). Where proposed relief is “inimical to receivership purposes,” the court has the discretionary power to deny that

relief. *Id.* (“Given its equitable nature and purposes, a district court supervising such a receivership has the discretionary power to deny these equitable remedies as inimical to receivership purposes even though they are or might be warranted under controlling law.”); *see Elliott*, 953 F.2d at 1566 (receivership court has broad discretion in the conduct of the receivership and the relief to be granted to involved parties).

Here, Mr. Teylouni seeks an allowed claim for more than \$350,000 for deferred compensation without a formal agreement for the payment of such compensation nor any understanding that such compensation should have been or would be paid to him at any time after he left the employment of the Receivership Entities. The equities weigh against allowance of Mr. Teylouni’s claim. If allowed, Mr. Teylouni’s claim would reduce limited funds available for distribution to third parties not connected to the alleged fraud, *i.e.*, the Receivership Entities’ investors. Such a result undermines the Receiver’s ability to maximize recovery for investors and otherwise preserve funds for the Receivership Estates that can be paid out to investors in a plan of distribution.

Further, given the conditional nature of the alleged deferred compensation and the fact that it arose because of the Receivership Entities’ financial difficulties, it would be inequitable to pay such compensation through a proceeding that is occurring because of the actions that led to those same financial difficulties. Payment of deferred compensation was dependent upon sufficient cash reserves and management discretion. Clearly, the Receivership Entities lacked the cash reserves to pay Mr. Teylouni’s claimed deferred compensation (which was a part of almost \$2.4 million in total deferred compensation). And ATP in particular failed to raise sufficient capital to support its operations. On these grounds, it would be inequitable to award Mr.



Teylouni a claim for deferred compensation that the Receivership Entities could not pay at the time of his departure from ATP or prior to the institution of the Receivership.

Further, to the extent Mr. Teylouni argues that the current state of the Receivership Entities supports payment of the compensation, it is within the Receiver's discretion as management to deny such payment. *See* Order Appointing Receiver, at 1 (ECF No. 16); *see also* Memorandum and Order dated June 25, 2013 (ECF No. 261) (discussing the Receiver's power to make decisions regarding distributions as managing partner of Acartha Group). As such, equity supports the Receiver's Determination as to Mr. Teylouni's claim.

Allowance of Mr. Teylouni's claim also is inconsistent with the Receiver's obligations under the Order Appointing Receiver. This Court charged the Receiver with safeguarding the assets of the Receivership Entities, taking such actions as are necessary for the protection of investors, acting as the sole and exclusive managing member and/or partner of the Receivership Entities and administering and managing the business affairs, funds, assets, choses in action and other property of the Receivership Entities. *See* Order Appointing Receiver (ECF No. 16). The Receiver kept these obligations in mind when reviewing Mr. Teylouni's claim. As stated above, the Receiver's ultimate objective is to administer the Receivership Estate so that she maximizes the recovery for the investor class. *Wealth Mgmt.*, 628 F.3d at 336 ("the ultimate goal of a receivership is to maximize the recovery of the investor class"). The Receiver fulfills this objective best if she allows valid, defensible claims against the Receivership Entities and disallows claims that seek recovery on grounds inimical to the Receiver's ultimate objective of achieving a maximum recovery for the Receivership Entities' investors.

**C. The Inherent Ability of the Receiver to Reject Pre-Receivership Agreements Supports the Receiver's Determination.**

A receiver, by virtue of his or her appointment, does not become liable upon the covenants and agreements of the receivership entities. *Sunflower Oil Co. v. Wilson*, 142 U.S. 313, 322 (1892). Rather, a receiver has the inherent power to reject contracts and leases as an equity receiver under the common law. *See In re Unishops, Inc.*, 422 F. Supp. 75, 79 (S.D.N.Y. 1975) (citing *U.S. Trust Co. v. Wabash W. Ry.*, 150 U.S. 287, 299 (1893)) (rejecting unprofitable leases and contracts); *see Sec. & Exch. Comm'n v. Ross*, 504 F.3d 1130, 1145 (9th Cir. 2007) (“Congress has authorized federal receivers to exercise broad powers in administering, retrieving, and disposing of assets belonging to the receivership.”).

By virtue of her appointment, the Receiver did not become liable to Mr. Teylouni for any agreement that Mr. Teylouni might have had with the Receivership Entities for payment of deferred compensation. Moreover, the alleged agreement for payment of deferred compensation does not benefit the Receivership Estate. Mr. Teylouni requests a claim in the amount of \$352,532.15. Absent Mr. Teylouni's claim, this money would be available for eventual distribution to investors through a plan of distribution. Considering the detriment to the Receivership Estate and the investors, the Receiver cannot be held to any agreement that Mr. Teylouni had with the Receivership Entities for the payment of deferred compensation.

**D. The Facts Support the Receiver's Determination.**

As more particularly stated above, in the Final Notice of Determination, and in the Receiver's Letter Regarding Teylouni Objection dated July 10, 2014, the facts support disallowance of Mr. Teylouni's claim.

**1. Mr. Teylouni waived any “deferred salary” in June 2008 and had his salary fully paid at his reduced salary rate.**

Mr. Teylouni’s claim is based on the difference between the salary as stated in his employment agreement and the reduced salary that Mr. Teylouni received during the Receivership Entities’ financial troubles. Mr. Teylouni agreed to the salary reductions. He executed a payroll salary reduction form containing his acknowledgment that such reduction was not a deferral of wages nor a promise that reduced wages would be paid at a later date. *See* Exhibit J.

Further, Mr. Teylouni’s claim documentation and the Receivership records reflect that the salary payments Mr. Teylouni received met or exceeded Mr. Teylouni’s agreed upon salaries. In 2008, Mr. Teylouni received \$235,833.30. *See* Exhibit A. His agreed-upon salary for 2008 was no more than \$181,000.<sup>9</sup> *See* Exhibit J. In 2009, Mr. Teylouni received almost \$89,000 in total compensation, which was more than his agreed-upon \$80,000 salary. *See* Exhibit A; Exhibit J-1. As such, Mr. Teylouni has been compensated fully as his agreed-upon compensation rate.

**2. Any right to deferred compensation was conditional and the condition precedent for payment did not occur prior to the institution of the Receivership; and Mr. Teylouni waived his right to the alleged deferred compensation when he left ATP in February 2010 without payment of that compensation or an agreement as to how that compensation would be paid.**

There are generally two forms of deferred salary: salary that accrues immediately but the time of payment is deferred to a later date, and salary that accrues at the time of some anticipated time or event. *See Winkler v. Frank-Cunningham Stores Corp.*, 256 A.2d 905, 907 (D.C. App. 1969). In the first type of situation, the right to payment vests even if the employee quits; in the

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<sup>9</sup> The Receivership Records reflect additional changes in Mr. Teylouni’s rate of pay in May and June 2008 that may have further reduced Mr. Teylouni’s annual salary.

second type of situation, the right does not vest until the anticipated time or event occurs. *Id.* Here, it is clear that Mr. Teylouni's alleged deferred compensation is of the latter variety. Management treated the alleged deferred salary as the type that accrues upon a stated event: improvement of the Receivership Entities' financial condition. Payment of such compensation, therefore, was conditional; it would be paid upon "a successful portfolio company liquidity event occurred or Acartha was able to raise additional funds." Exhibit L, at 3. As of the filing of the Receivership, neither of these events occurred.

Mr. Teylouni has not provided evidence of any event that would have triggered Acartha Group's potential liability for payment of the alleged deferred compensation prior to the institution of the Receivership. Mr. Teylouni only argues that the Receiver's post-Receivership sale of the Receivership Entities' preferred and common shares of Pollen, Inc. ("Pollen") qualifies as a triggering event for payment of the alleged deferred compensation. *See* Exhibit G, at 2. Even if a post-Receivership event could possibly trigger Mr. Teylouni's alleged right to payment of deferred compensation, the Receiver's sale of the Pollen shares does not constitute such an event. Post-Receivership, the Receiver monetized the Receivership's interest in Pollen through a sale of the Pollen shares back to Pollen. The Receiver's receipt of funds from the sale was not the result of an acquisition, merger, or other significant event involving Pollen. Nor does the Receiver's receipt of the funds constitute the raising of additional funds. The funds coming from the sale were not the result of a new or additional investment in the Receivership Entities. As such, even if a post-Receivership event could be found to trigger alleged pre-Receivership liability for payment of deferred compensation, the Receiver's sale of the Pollen shares back to Pollen does not qualify as such an event.

Furthermore, Mr. Teylouni voluntarily left his employment with ATP without payment of the alleged deferred compensation or any understanding or agreement (written or oral) as to how, when, or if Mr. Teylouni's alleged deferred compensation would be paid. The Receivership Entities treated Mr. Teylouni's alleged deferred compensation as no longer owed to Mr. Teylouni when he left ATP's employment. In April 2010, the Receivership Entities took the step of removing the alleged deferred compensation claimed by Mr. Teylouni from its schedule of payroll deferrals. *See* Email Regarding Deletion of Teylouni Payroll Deferral Amount dated April 15, 2010 (attached hereto as Exhibit O). He also understood that his employment with Acartha and ATP was risky. In his employment agreement, he acknowledged that Acartha was a start-up financial services holding company and that there were risks of business failure. *See* Exhibit A, at 8. Under the circumstances, Mr. Teylouni waived his right to any claim for the alleged deferred compensation.

**WHEREFORE**, for all the foregoing reasons as well as those included in the Receiver's Final Notice of Determination and Letter Regarding Teylouni Claim Objection dated July 10, 2014, the Receiver respectfully requests that the Court reject the Objection and affirm the Receiver's disallowance of Hany Teylouni's claim as appropriate and proper in this Receivership case.

Dated: September 2, 2014

Respectfully Submitted,

**THOMPSON COBURN LLP**

By           /s/ Kathleen E. Kraft          

Stephen B. Higgins, #25728MO  
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One US Bank Plaza  
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Washington, DC 20006  
Phone: (202) 585-6922  
Fax: (202) 508-1035  
kkraft@thompsoncoburn.com

**CERTIFICATE OF SERVICE**

I hereby certify that on September 2, 2014, 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 the following:

John R. Ashcroft, Esq.  
Ashcroft Hanaway LLC  
222 South Central Ave., Suite 110  
St. Louis, Missouri 63105  
*Counsel for Defendant Burton Douglas Morriss*

Robert K. Levenson  
Brian T. James  
Securities and Exchange Commission  
801 Bricknell Avenue, Suite 1800  
Miami, Florida 33131  
*Attorneys for Plaintiff*

/s/ Kathleen E. Kraft

**EXHIBIT A**

**PROOF OF CLAIM IS TO BE FILED WITH RECEIVER -- DO NOT FILE WITH COURT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, )  
Plaintiff, )  
v. )  
BURTON DOUGLAS MORRISS, et al., )  
Defendants. )

Case No. 4:12-cv-00080-CEJ

**PROOF OF CLAIM FORM**

Please Type or Print in the Boxes Below  
Do NOT use Red Ink, Pencil, or Staples

<b>FOR RECEIVER'S USE ONLY</b>	
Claim No.:	<u>20</u>
Date of Claim:	<u>5</u> / <u>2</u> / <u>2013</u> <sup>1</sup>

**PART I: CLAIMANT IDENTIFICATION**

**Name of Individual (Last, First) or Entity**

TEYLOUNI, HANY

**If Entity, Name (Last, First) of Individual Completing Form on behalf of Entity**

**Title**

**Street Address**

c/o THEODORE MCDONOUGH, CARTER LEDYARD & MILBURN LLP, TWO WALL STREET

**City**

NEW YORK

**State**

NEW YORK

**Zip Code**

10005

**Foreign Province**

**Foreign Postal Code**

**Foreign Country Name/Abbreviation**

**Telephone Number (Primary)**

212 - 732 - 3200

**Telephone Number (Alternate)**

212 - 238 - 8788

**Email Address**

MCDONOUGH@CLM.COM

<sup>1</sup> For Claims sent by regular mail, "Date of Claim" means: (i) for Claims sent by regular mail, the date shown on the official postmark on the Proof of Claim Form envelope; (ii) for Claims sent by hand delivery or courier, the date the Receiver actually received the Proof of Claim Form; and (iii) for Claims sent by electronic mail, the date that the email was transmitted as determined by the time stamp given to the email by the Claimant's email provider (adjusted to prevailing Central Time as necessary).



**PART II: CLAIM**

<p><b>AMOUNT OF CLAIM:</b> <u>  \$ 352,532.15  </u></p> <p><small>(if your claim is based on equity or other interest(s) and is not subject to specific valuation, please include such information in the "Specific Grounds for Claim" box below)</small></p>	<p><b>DATE CLAIM INCURRED:</b> <u>  August 1, 2008  </u></p>
---	--

**Please identify, by checking the appropriate box, the Receivership Entity against whom this claim is asserted:**

<p><input checked="" type="checkbox"/> Acartha Group, LLC</p> <p><input checked="" type="checkbox"/> Acartha Technology Partners, L.P.</p> <p><input type="checkbox"/> MIC VII, LLC</p> <p><input type="checkbox"/> Gryphon Investments III, LLC</p>
--

**Specific Grounds for Claim** (attach additional sheet(s), if necessary). \_\_\_\_\_

Mr. Teylouni is a former employee of Acartha Group, LLC and the former Managing Director of Acartha Technology Partners, L.P. Mr. Teylouni's claim is comprised of deferred salary, plus interest thereon, for the period August 1, 2008 to April 15, 2010. Please see the attached sheet for additional information.

**Secured Claim.** Check this box if you contend that your claim is subject to a security interest. Attach copies of all documents that evidence the claim of secured status, including, but not limited to, promissory notes, mortgages, security agreements, and evidence of perfection of lien.

Asserted Value of Collateral:  
\$ \_\_\_\_\_ .00

Description of Collateral: \_\_\_\_\_

If Court Judgment, Date Obtained: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

If Legal Action Pending, Date Commenced, Court Name, and Case No.: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Claim Status.**

- Check box if you are aware that anyone else has filed a Proof of Claim Form relating to your Claim. (Attach statement giving particulars.)
- Check box if the address entered on this form differs from the address on the envelope sent to you by the Receiver (if you received this form via mail).

Check here if this Proof of Claim:

- Amends
- Replaces
- Supplements a previously filed Proof of Claim Form, dated: \_\_\_\_\_

**YOU MUST READ AND SIGN THE RELEASE AND THE CERTIFICATE OF TRUTHFULNESS OF PAGE 3.  
FAILURE TO SIGN THE RELEASE AND THE CERTIFICATE OF TRUTHFULNESS MAY RESULT IN A  
DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

**SUPPORTING DOCUMENTATION:** Please attach to your Proof of Claim Form only documents (including copies of emails and other electronic data) that support your Proof of Claim Form. Such documentation may include, but is not limited to: copies of personal checks, cashier's checks, wire transfer advices; account statements and other documents evidencing the investment or payment of funds; any written contract or agreement made in connection with any investment in or with any Receivership Entity; a chronological accounting of all money received by the Claimant from any Receivership Entity or the Receiver, whether such payments are denominated as the return of principal, interest, commissions, finder's fees, sponsor payments, or otherwise; copies of all documentation and records reflecting or regarding any withdrawals ever made by or payments received by the Claimant from any Receivership Entity or the Receiver; copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, or evidence of perfection of lien; and other documents evidencing the amount and basis of the Claim. **DO NOT SEND ORIGINAL DOCUMENTS.** If such documentation is not available, please attach an explanation of why the documents are not available.

Please do not submit the following types of materials with a Proof of Claim Form unless requested by the Receiver: (1) marketing brochures and other marketing materials received from the Receivership Entities; (2) routine or form correspondence received from the Receivership Entities; (3) copies of pleadings on file in any case involving the Receiver or the Receivership Entities; and (4) other documents received from Receivership Entities that do not reflect Claimant specific information concerning the existence or value of a Claim.

**VERIFICATION OF CLAIMS:** All Proof of Claim Forms submitted are subject to verification by the Receiver and approval by the Court. It is important to provide complete and accurate information to facilitate this effort. Claimants must be willing to submit to an interview and may be asked to supply additional information to complete the claims process.

**CONSENT TO JURISDICTION:** By submitting your Proof of Claim Form, you consent to the jurisdiction of the United States District Court for the Eastern District of Missouri for all purposes and agree to be bound by its decisions, including, without limitation, a determination as to the validity and amount of any Claims asserted against the Receivership Entities. In submitting your Proof of Claim Form, you agree to be bound by the actions of the United States District Court for the Eastern District of Missouri even if that means your Claim is limited or denied.

**CERTIFICATE OF TRUTHFULNESS:** Pursuant to 28 U.S.C. § 1746, I, the undersigned, hereby certify, under penalty of perjury under the laws of the United States of America, that all of the information provided in this Proof of Claim Form, including all Schedules and attachments to the Proof of Claim, is true and correct and that the undersigned is authorized to make this Claim.

\_\_\_\_\_  
(Sign your name here) 

\_\_\_\_\_  
(Date) 4/23/2013

Hany Teylouni  
\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing)

Submit your Proof of Claim Form and supporting documentation to the Receiver: (1) by mail to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101; (2) by courier service, overnight service or hand delivery to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101; or (3) by electronic mail, as an attachment in portable document format (.pdf), to [acartha.receivership@thompsoncoburn.com](mailto:acartha.receivership@thompsoncoburn.com).

- Reminder Checklist:
1. Please sign the above declaration.
  2. Remember to attach supporting documentation, if available.
  3. Keep a copy of your claim form and all supporting documentation for your records.
  4. If your contact information changes, please send the Receiver updated information.



**Specific Grounds for Claim:**

Mr. Teylouni is a former employee of Acartha Group, LLC (“Acartha”) and the former Managing Director of Acartha Technology Partners, L.P. Mr. Teylouni’s claim is comprised of deferred salary from August 1, 2008 to April 15, 2010, plus interest on his deferred salary. Attached hereto is a copy of Mr. Teylouni’s employment agreement with Acartha, a copy of his 2008 and 2009 W-2 forms, a copy of the final pay stub Mr. Teylouni received, emails between Mr. Teylouni and Dixon Brown, the former Chief Administrative Officer of Acartha, evidencing the deferral of Mr. Teylouni’s salary and the agreement that interest would accrue on his deferred salary, and a spreadsheet (two pages) detailing the computation of interest accrued.

## ACARTHA EMPLOYMENT AGREEMENT

**Employee:** Hany Teylouni

**Co-Employer:** Acartha Group, LLC ("Acartha") - Employer of record for supervision, evaluation and determinations with respect to Employee's Employment Agreement; and, Administaff of Texas, Inc. - Employer of record for payroll and benefits.

**Subsidiary Affiliation & Title:** Acartha Technology Partners, LLC - Managing Director.

**Report:** Employee's position reports to Ameet Patel, Partner and CTO, Acartha Group and CEO of Acartha Technology Partners, LLC.

**Responsibilities:** Oversight of Acartha portfolio companies as assigned from time to time by Ameet Patel other such assignments as may be tasked by Acartha from time to time. In addition, Employee will build and direct a technology advisory business operating from within Acartha Technology Partners, LLC ("ATP") pursuant to a business plan for same to be developed by ATP. Oversee and manage Acartha's and its subsidiaries Information Technology platform.

**Hire Date:** July 3, 2005.

**Employment Term:** The Employment Term ("Term") is one (1) full year from Hire Date and will automatically renew monthly thereafter unless ended under the Termination provisions of the Agreement.

**Condition of Employment:**

- An executed Acartha Employment Agreement ("Agreement").
- An executed Administaff Employment Agreement.
- Completed required Federal employment forms including, but not limited to, Form I-9.
- An executed Acartha Confidentiality and Non-Disclosure Agreement (attached hereto and made part hereof).
- To Acartha's sole satisfaction, a background and reference(s) checks and a substance abuse screening.

**Annual Base Compensation Rate:** ("ABCR"): \$300,000 paid in accordance with Acartha's payroll policies as are in effect from time to time.

**Additional Standard Compensation:**

- Twenty (20) business days (4 weeks) Employer paid Vacation Days during the first year of employment, pro rated for number of days employed from Hire Date during the year.
- Two (2) Employer paid Personal Days.

## ACARTHA EMPLOYMENT AGREEMENT

### **Incentive Compensation:**

- **Cash Incentive Compensation ("CIC")** of up to \$60,000 in excess of ABCR may be awarded by Acartha based on a performance review at the conclusion of 12 full months from Hire Date, provided Employee is an Acartha Employee at the time any CIC is awarded.
- **Equity Compensation:** Morriss Enterprises, LLC, the majority owner of Acartha, shall grant Employee a Profits Interest in Morriss Enterprises, LLC as soon as practicable, but no later than 90 days from Hire Date ("Grant Date") in a fixed number of shares equal to 1% of the shares of Morriss Enterprises outstanding on Grant Date. The Profits Interest granted to Employee will vest in equal monthly installments over 36 months from Grant Date.

**Participation/Carry in Selected Acartha Transactions:** Acartha shall allow Employee to participate in the Funds managed by ATP and may award Employee a portion of carried interest therein. In addition, at the sole discretion of Acartha's Compensation Committee, Acartha may allow Employee to participate in and/or award Employee a carried interest with respect to selected special purpose vehicle investment entities created by Acartha or its affiliates, including investments in Related Business Opportunities, defined herein.

**Related Business Opportunities:** During the Term, Employee will bring all business opportunities of which he is aware that are within the scope of the any of Acartha's funds' investment strategy ("Related Business Opportunity") to the attention of Acartha for consideration regardless of whether any Acartha entity desires to participate in such Related Business Opportunity. Employee will not participate in or advise any Related Business Opportunity without the approval of Acartha's Board of Directors. Any fees or remuneration due Employee as the result of an approved participation in or advisory services to a Related Business Opportunity will be treated pursuant to Acartha policies for such fees as are in effect at the time the fees are earned.

**Outside Activities:** Acartha acknowledges that Employee may have existing passive investments. This Agreement shall not require the liquidation of any such investments unless such investment is made in any business or entity which is or may be deemed, at the sole discretion of Acartha, to be in direct competition with Acartha or any portfolio company held in a fund managed by Acartha or any of its subsidiaries. Employee agrees that he will notify Acartha of any future investments in entities competitive with Acartha, or competitive with portfolio companies held in a fund managed by an Acartha subsidiary, which he intends to make or pursue while Acartha employs him and agrees not to make any such investment unless approved in writing by the Acartha's Board of Directors. Acartha acknowledges that Employee may engage in charitable and community activities and may serve as an officer or director thereof, provided such activities are not directly competitive with Acartha and do not interfere with Employee's performance of his obligations hereunder.

**Benefits:** Employee shall participate in all benefits generally provided by Acartha to its employees at a similar level of responsibility. Standard benefits currently offered are detailed in Exhibit A to this memo.



## ACARTHA EMPLOYMENT AGREEMENT

**Termination:** Employee may be terminated by Acartha at any time for any reason subject to policies of Acartha as are from time to time in effect. If terminated for Cause, the Employee will receive ABCR compensation only through date of Notice of Termination. If terminated not for Cause, the Employee will be paid four weeks compensation from date of Notice of Termination, pro rated for any partial pay period already earned by the Employee to the date of Notice of Termination. In addition, Employee will be compensated at the daily rate of his/her ABCR for any unused Vacation Days or Personal Days.

**Notice of Termination:** Acartha shall notify the Employee of Termination in writing. Such Notice may be delivered by letter or electronically by facsimile or e-mail. The effective date of such Notice and Termination is the date of the letter or, if applicable, the date of the letter's transmission electronically by facsimile or, if applicable, the date the e-mail is sent to the Employee by Acartha.

**Confidentiality Obligations during the Term:**

The Employee acknowledges that the Employee's work for the Employer is expected to expose Employee to confidential and proprietary information of Acartha, its Affiliates, its Related Parties, its investors, its clients, its vendors, its Officers, and its employees. As a condition of employment, Acartha requires that the Employee undertake certain confidentiality, non-competition and intellectual property obligations. Accordingly, Employee shall execute the attached Confidentiality and Non-Disclosure Agreement.

**Obligations after the End of the Term:** In the event Employee's employment is terminated, Employee agrees to be subject to the non-competition and non-solicitation provisions described below for a one year period beginning on the effective date of Notice of Termination. The non-competition and non-solicitation provisions to which Employee will be subject are as follows: (1) Employee shall not directly or indirectly own, manage, control, participate in, consult with, render services for, or in any manner engage in any business that is invested in or proposes to invest in any company in which Acartha or any affiliate thereof or any fund associated with Acartha has invested or in any company which was introduced to any of the foregoing and discussed by Acartha management during the Term; (2) Employee shall not directly or indirectly through another entity (i) induce, attempt to induce or hire any employee of Acartha or any affiliate thereof to leave the employ of Acartha or affiliate thereof, or in any way willfully interfere with the relationship between Acartha or any affiliate thereof and any employee thereof; or (ii) induce or attempt to induce any investor, joint venture, manager, customer, supplier, licensee or other business relation of Acartha or any affiliate thereof to cease doing business with Acartha or such affiliate thereof, or in any way interfere with the relationship between any such person or entity and Acartha or any affiliate thereof.

**Expense Reimbursement:**

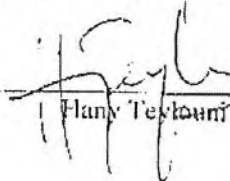
Employer will reimburse the Employee only for documented expenses that have been approved in advance by Employee's Report or Officer of Acartha and provided that such expenses are legitimate business expenses of Acartha. Expense Reimbursements shall be made in accordance with Acartha reimbursement policies in effect at the time the expense is submitted for reimbursement.

## ACARTHA EMPLOYMENT AGREEMENT

### Acknowledgement by Employee:

I hereby acknowledge that I am aware that Acartha is a start up financial services holding company and that its management has disclosed to me the potential risks of business failure associated with its business plan. I acknowledge that this letter and its attachments constitute the only terms of this Agreement. Further, I acknowledge that I have read the forgoing and the other documents presented herewith and that any questions I may have had pertaining thereto have been answered to my satisfaction by Acartha.

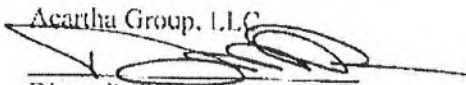
Employee: \_\_\_\_\_

  
Flany Testauni

Date: 6/17, 2006

### Acknowledgement of Receipt by Employer:

Employer: \_\_\_\_\_

Acartha Group, LLC  
  
Dixon R. Brown, Secretary

By: \_\_\_\_\_

Date: 6/19, 2006

Exhibit A – Benefits List from Administaff

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

<b>Copy C-For EMPLOYEE'S RECORDS (see Notice to Employee on back of Copy B.)</b>		<b>Form W-2</b> Wage and Tax Statement	OMB No. 1545-0008
<b>2008</b>	1 Wages, tips, other comp. 235,833.30	2 Federal income tax withheld 42,398.97	
Employee's SSN	3 Social security wages 102,000.00	4 Social security tax withheld 6,324.00	
Employer Ident. No. (EIN) 76-0689539	5 Medicare wages and tips 235,833.30	6 Medicare tax withheld 3,419.55	
Employer's name, address, and ZIP code ADMINISTAFF COMPANIES II, L.P. 19001 CRESCENT SPRINGS DR KINGWOOD, TX 77339			
Control number 1784900			
Employee's first name and initial      Last name      Suffix.  HANY TEYLOUNI 55 CREST ST CONCORD, MA 01742-3006			
Employee's address, and ZIP code			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a code See instr. for box 12	
13 Statutory employee <input type="checkbox"/>	Retirement plan <input type="checkbox"/>	Third-party sick pay <input type="checkbox"/>	12b code
14 Other NJSDI 138.50 UI/HCI 117.73			12c code
			12d code
15 State MA 760-689-539*03* NJ 760-689-539/000	16 State wages, tips, etc. 235,833.30 235,833.30	17 State income tax 1,126.81 12,161.79	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Department of the Treasury-Internal Revenue Service



Copy B - To Be Filed With Employee's FEDERAL Tax Return.		2009		OMB No. 1545-0008	
a Employee's social security number	1 Wages, tips other comp. 88984.92	2 Federal income tax withheld 3402.90			
b Employer ID number 76-0689539	3 Social security wages 88984.92	4 Social security tax withheld 5517.15			
	5 Medicare wages and tips 88984.92	6 Medicare tax withheld 1290.20			
c Employer's name, address and ZIP code REISSUED STATEMENT ADMINISTAFF COMPANIES II, L.P. 19001 CRESCENT SPRINGS DR KINGWOOD, TX 77339					
d Control number 1784900					
e Employee's name HANY TEYLOUNI					
f Employee's address and ZIP code 55 CREST ST CONCORD, MA 01742					
7 Social security tips		8 Allocated tips		9 Advanced EIC payment	
10 Dependent care benefits		11 Nonqualified plans		12a Code See instr. for box 12	
13 Statutory employee		14 Other NJSDI 144.50		12b Code	
Retirement plan		UI/HC/ 122.83		12c Code	
Third-party sick pay				12d Code	
NJ 760-689-539/000		88984.92		1972.20	
MA 760-689-539*03*		88984.92		1968.24	
15 State Employer's State ID number		16 State wages, tips, etc.		17 State income tax	
18 Local wages, tips, etc.		19 Local income tax 26.01		20 Locality name FLI	

Form W-2 Wage and Tax Statement Dept. of the Treasury -- IRS 39-1908647  
This information is being furnished to the Internal Revenue Service

Copy 2 - To Be Filed With Employee's State, City, or Local Income Tax Return.		2009		OMB No. 1545-0008	
a Employee's social security number	1 Wages, tips other comp. 88984.92	2 Federal income tax withheld 3402.90			
b Employer ID number 76-0689539	3 Social security wages 88984.92	4 Social security tax withheld 5517.15			
	5 Medicare wages and tips 88984.92	6 Medicare tax withheld 1290.20			
c Employer's name, address and ZIP code REISSUED STATEMENT ADMINISTAFF COMPANIES II, L.P. 19001 CRESCENT SPRINGS DR KINGWOOD, TX 77339					
d Control number 1784900					
e Employee's name HANY TEYLOUNI					
f Employee's address and ZIP code 55 CREST ST CONCORD, MA 01742					
7 Social security tips		8 Allocated tips		9 Advanced EIC payment	
10 Dependent care benefits		11 Nonqualified plans		12a Code See instr. for box 12	
13 Statutory employee		14 Other NJSDI 144.50		12b Code	
Retirement plan		UI/HC/ 122.83		12c Code	
Third-party sick pay				12d Code	
NJ 760-689-539/000		88984.92		1972.20	
MA 760-689-539*03*		88984.92		1968.24	
15 State Employer's State ID number		16 State wages, tips, etc.		17 State income tax	
18 Local wages, tips, etc.		19 Local income tax 26.01		20 Locality name FLI	

Form W-2 Wage and Tax Statement Dept. of the Treasury -- IRS 39-1908647

Copy C - For EMPLOYEE'S RECORDS. (See Notice to Employee on Back of Copy B).		2009		OMB No. 1545-0008	
a Employee's social security number	1 Wages, tips other comp. 88984.92	2 Federal income tax withheld 3402.90			
b Employer ID number 76-0689539	3 Social security wages 88984.92	4 Social security tax withheld 5517.15			
	5 Medicare wages and tips 88984.92	6 Medicare tax withheld 1290.20			
c Employer's name, address and ZIP code REISSUED STATEMENT ADMINISTAFF COMPANIES II, L.P. 19001 CRESCENT SPRINGS DR KINGWOOD, TX 77339					
d Control number 1784900					
e Employee's name HANY TEYLOUNI					
f Employee's address and ZIP code 55 CREST ST CONCORD, MA 01742					
7 Social security tips		8 Allocated tips		9 Advanced EIC payment	
10 Dependent care benefits		11 Nonqualified plans		12a Code See instr. for box 12	
13 Statutory employee		14 Other NJSDI 144.50		12b Code	
Retirement plan		UI/HC/ 122.83		12c Code	
Third-party sick pay				12d Code	
NJ 760-689-539/000		88984.92		1972.20	
MA 760-689-539*03*		88984.92		1968.24	
15 State Employer's State ID number		16 State wages, tips, etc.		17 State income tax	
18 Local wages, tips, etc.		19 Local income tax 26.01		20 Locality name FLI	

Form W-2 Wage and Tax Statement Dept. of the Treasury -- IRS 39-1908647  
This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Copy 2 - To Be Filed With Employee's State, City, or Local Income Tax Return.		2009		OMB No. 1545-0008	
a Employee's social security number	1 Wages, tips other comp. 88984.92	2 Federal income tax withheld 3402.90			
b Employer ID number 76-0689539	3 Social security wages 88984.92	4 Social security tax withheld 5517.15			
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d Control number 1784900					
e Employee's name HANY TEYLOUNI					
f Employee's address and ZIP code 55 CREST ST CONCORD, MA 01742					
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Retirement plan		UI/HC/ 122.83		12c Code	
Third-party sick pay				12d Code	
NJ 760-689-539/000		88984.92		1972.20	
MA 760-689-539*03*		88984.92		1968.24	
15 State Employer's State ID number		16 State wages, tips, etc.		17 State income tax	
18 Local wages, tips, etc.		19 Local income tax 26.01		20 Locality name FLI	

Form W-2 Wage and Tax Statement Dept. of the Treasury -- IRS 39-1908647

ADMINISTRATIVE		Date: 04/15/2010		Check #: 0006091999		Name: HANY TEYLOUNI	
Division: 1784900		From: 04/01/2010 To: 04/15/2010		Bank #: 524		Employee ID: 396179	
Earnings	Units	Current	YTD				
Salary	86.67	3,333.33					
TOTAL		3,333.33	23,333.31				
<b>Taxable Gross</b>							
Faxable Gross		3,333.33	23,333.31				
SecSec Wage Base			23,333.31				
Medicare Wage Base			21,333.31				
<b>Deductions</b>							
Federal Taxes		49.48	346.36				
SecSec		206.67	1,446.69				
Medicare		48.33	338.31				
MA SIT		71.39	499.73				
NJ SIT		57.75	404.25				
NJ SDI		14.17	99.19				
NJ F.I.L.		16.67	116.69				
Fed. Tax Levy		4.00	28.00				
Net to zero dod		2,475.29	14,851.74				
		.00	389.58				
TOTAL		2,943.75	18,520.54				
<b>NET PAY</b>		<b>389.58</b>					



**hany teylouni**

---

**From:** Dixon Brown <[dbrown@AcarthaGroup.com](mailto:dbrown@AcarthaGroup.com)>  
**Sent:** Thursday, October 23, 2008 6:38 AM  
**To:** Hany Teylouni  
**Subject:** RE: employment and salary

Hany,

This will confirm that your rate of compensation as an employee of Acartha Group is \$300,000 per annum and that, as of October, 15, 2008 the amount of salary deferrals

is \$18,333.35 and that you have no other additional deferred compensation. Please note that an employee's deferred compensation is subject to certain mandatory withholding by Administaff and any voluntary reductions (401-K, Medical Savings, term life insurance, etc.) offered by Administaff and authorized by the employee. Therefore, the amount confirmed above is gross deferred compensation prior to any such withholdings or voluntary reductions.

Thanks, Dixon.

---

**From:** Hany Teylouni [<mailto:hteylouni@acarthatechpartners.com>]  
**Sent:** Wednesday, October 22, 2008 9:49 PM  
**To:** Dixon Brown  
**Subject:** employment and salary

Just a quick email to remind you of our discussion to send me your template.

Thanks

Hany

---

Acartha Group, LLC  
Hany Teylouni  
Managing Director  
[hteylouni@acarthatechpartners.com](mailto:hteylouni@acarthatechpartners.com)  
2 Tower Center boulevard  
20<sup>th</sup> Floor  
East Brunswick, NJ 08816  
Tel: +1 (732)289-3353  
Mobile: +1(917)613-4811

---

**From:** Dixon Brown [<mailto:dbrown@AcarthaGroup.com>]  
**Sent:** Sunday, October 12, 2008 11:43 PM  
**To:** Hany Teylouni  
**Subject:** RE: cornwall agreement

Not really...will emerge on Tuesday...lets talk then.

---

**From:** Hany Teylouni [<mailto:hteylouni@acarthatechpartners.com>]  
**Sent:** Sunday, October 12, 2008 6:01 PM  
**To:** Dixon Brown  
**Subject:** cornwall agreement

I would like to discuss changing the terms. Specifically extending the term beyond the \$50K limit which is where we will be at following payment of the last invoice (assuming we get the last invoice paid).

Are you available Monday morning?

---

Acartha Group, LLC

**Hany Teylouni**  
*Managing Director*  
[hteylouni@acarthatechpartners.com](mailto:hteylouni@acarthatechpartners.com)  
2 Tower Center boulevard  
20<sup>th</sup> Floor  
East Brunswick, NJ 08816  
Tel: +1 (732)289-3353  
Mobile: +1(917)613-4811

## **hany teylouni**

---

**From:** Dixon Brown <[dbrown@AcarthaGroup.com](mailto:dbrown@AcarthaGroup.com)>  
**Sent:** Wednesday, January 28, 2009 9:56 AM  
**To:** Hany Teylouni  
**Subject:** RE: Call

Hany,

Sorry getting back to you so late been a bit hectic here. The amount due you as of 1.15.09 including interest is \$73,610.91. Of that, \$73,333.33 is deferred and the balance is interest. The interest accrual is low because it is LIBOR based and that is low and has been in the recent past. Chris provided the calculations and we now have a model to revise the accrual at the end of each month. Thanks, drb

---

**From:** Hany Teylouni [<mailto:hteylouni@acarthatechpartners.com>]  
**Sent:** Tuesday, January 27, 2009 7:32 AM  
**To:** Dixon Brown  
**Subject:** Re: Call

Ok. Do you have an account of what I am due?  
Acartha Tech Partners

Hany Teylouni  
Managing Director  
[hteylouni@acarthatechpartners.com](mailto:hteylouni@acarthatechpartners.com)

2 Tower Center boulevard  
East Brunswick, NJ 08816

Tel: +1 (732) 289 3353  
Mobile: +1 (917) 613 4811

---

**From:** Dixon Brown  
**To:** Hany Teylouni  
**Sent:** Tue Jan 27 06:56:12 2009  
**Subject:** RE: Call

Thanks will talk to Doug today about this. Structure is most likely note from you to him personally – I will draft. But remember, when you get \$ from Acartha as make up, you will be paying back Doug in after tax \$ because your Acartha make up will be a taxable bonus against which there will be the normal withholdings. So, best plan that into your cash flows in the future. Thanks, drb.

---

**From:** Hany Teylouni [<mailto:hteylouni@acarthatechpartners.com>]  
**Sent:** Monday, January 26, 2009 11:00 PM  
**To:** Dixon Brown  
**Subject:** RE: Call

\$35 to 40K as an advance against payroll  
Thanks

---

Acartha Group, LLC  
Hany Teylouni  
Managing Director  
[hteylouni@acarthatechpartners.com](mailto:hteylouni@acarthatechpartners.com)  
2 Tower Center boulevard

20<sup>th</sup> Floor  
East Brunswick, NJ 08816  
Tel: +1 (732)289-3353  
Mobile: +1(917)613-4811

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**From:** dbrown [mailto:dbrown@morrissholdings.com]  
**Sent:** Monday, January 26, 2009 5:26 PM  
**To:** Hany Teylouni  
**Subject:** Re: Call

Hany,  
What is the amount you discussed with Doug? Thanks, drb

drb Acartha Group Blackberry

---

**From:** "Hany Teylouni"  
**Date:** Mon, 26 Jan 2009 16:00:15 -0500  
**To:** <dbrown@acarthagroup.com>  
**Subject:** Re: Call

Thanks. Wanted to set up time with you and doug before or after to discuss salary catch up (following discussion I had with him yesterday)  
Acartha Tech Partners

Hany Teylouni  
Managing Director  
[Hteylouni@acarthatechpartners.com](mailto:Hteylouni@acarthatechpartners.com)

2 Tower Center boulevard  
East Brunswick, NJ 08816

Tel: +1 (732) 289 3353  
Mobile: +1 (917) 613 4811

---

**From:** Dixon Brown  
**To:** Hany Teylouni  
**Sent:** Mon Jan 26 15:34:24 2009  
**Subject:** RE: Call

There is a call but the participants are Ameet, Doug, John, Wynne and Christian will focus on valuation and valuation process, future rounds, and prairie capital closing docs. We need not be on the call. drb

---

**From:** Hany Teylouni [mailto:hteylouni@acarthatechpartners.com]  
**Sent:** Monday, January 26, 2009 3:16 PM  
**To:** Dixon Brown  
**Subject:** Call

Are we having a call tomorrow and if so at what time?  
Acartha Tech Partners

Hany Teylouni  
Managing Director  
[Hteylouni@acarthatechpartners.com](mailto:Hteylouni@acarthatechpartners.com)

2 Tower Center boulevard  
East Brunswick, NJ 08816

Tel: +1 (732) 289 3353  
Mobile: +1 (917) 613 4811



Pay Period	Monthly libor	Montly Interest Rate	Accrued Interest	Deferred Compensation During Pay Period (\$)	Total Deferred Compensation (\$)	Accrued Deferred Compensation plus interest
Sep-08	3.21%	0.0026724	\$0.00	9166.666667	9166.666667	
Oct-08	3.96%	0.003302083		9166.666667	18333.33333	
Oct-08	3.96%	0.003302083	\$90.81	9166.666667	27500	\$27,590.81
Nov-08	3.17%	0.002644792		9166.666667	36757.47396	\$36,757.47
Nov-08	3.17%	0.002644792	\$121.46	9166.666667	45924.14063	\$46,045.60
Dec-08	2.77%	0.002305208		9166.666667	55212.26708	\$55,212.27
Dec-08	2.77%	0.002305208	\$148.41	9166.666667	64378.93374	\$64,527.34
Jan-09	2.00%	0.001669792		9166.666667	73694.00726	\$73,694.01
Jan-09	2.00%	0.001669792	\$138.36	9166.666667	82860.67393	\$82,999.03
Feb-09	1.98%	0.001645833		9166.666667	92165.70066	\$92,165.70
Feb-09	1.98%	0.001645833	\$166.78	9166.666667	101332.3673	\$101,499.14
Mar-09	2.12%	0.00176615		9166.666667	110665.8102	\$110,665.81
Mar-09	2.12%	0.00176615	\$211.64	9166.666667	119832.4768	\$120,044.12
Apr-09	1.97%	0.001643233		9166.666667	129210.7856	\$129,210.79
Apr-09	1.97%	0.001643233	\$227.39	9166.666667	138377.4523	\$138,604.84
May-09	1.87688%	0.001564067		9166.666667	147771.5054	\$147,771.51
May-09	1.87688%	0.001564067	\$245.46	9166.666667	156938.1721	\$157,183.63
Jun-09	1.60%	0.001333333		9166.666667	166350.3005	\$166,350.30
Jun-09	1.60%	0.001333333	\$234.02	9166.666667	175516.9672	\$175,750.99
Jul-09	1.61%	0.001338542		9166.666667	184917.6565	\$184,917.66
Aug-09	1.61%	0.001338542		9166.666667	194084.3231	\$194,084.32
Aug-09	1.50%	0.001247917	\$253.64	9166.666667	203250.9898	\$203,504.63
Sep-09	1.50%	0.001247917		9166.666667	212671.2968	\$212,671.30
Sep-09	1.33%	0.001108333	\$245.87	9166.666667	221837.9634	\$222,083.83
Oct-09	1.33%	0.001108333		9166.666667	231250.5005	\$231,250.50
Oct-09	1.33%	0.001108333	\$266.46	9166.666667	240417.1672	\$240,683.63
Nov-09	1.26%	0.001053125		9166.666667	249850.2962	\$249,850.30
Nov-09	1.26%	0.001053125	\$272.78	9166.666667	259016.9629	\$259,289.74
Dec-09	1.20%	0.000999483		9166.666667	268456.4068	\$268,456.41
Dec-09	1.20%	0.000999483	\$277.48	9166.666667	277623.0734	\$277,900.55
Jan-10	0.98%	0.000820317		9166.666667	287067.2197	\$287,067.22
Jan-10	0.98%	0.000820317	\$243.01	9166.666667	296233.8864	\$296,476.89
Feb-10	0.85%	0.000705208		9166.666667	305643.5587	\$305,643.56
Feb-10	0.85%	0.000705208	\$222.01	9166.666667	314810.2253	\$315,032.23
Mar-10	0.84%	0.000699483		9166.666667	324198.8988	\$324,198.90
Mar-10	0.84%	0.000699483	\$233.18	9166.666667	333365.5655	\$333,598.75
Apr-10	0.92%	0.000766667		9166.666667	342765.4158	\$342,765.42
Apr-10	0.92%	0.000766667	\$262.79		342765.4158	\$343,028.20
May-10	1.02%	0.000846358	\$290.32		343028.2026	\$343,318.53



Jun-10	1.20%	0.001003383	\$344.48	343318.5274	\$343,663.01
Jul-10	1.17313%	0.000977608	\$335.97	343663.0075	\$343,998.98
Aug-10	1.04%	0.000863908	\$297.18	343998.9753	\$344,296.16
Sep-10	0.84306%	0.00070255	\$241.89	344296.1589	\$344,538.04
Oct-10	0.78%	0.000648125	\$223.30	344538.0441	\$344,761.35
Nov-10	0.76%	0.000635158	\$218.98	344761.3479	\$344,980.33
Dec-10	0.79%	0.000655467	\$226.12	344980.3259	\$345,206.45
Jan-11	0.78094%	0.000650783	\$224.65	345206.449	\$345,431.10
Feb-11	0.78125%	0.000651042	\$224.89	345431.1036	\$345,655.99
Mar-11	0.79025%	0.000658542	\$227.63	345655.9937	\$345,883.62
Apr-11	0.78250%	0.000652083	\$225.54	345883.6225	\$346,109.17
May-11	0.76100%	0.000634167	\$219.49	346109.1675	\$346,328.66
Jun-11	0.72950%	0.000607917	\$210.54	346328.6584	\$346,539.20
Jul-11	0.73350%	0.00061125	\$211.82	346539.1973	\$346,751.02
Aug-11	0.76025%	0.000633542	\$219.68	346751.0194	\$346,970.70
Sep-11	0.80000%	0.000666667	\$231.31	346970.7006	\$347,202.01
Oct-11	0.86489%	0.000720742	\$250.24	347202.0144	\$347,452.26
Nov-11	0.93561%	0.000779675	\$270.90	347452.2574	\$347,723.16
Dec-11	1.07106%	0.00089255	\$310.36	347723.1572	\$348,033.52
Jan-12	1.12805%	0.000940042	\$327.17	348033.5175	\$348,360.68
Feb-12	1.09570%	0.000913083	\$318.08	348360.6836	\$348,678.77
Mar-12	1.05980%	0.000883167	\$307.94	348678.7659	\$348,986.71
Apr-12	1.04850%	0.00087375	\$304.93	348986.7073	\$349,291.63
May-12	1.04720%	0.000872667	\$304.82	349291.6345	\$349,596.45
Jun-12	1.06920%	0.000891	\$311.49	349596.4497	\$349,907.94
Jul-12	1.06800%	0.00089	\$311.42	349907.9401	\$350,219.36
Aug-12	1.05350%	0.000877917	\$307.46	350219.3582	\$350,526.82
Sep-12	1.03200%	0.00086	\$301.45	350526.8216	\$350,828.27
Oct-12	0.97300%	0.000810833	\$284.46	350828.2746	\$351,112.74
Nov-12	0.87550%	0.000729583	\$256.17	351112.7379	\$351,368.90
Dec-12	0.86000%	0.000716667	\$251.81	351368.9039	\$351,620.72
Jan-13	0.84350%	0.000702917	\$247.16	351620.7183	\$351,867.88
Feb-13	0.78100%	0.000650833	\$229.01	351867.8783	\$352,096.89
Mar-13	0.75150%	0.00062625	\$220.50	352096.8857	\$352,317.39
Apr-13	0.73150%	0.000609583	\$214.77	352317.3864	\$352,532.15
				<b>TOTAL</b>	<b>\$352,532.15</b>

**EXHIBIT B**

**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.	)	

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**NOTICE OF DEFICIENCY**

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Jul 3, 2013

Hany Teylouni  
c/o Theodore McDonough, Carter Ledyard & Milburn LLP  
Two Wall Street  
New York, NY 10005  
  
Email: mcdonough@clm.com

Dear Claimant:

**PLEASE READ THIS NOTICE CAREFULLY.**

The Court Appointed Receiver in the above-referenced matter, Claire M. Schenk, has received your Proof of Claim which has been assigned Claim Number 20.

The Receiver has begun processing your Claim, but requires the following information in order to properly evaluate your Claim:

The Court's Claims Bar Date Order entered March 4, 2013 (Docket No. 234), the Receiver's Notice of Claims Bar Date and the Proof of Claim Form directed claimants to provide documentation to support the claimant's proof of claim (the "Requested Documentation"). The Requested Documentation included, but was not limited to: (i) copies of personal checks, cashier's checks, wire transfer advices, account statements and other documents evidencing the investment or payment of funds; (ii) copies of signed investment contracts or other written contracts or agreements made in connection with any investment in or with any Receivership Entity; (iii) a chronological accounting of all money received by the Claimant from any Receivership Entity or the Receiver, whether such payments are denominated as the return of principal, interest, commissions, finder's fees, sponsor payments or otherwise; (iv) copies of all documentation and records reflecting or regarding any withdrawals ever made by or payments received by the Claimant from any Receivership Entity or the Receiver; (v) copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements or other evidence of perfection of liens; and (vi) other documents evidencing the amount and basis of the Claim.

The Court's Claims Bar Date Order, the Notice of Claims Bar Date and the Proof of Claim Form further directed claimants to explain the unavailability of any of the Requested Documentation. The Court also authorized the Receiver to conduct interviews of claimants and request that claimants supply the Receiver with additional information to complete the claims process.

Your claim does not contain all of the Requested Documentation. Please provide the Requested Documentation, to the extent not already provided with your proof of claim form, as well as any other documentation that you believe may support your claim.



(continued)

In particular, the following documents and information should be available to you: (i) copies of all employment or other agreement(s) with the Receivership Entities; (ii) a chronological accounting of all money or other property received by you from or on behalf of any Receivership Entity; (iii) documentation evidencing the source of the money or other property received by you from or on behalf of any Receivership Entity; and (iv) time records or other contemporaneous documentation evidencing the work you performed for payment by any of the Receivership Entities.

If the Requested Documentation is not available, please provide the Receiver with a statement explaining why the Requested Documentation is unavailable. If you believe you previously produced the Requested Documentation to the Receiver or the Securities and Exchange Commission, please identify (by bates number, date, author, date produced, and mode of production) those specific previously produced documents that you contend support your claim. Please be advised that your supplemental submission is subject to the certification of truthfulness under 28 U.S.C. § 1746 executed by you on your initial Proof of Claim Form. The Receiver reserves her right to conduct an interview once she has received and reviewed your supplemental submission.

Your claim will not be processed further until you provide us with the requested information and/or submit to an interview at a mutually agreeable day and time. Please return a copy of this Notice with the requested information (1) in person or by courier service, hand delivery, or mail addressed to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101; or (2) by electronic mail, as an attachment in portable document format (.pdf), to [acartha.receivership@thompsoncoburn.com](mailto:acartha.receivership@thompsoncoburn.com).

**PLEASE TAKE NOTICE: YOUR CLAIM WILL BE DISALLOWED FOR LACK OF SUFFICIENT INFORMATION IF YOUR RESPONSE, PROVIDING THE INFORMATION REQUESTED, IS NOT RECEIVED BY THE RECEIVER WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF DEFICIENCY.**

Receiver Claire M. Schenk

EXHIBIT C

CARTER LEDYARD & MILBURN LLP  
*Counselors at Law*

Theodore Y. McDonough  
Associate

Direct Dial: 212-238-8788  
E-mail: [mcdonough@clm.com](mailto:mcdonough@clm.com)

2 Wall Street  
New York, NY 10005-2072

Tel (212) 732-3200  
Fax (212) 732-3232

570 Lexington Avenue  
New York, NY 10022-6856  
(212) 371-2720

August 28, 2013

**BY EMAIL & FEDEX**

Acartha Group Receivership  
505 North 7<sup>th</sup> Street  
Saint Louis, Missouri 63101

Re: SEC v. Morris, No. 4:12-cv-00080, Claim Number 20

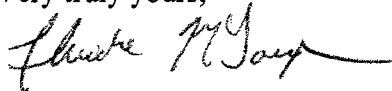
Dear Sir or Madam:

This letter responds to the Notice of Deficiency, dated July 3, 2013, concerning the claim filed on behalf of Hany Teylouni, which has been assigned Claim Number 20.

Mr. Teylouni's Proof of Claim form and the documents submitted therewith constitute all of the documentation available to Mr. Teylouni to support his claim. The Notice of Deficiency fails to explain what additional documentation is required for the Receiver to evaluate Mr. Teylouni's claim, and Mr. Teylouni consequently is unable to explain the unavailability of particular documents that the Receiver apparently expects to be submitted. Therefore, we request that the Receiver articulate explicitly which additional documents are required in order to properly evaluate Mr. Teylouni's claim.

Mr. Teylouni is prepared to submit to an interview concerning his claim at a mutually agreeable day and time, as required by the Notice of Deficiency.

Very truly yours,



Theodore Y. McDonough

TYM:tbm

**EXHIBIT D**

**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.	)	

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**NOTICE OF DETERMINATION**

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January 13, 2014

Hany Teylouni  
c/o Theodore McDonough, Carter Ledyard & Milburn LLP  
2 Wall Street  
New York, NY 10005  
  
Email: mcdonough@clm.com

Dear Claimant:

**PLEASE READ THIS NOTICE CAREFULLY.**

The Court Appointed Receiver in the above-referenced matter, Claire M. Schenk, has made the following determination regarding your claim designated as Claim Number 20 :

**The Receiver will recommend that the Court disallow the claim for lack of sufficient information. The Receiver sent the Claimant a Notice of Deficiency on July 3, 2013, and a follow-up letter on January 3, 2014. You or your representative has been in contact with the Receiver to indicate that you will be providing supplemental information to the Receiver. Please refer to the follow-up letter for more information on what additional information the Receiver requires to reconsider this recommendation.**

**You must submit the supplemental information to the Receiver by January 31, 2014. Provided you timely submit all required supplemental information, the Receiver will reissue this Notice. Your time to file an objection to the reissued notice with the Receiver will run from the date of such reissued notice.**

**The Receiver will take into account all equitable considerations in formulating a proposed order of distribution. The Receiver notes that your claim is based in whole or in part on your status as a former employee, officer, director and/or manager of one or more of the Receivership Entities. Among other things, the Receiver will take into consideration evidence of your actions in supporting or facilitating, or your knowledge of, the transactions involving Defendant B. Douglas Morriss and/or entities associated with him as alleged in the Complaint (Dkt. No. 1) and substantiated by the supporting documentation filed by the Securities & Exchange Commission in this proceeding. Should the Receiver determine to recommend allowance of your claim in whole or in part, equitable and legal considerations may affect the category of claims to which your claim is assigned and/or the treatment afforded your claim in any proposed order of distribution.**



**PLEASE TAKE NOTICE:** If you disagree with this Determination, you have the right to file an objection and have the Court decide whether the Determination is correct. To exercise this right, you must first serve, but not file with the Court, a written objection to the Receiver's determination in accordance with the instructions herein. You must serve the objection on the Receiver (a) in person, by courier, or by mail addressed to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101, or (b) by electronic mail, as an attachment in portable document format (.pdf) to [acartha.receivership@thompsoncoburn.com](mailto:acartha.receivership@thompsoncoburn.com), within **THIRTY (30) DAYS** of the date of this Notice of Determination. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for your objection to the Receiver's determination; (iii) copies of any document or other writing upon which you rely; and (iv) your mailing, phone, and email contact information. Objections not timely served shall be deemed waived and overruled without the need for further order of the Court or action by the Receiver.

**PLEASE TAKE FURTHER NOTICE:** You are required to work in good faith with the Receiver to attempt to resolve your objection before submitting the objection to the Court for determination.

**PLEASE TAKE FURTHER NOTICE:** If you and the Receiver are unable to resolve your objection, you shall file the written objection to the Receiver's Notice of Determination with the Court in accordance with the instructions herein. You must file the objection with the Court no earlier than NINETY (90) DAYS of the date of the Receiver's Notice of Determination and no later than ONE HUNDRED TWENTY (120) DAYS of the date of the Receiver's Notice of Determination. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for your objection to the Receiver's Notice of Determination; (iii) copies of any document or other writing upon which you rely; (iv) your mailing, phone, and email contact information; and (v) and a certification that you have conferred in good faith with the Receiver in an effort to resolve the objection without the need for a ruling from the Court. Objections not timely filed with the Court shall be deemed waived and overruled without the need for further order of the Court or action by the Receiver.

**PLEASE TAKE FURTHER NOTICE:** The Receiver may, within **THIRTY (30) DAYS** of the date on which you file with the Court a written objection to the Receiver's Notice of Determination, file a response to your objection. The Receiver shall serve a copy of her response on you or your counsel. Following the filing of the Receiver's response or, if the Receiver does not file a response, the expiration of the Receiver's thirty (30) day response period, the Court will consider and rule on your objection to the Notice of Determination. Notwithstanding the procedures outlined herein, you and the Receiver may stipulate to informally resolve the dispute and may extend by agreement without leave of Court the deadline for either party to file a motion to have the Court rule on the objection and determination.

**PLEASE TAKE FURTHER NOTICE:** No discovery or other motion practice shall occur regarding the Receiver's Notice of Determination or facts giving rise to such determination unless you first seek and obtain leave of Court, upon a showing of good cause and substantial need to pursue such motion practice or discovery. Filing of such a motion for leave shall not suspend or extend any deadlines set forth in the Claims Bar Date Order.

Receiver Claire M. Schenk

**CARTER LEDYARD & MILBURN LLP**

*Counselors at Law*

Theodore Y. McDonough  
Associate

Direct Dial: 212-238-8788  
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2 Wall Street  
New York, NY 10005-2072

Tel (212) 732-3200  
Fax (212) 732-3232

570 Lexington Avenue  
New York, NY 10022-6856  
(212) 371-2720

January 31, 2014

**BY USPS & EMAIL**

Kathleen K. Kraft  
Thompson Coburn LLP  
1909 K Street, N.W.  
Suite 600  
Washington, D.C. 20006  
Email: [kkraft@thompsoncoburn.com](mailto:kkraft@thompsoncoburn.com)

Re: Claim No. 20  
*Acartha Receivership, Securities & Exchange Commission v.  
Burton Douglas Morriss, et al., No. 4:12-cv-00080*

Dear Ms. Kraft:

This letter and its attachments respond to your request of January 3, 2014 for additional documents and information concerning Hany Teylouni's claim (Claim No. 20) filed in the above referenced proceeding. As an initial matter, please be advised that Mr. Teylouni is now, and has been for the past several months, overseas caring for his father, who is in poor health. Consequently, Mr. Teylouni has very limited access to the internet and no access to historical information concerning Acartha. To the extent the Receiver requires additional information or documents beyond what is contained herein, we request additional time to gather that information and documents upon Mr. Teylouni's return to the U.S.

Each paragraph below responds to one of your letter's six requests, in the order in which they were presented in your letter.

Attached as Tab 1 is an email from Dixon Brown to Mr. Teylouni, dated January 28, 2009, evidencing the deferral of Mr. Teylouni's salary and the agreement that interest would accrue on his deferred salary, and a spreadsheet prepared by Mr. Teylouni detailing the computation of the interest accrued on Mr. Teylouni's deferred salary.

Mr. Teylouni is unable to prepare at this time an accounting of, and does not have access at this time to documents evidencing, his receipt of money or other property from the Receivership Entities.

Kathleen K. Kraft

-2-

We are not aware that Mr. Teylouni performed work for any non-Receivership Entity, including but not limited to Morriss Holdings and Morriss Enterprises during the term of his employment with Acartha.

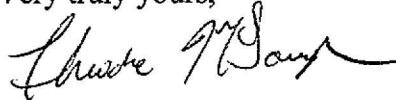
Mr. Teylouni's wages from Acartha were garnished by the IRS as a result of his underpayment of taxes for the year 2002. Mr. Teylouni does not recall the precise time period during which the garnishment was effective. The garnishment has been satisfied.

Mr. Teylouni does not have copies of any documents issued to him by Administaff, including but not limited to Acknowledgements of Receipt of Wages and Employee Change of Status form.

In light of Mr. Teylouni's present circumstances, it is not possible at this time to submit a certification concerning his knowledge of the allegations made in the Complaint filed by the Securities & Exchange Commission. Mr. Teylouni would be pleased, however, to participate in a telephone interview with the Receiver, or meet with the Receiver in person upon his return to the U.S. Should the Receiver wish to conduct a telephone interview, please contact me as soon as possible, as it may take some time to arrange.

Please contact me with any questions.

Very truly yours,



Theodore Y. McDonough

TYM:tbm  
Attachments

**1**



**hany teylouni**

---

**From:** Dixon Brown <dbrown@AcarthaGroup.com>  
**Sent:** Wednesday, January 28, 2009 9:56 AM  
**To:** Hany Teylouni  
**Subject:** RE: Call

Hany,  
Sorry getting back to you so late been a bit hectic here. The amount due you as of 1.15.09 including interest is \$73,610.91. Of that, \$73,333.33 is deferred and the balance is interest. The interest accrual is low because it is LIBOR based and that is low and has been in the recent past. Chris provided the calculations and we now have a model to revise the accrual at the end of each month. Thanks, drb

---

**From:** Hany Teylouni [<mailto:hteylouni@acarthatechpartners.com>]  
**Sent:** Tuesday, January 27, 2009 7:32 AM  
**To:** Dixon Brown  
**Subject:** Re: Call

Ok. Do you have an account of what I am due?  
Acartha Tech Partners

Hany Teylouni  
Managing Director  
[Hteylouni@acarthatechpartners.com](mailto:Hteylouni@acarthatechpartners.com)

2 Tower Center boulevard  
East Brunswick, NJ 08816

Tel: +1 (732) 289 3353  
Mobile: +1 (917) 613 4811

---

**From:** Dixon Brown  
**To:** Hany Teylouni  
**Sent:** Tue Jan 27 06:56:12 2009  
**Subject:** RE: Call

Thanks will talk to Doug today about this. Structure is most likely note from you to him personally – I will draft. But remember, when you get \$ from Acartha as make up, you will be paying back Doug in after tax \$ because your Acartha make up will be a taxable bonus against which there will be the normal withholdings. So, best plan that into your cash flows in the future. Thanks, drb.

---

**From:** Hany Teylouni [<mailto:hteylouni@acarthatechpartners.com>]  
**Sent:** Monday, January 26, 2009 11:00 PM  
**To:** Dixon Brown  
**Subject:** RE: Call

\$35 to 40K as an advance against payroll  
Thanks

---

Acartha Group, LLC  
Hany Teylouni  
Managing Director  
[hteylouni@acarthatechpartners.com](mailto:hteylouni@acarthatechpartners.com)  
2 Tower Center boulevard

20<sup>th</sup> Floor  
East Brunswick, NJ 08816  
Tel: +1 (732)289-3353  
Mobile: +1(917)613-4811

---

**From:** dbrown [mailto:dbrown@morrisholdings.com]

**Sent:** Monday, January 26, 2009 5:26 PM

**To:** Hany Teylouni

**Subject:** Re: Call

Hany,

What is the amount you discussed with Doug? Thanks, drb

drb Acartha Group Blackberry

---

**From:** "Hany Teylouni"

**Date:** Mon, 26 Jan 2009 16:00:15 -0500

**To:** <dbrown@acarthagroup.com>

**Subject:** Re: Call

Thanks. Wanted to set up time with you and doug before or after to discuss salary catch up (following discussion I had with him yesterday)  
Acartha Tech Partners

Hany Teylouni  
Managing Director  
[Hteylouni@acarthatechpartners.com](mailto:Hteylouni@acarthatechpartners.com)

2 Tower Center boulevard  
East Brunswick, NJ 08816

Tel: +1 (732) 289 3353  
Mobile: +1 (917) 613 4811

---

**From:** Dixon Brown

**To:** Hany Teylouni

**Sent:** Mon Jan 26 15:34:24 2009

**Subject:** RE: Call

There is a call but the participants are Ameet, Doug, John, Wynne and Christian will focus on valuation and valuation process, future rounds, and prairie capital closing docs. We need not be on the call. drb

---

**From:** Hany Teylouni [mailto:hteylouni@acarthatechpartners.com]

**Sent:** Monday, January 26, 2009 3:16 PM

**To:** Dixon Brown

**Subject:** Call

Are we having a call tomorrow and if so at what time?  
Acartha Tech Partners

Hany Teylouni  
Managing Director  
[Hteylouni@acarthatechpartners.com](mailto:Hteylouni@acarthatechpartners.com)

2 Tower Center boulevard  
East Brunswick, NJ 08816

Tel: +1 (732) 289 3353  
Mobile: +1 (917) 613 4811

**EXHIBIT F**

**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.	)	

---

**NOTICE OF DETERMINATION**

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February 12, 2014

Hany Teylouni  
c/o Theodore McDonough, Carter Ledyard & Milburn LLP  
2 Wall Street  
New York, NY 10005  
  
Email: mcdonough@clm.com

Dear Claimant:

**PLEASE READ THIS NOTICE CAREFULLY.**

The Court Appointed Receiver in the above-referenced matter, Claire M. Schenk, has made the following determination regarding your claim designated as Claim Number 20:

**The Receiver will recommend that the Court disallow the claim in its entirety. Please see the attached Exhibit A for the bases of the Receiver's recommendation.**



**PLEASE TAKE NOTICE:** If you disagree with this Determination, you have the right to file an objection and have the Court decide whether the Determination is correct. To exercise this right, you must first serve, but not file with the Court, a written objection to the Receiver's determination in accordance with the instructions herein. You must serve the objection on the Receiver (a) in person, by courier, or by mail addressed to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101, or (b) by electronic mail, as an attachment in portable document format (.pdf) to [acartha.receivership@thompsoncoburn.com](mailto:acartha.receivership@thompsoncoburn.com), within **THIRTY (30) DAYS** of the date of this Notice of Determination. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for your objection to the Receiver's determination; (iii) copies of any document or other writing upon which you rely; and (iv) your mailing, phone, and email contact information. Objections not timely served shall be deemed waived and overruled without the need for further order of the Court or action by the Receiver.

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**PLEASE TAKE FURTHER NOTICE:** The Receiver may, within **THIRTY (30) DAYS** of the date on which you file with the Court a written objection to the Receiver's Notice of Determination, file a response to your objection. The Receiver shall serve a copy of her response on you or your counsel. Following the filing of the Receiver's response or, if the Receiver does not file a response, the expiration of the Receiver's thirty (30) day response period, the Court will consider and rule on your objection to the Notice of Determination. Notwithstanding the procedures outlined herein, you and the Receiver may stipulate to informally resolve the dispute and may extend by agreement without leave of Court the deadline for either party to file a motion to have the Court rule on the objection and determination.

**PLEASE TAKE FURTHER NOTICE:** No discovery or other motion practice shall occur regarding the Receiver's Notice of Determination or facts giving rise to such determination unless you first seek and obtain leave of Court, upon a showing of good cause and substantial need to pursue such motion practice or discovery. Filing of such a motion for leave shall not suspend or extend any deadlines set forth in the Claims Bar Date Order.

Receiver Claire M. Schenk



**Exhibit A**

**Claim No. 20**

Mr. Teylouni asserted a claim against Acartha Group, LLC (“Acartha”) and Acartha Technology Partners, LP (“ATP”) in the amount of \$352,532.15 (the “Claim”). The Claim seeks deferred salary, plus interest thereon, for the period August 1, 2008 to April 15, 2010. The Receiver will recommend that the Court disallow the Claim. The bases for the Receiver’s recommendation are detailed below.

**Disallowance of Claim for Deferred Compensation (Salary).** The Receiver will recommend disallowance of Mr. Teylouni’s claim for deferred salary (\$352,532.15) on the following grounds:

1. **Lack of Information.** Mr. Teylouni failed to provide all information required by the Receivership Court’s Claims Bar Date Order (Dkt. No. 234). In particular, Mr. Teylouni failed to provide an accounting of all monies received by him from or on behalf of any Receivership Entity. The Receiver notes that Mr. Teylouni did provide copies of his W-2 forms showing compensation for the years 2008 and 2009 and a paystub showing compensation through April 15, 2010. However, this documentation does not establish what other monies Mr. Teylouni may have received, if any, from any of the other Receivership Entities. The Receiver also notes that Mr. Teylouni stated that he is unable to prepare an accounting at this time. Furthermore, in correspondence dated January 6, 2014, the Receiver requested that Mr. Teylouni provide a statement evidencing his knowledge of the allegations made in the complaint filed by the S.E.C. in the Receivership proceeding. The requested statement has not been provided.
2. **Waiver of Deferred Compensation.** Mr. Teylouni evidences his claim for deferred salary (compensation) with an email exchange between Mr. Teylouni and Dixon Brown and a spreadsheet prepared by Mr. Teylouni. It appears that the amount of deferred compensation claimed is based on the difference between what Mr. Teylouni was paid by the Receivership Entities and the stated salary in his employment agreement (\$300,000). The Receivership records reflect that when the Receivership Entities did not have the funds to cover payroll, Mr. Teylouni agreed to lower his salary. Mr. Teylouni signed Employee Change of Status forms that reduced Mr. Teylouni’s salary as of June 1, 2008, to \$80,000 and contained the following language: “By signing below, I acknowledge that this is not a deferral of wages and I have not been promised that any reduction in wages reflected herein will be made up or paid at a later date.” As such, Mr. Teylouni waived any claim to payment of deferred compensation.
3. **Right to Payment of Deferred Compensation Was Conditional.** Any right Mr. Teylouni may have had to payment of the difference between the compensation amount stated in his employment agreement and the amount of salary and other benefits received by Mr. Teylouni was conditional. The December 8, 2011 correspondence from Acartha to investors described the alleged deferred compensation as follows:



On the cost side, since October 2008, **the most significant move was to have all senior personnel agree to reduce their salaries by 70 to 80%<sup>11</sup>, with the understanding that if and when either a successful portfolio company liquidity event occurred or Acartha was able to raise additional funds, the compensation foregone would be recovered.** Partial deferred salary recoveries occurred after the sale of Integrien to VMWare on August 30, 2010. The Reduced salaries have continued through 2011.

Dec. 8, 2011 Correspondence, at page 3 (emphasis added). The correspondence further states:

Salaries for Acartha senior employees were reduced effective October 1, 2008, resulting in total compensation paid being reduced from \$2.6mm in 2008 to \$961K in 2009. After adjustments for recent personnel reductions, Acartha's projected current annual payroll is \$846K. In 2010, after Acartha recovered fees and expenses related to the sale of Integrien, the deferred salary balance (\$3.5mm as of 9/30/10) was reduced by \$1.65mm through payments to employees whose salaries had been previously reduced. The salary deferral balance as of 11/30/11 was \$2.4mm. **This deferred balance does not appear on the financial statements of the Company as a liability, although it has been the understanding of the Company and the employees whose salaries had been reduced that the deferred balance would be paid at such time as Acartha had sufficient recourses as a result of fundraising or portfolio company liquidity events.** Individual and aggregate amounts paid in compensation and carried interest for each of 2009, 2010 and 2011 are set forth on the Compensation Schedule attached to this letter.

Dec. 8, 2011 Correspondence, at page 3 n.1 (emphasis added). As described in the December 8, 2011 letter, Acartha did not have sufficient resources to satisfy the alleged deferred compensation amounts due to any employee. *See* Dec. 8, 2011 Correspondence, at page 1 (describing the financial situation as "grave" and stating "**ABSENT SUPPORT FROM INVESTORS TO FINANCE ACARTHA THROUGH Q1 . . . AND ABSENT RECEIPT OF FUNDING BY DECEMBER 21, 2011, THE COMPANY WILL BE FORCED TO COMMENCE WIND-DOWN AND CEASE OPERATIONS ON DECEMBER 31, 2011.**" (emphasis in original)); *see also* Acartha Group, LLC, Voluntary Petition, Jan. 8, 2012 (showing assets of less than \$50,000 and liabilities exceeding \$1,000,001). The Receiver is not aware of circumstances that would have triggered Acartha Group's potential liability for payment of the alleged deferred compensation.

4. Salary Fully Paid. The Receivership's records reflect that Mr. Teylouni agreed to lower his salary on at least two occasions. For 2008, Mr. Teylouni's agreed-upon salary (given the two Employee Change of Status forms) was \$167,333.33 per year; for 2009, Mr. Teylouni's agreed-upon salary was \$80,000 per year; and for 2010, Mr. Teylouni's agreed-upon salary was \$80,000 per year (\$3,333.33/pay period; \$23,333.31 through April 15, 2010). The salary payments Mr. Teylouni actually received met or exceeded Mr. Teylouni's agreed-upon salaries for those years. Mr. Teylouni's W-2 form from 2008 evidences that Mr. Teylouni received \$235,833.30. According to the Receivership's records and Mr. Teylouni's 2009 W-



2 form, Mr. Teylouni received \$88,984.92 in 2009. For the period of 2010 covered (until April 15, 2010), Mr. Teylouni received \$23,333.31, as shown by his final paystub. Mr. Teylouni agreed to lower his salary and as the records available to the Receiver show, he was fully compensated for the lowered salary.

5. Inequitable to Award Conditional Payments. The Receiver believes it would be inequitable to allow Mr. Teylouni's claim for deferred compensation. The December 8, 2011 correspondence evidences, and communicated to investors, that the claimed deferred compensation would be paid "if and when either a successful portfolio company liquidity event occurred or Acartha was able to raise additional funds." Dec. 8 Correspondence, at page 3; *id.* at page 3, n.1 (payment of deferred compensation was conditioned on the availability of "sufficient resources as a result of fundraising or portfolio company liquidity events"). The December 8, 2011 Correspondence also discussed the failure of ATP to "raise the fund originally expected." Dec. 8, 2011 Correspondence, at page 3. ATP was intended to be a \$250,000,000 fund. The total capital raised for the Receivership Entities and related entities was less than \$89,000,000. *See* Complaint for Injunctive and Other Relief (Dkt. No. 1) at ¶15. The Receivership Entities' operating budgets were funded by management fees and carried interest from ATP and other related entities. In particular, the December 8, 2011 Correspondence notes that "the management fees which were payable to Acartha Group as service provider for the general partner of ATP were a small fraction of what had been anticipated." Dec. 8, 2011 Correspondence, at page 2. Acartha did not have the funds to pay employees for any differentials in pay, and in fact, had "insufficient revenues for Acartha to support its operations." *Id.* at page 3. The Receivership Entities' lack of cash is further evidenced by borrowing arrangements to cover payroll. It would be inequitable to award Mr. Teylouni a claim for deferred compensation based on a failure of the funds to raise sufficient capital to support payment of the deferred compensation. Furthermore, to the extent a "successful portfolio liquidity event" may occur as a result of the efforts of the Receiver after January 17, 2012, the Receiver believes that it would be inequitable to pay deferred compensation.
6. Deferred Compensation Invalid Under ATP Agreement of Limited Partnership and Acartha Group Company Agreement. The salary promised to Mr. Teylouni in his employment agreement was not valid under the Acartha Group Company Agreement dated March 1, 2006 ("Acartha Company Agreement"). The Acartha Company Agreement required that the Budget and Compensation Committee establish the "compensation to be paid to the employees of the Company and its subsidiaries" on an annual basis. The Acartha Company Agreement did not contemplate fixed salaries, but rather required evaluation of the funds and expenses in determining employee salaries. Mr. Teylouni's employment agreement violates the Acartha Company Agreement.
7. Claimed Deferred Compensation Not Treated as Deferred Compensation By Receivership Entities. The information available to the Receiver shows that the Receivership Entities did not treat the claimed deferred compensation as deferred compensation. The Receivership Entities did not designate the claimed deferred compensation as deferred compensation for tax purposes; instead, they treated the claimed deferred compensation as a bonus when paying employees. The Receivership Entities' prior treatment of the claimed deferred compensation precludes the treatment requested by Mr. Teylouni in the claims process.



8. Inequitable to Allow Claim for Deferred Compensation. Mr. Teylouni lacks an equitable right to payment of the alleged deferred compensation. In S.E.C.-instituted cases, courts have held that receivers may disallow or disqualify employee-related claims based on activities by the employees that harmed investors. *See, e.g., Sec. & Exch. Comm'n v. Pension Fund of Am. L.C.*, 377 Fed. Appx. 957 (11th Cir. 2010) (Circuit court upheld decision to disallow regional director's claim for payment of commission, finding that director was "responsible for recruiting the investors who ultimately suffered losses due to the . . . fraud" (*id.* at 963)); *Sec. & Exch. Comm'n v. Byers*, 637 F. Supp. 2d 166 (S.D.N.Y. 2009) (approving receiver's proposal to disqualify defendants, defendants' relatives, and employees that actively participated in the development, implementation, and marketing of the fraudulent scheme (*id.* at 173) as "eminently reasonable and [ ] supported by caselaw" (*id.* at 184)); *see also Sec. & Exch. Comm'n v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 660 (6th Cir. 2001); *Sec. & Exch. Comm'n v. Enter. Trust Co.*, No. 08 Civ. 1260, 2008 WL 4534154, at \*3 (N.D. Ill. Oct. 7, 2008); *Sec. & Exch. Comm'n v. Merrill Scott & Assocs.*, No. 02 Civ. 39, 2006 WL 3813320, at \*6-7 (D. Utah Dec. 21, 2006)).

Furthermore, disallowance of claims of insiders is justified in equitable receivership proceedings. *See Sec. & Exch. Comm'n v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2009 WL 1854671, at \*2 (M.D. Fla. June 29, 2009) (disallowing vice-president/board member's claims because "[a]s equitable theories govern distribution plans in S.E.C. receiverships, [the claimant's] status as an insider whose actions furthered the fraud defeat[ed] his claim"). Insiders include individuals who have a fiduciary relationship with the entity (i.e., directors, officers) (*United States v. Evans*, 486 F.3d 315, 321 (7th Cir. 2007)) and persons in control of the entity (11 U.S.C. § 101(31)). The Receiver notes that insider status justifies not only disallowance but also equitable subordination of a claim. *See Sec. & Exch. Comm'n v. Am. Bd. of Trade*, 719 F. Supp. 186, 198-99 (S.D.N.Y. 1989) (holding that even if certain claims were not disallowed, they could be subordinated).

Mr. Teylouni was a managing director of ATP. In that role, he was, or should have been, aware of the related-party transactions and other dealings that led to the removal of funds from the Receivership Entities. The Receiver also has no information indicating that Mr. Teylouni reported out to investors, the Acartha board, the S.E.C., law enforcement, or others regarding the BDM transfers or other activities as alleged in the S.E.C. complaint. Furthermore, as managing director, Mr. Teylouni was an insider.

**Reservation of Rights.** The Receiver reserves the right to assert legal claims held by the Receivership Entities against Mr. Teylouni that would offset any alleged liability of the Receivership Entities to Mr. Teylouni. Offsetting claims may be based upon the facts generally outlined above and include, but are not limited to, an offset of the sums received by Mr. Teylouni in excess of his reduced salary and an offset of sums provided to Mr. Teylouni by Acartha in a lending capacity. The facts may also support offsetting claims based upon legal theories including, but not limited to, breach of fiduciary duty, aiding and abetting BDM's breach of fiduciary duty, aiding and abetting BDM's conversion, aiding and abetting BDM's fraudulent misrepresentation/concealment, and common law negligence. The Receiver further reserves the right to identify additional grounds for her recommendation of disallowance.

**Interview.** The Receiver would like to conduct an interview of Mr. Teylouni. The Receiver understands that Mr. Teylouni is currently out of the country. Please provide the Receiver with the dates on which Mr. Teylouni is available to participate in an interview upon his return to the United States.

**CARTER LEDYARD & MILBURN LLP**  
*Counselors at Law*

**Robert J.A. Zito**  
*Partner*

*Direct Dial: 212-238-8768*  
*E-mail: zito@clm.com*

*2 Wall Street*  
*New York, NY 10005-2072*

*Tel (212) 732-3200*  
*Fax (212) 732-3232*

*570 Lexington Avenue*  
*New York, NY 10022-6856*  
*(212) 371-2720*

April 28, 2014

**By First Class Mail**  
**and Email**

Claire M. Schenk, Esq.  
Thompson Coburn LLP  
One US Bank Plaza  
St. Louis, Missouri 63101

Re: SEC v. Morriss, et al. (No 4:12-cv-00080-CEJ)  
Claim of Hany Teylouni, Claim No. 20

Dear Ms. Schenk:

This letter responds to the Notice of Determination, dated February 12, 2014, recommending disallowance of Mr. Teylouni's claim, Claim No. 20, submitted in the proceeding referenced above. This letter will respond to each aspect of the Receiver's recommendation that Mr. Teylouni's claim for deferred compensation be disallowed.

The Receiver first asserts that Mr. Teylouni has failed to provide sufficient information for the Receiver to determine the dates during which Mr. Patel's claim for deferred compensation accrued. To the contrary, Mr. Teylouni has provided all information and documents in his possession. He has also agreed, at the Receiver's request, to be interviewed by the Receiver. Moreover, as Receiver, the Receiver has in her possession, custody and control all company documents relating to Mr. Teylouni's claim for deferred compensation. For this reason, Mr. Teylouni believes the Receiver has all information necessary to determine his claim for deferred compensation.

The Receiver also asserts that Mr. Teylouni waived his right to deferred compensation by signing an Employee Change of Status form dated June 1, 2008 which reduced his compensation to \$80,000 per year. The Receiver relies on the same "form" to support the assertion that Mr. Teylouni's salary was fully paid. As an initial matter, Mr. Teylouni does not have a copy of, and the Receiver has not provided us, the Employee Change of Status form to which the Receiver refers. Additionally, in support of his claim for deferred compensation Mr. Teylouni relies on, among other things, emails between him and Dixon Brown<sup>1</sup>, one of which, sent by Mr. Brown and dated October 23, 2008, states, "This will confirm that your rate of compensation as an

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<sup>1</sup> A copy of the emails was included with Mr. Teylouni's Proof of Claim.



employee of Acartha Group is \$300,000 per annum . . . .” Thus, it is clear that despite whatever payroll “form” Mr. Teylouni was asked to sign, such was not intended to act as a waiver against future compensation claims. And that is certainly the case for the period after June 1, 2008. Accordingly, the Receiver’s assertion that Mr. Teylouni “waived” his claim for future compensation, or that his salary was fully paid, is unavailing.

In response to the contention that recovery of deferred compensation was dependent upon a liquidity event, Mr. Teylouni notes that the Receiver recently received approval from the Court to sell preferred and common shares of Pollen, Inc. Accordingly, the alleged condition precedent in the December 8, 2011 correspondence to investors will be satisfied.

The Receiver contends that the Acartha Group, LLC Agreement (“Operating Agreement”) required a Budget and Compensation Committee to establish the compensation to be paid to Acartha’s employees. The relevant language of the Operating Agreement, however, requires that the Budget and Compensation Committee “*recommend*” to the Board of Directors . . . the compensation to be paid” to Acartha’s employees. (emphasis supplied). That the Budget and Compensation Committee’s recommendations were not binding on Acartha’s Board of Directors belies the contention that the Operating Agreement did not contemplate fixed salaries, and any failure of the Budget and Compensation Committee to make a recommendation for Mr. Teylouni’s salary is not fatal to his claim.

The Receiver also contends that because the Receivership Entities’ treated deferred compensation as a bonus when paying employees, rather than as deferred compensation, Mr. Teylouni’s claim is precluded. That argument is a non-sequitur. The manner by which the Receivership Entities elected to account for payment of deferred compensation to their employees is irrelevant for purposes of determining whether compensation actually is due. Mr. Teylouni has established that is due more than \$350,000 in deferred compensation and whether or not the Receivership entities accounted for his past deferred compensation amounts as bonuses is irrelevant.

Finally, Mr. Teylouni contends that the cases on which the Receiver relies in support of the assertion that it would be inequitable to allow Mr. Teylouni’s claim are inapposite. The factual circumstances underlying those decisions bear no resemblance to Mr. Teylouni’s activities while at ATP. Mr. Teylouni’s responsibilities as an employee of ATP would not have revealed to him Mr. Morriss’ related-party transactions. As set forth in Mr. Teylouni’s employment agreement with ATP, Mr. Teylouni’s responsibilities included “build[ing] and direct[ing] a technology advisory business” and “[o]verse[ing] and manag[ing] Acartha’s and its subsidiaries Information Technology platform.” Specifically, Mr. Teylouni conducted due diligence into the technology aspects of various companies, as directed by his superior. He had no involvement with fundraising activities, and his work would not have brought the related-party transactions to Mr. Teylouni’s attention, particularly because it is well known that Mr. Morriss’ concealed, whenever possible, the existence of the transactions. Accordingly, Mr. Teylouni disagrees with the assertion that it would be inequitable to allow his claim.

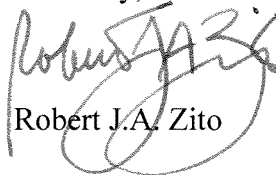


Claire M. Schenk, Esq.

-3-

Mr. Teylouni remains willing to be interviewed by the Receiver. Please contact me to schedule the interview.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J.A. Zito". The signature is stylized and somewhat cursive, with a large loop at the end.

Robert J.A. Zito



Jayna Marie Rust  
P 202.585.6929  
F 202.318.6496  
jrust@thompsoncoburn.com

Licensed in Virginia only.  
(supervised by DC licensed attorneys)

May 13, 2014

**VIA ELECTRONIC MAIL**

Hany Teylouni  
c/o Theodore McDonough  
Carter Ledyard & Milburn LLP  
Two Wall Street  
New York, NY 10005  
Email: mcdonough@clm.com

Re: Claim No. 20, *Securities & Exchange Commission v. Burton Douglas Morriss, et al.*, No. 4:12-cv-00080

Dear Mr. McDonough:

The Receiver has reviewed your objection to the Receiver's February 12, 2014 Notice of Determination in the above referenced proceeding. The Receiver has decided that she will still recommend disallowance of your claim, Claim No. 20, based on the reasons outlined in the Notice of Determination.

As noted in the Notice of Determination, you previously failed to provide sufficient information to support your claim. The objection and reasoning you provided the Receiver does not provide any additional information to support a need to re-review the grounds for disallowance. Furthermore, other reasons underlying your objection were also addressed in the Notice of Determination.

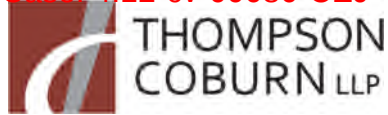
Please refer to the Notice of Determination and the Court's Order on Motion to Establish Claims Bar Date, Approve Manner and Form of Notice of Claims Bar Date and Approve Process for Submitting Claims (Dkt. No. 234) and the Court's Order Amending Claims Bar Date Order and Extending Certain Claims Bar Date Deadlines (Dkt. No. 278) to the extent that you are interested in reviewing the instructions for filing an objection with the Court.

Very truly yours,

Thompson Coburn LLP

By 

Jayna Marie Rust



July 10, 2014

**VIA ELECTRONIC MAIL**

Hany Teylouni  
c/o Theodore McDonough  
Carter Ledyard & Milburn LLP  
Two Wall Street  
New York, NY 10005  
Email: [mcdonough@clm.com](mailto:mcdonough@clm.com)

Re: Claim No. 20, *Securities & Exchange Comm'n v. Morriss, et al.*, No. 4:12-cv-00080

Dear Mr. McDonough:

The Receiver has considered Mr. Teylouni's objection to the Notice of Determination and determined that she will not change her recommendation of disallowance for Claim No. 20 based on the reasons outlined in the Notice of Determination, a copy of which is attached hereto for your reference. In particular, the Receiver notes that the additional information Mr. Teylouni provided with and subsequent to his objection does not alter her determination that:

- Mr. Teylouni waived the claimed deferred compensation by (1) signing Employee Change of Status forms during his employment containing an acknowledgement that the agreed-to reduction in salary was not a deferral of wages and also that Mr. Teylouni had not been promised that the reduction in wages would be made up or paid at a later date and (2) resigning from Acartha Technology Partners L.P. ("ATP") in February 2010;
- Mr. Teylouni's claimed right to deferred compensation was conditioned upon a successful liquidity event or Acartha's ability to raise additional funds, neither of which occurred prior to the institution of the Receivership. Post-receivership, the Pollen interest was monetized through a sale of the Receivership interest to Pollen. The Receivership's receipt of funds from the Pollen sale was not a result of an acquisition, merger or other significant event involving this investment. Nor, does the sale of the Pollen interest constitute the raising of additional funds because the funds coming into the Estate were not the result of new or additional investment in one or more of the Receivership Entities. As such, the sale of the Receivership's interest in Pollen did not trigger the necessary pre-condition to Mr. Teylouni's claimed right to deferred compensation;
- Documentation submitted by Mr. Teylouni to the Receiver illustrates that his salary was paid in full at the reduced salary amount to which Mr. Teylouni agreed;
- It would be inequitable to award Mr. Teylouni conditional payments because the claimed deferred compensation was intended to be paid if and when ATP became a successful fund, an eventuality that did not occur. There is no justification for paying

Claim No. 20, Securities & Exchange Comm'n v. Morris, et al., No. 4:12-cv-00080

July 10, 2014

Page 2

the claimed deferred compensation based on the failure of ATP to raise sufficient capital to support such payment;

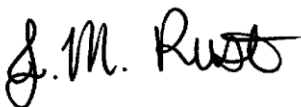
- Mr. Teylouni's claimed deferred compensation was invalid under the ATP Agreement of Limited Partnership and the Acartha Group Company Agreement because it was based off the differential between Mr. Teylouni's salary—as stated in his employment agreement—and the reduced salary paid to him by the Receivership Entities. Mr. Teylouni's employment agreement, with its fixed salary, was an arrangement that was not contemplated by or valid under the Acartha Group Company Agreement dated March 1, 2006; and
- The claimed funds were not treated as “deferred compensation” by the Receivership Entities for accounting or tax purposes.

The Receiver also notes that Mr. Teylouni forfeited any alleged deferred compensation upon his resignation from ATP. Mr. Teylouni has not provided any documentation to show that the Receivership Entities agreed to pay him any salary, bonus, or deferred compensation after his departure from ATP. His voluntary departure terminated any alleged right to payment. Further, the facts surrounding Mr. Teylouni's departure from ATP suggest that Mr. Teylouni did not have any expectation of payment of the claimed deferred compensation. Mr. Teylouni left ATP to work for LogicSource, a related party for whom he was already providing services during the time of his ATP employment because he understood that ATP was not doing well.

Please be advised that even if Mr. Teylouni secures an allowed claim (in any amount) through use of the objection process outlined in the Claims Bar Date Order, such allowance is not a determination of the priority of Mr. Teylouni's claim or a guarantee of payment (in full or otherwise). Priority and payment issues are not being dealt with in the claims allowance process. Provided that the Receivership estate has funds to distribute to claimants, the Receiver will develop a distribution plan. The Receiver has an obligation to propose a distribution plan based on equitable principles, and the Receivership Court will have wide discretion in reviewing and approving the Receiver's proposed distribution plan. *See, e.g., S.E.C. v. Byers*, 637 F. Supp. 2d 166, 174 (S.D.N.Y. 2009). Therefore, should there be sufficient funds to provide for a plan of distribution, the Receiver may recommend the subordination of the claims of employees, directors, and/or officers—including Mr. Teylouni's claim—to those of investors and other creditors. *See S.E.C. v. Merrill Scott & Assocs., Ltd.*, No. 02-39, 2007 WL 26981, at \*2 (D. Utah Jan. 3, 2007) (approving partial distribution plan that places non-insider investor claims above non-investor creditors, who would receive nothing from the distribution); *see also U.S. Commodity Futures Trading Comm'n v. RFF GP, LLC*, No. 13-383, 2014 WL 491639, at \*2 (E.D. Tex. Feb. 4, 2014) (“courts regularly grant defrauded investors a higher priority than defrauded creditors, and there is persuasive authority supporting this view”).

Very truly yours,

Thompson Coburn LLP



By

Jayna Marie Rust



**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.	)	

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**NOTICE OF DETERMINATION**

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Email:

Dear Claimant:

**PLEASE READ THIS NOTICE CAREFULLY.**

The Court Appointed Receiver in the above-referenced matter, Claire M. Schenk, has made the following determination regarding your claim designated as Claim Number \_\_\_\_\_:

**PLEASE TAKE NOTICE:** If you disagree with this Determination, you have the right to file an objection and have the Court decide whether the Determination is correct. To exercise this right, you must first serve, but not file with the Court, a written objection to the Receiver's determination in accordance with the instructions herein. You must serve the objection on the Receiver (a) in person, by courier, or by mail addressed to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101, or (b) by electronic mail, as an attachment in portable document format (.pdf) to [acartha.receivership@thompsoncoburn.com](mailto:acartha.receivership@thompsoncoburn.com), within **THIRTY (30) DAYS** of the date of this Notice of Determination. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for your objection to the Receiver's determination; (iii) copies of any document or other writing upon which you rely; and (iv) your mailing, phone, and email contact information. Objections not timely served shall be deemed waived and overruled without the need for further order of the Court or action by the Receiver.

**PLEASE TAKE FURTHER NOTICE:** You are required to work in good faith with the Receiver to attempt to resolve your objection before submitting the objection to the Court for determination.

**PLEASE TAKE FURTHER NOTICE:** If you and the Receiver are unable to resolve your objection, you shall file the written objection to the Receiver's Notice of Determination with the Court in accordance with the instructions herein. You must file the objection with the Court no earlier than NINETY (90) DAYS of the date of the Receiver's Notice of Determination and no later than ONE HUNDRED TWENTY (120) DAYS of the date of the Receiver's Notice of Determination. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for your objection to the Receiver's Notice of Determination; (iii) copies of any document or other writing upon which you rely; (iv) your mailing, phone, and email contact information; and (v) and a certification that you have conferred in good faith with the Receiver in an effort to resolve the objection without the need for a ruling from the Court. Objections not timely filed with the Court shall be deemed waived and overruled without the need for further order of the Court or action by the Receiver.

**PLEASE TAKE FURTHER NOTICE:** The Receiver may, within **THIRTY (30) DAYS** of the date on which you file with the Court a written objection to the Receiver's Notice of Determination, file a response to your objection. The Receiver shall serve a copy of her response on you or your counsel. Following the filing of the Receiver's response or, if the Receiver does not file a response, the expiration of the Receiver's thirty (30) day response period, the Court will consider and rule on your objection to the Notice of Determination. Notwithstanding the procedures outlined herein, you and the Receiver may stipulate to informally resolve the dispute and may extend by agreement without leave of Court the deadline for either party to file a motion to have the Court rule on the objection and determination.

**PLEASE TAKE FURTHER NOTICE:** No discovery or other motion practice shall occur regarding the Receiver's Notice of Determination or facts giving rise to such determination unless you first seek and obtain leave of Court, upon a showing of good cause and substantial need to pursue such motion practice or discovery. Filing of such a motion for leave shall not suspend or extend any deadlines set forth in the Claims Bar Date Order.

Receiver Claire M. Schenk

**Exhibit A**

**Claim No. 20**

Mr. Teylouni asserted a claim against Acartha Group, LLC (“Acartha”) and Acartha Technology Partners, LP (“ATP”) in the amount of \$352,532.15 (the “Claim”). The Claim seeks deferred salary, plus interest thereon, for the period August 1, 2008 to April 15, 2010. The Receiver will recommend that the Court disallow the Claim. The bases for the Receiver’s recommendation are detailed below.

**Disallowance of Claim for Deferred Compensation (Salary).** The Receiver will recommend disallowance of Mr. Teylouni’s claim for deferred salary (\$352,532.15) on the following grounds:

1. **Lack of Information.** Mr. Teylouni failed to provide all information required by the Receivership Court’s Claims Bar Date Order (Dkt. No. 234). In particular, Mr. Teylouni failed to provide an accounting of all monies received by him from or on behalf of any Receivership Entity. The Receiver notes that Mr. Teylouni did provide copies of his W-2 forms showing compensation for the years 2008 and 2009 and a paystub showing compensation through April 15, 2010. However, this documentation does not establish what other monies Mr. Teylouni may have received, if any, from any of the other Receivership Entities. The Receiver also notes that Mr. Teylouni stated that he is unable to prepare an accounting at this time. Furthermore, in correspondence dated January 6, 2014, the Receiver requested that Mr. Teylouni provide a statement evidencing his knowledge of the allegations made in the complaint filed by the S.E.C. in the Receivership proceeding. The requested statement has not been provided.
2. **Waiver of Deferred Compensation.** Mr. Teylouni evidences his claim for deferred salary (compensation) with an email exchange between Mr. Teylouni and Dixon Brown and a spreadsheet prepared by Mr. Teylouni. It appears that the amount of deferred compensation claimed is based on the difference between what Mr. Teylouni was paid by the Receivership Entities and the stated salary in his employment agreement (\$300,000). The Receivership records reflect that when the Receivership Entities did not have the funds to cover payroll, Mr. Teylouni agreed to lower his salary. Mr. Teylouni signed Employee Change of Status forms that reduced Mr. Teylouni’s salary as of June 1, 2008, to \$80,000 and contained the following language: “By signing below, I acknowledge that this is not a deferral of wages and I have not been promised that any reduction in wages reflected herein will be made up or paid at a later date.” As such, Mr. Teylouni waived any claim to payment of deferred compensation.
3. **Right to Payment of Deferred Compensation Was Conditional.** Any right Mr. Teylouni may have had to payment of the difference between the compensation amount stated in his employment agreement and the amount of salary and other benefits received by Mr. Teylouni was conditional. The December 8, 2011 correspondence from Acartha to investors described the alleged deferred compensation as follows:

On the cost side, since October 2008, **the most significant move was to have all senior personnel agree to reduce their salaries by 70 to 80%<sup>[1]</sup>, with the understanding that if and when either a successful portfolio company liquidity event occurred or Acartha was able to raise additional funds, the compensation foregone would be recovered.** Partial deferred salary recoveries occurred after the sale of Integrien to VMWare on August 30, 2010. The Reduced salaries have continued through 2011.

Dec. 8, 2011 Correspondence, at page 3 (emphasis added). The correspondence further states:

Salaries for Acartha senior employees were reduced effective October 1, 2008, resulting in total compensation paid being reduced from \$2.6mm in 2008 to \$961K in 2009. After adjustments for recent personnel reductions, Acartha's projected current annual payroll is \$846K. In 2010, after Acartha recovered fees and expenses related to the sale of Integrien, the deferred salary balance (\$3.5mm as of 9/30/10) was reduced by \$1.65mm through payments to employees whose salaries had been previously reduced. The salary deferral balance as of 11/30/11 was \$2.4mm. **This deferred balance does not appear on the financial statements of the Company as a liability, although it has been the understanding of the Company and the employees whose salaries had been reduced that the deferred balance would be paid at such time as Acartha had sufficient recourses as a result of fundraising or portfolio company liquidity events.** Individual and aggregate amounts paid in compensation and carried interest for each of 2009, 2010 and 2011 are set forth on the Compensation Schedule attached to this letter.

Dec. 8, 2011 Correspondence, at page 3 n.1 (emphasis added). As described in the December 8, 2011 letter, Acartha did not have sufficient resources to satisfy the alleged deferred compensation amounts due to any employee. *See* Dec. 8, 2011 Correspondence, at page 1 (describing the financial situation as "grave" and stating "**ABSENT SUPPORT FROM INVESTORS TO FINANCE ACARTHA THROUGH Q1 . . . AND ABSENT RECEIPT OF FUNDING BY DECEMBER 21, 2011, THE COMPANY WILL BE FORCED TO COMMENCE WIND-DOWN AND CEASE OPERATIONS ON DECEMBER 31, 2011.**" (emphasis in original)); *see also* Acartha Group, LLC, Voluntary Petition, Jan. 8, 2012 (showing assets of less than \$50,000 and liabilities exceeding \$1,000,001). The Receiver is not aware of circumstances that would have triggered Acartha Group's potential liability for payment of the alleged deferred compensation.

4. Salary Fully Paid. The Receivership's records reflect that Mr. Teylouni agreed to lower his salary on at least two occasions. For 2008, Mr. Teylouni's agreed-upon salary (given the two Employee Change of Status forms) was \$167,333.33 per year; for 2009, Mr. Teylouni's agreed-upon salary was \$80,000 per year; and for 2010, Mr. Teylouni's agreed-upon salary was \$80,000 per year (\$3,333.33/pay period; \$23,333.31 through April 15, 2010). The salary payments Mr. Teylouni actually received met or exceeded Mr. Teylouni's agreed-upon salaries for those years. Mr. Teylouni's W-2 form from 2008 evidences that Mr. Teylouni received \$235,833.30. According to the Receivership's records and Mr. Teylouni's 2009 W-



2 form, Mr. Teylouni received \$88,984.92 in 2009. For the period of 2010 covered (until April 15, 2010), Mr. Teylouni received \$23,333.31, as shown by his final paystub. Mr. Teylouni agreed to lower his salary and as the records available to the Receiver show, he was fully compensated for the lowered salary.

5. Inequitable to Award Conditional Payments. The Receiver believes it would be inequitable to allow Mr. Teylouni's claim for deferred compensation. The December 8, 2011 correspondence evidences, and communicated to investors, that the claimed deferred compensation would be paid "if and when either a successful portfolio company liquidity event occurred or Acartha was able to raise additional funds." Dec. 8 Correspondence, at page 3; *id.* at page 3, n.1 (payment of deferred compensation was conditioned on the availability of "sufficient resources as a result of fundraising or portfolio company liquidity events"). The December 8, 2011 Correspondence also discussed the failure of ATP to "raise the fund originally expected." Dec. 8, 2011 Correspondence, at page 3. ATP was intended to be a \$250,000,000 fund. The total capital raised for the Receivership Entities and related entities was less than \$89,000,000. *See* Complaint for Injunctive and Other Relief (Dkt. No. 1) at ¶15. The Receivership Entities' operating budgets were funded by management fees and carried interest from ATP and other related entities. In particular, the December 8, 2011 Correspondence notes that "the management fees which were payable to Acartha Group as service provider for the general partner of ATP were a small fraction of what had been anticipated." Dec. 8, 2011 Correspondence, at page 2. Acartha did not have the funds to pay employees for any differentials in pay, and in fact, had "insufficient revenues for Acartha to support its operations." *Id.* at page 3. The Receivership Entities' lack of cash is further evidenced by borrowing arrangements to cover payroll. It would be inequitable to award Mr. Teylouni a claim for deferred compensation based on a failure of the funds to raise sufficient capital to support payment of the deferred compensation. Furthermore, to the extent a "successful portfolio liquidity event" may occur as a result of the efforts of the Receiver after January 17, 2012, the Receiver believes that it would be inequitable to pay deferred compensation.
6. Deferred Compensation Invalid Under ATP Agreement of Limited Partnership and Acartha Group Company Agreement. The salary promised to Mr. Teylouni in his employment agreement was not valid under the Acartha Group Company Agreement dated March 1, 2006 ("Acartha Company Agreement"). The Acartha Company Agreement required that the Budget and Compensation Committee establish the "compensation to be paid to the employees of the Company and its subsidiaries" on an annual basis. The Acartha Company Agreement did not contemplate fixed salaries, but rather required evaluation of the funds and expenses in determining employee salaries. Mr. Teylouni's employment agreement violates the Acartha Company Agreement.
7. Claimed Deferred Compensation Not Treated as Deferred Compensation By Receivership Entities. The information available to the Receiver shows that the Receivership Entities did not treat the claimed deferred compensation as deferred compensation. The Receivership Entities did not designate the claimed deferred compensation as deferred compensation for tax purposes; instead, they treated the claimed deferred compensation as a bonus when paying employees. The Receivership Entities' prior treatment of the claimed deferred compensation precludes the treatment requested by Mr. Teylouni in the claims process.

8. Inequitable to Allow Claim for Deferred Compensation. Mr. Teylouni lacks an equitable right to payment of the alleged deferred compensation. In S.E.C.-instituted cases, courts have held that receivers may disallow or disqualify employee-related claims based on activities by the employees that harmed investors. *See, e.g., Sec. & Exch. Comm'n v. Pension Fund of Am. L.C.*, 377 Fed. Appx. 957 (11th Cir. 2010) (Circuit court upheld decision to disallow regional director's claim for payment of commission, finding that director was "responsible for recruiting the investors who ultimately suffered losses due to the . . . fraud" (*id.* at 963)); *Sec. & Exch. Comm'n v. Byers*, 637 F. Supp. 2d 166 (S.D.N.Y. 2009) (approving receiver's proposal to disqualify defendants, defendants' relatives, and employees that actively participated in the development, implementation, and marketing of the fraudulent scheme (*id.* at 173) as "eminently reasonable and [ ] supported by caselaw" (*id.* at 184)); *see also Sec. & Exch. Comm'n v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 660 (6th Cir. 2001); *Sec. & Exch. Comm'n v. Enter. Trust Co.*, No. 08 Civ. 1260, 2008 WL 4534154, at \*3 (N.D. Ill. Oct. 7, 2008); *Sec. & Exch. Comm'n v. Merrill Scott & Assocs.*, No. 02 Civ. 39, 2006 WL 3813320, at \*6-7 (D. Utah Dec. 21, 2006)).

Furthermore, disallowance of claims of insiders is justified in equitable receivership proceedings. *See Sec. & Exch. Comm'n v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2009 WL 1854671, at \*2 (M.D. Fla. June 29, 2009) (disallowing vice-president/board member's claims because "[a]s equitable theories govern distribution plans in S.E.C. receiverships, [the claimant's] status as an insider whose actions furthered the fraud defeat[ed] his claim"). Insiders include individuals who have a fiduciary relationship with the entity (i.e., directors, officers) (*United States v. Evans*, 486 F.3d 315, 321 (7th Cir. 2007)) and persons in control of the entity (11 U.S.C. § 101(31)). The Receiver notes that insider status justifies not only disallowance but also equitable subordination of a claim. *See Sec. & Exch. Comm'n v. Am. Bd. of Trade*, 719 F. Supp. 186, 198-99 (S.D.N.Y. 1989) (holding that even if certain claims were not disallowed, they could be subordinated).

Mr. Teylouni was a managing director of ATP. In that role, he was, or should have been, aware of the related-party transactions and other dealings that led to the removal of funds from the Receivership Entities. The Receiver also has no information indicating that Mr. Teylouni reported out to investors, the Acartha board, the S.E.C., law enforcement, or others regarding the BDM transfers or other activities as alleged in the S.E.C. complaint. Furthermore, as managing director, Mr. Teylouni was an insider.

**Reservation of Rights.** The Receiver reserves the right to assert legal claims held by the Receivership Entities against Mr. Teylouni that would offset any alleged liability of the Receivership Entities to Mr. Teylouni. Offsetting claims may be based upon the facts generally outlined above and include, but are not limited to, an offset of the sums received by Mr. Teylouni in excess of his reduced salary and an offset of sums provided to Mr. Teylouni by Acartha in a lending capacity. The facts may also support offsetting claims based upon legal theories including, but not limited to, breach of fiduciary duty, aiding and abetting BDM's breach of fiduciary duty, aiding and abetting BDM's conversion, aiding and abetting BDM's fraudulent misrepresentation/concealment, and common law negligence. The Receiver further reserves the right to identify additional grounds for her recommendation of disallowance.

**Interview.** The Receiver would like to conduct an interview of Mr. Teylouni. The Receiver understands that Mr. Teylouni is currently out of the country. Please provide the Receiver with the dates on which Mr. Teylouni is available to participate in an interview upon his return to the United States.

**EXHIBIT I-1**

**Kraft, Kathleen E.**

---

**From:** Dixon Brown  
**Sent:** Wednesday, April 28, 2010 1:42 PM  
**To:** Hany Teylouni  
**Cc:** htnet@speakeasy.net  
**Subject:** Employment

**Importance:** High

Hany,

For the past two months, I have reached out to you trying to determine your employment status at Logic Source. I have been told that you are a full time employee of LS and to terminate you from Administaff/Acartha employment. We have known each other too long and have worked together as do not want to do that IF what I have been told is not accurate. Please confirm. In March, you terminated your ATP email and Blackberry accounts – which I found out by chance speaking with Mailstreet the other day. Would have been nice to know at the time. Please email me or call me with a response. Thanks, Dixon.



**EXHIBIT I-2**

**Kraft, Kathleen E.**

---

**From:** Dixon Brown  
**Sent:** Monday, May 17, 2010 3:57 PM  
**To:** Hany Teylouni  
**Subject:** FW: contact info

See below...where can I email you?? Thanks, Dixon

---

**From:** Dixon Brown  
**Sent:** Monday, May 17, 2010 11:46 AM  
**To:** 'hteylouni@logicsource.com'  
**Subject:** contact info  
**Importance:** High

Hany,  
I have emailed you several times with no response so I assume you are not using your ATP address. Please respond to this email so that I may send you a document from Administaff. Thanks, Dixon

**Kraft, Kathleen E.**

---

**From:** Chris Aliprandi  
**Sent:** Wednesday, December 12, 2007 3:29 PM  
**To:** Hany Teylouni  
**Subject:** 10014\_Emp\_Chg\_Status.pdf  
**Attachments:** 10014\_Emp\_Chg\_Status.pdf

hi, pls complete to authorize a reduction to 65k effective on 12/1/07. ca



**EMPLOYEE CHANGE OF STATUS  
(EMPLOYMENT INFORMATION)**

Instructions: Complete all fields in the Employee Information section.  
Enter the changes into the applicable sections.  
Submit the completed form to your Administaff Payroll Specialist.

**EMPLOYEE INFORMATION** *(complete all fields)*

Employee First Name <b>Hany</b>	Employee Middle Name	Employee Last Name <b>Teylouni</b>	Last 4 Digits of Social Security Number <b>0858</b>
Effective Date of Change <b>06/16/2008</b>	Client Company Name <b>Acartha Group, LLC</b>		Client Number <b>1784900</b>

**JOB DESCRIPTION CHANGE/TRANSFER** *(enter changes only)*

Job Title Change		Job Function Change <i>(if different from job title)</i>		
Benefit Class				
New Job Category		New Billing Group Number	New Department	
New Location		New STS Location	New W/Comp Code	AIG Audit Request <input type="checkbox"/>
New Worksite Address			New Worksite County	
New Worksite City		New Worksite State	New Worksite Zip	
New Check Destination Address	New Work Phone	New Work Fax	New Work e-mail	
Change Client Number From		To	Change Administaff Hire Date From	
			To	

**PAY RATE CHANGE / CLASSIFICATION** *(enter changes only)*

Employee signature required for pay reduction and/or changes from nonexempt to exempt.	From	To
<input type="checkbox"/> Pay Rate Increase*		
<input type="checkbox"/> Full-Time / Part-Time / Temporary		
<input checked="" type="checkbox"/> Pay Reduction**	300000	80,000 per year
<input type="checkbox"/> Exemption Change	Is this employee exempt from overtime payment? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", the FLSA Test for Exemption for this position should be completed, signed by the employee and on-site supervisor, and submitted to your Administaff Payroll Specialist.	
By signing below, I acknowledge that this is not a deferral of wages and I have not been promised that any reduction in wages reflected herein will be made up or paid at a later date. I also understand that a reduction in my wages will result in a reduction in benefit for any applicable life insurance, short-term/long-term disability, workers compensation and other benefit which is based on my wages/salary. **For a reduction in pay, this form must be signed and dated by the employee on or before the effective date of change.		
Employee Signature 	Date Signed by Employee 6/15/08	*For a payroll contact and/or onsite supervisor pay increase or reduction, the client owner signature is required.
Payroll Contact/Onsite Supervisor Signature	Client Owner Signature	

**TO BE COMPLETED BY PAYROLL SERVICES**

Entered By	Date Entered
------------	--------------



**EXHIBIT J-1**

	2009 - AG Headcount: 12	2010 - AG Headcount: 11	2011 - AG Headcount: 9	Totals:		
Total Salary	629,034.85	223,528.68	562,731.40	1,415,294.93		
Total Employer Taxes/Health Ins./Other Benefits:	229,119.48	230,644.01	173,510.03	633,273.52		
Total Bonus	225,000.00	1,650,000.00	-	1,875,000.00	-	
Total Compensation Cost:	1,083,154.33	2,104,172.69	736,241.43	3,923,568.45		
<b>Bonus Payments:</b>	<b>Jan-09</b>	<b>Aug-09</b>	<b>Sep-10</b>	<b>Dec-10</b>		
██████████ R	7,356.00	12,751.00	625,000.00	175,000.00		
██████████	30,634.00	63,237.00	150,000.00	90,000.00		
██████████	13,742.00	27,476.00	-			
██████████	3,880.00	7,760.00	150,000.00	90,000.00		
██████████	10,403.00	17,970.00	185,000.00	85,000.00		
TEYLOUNI, HANY	8,985.00	20,806.00	-	-		
██████████	-	-	100,000.00	-		
	75,000.00	150,000.00	1,210,000.00	440,000.00	1,875,000.00	
<b>Severance Payments:</b>		1,360,000.00				
██████████			53,509.91			

**REDACTED**



2009 - Headcount 12			
Executive Employee	Total Compensation	Employer Taxes/Health Ins./Payroll Fees	Total Employment Cost
[REDACTED]	176,870.92	30,505.45	207,376.37
[REDACTED]	121,217.92	20,265.20	141,483.12
[REDACTED]	85,507.20	15,207.43	100,714.63
[REDACTED]s	108,372.92	29,348.36	137,721.28
[REDACTED]	79,999.92	20,265.20	100,265.12
[REDACTED]	79,999.92	26,634.45	106,634.37
<b>Totals:</b>	<b>651,968.80</b>	<b>142,226.09</b>	<b>794,194.89</b>

2010 - Headcount 11			
Executive Employee	Total Compensation	Employer Taxes/Health Ins./Payroll Fees	Total Employment Cost
[REDACTED]	990,000.08	46,537.36	1,036,537.44
[REDACTED]	320,000.00	25,718.67	345,718.67
[REDACTED]	320,000.00	12,099.89	332,099.89
[REDACTED]s	364,999.92	35,967.78	400,967.70
[REDACTED]	79,999.92	21,584.19	101,584.11
[REDACTED]	179,999.92	31,734.46	211,734.38
<b>Totals:</b>	<b>2,254,999.84</b>	<b>173,642.35</b>	<b>2,428,642.19</b>

2011(Nov 30) - Headcount 9			
Executive Employee	Total Compensation	Employer Taxes/Health Ins./Payroll Fees	Total Employment Cost
[REDACTED]	174,166.74	32,718.66	206,885.40
[REDACTED]	73,333.26	28,618.61	101,951.87
[REDACTED]	73,333.26	11,829.84	85,163.10
[REDACTED]	73,333.26	28,119.16	101,452.42
[REDACTED]	73,333.26	22,610.59	95,943.85
<b>Totals:</b>	<b>467,499.78</b>	<b>123,896.86</b>	<b>591,396.64</b>

[REDACTED]	6,666.66	2,477.30	9,143.96
[REDACTED]	27,642.51	11,465.90	39,108.41
[REDACTED]	2,000.00	978.54	2,978.54
[REDACTED]	79,790.17	21,513.96	101,304.13
TEYLOUNI, HANY	88,984.92	26,032.62	115,017.54
[REDACTED]	49,839.79	24,425.07	74,264.86
<b>Other Staff</b>	<b>254,924.05</b>	<b>86,893.39</b>	<b>341,817.44</b>
	906,892.85	229,119.48	1,136,012.33

[REDACTED]	10,125.00	4,754.14	14,879.14
[REDACTED]	75,000.00	22,558.80	97,558.80
TEYLOUNI, HANY	29,999.97	10,724.84	40,724.81
[REDACTED]	19,903.89	10,714.11	30,618.00
[REDACTED]E	18,499.98	8,249.77	26,749.75
<b>Other Staff</b>	<b>153,528.84</b>	<b>57,001.66</b>	<b>210,530.50</b>
	2,408,528.68	230,644.01	2,639,172.69

[REDACTED]	47,740.44	15,306.12	63,046.56
[REDACTED]	59,583.26	26,960.79	86,544.05
[REDACTED]	11,250.00	3,874.44	15,124.44
[REDACTED]	15,624.99	3,471.82	19,096.81
<b>Other Staff</b>	<b>134,198.69</b>	<b>49,613.17</b>	<b>183,811.86</b>
	601,698.47	173,510.03	775,208.50

**Base Salaries**

[REDACTED]	750,000	Acartha Employment Agreement dtd 6/8/2005
[REDACTED]	275,000	Administaff Employment Agreement 10/04/2005
[REDACTED]	400,000	"
[REDACTED]	400,000	"
[REDACTED]	175,000	"
[REDACTED]	300,000	Administaff Employment Agreement 10/1/2008
<b>Total:</b>	<b>2,300,000</b>	

\* [REDACTED] is e party to an employment contract with the Company that provides for an annual compensation of not less than \$750,000, inclusive of carried interest received with respect to funds managed by him. The contract contains other standard executive provisions, including the provision of life insurance. The contract renews automatically each year unless cancelled by the Company or [REDACTED]

\*\* In lieu of incentive compensation in 2010, the Company advanced \$600,000 to BDM under the the MH Note.

**REDACTED**

Carried Interest Distributions	2010	2011
[REDACTED]	47,386.13	31,149.95
[REDACTED]	47,386.13	31,149.95
[REDACTED]	35,836.91	5,262.37
<b>Total:</b>	<b>130,609.17</b>	<b>67,562.27</b>

Acartha – Information Request

- 1) Bank Statements for Cash Accounts for January 2009. Waiting for replacement statement copy from PNC.
- 2) Accrued Compensation: At 12/31/07, this account had an outstanding balance of \$254,824. Per the schedule detailing the payable balance, the payables were listed as “Contingent Payables for the startup period”. Is there an agreement in place for these payables detailing the arrangement and the event triggering the payment of these amounts. If not, can you provide additional information regarding the nature of these payables. There is no agreement in place for these payables detailing the arrangement or triggering event for payments against these amounts. The amount represents the difference between compensation levels planned for several employees when Acartha Group began operations and the amount paid to them against the amount planned. The contingency regarding these payables remains sufficient cash reserves for Acartha to pay them at the discretion of management. Again, there was no formal documentation regarding this arrangement during Acartha’s start up period.
- 3) Notes Payable- Copies of the Signed Note Agreements (ATP, Morriss Trust, BD Morriss). Previously sent. Attached again.
- 4) Management Fee: Please provide a copy of the agreement between the Company and MCIVII, detailing the management fee. Please see MIC VII Operating Agreement for section regarding 2% management fee payable to the Manager of MIC VII, Acartha Group.
- 5) Management Fee: Please provide a copy of the agreement between the Company and ATP, detailing the management fee. Attached.
- 6) Payroll Report- We received the payroll excel reconciliation. Is there an W3, 941’s, or report from a third party payroll provider (Administaff) where we can verify the wages in the reconciliation. In addition, there is a line item on the spreadsheet for \$252,527. Can you provide support for this reconciling item? Administaff, the employer of record, will be providing evidence for this support request. Will be sent subsequently.
- 7) Due to MIC Real Estate- Your response noted that this lease is still active. However, the Company does not appear to have made a payment for over a year. Is this amount payable to a related party? MIC Real Estate is owned by a Trust. One of the Trustees of the Trust is B. Douglas Morriss, Chairman of Acartha Group.
- 8) Please see the attached excel file for selections made to test individual transactions (previously requested) for the years ended 12/31/07 and 12/31/08.

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Acartha Group, LLC  
2 Tower Center Boulevard, 20<sup>th</sup> Floor  
East Brunswick, NJ 08816

December 8, 2011

Dear Investor:

We are writing to describe the grave situation confronting Acartha Group, LLC (“Acartha” or the “Company”) and by extension the funds and special purpose vehicles which it manages on your behalf. This letter first gives some background on how Acartha has arrived at its current situation and then provides details on the current financial situation of the Company and the funds it manages. The last part sets forth a recommendation as to how to manage the Company and funds going forward. As detailed in this letter, Acartha has very limited cash reserves, owes substantial amounts to creditors and is on the verge of insolvency.

There are several important exhibits and schedules attached which should be read in conjunction with this letter. These include:

- Financial statements for Acartha, MIC VII, LLC (“MIC VII”) and Acartha Technology Partners, L.P. (“ATP”);
- A statement setting forth your current holdings in Acartha and each investment vehicle, a projection of your possible returns based on a range of assumed exit prices for portfolio companies, and your pro rata ownership percentage;
- A schedule with our estimates of the investments needed in the portfolio companies over the next 24 months in order to protect existing positions;
- A detailed Company budget which addresses the financial challenges and provides for a core staff to manage the Company and the funds; and
- A Summary of Terms outlining a financing structure which would enable the Company to implement the plan detailed in the budget.

**We believe that an Acartha bankruptcy filing or the appointment of a receiver would destroy a large portion of the existing and potential value held today by investors in the Acartha funds. Given the range of potential purchasers, any distressed sale of positions in the portfolio companies would be at a very discounted price and, equally important, the mere perception that an Acartha fund is in a distressed situation will undoubtedly lead co-investors in successful Acartha portfolio companies to take aggressive actions that would increase their ownership percentage at your expense. We will contact you within the next few days to discuss the contents of this letter and your potential participation in the proposed plan to address the immediate challenges.**

**ABSENT SUPPORT FROM INVESTORS TO FINANCE ACARTHA THROUGH Q1 2012 AS OUTLINED IN THIS LETTER, AND ABSENT RECEIPT OF FUNDING BY DECEMBER 21, 2011, THE COMPANY WILL BE FORCED TO COMMENCE WIND-DOWN AND CEASE OPERATIONS ON DECEMBER 31, 2011.**

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### *Background*

For the last several years, Acartha has been attempting to adjust to the adverse fundraising environment for illiquid long term risk capital. Specifically, the Company's attempt to raise a substantial new venture capital fund has not been successful, the portfolio companies in which Acartha's investment vehicles are invested have required more additional rounds of funding than originally expected and, importantly, primarily as a result of not increasing its assets under management, Acartha's costs have outpaced its revenues. In addition, significant loans have been made by the Company to Morriss Holdings, LLC ("MH"), a company controlled by B. Douglas Morriss ("BDM"). Because of the deteriorating financial situation of MH and BDM, and the requirement that Acartha stop soliciting funds for the financing plan for the Company which was designed to enable MH to repay the loans, it now appears that these loans are not currently collectible. The loans are described below in "*Acartha Revenues, Expenses, Assets and Liabilities.*" BDM has affirmed his intention to repay the loans and, as detailed further in this letter, has agreed to cause the entities under his control which are entitled to receive revenue from Acartha funds to pledge such revenues to secure repayment.

Addressing fundraising, investments in portfolio companies and Acartha's expenses in turn:

- After several years of fundraising, ATP had its initial close on September 22, 2008 (seven days after the bankruptcy of Lehman Brothers). At the time of the initial closing, the partners believed that a total of at least \$100mm would be invested and that the final fund size would be \$250mm or more. For a variety of reasons, all generally tied to the economic upheaval of 2008 and 2009, the institutional investors who were expected to invest backed out, and ATP never reached the initial \$100mm size (much less \$250mm). As a result, the management fees which were payable to Acartha Group as service provider for the general partner of ATP were a small fraction of what had been anticipated.
- As a bridge to ATP, and to capture the opportunities available at the time, Acartha had established MIC VII, LLC ("MIC VII") in July 2005. MIC VII invested in several portfolio companies, including Cirqit.com, Integrien, Tervela, Clearbrook Financial, X.eye, Evergrid (later Librato), Granite Edge (later Vantos) and Exegy. At the time they made their investment, investors in MIC VII generally contributed their full commitment amounts. This meant that no additional amounts were available to call from MIC VII investors after the initial investments were made in the portfolio companies. When several of the companies (Tervela, Integrien, Clearbrook Financial and Evergrid (Librato)) needed additional capital, single purpose investment vehicles ("SPVs") were established to provide MIC VII investors with the opportunity to protect the value of their investments through these investment vehicles. None of the SPVs established before 2010 charged a management fee, or explicitly provided for the recovery of expenses. Several did not provide for the payment of carried interest. At the time, the assets under management in these SPVs as compared to the expected size of the ATP fund made it appear that the foregone fees and carried interest would be relatively insignificant compared to the fees and carried interest revenue to be generated by ATP.



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While most of the investors in MIC VII chose to invest in additional rounds of funding for the MIC VII portfolio companies, several significant investors did not, as the expectation was that the ATP fund would cover any additional investment needs for MIC VII portfolio companies. Indeed, once ATP had its initial closing, it was partially able to provide support and thereby prevent punitive dilution for MIC VII investors.

However, because ATP could not raise the funds originally expected, and because the portfolio companies required additional financial support as a result of the economic downturn through “down rounds” (i.e., at lower valuations) of financing, additional requests to the original MIC VII investor base were made during 2008, 2009 and 2010 to protect the value of MIC VII’s investment in the portfolio companies. Again, some but not all of the investors chose to participate and preserve their indirect pro rata interests. In several instances (most notably for Integrien) new investors stepped in to cover the gap. The result has been that in each situation in which Acartha believed that it was in its investors’ best interests to provide additional funding to avoid dilution, conversion, or subordination of existing positions, Acartha accessed additional funding and, thereby, preserved the priority and value (to the extent possible) of the investments previously made. It is important to note that even investors who did not participate in additional financings were protected through these additional funds provided by other Acartha investors, and that existing investors were asked to participate before new funding sources were brought in.

- The net result of a much smaller ATP fund, combined with the structure for the distribution of carried interest in MIC VII and the overall lack of compensation for the manager in the SPVs, resulted in insufficient revenues for Acartha to support its operations. As this became apparent, the Company took several steps to address this imbalance on both the revenue side and the cost side.

On the cost side, since October 2008, the most significant move was to have all senior personnel agree to reduce their salaries by 70 to 80%<sup>1</sup>, with the understanding that if and when either a successful portfolio company liquidity event occurred or Acartha was able to raise additional funds, the compensation foregone would be recovered. Partial deferred salary recoveries occurred after the sale of Integrien to VMware on August 30, 2010. The reduced salaries have continued through 2011. Recently, to reduce expenses as the financial situation deteriorated, several long-time employees were terminated and

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<sup>1</sup> Salaries for Acartha senior employees were reduced effective October 1, 2008, resulting in total compensation paid being reduced from \$2.6mm in 2008 to \$961K in 2009. After adjustments for recent personnel reductions, Acartha’s projected current annual payroll is \$846K. In 2010, after Acartha recovered fees and expenses related to the sale of Integrien, the deferred salary balance (\$3.5mm as of 9/30/10) was reduced by \$1.65mm through payments to employees whose salaries had been previously reduced. The salary deferral balance as of 11/30/11 was \$2.4mm. This deferred balance does not appear on the financial statements of the Company as a liability, although it has been the understanding of the Company and the employees whose salaries had been reduced that the deferred balance would be paid at such time as Acartha had sufficient resources as a result of fundraising or portfolio company liquidity events. Individual and aggregate amounts paid in compensation and carried interest for each of 2009, 2010 and 2011 are set forth on the Compensation Schedule attached to this letter.

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payments to key service providers have been delayed, including payables to the Company's auditors, accounting and legal firms, which, importantly, have generally been willing to work with us while we address the current situation.

On the revenue side, new managers with a focus on other alternative investment strategies were recruited to join the Acartha platform. Several took up residence in the St. Louis office and started to engage in active negotiations and fund raising. At least two managers had closed with sufficient funds such that revenue would have been generated immediately upon joining the Acartha platform. Based upon the projected revenues from these new managers plus revenues from existing Acartha funds, as well as a new hedge fund and venture fund to be run by long-term Acartha employees, a business plan was developed which would have funded the existing and projected expense base while providing an attractive return for new investors as well as the existing Acartha Series A investors. In July, 2011, an investor group provisionally agreed to a term sheet<sup>2</sup> that provided for \$12.5mm of additional funding through the issuance of new Series B

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<sup>2</sup> The term sheet for the Acartha Series B Recapitalization called for the sale of the substantially all of the common shares in Acartha held by Morriss Enterprises, LLC, the issuance of a new series of senior participating preferred stock which was expected not to exceed \$12.5mm and the restructuring of the terms of the existing Acartha Series A Preferred stock to provide for its retirement before distributions were made to common shareholders. Payment of a return on the new Acartha Series B senior participating preferred shares and ultimately the payment of the \$19.766mm preference of the existing Acartha Series A preferred shares was to be largely funded from incremental revenues from new enterprises.

The business plan of the Company prepared in connection with the Series B Recapitalization reflected an overall strategic shift away from reliance on venture capital investment (where returns are back-loaded and variable) toward funds generating increased revenues in a more predictable manner, which would reduce operating risk by increasing the amount and predictability of Company cash flow. An important component was requiring any new manager to be cash flow positive from the moment they joined the Company to avoid incurring incremental expenses without incremental revenues. Reflecting Acartha's macro perspective that markets in general would be bearish and world economies would continue to be stressed for the foreseeable future, but that the growth in information technology would continue even in such an environment, the new enterprises identified in the business plan focused on (i) the increased expenditures in financial services technology in response to greater regulation, (ii) the global food shortage and (iii) specialty finance and opportunistic unlevered investment in real estate (given the macro view that real estate values were headed down before they recovered). New managers in response to these themes that had indicated they would join the Acartha platform were: Lifeline Capital, Sonde Capital, Abaris Capital and affiliated entities, Saturday Capital, and new Acartha funds Acartha Technology Partners II and Acartha Capital, a hedge fund which would invest in public companies in the same financial services information technology area that is the focus of ATP.

Revenue for Acartha would have been generated from each new enterprise by the 25% of net revenues (i.e., management fees after fund level expenses and carried interest) which Acartha would have received (consistent with the arrangements in place for MIC VII and ATP). In exchange for this new revenue, Acartha would have provided management and marketing services and would also have granted to the managers of the new enterprises a common equity interest in Acartha which would have been subordinated to the Series B and Series A Preferred Shares. The structure envisioned that the managements of the various new ventures would generally have been self-sufficient, so that each new venture would have been accretive to overall Acartha cash flow while not having any impact on the existing venture capital investment vehicles. *Consent of the holders of the Acartha Series A Preferred would have been required to implement the Series B Recapitalization.*

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Preferred interests of Acartha (the “Series B Recapitalization”). The proceeds from the Series B Recapitalization were to be used to repay Acartha indebtedness and fund Acartha operations until the new funds identified in the business plan generated sufficient cash flow to make the Company cash flow positive, which was expected to take about a year. In late September it appeared that investors were willing to provide funding on the basis set forth in the term sheet.

But all that changed on September 27<sup>th</sup>, when Acartha received a subpoena from the Securities and Exchange Commission requesting the extensive production of documents. The Company and its officers immediately retained counsel, and on their advice, suspended fund raising efforts. In order to preserve cash, payment of invoices deemed non-essential to the day-to-day operation of the Company was suspended, including payment to the auditors who were working on the audit of Acartha Group and ATP for 2009-2010<sup>3</sup>. Since the delivery of the subpoena to Acartha, the Company has learned that it is the subject of an investigative order issued by the SEC, certain current and former officers have received document subpoenas. BDM has provided testimony to the SEC and another officer of the Company has been subpoenaed to provide testimony. Several Acartha investors have been contacted by the SEC, and we are aware of at least one fund investor who has been subpoenaed to provide documents and testimony. Acartha’s banks have complied with document subpoenas. The end result of this activity has been that all new business activity, including the Series B Recapitalization, has been put on hold<sup>4</sup>.

The balance of this letter first provides a summary of Acartha’s current financial situation by describing its revenues, expenses, assets and liabilities. We then provide an analysis of the existing Acartha funds as well as significant issues with respect to their finances that will have an impact on the investors in those funds. With that background, we outline a proposed financing to keep Acartha from immediate bankruptcy and which, for fund investors, we believe will maximize the value of the existing portfolio in the Acartha investment vehicles while minimizing Acartha expenses.

***Acartha Revenues, Expenses, Assets and Liabilities***

**Acartha Revenues:** Acartha has two streams of revenue: management fees and carried interest. Acartha receives management fees from three sources: MIC VII, ATP and two of the SPVs, Librato Acquisition II, LLC (“LA II”) and the newly formed Tervela Acquisition III, LLC (“TA III”). The aggregate management fee revenue for 2012 expected to be due to Acartha is \$973,200. In addition to management fees, Acartha’s other source of revenue is its right to receive 25% of the aggregate carried interest distributed from MIC VII and ATP, as well as those

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<sup>3</sup> The audit for MIC VII through 12/31/10 has been completed (and is attached) but the auditors have not been paid. The 2007/08 audited financial statements of Acartha are attached, as are the unaudited balance sheets and income statements of Acartha and ATP for the periods ending 12/31/10 and 9/30/11.

<sup>4</sup> On November 29 Ron Nixon, as Co-Trustee of the Bailey Quinn Daniel 1991 Trust, Wilmington Trust as Co-Trustee of the Bailey Quin [sic] Daniel 1991 Trust, JBG Interests, LLC, and HEG Interests LLC (the “Plaintiffs”) filed a summons in the Circuit Court of St. Louis County, Missouri against defendants BDM, Acartha and MIC VII. The Plaintiffs, *inter alia*, allege breach of contract by Acartha and MIC VII and breach of fiduciary duties by Acartha and BDM. The Plaintiffs also request an accounting and the appointment of a receiver for Acartha and MIC VII. Acartha, MIC VII and BDM have engaged counsel who are responding to Plaintiff’s counsel.

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SPVs which provide for the payment of carried interest. Carried interest distributions are made only after a realization event with respect to a portfolio company: for MIC VII, carried interest is paid only after investors have received a return of capital equal to the aggregate amount of capital they have contributed (which amount excludes management fees); for ATP, carried interest is distributed on a per portfolio company investment basis after accounting for the write-offs under GAAP of other portfolio companies held by ATP; and for those SPVs which provide for carried interest, it is distributed generally once the relevant SPV investors have received a return of their capital.

Carried interest distributions by their nature are unpredictable and depend first upon successful exits for portfolio companies. Using current estimates of the exit valuations of the portfolio companies, and applying those exit valuations against the matrix of which funds own what interests in the portfolio companies, and what obligations those funds have before carried interest is distributed to Acartha, the estimate of the aggregate carried interest distribution to Acartha once all companies have liquidity events is \$1.239mm (the “Base Case Projected AG Carry”)<sup>5</sup>. This estimate of course is highly variable, and while we are hopeful that it will prove to be a conservative estimate, the final amount could be zero or even a multiple of the Base Case Projected AG Carry. This estimate does not account for additional supporting investments in current portfolio companies, and it assumes that existing investments in portfolio companies retain their current pro rata ownership interests and priority (preference) in the respective portfolio company capitalization tables. Both assumptions don’t reflect the likely reality – either

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<sup>5</sup> The Base Case Projected AG Carry assumes exits of \$50mm for Tervela, \$50mm for Clearbrook Financial, \$30mm for Librato, \$200mm for Cirqit (which means \$740mm for LogicSource) and \$50mm for Pollen. An exit at these levels results in an aggregate gross distribution of approximately \$75mm to all Acartha entities. These valuations are broadly consistent with the FAS 157 valuations ascribed to the portfolio companies in the audited financial statements of MIC VII (Pollen is not an MIC VII portfolio company). The Base Case Projected AG Carry also assumes a return of the capital invested for Exegy, and a full write-down of the investment in Vantos. The calculation of the Base Case Projected AG Carry is based on the capitalization tables provided by each portfolio company as of 12/31/10 and the investments made in those companies by each Acartha investment vehicle. It does not assume any additional investments (including, for example, the TA III investment in Tervela) are made in portfolio companies. Except for approximately \$1mm in convertible bridge loans made to Tervela, we are not aware of any material changes to the capitalization tables of the portfolio companies since 12/31/10. The Base Case Projected AG Carry is based upon Acartha’s share of an aggregate carried interest distribution of \$4.95mm.

Changes in the exit values for portfolio companies change the aggregate carried interest distribution significantly: for example, if the exit value of Cirqit increases from \$200mm to \$300mm (implying a LogicSource valuation of \$1.11bn), the aggregate carried interest distribution, holding all other variables constant, would increase from \$4.95mm to \$8.74mm (the Acartha share would be \$2.185mm; the aggregate gross distribution to all Acartha entities would be approximately \$94mm). If the Cirqit valuation is increased to \$400mm (i.e., implied LogicSource valuation at \$1.48bn), and Tervela is increased from \$50mm to \$100mm (all other portfolio company valuations held at the valuations for the Base Case Projected AG Carry), the aggregate carried interest distribution would be \$13.882mm (the Acartha Share would be \$3.470mm; the aggregate gross distribution to all Acartha entities would be approximately \$120mm). A downside case of Cirqit valued at \$100mm (implying a LogicSource valuation of \$370mm) and all other companies held at the valuations for the Base Case Projected AG Carry has an aggregate carried interest distribution of \$2.21mm, an Acartha share of \$553K and an aggregate gross distribution of approximately \$61mm. The aggregate capital invested in the Acartha entities is \$63.642mm, excluding the Series A preferred interests of Acartha Group, LLC and Gryphon Investments III, LLC, and the approximately \$350K of capital contributed in 2011 to TA III.



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additional funds will be invested by the existing investors in the portfolio companies or the pro rata ownership interest and priority of the investments already made by those investors will be reduced. The final realized carried interest investment outcome is highly likely to be materially different from the Base Case Projected AG Carry. An important exclusion from the determination of Base Case Projected AG Carry is any carried interest from any new funds which Acartha might establish once the platform has been stabilized. Note that in preparing Scenario A of the Schedule of Individual Member Return Data (which accompanies this letter), we have used the same financial model and the same assumptions as we used to determine Base Case Projected AG Carry to project the gross (i.e., before any fees or expenses) return that might be expected from your current investments. This projected gross return is subject to the same caveats as the calculation of Base Case Projected AG Carry.

**Acartha Expenses:** Acartha expenses through 9/30/11 (unaudited) were \$1,817,742. Excluding the non-cash interest accrual of \$514,770 and depreciation of \$2,422, the actual cash expense through 9/30/11 was \$1,300,550. The largest cash expenditure was compensation and benefits (\$631,089); rent for the St. Louis and East Brunswick offices (\$214,442); and, auditing and consulting/accounting services (\$214,037). As detailed in the Compensation Schedule and the financial statements of Acartha accompanying this letter, the large reduction in Company expenses for 2011 is directly attributable to the reduced compensation paid to the senior employees of the Company and delayed payment to service providers. The budget for 2012 reduces headcount, makes some payments to certain ongoing service providers and provides an increase in compensation to the management team from the unsustainable level of 2011. Details on the 2012 budget are provided in “*Proposed 2012 Plan for Acartha – 2012 Operating Budget*” and in the actual 2012 budget accompanying this letter.

**Acartha Current Assets:** As of December 7, 2011, Acartha has \$18,405 in cash. Acartha has taken forward a portion of management fees from ATP for the first quarter of 2012 in order to extend its ability to operate through December 31, including winding down operations if necessary. This assumes not settling any accounts payable and continuing to pay key personnel at the reduced rates they have been receiving throughout 2011. Certain employees are being notified that they will be terminated as of December 15. Absent additional funding provided by investors, Acartha Group will wind-down operations and terminate all of its remaining employees by December 31. Depending on events, it may have to file for bankruptcy protection on or around that date.

**Other Acartha Assets; the MH Note:** Morriss Holdings, LLC (“MH”) is the obligor under a demand note to Acartha in an aggregate amount of \$6,840,416 (inclusive of interest through 9/30/11) (the “MH Note”). The MH Note consolidates in one global note all amounts which were advanced by Acartha to MH, other entities associated with BDM personally (collectively, “Morriss Entities”) and various creditors of BDM and the Morriss Entities. The advances recorded in the MH Note were not deemed expenses of Acartha. The MH Note replaced a note dated 11/18/08 between ATP and MH as well as a financing arrangement between the Company and BDM pursuant to which BDM had from time to time advanced funds to the Company. The MH Note includes all amounts which were advanced to MH and the Morriss Entities through 9/30/11 including \$2,022,000 in proceeds from the sale of Gryphon Investments III Series A

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membership interests (the “G-III Series A”). See “*Acartha Funds – Acartha Technology Partners, L.P.*” for a description of the G-III Series A transaction.

Since the establishment of Acartha in 2006, BDM had from time to time funded operating deficits of the Company either directly or through MH. For example, in 2008, the last year in which audited financial statements were prepared for the Company, BDM advanced \$780,133 to Acartha. In 2009, the Company repaid the amount borrowed and by 12/31/09 had become a net creditor to MH for \$1,977,622 (including interest) according to the unaudited books and records of the Company. By 12/31/10, the amount due under the MH Note was \$4,242,480 (including interest). The outstanding amount of the MH Note is subject to some adjustments, as the Company completes its audit process, for items such as the allocation of time spent by MH employees on Company matters for 2011. It had been the intention of BDM to cause MH to satisfy the MH Note through the sale or redemption of the common stock of the Company owned by Morriss Enterprises, LLC as part of the Series B Recapitalization. However, given that MH and BDM have limited financial resources and that the Series B Recapitalization has been suspended, the current collectability of any portion of the MH Note must be considered doubtful.<sup>6</sup>

**Acartha Liabilities to Vendors:** As of December 1, 2011, accounts payable aggregated \$594,170. The top five liabilities were to UHY Advisors for accounting services (\$234,975), Holtz Rubenstein Reminick for auditing services (\$72,500), Two Tower Center for back rent (\$81,112), Pryor Cashman for legal services (\$94,110) and Armstrong Teasdale for legal services (\$43,374).

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<sup>6</sup> One asset which may be available to at least partially satisfy the MH note (to the extent not applied against repayment of the financing described later in this letter) is the aggregate carried interest which entities related to or controlled by BDM (each a “BDM Entity”) are entitled to receive from MIC VII and certain of the SPVs (the “BDM Carry”). Under the scenario which generates the Base Case Projected AG Carry of \$1,239,000 for Acartha, the projected BDM Carry would be \$1,710,000. The same variability and caveats apply to the actual amount of BDM Carry ultimately generated as were noted in connection with the determination of the Base Case Projected AG Carry: the BDM Carry could be substantially more, it could be zero but it almost definitely won’t be \$1,710,000. Specifically, increasing the exit value of Cirqit to \$300mm from \$200mm and holding all other exit values constant increases the BDM Carry to \$3,216,430; increasing the exit value of Cirqit to \$400mm and Tervela to \$100mm (from \$50mm) and holding all other exit values constant increases the BDM Carry to \$5,236,748. A downside case with Cirqit’s exit value at \$100mm and all other exit values held constant with the exit values for the Base Case Projected AG Carry generates a BDM Carry of \$616,211.

The BDM Carry is subject to an agreement between Ameet Patel (“AP”) and BDM pursuant to which BDM agreed to grant a net 40% interest in the carried interest of MIC VII and all SPVs in existence at the time of the agreement (March 19, 2009). The amounts of BDM Carry projected above reflect this agreement. Economically, after giving effect to the agreement with AP, the BDM Entities related to MIC VII, Tervela Acquisition, LLC, Tervela Acquisition II, LLC, Evergrid/MIC VII, LLC, and Clearbrook Acquisition, LLC have the right to receive 45% of the aggregate net carried interest (if any) paid by such entities and the BDM Entities related to ATP, LA II, and TA III, LLC have the right to receive 25% of the aggregate net carried interest paid by such entities. The other recipients of carried interest in ATP are AP and the John S. Wehrle Revocable Trust, and in LA II and TA III are AP and T. Wynne Morriss. The payment of carried interest in ATP is subject to the satisfaction of certain preferred interests described below in “*Acartha Funds – Acartha Technology Partners, L.P.*”

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**Other Acartha Liabilities:** Acartha is the obligor under two original issue discount promissory notes (the “OID Notes”) issued to a private investor. The OID Notes require the Company to repay \$5,250,000 in exchange for an advance of \$2,000,000 effective as of December 3, 2010 and \$1,500,000 effective as of January 13, 2011. The terms of the OID Notes provide that if they are not retired by the third anniversary of their respective issuance dates, the investor will be granted a warrant for 1% of the outstanding fully diluted equity of Acartha for each calendar year they remain unpaid, up to a maximum of 7%. It is an event of default if the OID Notes are not paid in full by the tenth anniversary of their respective issuance dates. The OID Notes accelerate upon a bankruptcy of Acartha. Proceeds from the OID Notes were applied to fund Acartha operating expenses; certain amounts advanced thereunder are included in the MH Note.

Acartha is the borrower for each of the loans listed below:<sup>7</sup>

- Acartha is the obligor under a demand note to ATP in an aggregate amount of \$3,775,391 as of September 30, 2011.
- Acartha is the obligor under demand notes with Tervela Acquisition, LLC (“TA”) for \$277,771 and with Tervela Acquisition II, LLC (“TA II”) for \$351,028. As described below under “*Acartha Funds – Acartha Technology Partners, L.P.*,” TA and TA II in turn are the obligors under demand notes to ATP for \$184,755 and \$285,355, respectively.
- Acartha is the obligor under a note payable to a trust affiliated with BDM for \$374,423. This note is for amounts advanced in 2008 from the trust to the Company plus fees and accrued interest.
- Acartha is the obligor to MIC VII for a net amount of \$313,475 as of 9/30/11. This obligation is reduced each month by management fees due Acartha to the extent not paid by MIC VII investor members.
- Acartha advanced \$206,513 to Acartha & Company, LLC (“Acartha & Co.”) to finance a portion of a \$500,000 commitment by Acartha Specialty Finance Investment, LLC (“ASFI”) to invest in Impact Ventures II, L.P., an unrelated venture capital fund. Acartha & Co. is the managing member of ASFI. Certain investors assumed and fully funded 60% of Acartha & Co.’s investment in ASFI. As of 9/30/11, Acartha is the obligor to ASFI for \$134,927 and is the indirect beneficiary through Acartha & Co. of 40% of any amounts received by ASFI as a result of the investment made with the proceeds of the Acartha advance. Acartha & Co.’s share of the unfunded commitment to ASFI is \$89,951. The aggregate amount invested by ASFI in the venture capital fund to date is \$275,122 and the balance of the commitment is \$224,878.

Any amount advanced to Acartha, but then not utilized for Acartha related expenses, is included in the consolidated MH Note.

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<sup>7</sup> All promissory notes have interest set at 1 month LIBOR plus 1.5%, and the amounts due are as of the most recent date of calculation (generally 9/30/11, but in some instances 8/31/11 or 10/31/11.)

### *Acartha Funds*

Acartha manages directly or indirectly two funds which invest in multiple companies, MIC VII and ATP, and ten SPVs which invest (with one exception -- ASFI) in enterprises which are portfolio companies of either or both of MIC VII and ATP. MIC VII, ATP and the SPVs are sometimes referred to as the “Acartha Funds.” The description of the Acartha Funds below focuses on their respective assets, liabilities and any agreements or side letters which affect the cash flow from carried interest or management fees. Please refer to the financial statements accompanying this letter for further details on MIC VII and ATP.

**MIC VII:** Established in 2005, MIC VII has investments in five portfolio companies as of 12/31/10: Tervela (through TA – capital invested: \$910,019), Librato (capital invested: 6,648,124), Clearbrook Financial (capital invested directly and through Clearbrook Acquisition, LLC: \$6,000,000), Exegy (\$500,000) and Cirqit.com (capital invested through notes convertible into Series D-1 preferred shares: \$5,129,073). As of 12/31/10, these investments had a GAAP fair market value of \$22,532,300. The investment in Cirqit.com constituted 52.49% of that value. MIC VII has exited x.eye (distribution net of escrow \$5,474,221) and Integrien (distribution net of escrow \$1,726,563). The investment in Granite Edge (now Vantos) has been valued at zero (basis of \$1,506,904). For each of x.eye and Integrien, one escrow payment has been received and partially distributed and there is one remaining escrow distribution expected to be received in March, 2012.

In September and October, 2010, the managing member of MIC VII contributed \$2,500,000 of additional capital to the fund which was applied to fully discharge an outstanding promissory note of MIC VII payable to Wachovia, N.A. guaranteed by BDM<sup>8</sup>. The source of the \$2,500,000 was an investor group (the “MIC VII New Investors”) which became a preferred interest holder in Acartha Group Funding, LLC, which in turn contributed the capital to MIC VII through Acartha as their common managing member. At the end of the transaction, the loan to Wachovia was extinguished, MIC VII had as an asset a \$2,500,000 loan made to BDM by MIC VII<sup>9</sup>, and through Acartha Group Funding, LLC and Acartha as managing member, the MIC VII New Investors had a 10.63% sharing percentage interest in the distributions of the fund. Members of MIC VII other than the MIC VII New Investors were diluted such that they were entitled to 89.37% of the ongoing distributions of the fund. Acartha and Morriss Enterprises, LLC (“ME”) agreed in a side letter with the representative of the MIC VII New Investors that (i) the MIC VII New Investors were not entitled to any distributions related to x.eye (x.eye sold for cash and stock to Odyssey Financial; Odyssey Financial in turn was sold to Temenos Finance on October 18, 2010) or Integrien (sold to VMware on August 30, 2010), (ii) the MIC VII New Investors would not pay any management fee on their investment and (iii) Acartha would refund to the

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<sup>8</sup> The loan proceeds had been applied to finance the purchase of certain Series B preferred shares of Integrien Corp., an MIC VII portfolio company. The purchase prevented existing preferred positions in Integrien Corp. from being converted into common and/or being substantially diluted.

<sup>9</sup> This loan is booked as a demand note to MIC VII which, with accrued interest, totals \$2,581,975 through 9/30/11).



MIC VII New Investors 50% of any carried interest paid to Acartha after the capital contributed by the MIC VII New Investors had been returned. Acartha and Morriss Enterprises, LLC also agreed to jointly and severally indemnify the MIC VII New Investors against any claim brought by any existing MIC VII investor with respect to the investment and related matters.

**Acartha Technology Partners, L.P.**: ATP was established on September 22, 2008. It has investments in five portfolio companies as of September 30, 2011: Clearbrook Financial (capital invested: \$2,500,000), Pollen, Inc. (capital invested: \$1,654,652); Librato (capital invested: \$1,017,526); Cirqit.com (capital invested through notes convertible into Series D-1 shares (including accrued interest) -- \$960,677) and Tervela (capital invested: \$2,463,553). It has exited Integrien, with a distribution to investors net of the escrow of \$7,859,340. The ATP basis in Integrien was \$6,149,702 and as of 9/30/11 the distribution to investors from the Integrien sale \$8,299,315, which included a partial distribution of the first escrow payment received in September, 2011. The second escrow payment is expected in March, 2012.

As noted above in “*Other Acartha Liabilities*,” ATP holds the following notes from Acartha and SPVs managed by Acartha:

- Acartha Group as the obligor to ATP for a total balance of \$3,775.391;
- TA as the obligor to ATP for \$184,755 (this amount was advanced by ATP to enable TA to invest in Tervela, Inc. in the amount subscribed for by TA investors);
- TA II as the obligor to ATP for \$285,335 (this amount was advanced by ATP to enable TA II to invest in Tervela, Inc. in the amount subscribed for by TA II investors);
- Evergrid/MIC VII, LLC as the obligor to ATP for \$69,773 (this amount was advanced by ATP to enable Evergrid/MIC VII to invest in Evergrid, Inc. (subsequently renamed Librato, Inc.) in the amount subscribed for by Evergrid/MIC VII investors)<sup>10</sup>

***Acartha’s ability to pay the amount due under its note to ATP depends upon Acartha’s ability to generate sufficient positive cash flow after expenses. Absent Acartha collecting on at least a portion of the MH Note, it is not likely to have sufficient resources to meet its obligations to ATP.***

ATP has granted a waiver on the payment of carried interest to limited partners who have contributed \$6,000,000 to the fund.

The general partner of ATP, Gryphon Investments III, LLC (“G-III”), sold \$3,750,000 of Series A Preferred membership interests in G-III (the “G-III Series A Interests”) in 2008 and 2009. Proceeds from the sale were advanced by G-III to Acartha to meet expenses of Acartha. As

<sup>10</sup> ATP also has note receivables relating to investments in convertible notes issued by Cirqit.com, Inc. (\$960,677 as of 9/30/11) and Tervela, Inc. (\$703,969); these investments are included in the aggregate ATP investments in portfolio companies listed above. ATP has a note payable for \$40,824 to MIC VII relating to \$40,000 advanced by MIC VII for the benefit of ATP in connection with ATP’s investment in portfolio company Librato.

noted above in “*Acartha Revenues, Expenses, Assets and Liabilities – Other Acartha Assets; the MH Note*,” \$2,022,000 of the total proceeds raised have been included in the MH Note. The holders of the G-III Series A Interests are entitled to receive from the net management fees payable to G-III a preferred distribution of 10% per annum, which if not paid, is cumulative and accrues. The holders of the G-III Series A Interests have the right to convert their interests into interests in ATP in an amount equal to their original subscription amounts. If not converted, the G-III Series A Interests have a liquidation preference and, in addition to the net management fee (if any) received by G-III, the right to receive cash flow in G-III derived from its right to receive carried interest in ATP. This does not include the 25% of the carried interest which is paid to Acartha. As of 9/30/11, the aggregate amount payable to the holders of the G-III Series A Interests was approximately \$[4.8mm], including the accrued preferred return. As a result of the assets under management in ATP being substantially less than originally projected, it is not anticipated that investors will receive cash flow from carried interest in an amount sufficient to repay investors the amount contributed and accrued interest.

The audit of ATP is in process and is suspended pending the payment of outstanding invoices to Holtz Rubenstein Reminick.

**Single Purpose Investment Vehicles:** Acartha manages ten SPVs, each established to make investments in a single company, which in all but one instance are companies that are also held by MIC VII or ATP. TA, TA II and TA III were established to invest in Tervela, Inc. Evergrid Acquisition, LLC; Evergrid/MIC VII, LLC and LA II were established to invest in Librato, Inc. (originally named Evergrid). Integrien Acquisition, LLC (“IA”) and Integrien Acquisition II, LLC (“IA II”) were established to invest in Integrien Corporation (these will be liquidated once the final Integrien escrow distribution is received in March, 2012). Clearbrook Acquisition, LLC was established to invest in Clearbrook Financial, LLC. ASFI was established to invest in limited partnership interests of Impact Ventures II, L.P. (a fund which invests in technology companies).

Acartha receives a 2% per annum management fee only from LA II and TA III. Management fees are calculated based on capital contributed. The aggregate capital contributed to LA II and TA III is approximately \$2.1 mm. Acartha receives carried interest distributions after investors have received a return of their capital contributed from the following funds: Integrien Acquisition, Integrien Acquisition II, TA II, TA III, LA II and Evergrid/MIC VII. The payment of carried interest in LA II is subject to a waiver of \$500,000 relating to the first \$1.5mm invested by certain investors. Under the documentation as executed, Acartha is not entitled to receive carried interest distribution from any of the other SPVs (Clearbrook Acquisition, Evergrid Acquisition, TA and ASFI). Excluding IA and IA II, the total capital invested in those entities which do provide for carried interest is \$9,456,658 (TA II -- \$5,715,831; TA III -- \$302,182; LA II -- \$1,758,511; and Evergrid/MIC VII -- \$1,680,134).

### *Proposed 2012 Plan for Acartha*

The situation and prognosis for Acartha has dramatically deteriorated in the last nine weeks: In the third week of September it appeared that the Series B Recapitalization was within reach,<sup>11</sup> which would have enabled the MH Note to Acartha to be repaid and would have provided sufficient runway to enable the Company to be in a position to generate positive cash flow through both increased management fees, and the realization of carried interest from investments (such as hedge funds) which generate carried interest on a quicker timetable than venture capital funds. Once the Company became aware of the SEC investigation and suspended the Series B recapitalization, it became clear that an alternative course of action was needed to address the Company's situation and avoid bankruptcy.

We recognize the significance of the information contained in this letter and the attachments. We also strongly believe that there is significant value in the portfolio, and that with proper management and support, that value can be realized. We believe that the key to a satisfactory resolution for investors and for us personally is to be completely transparent with investors about the events which have occurred up to this point in time and to work with investors in whatever manner they desire to obtain the best possible outcome.

There are two fundamental issues which we believe need to be addressed.

The first is providing comfort that the books and records of the Company and the Acartha Funds are in good order. That requires completion of the audits for Acartha and ATP. We also believe that appointment of an administrator to provide fund accounting and investor servicing would help ensure improved reporting, as well the tracking, preparation and delivery of capital account statements and K-1s. Both of these initiatives were planned to be implemented after the close of the Series B Recapitalization; both require the expenditure of additional funds. For the audits, the heavy lifting has already been completed on the Acartha audit, and upon satisfaction of the outstanding invoices of Holtz Rubenstein Reminick, it should be completed in short order. The ATP audit process has started and does not appear to be particularly difficult or expensive as ATP has many common investments with MIC VII, which should expedite the portfolio company valuation process. For the fund administrator, we have received bids for the provision of fund accounting and investor services from two established fund service companies in connection with the proposed Series B Recapitalization; while these will need to be updated, we believe that for approximately \$200,000 an independent administrator would provide basic services and handle all cash coming in to and out of the various funds and SPVs. The addition of an independent fund administrator does not reduce the ongoing expenses for accounting and related services already embedded in the budget for 2012.

The second issue is more difficult: structuring a decision making process which permits investors who are so inclined to support those portfolio companies which they believe will provide profitable returns, taking into account the amounts such investors have already invested in those companies through ATP, MIC VII and/or one or more of the SPVs as well as any new money which may need to be invested. In a traditional fund, the fund manager makes the

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<sup>11</sup> See note 2 for a description of the Series B Recapitalization.

decision to invest more money in an existing fund position or to decide not make further investments. The manager accesses cash to fund additional investments by drawing down on commitments made by investors.

Our sense is that given the overall circumstances, investors are reluctant to make additional commitments to Acartha to manage the existing portfolio in this traditional manner. Instead, reasonably enough, investors want to spend as little as possible and harvest the returns from those companies which are successful while not investing new money into those companies which are destined to fail, or more precisely, which might have an adverse outcome that doesn't return the incremental capital invested. The trick, of course, is being sure which portfolio companies are worth supporting. It is a particularly complicated endeavor when there are potentially very adverse outcomes if additional funds are not invested in a new round of investment. We believe reasonable people can have different views with respect to particular investing situations, and accordingly we believe that any structure needs to accommodate both those who wish to make additional investments and those who prefer to not make additional investments.

Of course, this is venture capital, and investors need to realize that in general, when a portfolio company has a financing round that involves parties in addition to Acartha, that round most often has a "pay to play" provision. This means that if an investor fails to make their pro rata investment, their existing position will be disadvantaged. Most often the penalty is that the preference is lost: what was a senior preferred position becomes common equity, which means that in order to recoup an investment which has been converted, the portfolio company will have to be sold for more than the aggregate remaining preferences before anything is distributed to the common stockholders. Sometimes the penalty is a partial conversion to common if there is partial participation in the round (i.e., more than nothing but less than the pro rata). Sometimes the penalty is that existing investments are wiped out.

In addition, if the round is a "down round" (meaning the valuation on the portfolio company is lower than the valuation in the previous investment round), then failing to make an additional investment results in dilution, often significant, to investors who don't participate in the new round. Even if the transaction documentation provides for anti-dilution protection, the usual situation is for the controlling shareholders to waive that protection. This means that if an investor who is unable to block controlling shareholders has chosen not to invest in the new round, such investor loses their anti-dilution protection, despite their contractual protection (i.e., the protection is waived by the controlling shareholders).

Going forward, we believe that we can provide the most value to investors by giving them the detailed information on a transaction by transaction basis to make informed investing decisions, and then ensuring that those who take the risk of providing additional funding for a particular transaction receive all of the benefits. We also believe that because of the specific investments and our long-term involvement, we are in a good position to help maximize the value of those companies. Specifically, while we can't control macro-economic risk, we have historically been able to provide value to portfolio companies (and thus our investors) by helping them navigate through product development and marketing risks, competitive risks (positioning the portfolio company appropriately against competitors), sales risks (contacting the right individuals in



portfolio company customer organizations that can “close the deal” for significant contracts), management risks (upgrading executive and engineering talent), capital risks (assisting in the raising of funds and locating co-investors to provide financing) and exit risks (positioning portfolio companies for sale).

Despite the current challenges, we believe Acartha overall has delivered good results to its investors, and can continue to do so going forward.

**ASSF:** The attached term sheet describes the establishment of Acartha Special Situations Funding, LLC (“ASSF”) which would obtain commitments from you and other investors to support a reduced Acartha through 2012. The overall amount required (detailed below in “ – 2012 Operating Budget” and in the 2012 Operating Budget attached to this letter) is expected to be between \$1.5mm and \$2.1mm, depending in part on whether a fund administrator is hired and the amount of outside legal fees required.

In addition to enabling the collection and on-lending of the funds needed to cover the projected operating deficit at Acartha for 2012, ASSF would also be an investment vehicle for those investors who choose to support additional rounds of funding for portfolio companies.

For the support of Acartha, contributions to ASSF would be collected and disbursed to Acartha on an as-needed basis pursuant a senior secured loan agreement between ASSF and Acartha (the “Senior Loan”). Interest on the Senior Loan would accrue at a rate of 6% per annum, compounded annually. The Senior Loan would be repaid by the pro rata contribution of all investors who benefit from Acartha avoiding insolvency (that is, investors in ATP, MIC VII, the SPVs and in Acartha). Such contribution would be deducted from amounts otherwise payable to investors from any Acartha source, such as portfolio company liquidity events and carried interest. Because MIC VII and the SPVs require that investors receive their capital back before any carried interest is distributed, it is expected that the initial source of repayment of the Senior Loan will be portfolio company liquidity events. In addition, BDM has agreed to cause the BDM Carry to be pledged to secure the repayment of the Senior Loan. Acartha will pledge its carried interest as well, net of expenses. To the extent that all or a portion of the Senior Loan has been repaid from the pro rata contributions of ATP, MIC VII and SPV investors to ASSF, any BDM Carry will be first be applied to reimburse such investors for the full amount that had been deducted from their distributions to satisfy the repayment of the Senior Loan by Acartha, including interest at 6% per annum, compounded annually. The calculation of amounts deducted from distributions to be applied to enable the Company to repay the Senior Loan to ASSF is determined by the pro rata portion (by capital contributed) of each entity that receives such distribution.

**We are requesting that investors contribute an amount at least equal to their pro rata interest as set forth in the attached Schedule of Individual Member Return Data in order to enable ASSF to have the funding necessary to make the Senior Loan<sup>12</sup>. If insufficient**

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<sup>12</sup> For each investor, the Schedule of Individual Member Return Data sets forth such Member’s pro rata ownership interest in Acartha and the several Acartha investment vehicles. The denominator for determining the pro rata ownership is calculated by summing all capital contributed to ATP, MIC VII and the SPVs (excluding IA, IA II and TA III), the preference of the Series A preferred shares of Acartha and the original issue amount of the G-III Series A. It

**investors participate and Acartha is unable to access the funds required to maintain operations, Acartha will have to file for bankruptcy protection and, if you are an investor in Acartha Group, your investment will be wiped out while if you are an investor in MIC VII, ATP or any SPV, you will have a high likelihood of your venture capital investment being liquidated, sold or converted, resulting in collection of only a fraction of the potential value of such investment.**

In addition to funding the Senior Loan, investors in ASSF will be solicited for each investment that is needed for a portfolio company (other than investments in Librato, which will be made through LA II and for Tervela, which will be made through TA III). These investments in ASSF would be tracked individually and separately from the Senior Loan investments, such that distributions from a portfolio liquidity event received by ASSF would be made pro rata based on the relative amount contributed for the related round(s) of investment. The concept is that only those investors who have made an investment in a particular round would receive proceeds from that round – in other words, instead of each investor having a pro rata sharing percentage of all of the investments of ASSF, such investor would have the right to receive distributions on a pro rata basis with the other investors who participated in that round. This prevents those who don't participate in a round from diluting the returns of those who do participate.

It remains true that to the extent participation by ASSF investors prevents the overall Acartha position from being eliminated, converted to common or otherwise disadvantaged, by avoiding the effects of a pay to play provision, non-participating investors will receive an indirect benefit from the ASSF investors who support the transaction. We note that this is basically what happened in the Integrien transaction – investors participating in the last round of financing (a down round) benefitted from buying shares at a lower price than those who had participated in earlier rounds, but the fact that these later investors participated at all prevented the earlier investors (who chose not to participate) from having their investment converted from a senior preferred position to a junior preferred position.

ASSF would be managed by an LLC which, consistent with the other Acartha Funds, would distribute 25% of any carried interest to Acartha and the balance to the management team as incentive compensation. No carried interest would be distributed with respect to any investment until the members of ASSF funding the Senior Loan as well as all members participating in that investment had received a return of their capital invested.

ASSF is not a permanent plan for Acartha, but we believe that given the current situation, it provides the best way to protect the value of the assets held by the Acartha Funds in the near term (through 2012) while requiring the least commitment of funds. Depending on how events evolve, Acartha could conceivably launch new funds which will lead to increase revenues in 2013 and beyond which could provide revenue possibilities for existing Acartha creditors and Series A investors. It is equally possible that events may make it clear that the best course for both Acartha Fund investors, and Acartha creditors and Series A investors, is an orderly wind-

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excludes the cross-investments of MIC VII in Clearbrook Acquisition, LLC and TA. The sum total of the denominator is \$85,208,667. The numerator is the total such investor has invested in each entity, not adjusted for prior distributions. The resulting percentage is multiplied against an assumed capital raise for ASSF of \$2mm to determine the amount such investor's contribution if such investor chose to support at a pro rata level.

down. Even if investors decide not to make any additional investments in portfolio companies through ASSF, funding the Senior Loan to avoid a disorderly bankruptcy would provide value.

The attached term sheet for ASSF envisions the creation of “ASSF Advisory Council” discussed below in “—*Management of Acartha.*” As noted in the term sheet, the undersigned welcome whatever supervisory structure seems appropriate, including appointing an individual not associated with Acartha to represent the interests of investors. Issues which will need to be considered are the incremental cost and the skill-set of any such representative.

**2012 Operating Budget:** The overall operating budget for 2012 (the “2012 Operating Budget”) is \$1.7mm. In addition, there are \$594,000 in accrued expenses currently owed to providers of ongoing services to the Company (detailed in the 2012 Operating Budget). The sum of this amount, plus the \$160,000 needed to fund the Company in December, exceeds scheduled management fees by \$1.49mm. This is the projected immediate deficit. The 2012 Operating Budget contains further details about the assumptions underlying the proposed operating plan.

The 2012 Operating Budget assumes that the personnel currently housed in the East Brunswick New Jersey office operate the Company, with assistance from UHY Advisors for accounting and tax matters, and Holtz Rubenstein Reminick for audit matters. The St. Louis office, which Acartha shared with MH (the lessee), will be closed after production of the documents needed to respond to the SEC subpoenas. AP will continue his current role with the companies that he has been primarily involved with over the last two years (Tervela and Librato; previously Ameet had been very involved with Integrien (sold last year)) and will assume responsibility from BDM for the other portfolio companies. Currently, BDM sits on the boards of Tervela, Librato, Pollen and LogicSource (Cirqit.com owns approximately 27% of LogicSource), and, depending on events, may continue to represent the Acartha Funds on the boards of Pollen and/or LogicSource. Service as a member of the board of any portfolio companies will be subject to obtaining satisfactory director and officer’s insurance coverage.

The 2012 Operating Budget is structured to minimize the out-of-pocket advances from investors by delaying certain expenditures until such time as distributions from existing closed transactions (Integrien, x.eye) are received in March, at which point accrued management fees are collected and advance fees are collected as well against the distributions. **We project that \$685,000 in funding is needed to cover expenses until then.** This funding would enable the Company to make partial payments to UHY so that they can continue to provide financial support (particularly with respect to tax preparation and timely distribution of K-1’s as well as other analytical support). It would also allow Holtz Rubenstein Reminick to resume their audits of Acartha and ATP. Payments to the landlord of the East Brunswick office are included as well as compensation to the 2012 Management Team and other required operating expenses. This amount does not include payments to any fund administrator, ongoing legal expense beyond a minimal amount, or payments to any third party representative of investors.

**Management of Acartha:** BDM has agreed take a leave of absence from the day-to-day management of Acartha and hand over operational control while he attends to his personal matters. Our current expectation is that for administrative reasons BDM would retain his current title at Acartha and therefore would be available to execute documentation relating to the

Acartha Funds. This avoids a costly and premature redrafting of corporate and fund documentation. BDM stays on the payroll at a minimal rate in order to qualify for medical insurance in exchange for cooperating in the transition and generally assisting where appropriate, especially with respect to the portfolio companies where he has particular institutional knowledge, such as Cirqit/LogicSource.

The management team for 2012 would consist of Ameet Patel, Chief Technology Officer; T. Wynne Morriss, General Counsel; and Dixon Brown, Chief Administrative Officer (the “2012 Management Team”). We suggest that an advisory group be formed consisting of representative interested members of Acartha and the Acartha Funds who provide the interim financing (the “ASSF Advisory Council”). As noted above, an alternative approach would be for investors directly, or through the ASSF Advisory Council, to appoint a non-Acartha individual to act on behalf of the council and otherwise supervise the activities of the 2012 Management Team. Over the course of the year, in addition to providing ASSF members with information and recommendations on specific investment decisions, the 2012 Management Team would provide timely reports on Acartha and the portfolio companies to the ASSF Advisory Council (in addition to providing the reports required under the documentation governing the various Acartha Funds). The ASSF Advisory Council or its designee could also approve expenses not set forth in the 2012 Operating Budget, determine matters relating to the audits of the Company and the funds and otherwise provide such supervision as it determines is in the best interests of investors. Assuming that investors agree to support Acartha during 2012 through ASSF, the 2012 Management Team would continue to work in good faith at Acartha and would work with investors, and any third parties engaged by the investors, to address the issues facing the Company and the Acartha Funds.

As the portfolio develops and events evolve, the ASSF Advisory Council would determine the terms and conditions, if any, under which they might be willing to provide continued support for Acartha and the Acartha Funds. While the 2012 Management Team is hopeful that a long-term strategy can be developed for Acartha which provides a return for Acartha investors as well as opportunities for the members of the team, we also recognize that there are many uncertainties at the present time and it is premature to form a more permanent plan until at least some of those uncertainties are resolved.

BDM has reviewed this letter and indicated to us that he fully backs this plan and believes it is the best and most cost-efficient way to move forward. In exchange for the Company agreeing to forebear on the collection of the MH Note until such time as all investigations by government agencies are finally resolved, in addition to securing repayment of amounts contributed to fund the Senior Loan, BDM also has agreed to cause the BDM Entities to enter into such security agreements as are required to apply the BDM Carry (described in footnote 6 of this letter) to repay any remaining balance of the MH Note.

Given the cash situation of the Company, time is of the essence and accordingly we look forward to discussing the overall situation and this proposal to you in the next few days. Finally, while we cannot predict the outcome for the Company or the investments which it manages on your behalf, we do believe that the plan outlined here will lead to a better result for you than either an



Acartha bankruptcy or attempting to transfer the portfolio of the Acartha Funds to new managers before stabilizing the platform.

*This plan is designed to buy some time so that Acartha and Acartha Fund investors can understand their options, decide what is in their best interests and make appropriate decisions while at the same time ensuring that the value of their existing investments is not precipitously destroyed through a bankruptcy filing of Acartha, which, absent support from investors, will probably become inevitable within the next 30 days.*

It is our sincere hope that together we can manage our way through this very difficult situation and realize the value that remains within Acartha and the Acartha Funds. Despite the challenges, we think this value can be harvested for our mutual benefit.

Please direct any questions you may have on this letter to the Company's General Counsel, Wynne Morriss, at 732-289-3368.

Very truly yours,

Ameet Patel

T. Wynne Morriss

Dixon R. Brown

Attachments: Schedule of Individual Member Return Data  
Schedule of Investments in Portfolio Companies  
Compensation Schedule  
2012 Operating Budget  
Acartha Special Situations Funding Summary of Terms  
Unaudited 12/31/10 and 9/30/11 Balance Sheet and Income Statement of Acartha  
Unaudited 12/31/10 and 9/30/11 Balance Sheet and Income Statement of ATP  
MIC VII 12/31/10 Audited Financial Statements  
Acartha Group 12/31/08 Audited Financial Statements

BI (Official Form 1)(12/11)

United States Bankruptcy Court District of Delaware		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): <b>Acartha Group, LLC</b>		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) <b>86-1065996</b>		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): <b>Two Tower Center Boulevard 20th Floor East Brunswick, NJ</b>		Street Address of Joint Debtor (No. and Street, City, and State):
ZIP Code <b>08816</b>		ZIP Code
County of Residence or of the Principal Place of Business: <b>Middlesex</b>		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
ZIP Code		ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above):		
<b>Type of Debtor</b> (Form of Organization) (Check one box) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	<b>Nature of Business</b> (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other	<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
<b>Chapter 15 Debtors</b> Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:	<b>Tax-Exempt Entity</b> (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	<b>Nature of Debts</b> (Check one box) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.
<b>Filing Fee</b> (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<b>Chapter 11 Debtors</b> Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
<b>Statistical/Administrative Information</b> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
<b>Estimated Number of Creditors</b> <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> OVER 100,000		
<b>Estimated Assets</b> <input checked="" type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): <b>Acartha Group, LLC</b>	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years</b> (If more than two, attach additional sheet)			
Location Where Filed: <b>- None -</b>	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor</b> (If more than one, attach additional sheet)			
Name of Debtor: <b>See Attachment</b>	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<p style="text-align:center;"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>	<p style="text-align:center;"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).</p> <p><b>X</b> _____ Signature of Attorney for Debtor(s) (Date)</p>		
<b>Exhibit C</b>			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?			
<input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.			
<b>Exhibit D</b>			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)			
<input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
<b>Information Regarding the Debtor - Venue</b> (Check any applicable box)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input checked="" type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)  <div style="text-align:center;">_____</div> (Name of landlord that obtained judgment)			
<div style="text-align:center;">_____</div> (Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

<p><b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i></p>	<p>Name of Debtor(s): <b>Acartha Group, LLC</b></p>
<p style="text-align: center;"><b>Signatures</b></p> <p style="text-align: center;"><b>Signature(s) of Debtor(s) (Individual/Joint)</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><b>X</b> _____ Signature of Debtor</p> <p><b>X</b> _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (If not represented by attorney)</p> <p>_____ Date</p>	<p style="text-align: center;"><b>Signature of a Foreign Representative</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.</p> <p><input type="checkbox"/> Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p><b>X</b> _____ Signature of Foreign Representative</p> <p>_____ Printed Name of Foreign Representative</p> <p>_____ Date</p>
<p style="text-align: center;"><b>Signature of Attorney*</b></p> <p><b>X</b> <u>/s/ David L. Finger</u> Signature of Attorney for Debtor(s)</p> <p><u>David L. Finger 2556</u> Printed Name of Attorney for Debtor(s)</p> <p><u>Finger &amp; Slanina, LLC</u> Firm Name</p> <p><u>1201 N. Orange Street</u> <u>7th Floor</u> <u>Wilmington, DE 19801-1186</u> Address</p> <p style="text-align: right;">Email: <u>dfinger@delawgroup.com</u></p> <p><u>(302) 573-2525 Fax: (302) 573-2524</u> Telephone Number</p> <p><u>January 8, 2012</u> Date</p> <p><small>*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</small></p>	<p style="text-align: center;"><b>Signature of Non-Attorney Bankruptcy Petition Preparer</b></p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p><b>X</b> _____ Date</p> <p>Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.</p> <p>Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:</p>
<p style="text-align: center;"><b>Signature of Debtor (Corporation/Partnership)</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><b>X</b> <u>/s/ Dixon R. Brown, Trustee of the BDM 1996 Irrevocable Trust,</u> Signature of Authorized Individual</p> <p><u>Dixon R. Brown, Trustee of the BDM 1996 Irrevocable Trust</u> Printed Name of Authorized Individual</p> <p><u>as Man. Mem. of Morriss Ent., 100% equity owner of Debtor</u> Title of Authorized Individual</p> <p><u>January 8, 2012</u> Date</p>	<p>_____ Address</p> <p><b>X</b> _____ Date</p> <p>Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.</p> <p>Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><i>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.</i></p>



In re Acartha Group, LLC  
Debtor

Case No. \_\_\_\_\_

**FORM 1. VOLUNTARY PETITION**  
**Pending Bankruptcy Cases Filed Attachment**

<u>Name of Debtor / District</u>	<u>Case No. / Relationship</u>	<u>Date Filed / Judge</u>
<b>Acartha Technology Partners, L.P. Delaware</b>	<b>pending Affiliate</b>	<b>01/08/12 pending</b>
<b>MIC VII, LLC Delaware</b>	<b>pending Affiliate</b>	<b>01/08/12 pending</b>

**OFFICER'S CERTIFICATE**

I, T. Wynne Morriss, the General Counsel of Acartha Group, LLC (the "Company") hereby attest and certify that the resolutions attached hereto as Exhibit A (the "Resolutions") were duly adopted by unanimous vote at a meeting of the Board of Directors of the Company held via telephone conference call on January 7<sup>th</sup>, 2012. The meeting was convened in accordance with the Company's Amended and Restated Limited Liability Company Agreement dated as of March 1, 2006 (the "LLC Agreement"), and each Director attending the meeting waived the provisions of the LLC Agreement regarding the provision of advance notice for meetings of the Board of Directors.

IN WITNESS WHEREOF, I have executed this Officer's Certificate as of this 7<sup>th</sup> day of January, 2012.

By:   
T. Wynne Morriss

General Counsel, Acartha Group LLC

Exhibit A

ACARTHA GROUP, LLC, a Delaware limited liability company  
(The "Company")

RESOLUTIONS  
OF THE  
BOARD OF DIRECTORS  
("Board of Directors")

RESOLVED, that in the judgment of the Board of Directors of the Company, it is desirable and in the best interests of the Company, its creditors, members, employees, investors and other interested parties that a petition be filed by the Company seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code");

FURTHER RESOLVED, that any individuals duly elected or appointed by the Board of Directors as the President, Vice President, Secretary, Treasurer or Chief Restructuring Officer (each, an "Authorized Officer" and together, the "Authorized Officers") are, and each of them is, hereby authorized and empowered on behalf of, and in the name of, the Company to execute and verify or certify a petition under chapter 11 of the Bankruptcy Code and to cause the same to be filed in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") at such time as said Authorized Officer executing the same shall determine and in such form or forms as such Authorized Officer may approve;

FURTHER RESOLVED, that the law firm of Jacobs Partners LLC, 380 Madison Ave., New York, NY 10017 be, and hereby is, retained and employed as attorneys for the Company in connection with the prosecution of the Company's case under chapter 11 of the Bankruptcy Code;

FURTHER RESOLVED, that the law firm of Finger & Slanina, LLC, One Commerce Center, 1201 N. Orange St., 7th floor, Wilmington, DE 19801-1186000, be, and hereby is, retained and employed as Delaware attorneys for the Company in connection with the prosecution of the Company's case under chapter 11 of the Bankruptcy Code;

FURTHER RESOLVED, that Robert I. Hanfling be, and hereby is, retained and employed as Chief Restructuring Officer in connection with the prosecution of the Company's case under chapter 11 of the Bankruptcy Code

FURTHER RESOLVED, that each of the Authorized Officers be, and each of them hereby is, authorized to execute and file any and all petitions, schedules, motions, lists, applications, pleadings, and other papers, and to take any and all further actions which the Authorized Officers or the Company's legal counsel may deem necessary or appropriate to file the voluntary petition for relief under chapter 11 of the Bankruptcy Code, and to take and perform any and all further acts and deeds which they deem necessary, proper or desirable in connection with the chapter 11 case, with a view to the successful prosecution of such case including, without limitation, seeking authority to guarantee or borrow, and borrowing, amounts under any post-petition financing facility for itself or its affiliates, and granting liens, guarantees,

pledges, mortgages and/or other security therefor and filing financing statements, mortgages, intellectual property security agreements and other documents related thereto;

FURTHER RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized to employ and retain such additional legal counsel, financial advisors, accountants and other professionals, as such Authorized Officers deem necessary and advisable to advise the Company in connection with its case under chapter 11 of the Bankruptcy Code;

FURTHER RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized and directed on behalf of the Company to take such actions to make, sign, execute, acknowledge and deliver (and record in the relevant office of the secretary of state or the county clerk, if necessary) any and all such agreements listed above (including exhibits thereto), including any and all affidavits, orders, directions, certificates, requests, receipts, financing statements, or other instruments as may reasonably be required to give effect to these Resolutions, and to execute and deliver such agreements (including exhibits thereto) and related documents, and to fully perform the terms and provisions thereof;

FURTHER RESOLVED, that the Authorized Officers, be, and each of them hereby is, authorized on behalf of, and in the name of, the Company to execute any and all plans of reorganization under chapter 11 of the Bankruptcy Code, including any and all modifications, supplements, and amendments thereto, and to cause the same to be filed in the Bankruptcy Court at such time as said Authorized Officer executing the same shall determine;

FURTHER RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized and directed on behalf of the Company, to take such actions and to make, sign, execute, acknowledge and deliver all such additional documents, agreements and certificates as may be reasonably required to give effect to the consummation of the transactions contemplated by these Resolutions and any chapter 11 plan of reorganization, and to execute and deliver such documents, agreements and certificates, and to fully perform the terms and provisions thereof; and

FURTHER RESOLVED, that to the extent that any of the actions authorized by any of these Resolutions have been taken by the Authorized Officers of the Company on its behalf, such actions are hereby ratified and confirmed in their entirety.



B4 (Official Form 4) (12/07)

**United States Bankruptcy Court**  
**District of Delaware**

In re **Acartha Group, LLC**

Debtor(s)

Case No.

Chapter

**11**

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	<i>Amount of claim [if secured, also state value of security]</i>
<b>Ameet Patel 32 Fairhand Court Bridgewater, NJ 08807</b>	<b>Ameet Patel 32 Fairhand Court Bridgewater, NJ 08807</b>	<b>Employee Claim</b>		<b>1,130,420.68</b>
<b>Armstrong Teasdale 7700 Forsythe Blvd. Suite 1800 Saint Louis, MO 63105</b>	<b>Armstrong Teasdale 7700 Forsythe Blvd. Suite 1800 Saint Louis, MO 63105</b>	<b>Trade Debt</b>		<b>43,374.27</b>
<b>B. Douglas Morriss 7820 Maryland Avenue Saint Louis, MO 63105</b>	<b>B. Douglas Morriss 7820 Maryland Avenue Saint Louis, MO 63105</b>	<b>Trade Debt</b>		<b>1,579.86</b>
<b>B. Douglas Morriss 7820 Maryland Avenue Saint Louis, MO 63105</b>	<b>B. Douglas Morriss 7820 Maryland Avenue Saint Louis, MO 63105</b>	<b>Employee Claim</b>		<b>1,053,333.33</b>
<b>Barbara B. Morriss Marital Trust 7820 Maryland Avenue Saint Louis, MO 63105</b>	<b>Barbara B. Morriss Marital Trust 7820 Maryland Avenue Saint Louis, MO 63105</b>	<b>Note Payable</b>		<b>376,140.56</b>
<b>Christian Leedy 2464 Taylor Road PO Box 109 Wildwood, MO 63040</b>	<b>Christian Leedy 2464 Taylor Road PO Box 109 Wildwood, MO 63040</b>	<b>Employee Claim</b>		<b>61,068.33</b>
<b>Corporation Service Company PO Box 13397 Philadelphia, PA 19101-3397</b>	<b>Corporation Service Company PO Box 13397 Philadelphia, PA 19101-3397</b>	<b>Trade Debt</b>		<b>14,418.78</b>
<b>Dechert LLP PO Box 7247-66643 Philadelphia, PA 19170-6643</b>	<b>Dechert LLP PO Box 7247-66643 Philadelphia, PA 19170-6643</b>	<b>Trade Debt</b>		<b>20,492.50</b>
<b>Dixon Brown 1192 Park Avenue Apt. 5-E New York, NY 10128</b>	<b>Dixon Brown 1192 Park Avenue Apt. 5-E New York, NY 10128</b>	<b>Employee Claim</b>		<b>424,856.99</b>
<b>Eric Sarasin Schaffuasernheinweg 87 5408 Basel Switzerland</b>	<b>Eric Sarasin Schaffuasernheinweg 87 5408 Basel</b>	<b>Note Payable</b>		<b>5,626,140.56</b>

B4 (Official Form 4) (12/07) - Cont.

In re **Acartha Group, LLC**

Case No. \_\_\_\_\_

Debtor(s) \_\_\_\_\_

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**  
(Continuation Sheet)

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	<i>Amount of claim [if secured, also state value of security]</i>
<b>First Insurance Funding Corp. PO Box 66468 Chicago, IL 60666-0468</b>	<b>First Insurance Funding Corp. PO Box 66468 Chicago, IL 60666-0468</b>	<b>Contractual Obligations</b>		<b>46,086.48</b>
<b>Holtz Rubenstein Reminick LLP 1430 Broadway New York, NY 10018-3308</b>	<b>Holtz Rubenstein Reminick LLP 1430 Broadway New York, NY 10018-3308</b>	<b>Trade Debt</b>		<b>72,500.00</b>
<b>Level 3 Communications PO Box 931843 Atlanta, GA 31193-1843</b>	<b>Level 3 Communications PO Box 931843 Atlanta, GA 31193-1843</b>	<b>Contractual Obligations</b>		<b>6,312.00</b>
<b>Long Grove Ventures LLC 10 South Riverside Plaza Suite 1800 Chicago, IL 60606</b>	<b>Long Grove Ventures LLC 10 South Riverside Plaza Suite 1800 Chicago, IL 60606</b>	<b>Trade Debt</b>		<b>7,737.36</b>
<b>Pryor Cashman LLP 7 Times Square New York, NY 10036</b>	<b>Pryor Cashman LLP 7 Times Square New York, NY 10036</b>	<b>Trade Debt</b>		<b>29,109.90</b>
<b>Thomas Wynne Morriss, Jr. 71 Overlook Road Hastings on Hudson, NY 10706</b>	<b>Thomas Wynne Morriss, Jr. 71 Overlook Road Hastings on Hudson, NY 10706</b>	<b>Employee Claim</b>		<b>441,627.00</b>
<b>Tower Center II Investment Group, LLC PO Box 6076 Hicksville, NY 11802-6076</b>	<b>Tower Center II Investment Group, LLC PO Box 6076 Hicksville, NY 11802-6076</b>	<b>Contractual Obligations</b>		<b>325,919.50</b>
<b>UHY Advisors 15 Sunnen Drive Suite 100 Saint Louis, MO 63143-3801</b>	<b>UHY Advisors 15 Sunnen Drive Suite 100 Saint Louis, MO 63143-3801</b>	<b>Trade Debt</b>		<b>206,731.00</b>
<b>Verizon P.O. Box 4830 Trenton, NJ 08650-4830</b>	<b>Verizon P.O. Box 4830 Trenton, NJ 08650-4830</b>	<b>Trade Debt</b>		<b>322.99</b>
<b>Zurich North America 8712 Innovation Way Chicago, IL 60682-0087</b>	<b>Zurich North America 8712 Innovation Way Chicago, IL 60682-0087</b>	<b>Contractual Obligations</b>		<b>1,939.50</b>

B4 (Official Form 4) (12/07) - Cont.

In re **Acartha Group, LLC**

Debtor(s)

Case No. \_\_\_\_\_

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**  
(Continuation Sheet)

**DECLARATION UNDER PENALTY OF PERJURY  
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, the as Man. Mem. of Morriss Ent., 100% equity onwer of Debtor of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date **January 8, 2012**

Signature

**/s/ Dixon R. Brown, Trustee of the BDM 1996  
Irrevocable Trust,  
Dixon R. Brown, Trustee of the BDM 1996 Irrevocable  
Trust,  
as Man. Mem. of Morriss Ent., 100% equity onwer of  
Debtor**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.

ACARTHA GROUP, LLC  
TWO TOWER CENTER BOULEVARD  
20TH FLOOR  
EAST BRUNSWICK, NJ 08816

DIXON BROWN  
1192 PARK AVENUE  
APT. 5-E  
NEW YORK, NY 10128

UHY ADVISORS  
15 SUNNEN DRIVE  
SUITE 100  
SAINT LOUIS, MO 63143-3801

DAVID L. FINGER  
FINGER & SLANINA, LLC  
1201 N. ORANGE STREET  
7TH FLOOR  
WILMINGTON, DE 19801-1186

ERIC SARASIN  
SCHAFFUASERNHEINWEG 87  
5408 BASEL  
SWITZERLAND

VERIZON  
P.O. BOX 4830  
TRENTON, NJ 08650-4830

AMEET PATEL  
32 FAIRHAND COURT  
BRIDGEWATER, NJ 08807

FIRST INSURANCE FUNDING CORP.  
PO BOX 66468  
CHICAGO, IL 60666-0468

ZURICH NORTH AMERICA  
8712 INNOVATION WAY  
CHICAGO, IL 60682-0087

ARMSTRONG TEASDALE  
7700 FORSYTHE BLVD.  
SUITE 1800  
SAINT LOUIS, MO 63105

HOLTZ RUBENSTEIN REMINICK LLP  
1430 BROADWAY  
NEW YORK, NY 10018-3308

B. DOUGLAS MORRISS  
7820 MARYLAND AVENUE  
SAINT LOUIS, MO 63105

LEVEL 3 COMMUNICATIONS  
PO BOX 931843  
ATLANTA, GA 31193-1843

BARBARA B. MORRISS MARITAL TRUST  
7820 MARYLAND AVENUE  
SAINT LOUIS, MO 63105

LONG GROVE VENTURES LLC  
10 SOUTH RIVERSIDE PLAZA  
SUITE 1800  
CHICAGO, IL 60606

CHRISTIAN LEEDY  
2464 TAYLOR ROAD  
PO BOX 109  
WILDWOOD, MO 63040

PRYOR CASHMAN LLP  
7 TIMES SQUARE  
NEW YORK, NY 10036

CORPORATION SERVICE COMPANY  
PO BOX 13397  
PHILADELPHIA, PA 19101-3397

THOMAS WYNNE MORRISS, JR.  
71 OVERLOOK ROAD  
HASTINGS ON HUDSON, NY 10706

DECHERT LLP  
PO BOX 7247-66643  
PHILADELPHIA, PA 19170-6643

TOTAL PRINTING CENTER  
89 TAYLOR AVENUE  
NORWALK, CT 06854

DEER PARK DIRECT  
BOX 856192  
LOUISVILLE, KY 40285-6192

TOWER CENTER II INVESTMENT GROUP, LLC  
PO BOX 6076  
HICKSVILLE, NY 11802-6076



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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

**CERTIFICATION OF HANY TEYLOUNI**

I, Hany Teylouni, hereby certify as follows:

1. I am over the age of eighteen, make this certification of my own personal knowledge and am competent to testify as a witness if called to do so in this matter.
2. I hold a Masters degree in Mathematics and Computer Science from the University of Geneva. I have no degrees in finance, accounting, or related disciplines.
3. In or about July 2006, I was hired as Managing Director of Acartha Technology Partners, LLC (“ATP”). A copy of my employment agreement is annexed hereto as Exhibit A.<sup>1</sup>
4. My responsibilities as a Managing Director included overseeing and managing ATP’s internal technology infrastructure (e.g., ensuring that ATP’s telephone and email systems were functioning), and conducting due diligence on the technological aspects of companies in which Acartha Group, LLC (“Acartha”) or one of its subsidiary entities was considering

<sup>1</sup> I note that my employment agreement indicates that I was hired on July 3, 2005. That is not correct and I believe inclusion of the July 3, 2005 date in my employment agreement is a mistake.

investing. While an employee of ATP, I conducted due diligence into the technological aspects of approximately 50 companies in which Acartha or one of its subsidiary entities was considering investing.

5. As Managing Director of ATP, I reported to Ameet Patel, the CTO of Acartha and CEO of ATP. I delivered the work product of my due diligence investigations to Mr. Patel. Occasionally, I participated in telephone conferences with members of Acartha's management team during which my due diligence was discussed.

6. I had no role in deciding whether ATP, Acartha, or any Acartha subsidiary would ultimately invest in a particular company. I was unaware at the time, and do not know today, whether Acartha or a subsidiary entity invested in any of the companies on which I conducted due diligence. I did not know during my employment, and do not know presently, the identity of any investors in Acartha or its subsidiaries.

7. In or about 2006 and 2007, I participated in a limited number of telephone conferences with potential investors. I do not know whether those potential investors ultimately invested in Acartha or one of its subsidiaries. In or about 2008, I ceased to be involved in fundraising telephone calls and participated in no other fundraising activities.

8. During my employment with ATP, I was unaware of the financial condition of Acartha and its subsidiaries. I neither prepared, reviewed, nor was offered to review, financial documents for Acartha, ATP, or any other Acartha subsidiary. Only when I was informed in or about October 2008 that a portion of ATP's employees' salaries would need to be deferred did I understand the financial condition of the company.

9. Other than regular payroll payments, I received no property (including but not limited to carried interest and equity compensation) from Acartha, ATP, or any of Acartha's

subsidiaries while employed by ATP. I received no payments or property of any kind from Acartha, ATP, or any of Acartha's subsidiaries after I resigned from ATP.

10. I resigned as Managing Director of ATP in or about February, 2010. At that time I joined LogicSource as its CTO.

11. When I resigned as Managing Director of ATP, I understood that ATP was obligated to pay my deferred salary and that payment was not conditioned on a liquidity event or any other condition precedent.

12. I have reviewed the Complaint for Injunctive and Other Relief, dated January 17, 2011, Filed by the Securities and Exchange Commission against Burton Douglass Morriss and others.

13. While employed at ATP, I had no knowledge of the personal transfers or loans to Mr. Morriss or Morriss Holdings, or of any related party transaction, alleged in the Complaint. Similarly, I had no knowledge of either the "netting agreement" or promissory notes referenced in the Complaint.

14. I understood that Mr. Morriss was wealthy and believed much of his wealth was inherited. I had no knowledge of the financial difficulties allegedly experienced by Mr. Morriss or of his efforts to address those difficulties.

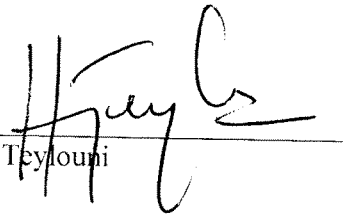
15. I am unaware whether or not Mr. Morriss, Acartha Group, MIC VII, ATP, or Gryphon Investments failed to disclose that Mr. Morris would or could use investor proceeds for personal use.

16. I had no role in the preparation, review, or dissemination of offering and operating documents of ATP, or of those of Acartha or any Acartha subsidiary.

17. I had no knowledge of the alleged defrauding of MIC VII and Gryphon Investment Investors alleged in the Complaint.

FURTHER DECLARANT SAYETH NAUGHT

I swear under penalty of perjury on this 27th day of June, 2014 that the foregoing is true and correct.

  
\_\_\_\_\_  
Hany Teylouni

**EXHIBIT O**

**Kraft, Kathleen E.**

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**From:** Christian Leedy  
**Sent:** Thursday, April 15, 2010 3:16 PM  
**To:** Dixon Brown  
**Subject:** RE: Model Information

Bye Bye...

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From: Dixon Brown  
Sent: Thursday, April 15, 2010 2:16 PM  
To: Christian Leedy  
Subject: RE: Model Information

Note - on the schedule I keep I will be adjusting it to eliminate Hany and Fester....or do you want one with them in as well.

From: Christian Leedy  
Sent: Thursday, April 15, 2010 3:13 PM  
To: Dixon Brown  
Subject: Model Information

Dix:

While waiting for Brian to scan all the K1s, I am starting to build the model to show what is needed to pay back all obligation of AG and related funds. One item I want to build into that is the payroll deferrals. Could you send me an update of that tally for the group?

Thanks