

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, and)
)
MORRISS HOLDINGS, LLC,)
)
Relief Defendant.)
_____)

**MEMORANDUM OF LAW IN SUPPORT OF
RECEIVER'S MOTION TO APPROVE PLAN OF DISTRIBUTION, APPROVE
SCHEDULE OF CLAIMS, AUTHORIZE DISTRIBUTIONS OF RECEIVERSHIP
ASSETS, AND APPROVE PARTIAL PAYMENT OF HOLDBACK AMOUNT
PERTAINING TO LEGAL AND PROFESSIONAL SERVICES RENDERED BY THE
RECEIVER, RETAINED COUNSEL, AND OTHER PROFESSIONALS**

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Receiver Claire M. Schenk, in her capacity as receiver (“Receiver”) for Acartha Group, LLC (“Acartha”), MIC VII, LLC (“MIC VII”), Acartha Technology Partners, L.P. (“ATP”), and Gryphon Investments III, LLC (“Gryphon III”) (collectively, the “Receivership Entities”), submits this memorandum of law (“Memorandum”) in support of her proposed distribution plan, which is set forth in this Memorandum and attached Exhibits (the “Distribution Plan” or “proposed Distribution Plan”). The Receiver submitted this Memorandum and the proposed Distribution Plan to the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) for review and comment prior to submission to the Court. The Commission has no objection to the Distribution Plan.

I. BACKGROUND

A. The Receivership Entities

Acartha is a Delaware limited liability company incorporated in February 2003, with its principal place of business formerly in Clayton, Missouri. Prior to the creation of this Receivership, it also maintained an office in East Brunswick, New Jersey. Acartha was established as a private equity fund management company. Acartha managed MIC VII and ATP. Acartha served as the managing member of MIC VIII and also managed Gryphon III. Burton Douglas Morriss (“Morriss”) operated as Acartha’s CEO and served as the chairman of its board of directors. *See* Complaint and Ex Parte Emergency Motion for Appointment of Receiver (the “*SEC Complaint*”) (ECF No. 1).

MIC VII is a Delaware limited liability company incorporated in March 2005, with its principal place of business formerly in Clayton, Missouri. MCI VII is a private equity fund formed to invest in early-to-mid-stage companies primarily in the financial and technology sectors. *See id.*

ATP is a Delaware limited partnership organized in April 2008, with its principal place of business formerly in Clayton, Missouri. ATP is a private equity fund formed for the same purpose as MIC VII. ATP invested in many of the same portfolio companies as MIC VII. *See id.*

Gryphon III is a Delaware limited liability company incorporated in February 2003, with its principal place of business formerly in Clayton, Missouri. Gryphon III is the general partner of ATP. *See id.*

B. The *SEC Complaint*, the Institution of the Receivership, and the SEC’s Civil Case Against Morriss and the Receivership Entities

On January 17, 2012, the SEC filed the *SEC Complaint* in the U.S. District Court for the Eastern District of Missouri (the “Court”). The SEC alleged that from approximately 2005 through 2011, Morriss

through several private equity funds and fund management companies he controlled, fraudulently transferred approximately \$9.1 million of investor funds to himself and his family’s holding company for personal use. Among other things, Morriss satisfied loans, paid alimony, and took expensive vacations. The companies disguised the transfers as loans and/or receivables without the knowledge or consent of investors. The offering documents and subscription agreements of the entities through which Morriss solicited investments failed to advise investors that Morriss could or would transfer their money for his personal use.

SEC Complaint ¶ 1. The SEC further alleged that the Receivership defendants “defrauded investors by failing to disclose that Morriss would or could use investor proceeds for personal use. The offering and operating agreements varied among [Receivership] Entities, yet none advised investors Morriss would use their funds personally, let alone have the [Receivership] Entities make personal, unsecured loans to Morriss and Morriss Holdings.” *Id.* ¶ 30. The SEC pointed out that ATP’s operating and offering documents “specifically prohibited Morriss from taking loans.” *Id.* ¶ 31; *see id.* ¶ 32. The offering and operating documents of the other Entities

were intentionally and deliberately broad and vague in their description of the permissible uses of fund money. *See id.* ¶¶ 31, 33-35.

The SEC further alleged that Morriss misappropriated \$2.5 million from MIC VII investors for Morriss' personal use, instead of using that money to satisfy a bank loan on which MIC VII was the borrower. *See id.* ¶¶ 37-38. Then, in 2010, Morris recruited additional investors to join MIC VII through a "fraudulent scheme" concocted to circumvent the requirement of unanimous consent of the existing MIC VII investors. The scheme required the new investors to invest in a new company, Acartha Group Funding, LLC, which would then invest in Acartha, which, in turn, would invest the fund into MIC VII. *See id.* ¶¶ 39-40. In reality, however, the new investors' funds went directly to the bank to satisfy MIC VII's loan. *See id.* ¶ 41.

Further, the SEC alleged that Morriss, Acartha, and Gryphon III defrauded Gryphon III investors "by failing to disclose that Morriss and Acartha Group used their investment almost exclusively to fund Acartha Group's operations, provide loans to Morriss and Morriss Holdings, and service Morriss' personal debt." *Id.* ¶ 42.

Based upon these facts, the SEC alleged that the conduct of Morriss and the Receivership Entities (collectively, the "Defendants") violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and other laws pertaining to securities. *See SEC Complaint* ¶ 3. To remedy these violations, the SEC requested an injunction to bar the Defendants from engaging in further fraudulent conduct, require disgorgement of profits and payment of civil penalties, and afford emergency relief to prevent dissipation of assets. On that same day, January 17, 2012, the Court entered an order freezing the investments and assets of the Defendants, requiring sworn accountings, and mandating the preservation of records (the "Asset Freeze Order") (ECF No. 17, amended by ECF Nos. 30, 59).

On March 22, 2012, the Court entered its Judgment of Permanent Injunction and Other Relief as to the Receivership Entities (ECF No. 101), which permanently restrained and enjoined the Receivership Entities from violating, directly or indirectly, Section 17(a) of the Securities Act and other laws pertaining to securities. Similarly, the Court entered its Judgment of Permanent Injunction and Other Relief as to Morriss on August 13, 2013 (ECF No. 275). Among other things, that judgment precluded Morriss from arguing that he did not violate the federal securities laws as alleged in the *SEC Complaint* in connection with an SEC motion for disgorgement and/or civil penalty. Further, the judgment determined that for purposes of such a motion, the allegations in the *SEC Complaint* shall be accepted as and deemed true by the Court. On February 26, 2014, the Court entered its Final Judgment as to Morriss (ECF No. 314), in which the Court ordered that Morriss disgorge \$9.1 million, representing profits gained as a result of the conduct alleged in the *SEC Complaint*, along with prejudgment interest of \$416,090.71. The SEC's allegations against Morriss were resolved with the entries of the consent and the permanent injunction and final judgment.

C. The Government's Criminal Case Against Morriss

In addition to the SEC's civil case against the Receivership Defendants, the U.S. Department of Justice pursued a criminal case against Morriss (*United States v. Burton Douglas Morriss*, 4:13-CR-341-RWS (E.D. Mo. filed Aug. 26, 2013)). In connection with that case, on August 26, 2013, Morriss entered a guilty plea, admitting to a knowing and wilful violation of Section 7201 of the U.S. Tax Code involving attempted tax evasion. Morriss was sentenced on December 19, 2013 to 60 months' imprisonment followed by supervised release for a term of three years. Morriss was also ordered to pay restitution of \$5,559,386 to the Internal Revenue Service. According to the Federal Bureau of Prisons inmate database, Morriss was released from federal prison on September 15, 2016.

D. The Function of the Receivership

The Receiver's authority, duties, obligations, and functions are set forth in the Receivership Order.¹ The overall function of the Receiver as set out in the Receivership Order is to administer and manage the business affairs and assets of the Receivership Entities, act as the managing member or partner of the Receivership Entities, marshal and safeguard all of the assets of the Receivership Entities, and take such actions as are necessary to protect the investors. The activities of the Receiver are guided by the Receivership Order, which requires the Receiver to, among other things: take immediate possession of and administer the assets of the Receivership Entities; investigate the manner in which the affairs of the Receivership Entities were conducted; institute such actions and legal proceedings for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary; defend, compromise, or settle legal actions in which the Receivership Entities or the Receiver is a party; assume control of all of the Receivership Entities' financial accounts, as necessary; and make payments and disbursements from the funds and assets taken into control as necessary in discharging the Receiver's duties.

Consistent with her responsibilities for administering the assets of the Receivership Entities, the Receiver developed a process for the analysis and approval of claims against the Receivership Entities by both investors and creditors. As described in more detail below, the Receiver proposed a claims bar date and claims allowance procedures to the Court on December 3, 2012 (ECF Nos. 214, 215). Now the Receiver seeks the Court's approval of the Distribution

¹ The SEC's motion to appoint and the Court's appointment were based upon the Receiver's proposal to the SEC (the "Proposal"). The Proposal set out the qualifications of the Receiver and the support to be received from Thompson Coburn LLP as primary counsel to the Receiver. Additionally, the Proposal fully disclosed the proposed compensation schedule and course of action contemplated by the Receiver (ECF No. 4, Exhibit 1).

Plan proposed herein to provide for distribution(s) of Receivership assets to those claimants who hold allowed claims against the Receivership Estate.

II. RECEIVERSHIP ASSETS AND RECOVERIES

When the Receiver took charge of the Receivership Entities on January 17, 2012, the cash position of each Entity was as follows: Acartha, \$56,762.61; MIC VII, \$2,584.50; ATP, \$614.79; and Gryphon III, \$34. Additionally, ATP and MIC VII presented with various active (but illiquid) portfolio investments, including Clearbrook Global Advisors, Librato, Inc., Cirqit (which holds an interest in LogicSource, Inc.), Tervela, Inc., and Pollenware, Inc. Throughout the Receivership, the Receiver worked to preserve the value of the Receivership Entities' existing portfolio investments by actively managing and monitoring the investment interests and taking affirmative steps, to the extent possible, to avoid dilution of the value of the holdings. The Receiver also pursued claims and recoveries that resulted in an increase in the assets of each of the Receivership Entities for eventual distribution to allowed claimants.

To date, the Receiver achieved the following recoveries for the benefit of all Receivership Entities:²

- In 2012, the Receiver secured Acartha's New Jersey office and retained an auctioneer to sell the personal property located in that office, including but not limited to office furniture, televisions, electronic and networking equipment, office supplies, and fitness equipment. After deductions for the auctioneer's commission, advertising costs, and storage fees, the Receivership received \$7,748 in proceeds from the sale.
- In 2012, the Receiver secured the return of \$8,415.05 in payroll funds held by Insperity, the company that handled payroll for the Receivership Entities prior to the institution of the Receivership.

² Other recoveries achieved during the Receivership have flowed directly to various special-purpose vehicles (SPVs) managed by Acartha. Because the proposed Distribution Plan does not pertain to the SPVs, those recoveries are not described here. Plans of distribution for the monies acquired by the SPVs have been the subject of separate motions to the Court.

- Also in 2012, the Receiver submitted a Proof of Loss to Maryland Casualty Company under the Commercial Crime Coverage Form of Acartha's insurance policy, based on the acts involving Burton Douglas Morriss, as described by the SEC in the *SEC Complaint* and which resulted in the transfer of substantial funds from the Receivership Entities. In 2013, the insurance company made payment of \$10,000 pursuant to the Proof of Loss.
- In 2012, the Receiver was named in an interpleader action filed by Federal Insurance Company due to multiple competing claims over certain funds available for defense costs under Acartha's Venture Capital Asset Protection Policy. The funds subject to the action totaled \$1,887,902.56. (This was the sum remaining on the \$3,000,000 policy after advancement of \$1,112,097.44 on behalf of Morriss and other Insured Persons for defense costs.) After nonbinding mediation in 2013, the Receiver and other parties claiming a right to the interpleader funds reached a settlement agreement, whereby Federal Insurance Company paid \$487,300 to the Receivership.
- In June 2015, the Receiver reached a settlement with UHY Advisors, MO, Inc. ("UHY") regarding affirmative civil claims of the Receivership Entities asserted against UHY arising out of alleged acts and omissions of the UHY parties in the provision of professional services to the Receivership Entities. The UHY settlement resulted in a payment of \$1,725,000 to the Receivership Entities.

The Receiver also achieved recoveries for the benefit of one or more of the Receivership Entities resulting from affirmative litigation on behalf of and/or liquidation of portfolio investments held by one or more, but not all, of the Receivership Entities:

- In 2012, the Receiver secured a distribution of funds remaining in escrow from the pre- Receivership sale of Integrien, Inc. to VMWare. Both ATP and MIC VII investors held interests in Integrien, Inc., and the recovery of escrow funds resulted in the payment of \$1,092,714 to ATP and \$361,515.48 to MIC VII.
- In 2014, the Receiver negotiated the sale of the preferred and common shares of Pollen, Inc. held by ATP, which resulted in a payment of \$3,758,436.75 to ATP.

- In 2014, the Receiver successfully recovered funds from an account of MIC VII held at PNC Bank in the amount of \$72,225.61, which primarily resulted from a post- Receivership payment on the pre-Receivership liquidation of a portfolio concern, Odyssey Financial Technologies, held by MIC VII.
- In 2015, the Receiver recovered funds due to ATP (\$184,748.13) and MIC VII (\$493,547.83) as a result of the Receivership Entities' holdings in Librato, Inc., which negotiated and executed a merger agreement with SolarWinds, Inc.
- In 2015, the Receiver initiated affirmative litigation against John Wehrle; Gryphon Investments II, LLC; and Cirqit.Com, Inc. ("Cirqit") (collectively, the "Wehrle Defendants"), alleging that \$3,425,000 of funds raised from Gryphon III investors were fraudulently and improperly comingled with funds of Gryphon Investments II, LLC and transferred to the Wehrle Defendants and others. The parties settled the litigation through mediation. In 2016, the Receivership Estate received \$125,000 in cash, a consent judgment of \$875,000 against John Wehrle, certain Cirqit stock retitled in the name of Gryphon III, and an agreement of the Wehrle Defendants to use best efforts to assist the Receiver in redeeming the Receivership's interests in Cirqit for the planned purchase price of \$1,489,201.³
- In 2016, the Receiver negotiated the sale of the Receivership's interests in Clearbrook Global Advisors, Inc., which resulted in a payment of \$52,941.21 for interests held by MIC and \$11,764.69 for interests held by ATP.

The Receivership Estate continues to hold several illiquid assets, including interests in Tervela, Inc., interests in Cirqit, and a default judgment against Morriss Holdings.

³ Despite best efforts of the parties, the Receiver has been unable to complete the sale of the Receivership's interest in Cirqit, which hinges on the agreement of LogicSource (a third party not under the control of the Wehrle Defendants or the Receiver). Because of the delays in effectuation of the settlement agreement and indications from LogicSource that its approval was delayed by competing priorities, the parties amended the settlement terms to permit, among other options, an assignment of the Receivership's interest in Cirqit to designated and approved claimants as part of a distribution plan or redemption of the Receivership's interest in Cirqit, which would allow the Receivership to hold the equity interests in LogicSource directly. (The redemption by Cirqit remains an option as well.)

III. CLAIM ALLOWANCE

A. The Claims Process

On December 3, 2012, the Receiver submitted a proposed claims bar date and allowance procedures for the approval of the Court. On March 4, 2013, the Court entered its order approving the Receiver's proposed claims-allowance procedures (the "Claims Bar Date Order") (ECF No. 234; *see also* ECF No. 278). In the Claims Bar Date Order, the Court established May 6, 2013 as the deadline for certain claimants to submit claims against the Receivership Entities (the "Claims Bar Date"). The Court also approved the procedures proposed by the Receiver regarding the allowance and disallowance of the filed claims ("Claims Procedures"). The approved Claims Procedures, among other things, defined a potential claimant's eligibility to submit a proof of claim and set forth the required contents and form of the proof of claim. The Claims Procedures applied only to the four Receivership Entities.⁴

The Claims Bar Date Order, the Receiver's Notice of Claims Bar Date, and the Proof of Claim Form⁵ instructed potential claimants to provide documentation to support the claimant's proof of claim, including but 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

⁴ Claimants specifically were instructed not to file Proof of Claim Forms for claims against any other entities, including but not limited to any SPVs. *See* Receiver's Notice of Claims Bar Date. The Receiver has resolved matters pertaining to SPVs or other entities managed by Acartha outside of the formal claims process.

⁵ The Receiver's Notice of Claims Bar Date and the Proof of Claim Form were approved by the Court in the Claims Bar Date Order.

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 Receiver received 227 proofs of claim from individuals and entities in response to the Claims Bar Date Order and related notices. (Some proofs of claim asserted claims against more than one Receivership Entity and/or qualify for treatment in more than one class as described in Section II.B below.)

As part of the review of the filed claims, the Receiver and her counsel developed a claimant category-specific list of necessary documents (sub-sets of the categories of documents listed in the Claims Bar Date Order) that the Receiver required from claimants to fully review and process the claims. The information received from claimants and information in the Receivership’s records assisted the Receiver in, among other things: (i) determining whether to allow or disallow individual claims, (ii) determining the most equitable priority of claims, (iii) understanding how monies were distributed through and from the various Receivership Entities, and (iv) developing the Distribution Plan proposed herein.

B. Claim Allowance

As shown on the Schedule of Allowed Claims (Ex. A-1) and the Schedule of Disallowed Claims (Ex. A-2) attached hereto, the Receiver is seeking approval of the following allowance and/or disallowance recommendations:

Claims recommended for allowance in full	115
Claims recommended for disallowance in full	107
Claims recommended for allowance in part and disallowance in part	5

Of the 112 claimants that received full or partial disallowance recommendations from the Receiver, five claimants utilized the objections process in the claims procedures:

1. Claimant No. 16, UHY Advisors MO, Inc.,⁶ filed a timely objection to the Receiver's determination on UHY's claim with the Court (*see* ECF No. 332). The reasons underlying the Receiver's recommendation of disallowance for UHY's claim intertwined with certain affirmative civil claims that the Receivership Entities asserted against UHY arising out of alleged acts and omissions of the UHY parties in the provision of professional services to the Receivership Entities. The Receiver and UHY were able to resolve UHY's claim objection in connection with the parties' mediation of the Receivership's affirmative claims. As part of that settlement, the Receiver agreed to allow UHY's claim but made no commitment or agreement as to the priority of UHY's claim or whether there would be sufficient funds to pay the claim.
2. Claimant No. 57 filed an objection with the Receiver to the Receiver's disallowance recommendation. The Receiver did not alter her recommendation as to Claim No. 57. Claimant No. 57 did not file an objection with the Court. Therefore, the Receiver's recommendation of disallowance stands.
3. Claimant No. 21, Ameet Patel (former management), also filed an objection with the Receiver. Mr. Patel and the Receiver reached a settlement (*see* ECF No. 358-2), which resulted in a waiver with prejudice of Mr. Patel's claim.
4. Claimant No. 227, Blink Marketing, also objected to the Receiver's determination of disallowance in part of Blink's claim. The Court sustained Blink's objection to the Receiver's determination (*see* ECF No. 455). As a result, per the Court's order, Blink's claim is being recommended for allowance in full.

⁶ The Receiver has attempted to protect the identities of claimants and investors from unintended and/or unwanted disclosure. Therefore, throughout this Memorandum, the Receiver refers to specific claimants by claim number, unless the particular claimant has taken affirmative steps to disclose his, her, or its identity, such as by making public filings with the Court in this case.

5. Claimant No. 20, Hany Teylouni, filed an objection with the Receiver. Mr. Teylouni's claim is based on alleged deferred compensation that accrued during his employment with Acartha Group (and/or ATP).⁷ Despite good-faith efforts, the Receiver and Mr. Teylouni were unable to resolve their differences regarding the Receiver's recommendation of disallowance. Mr. Teylouni filed an objection with the Court. Mr. Teylouni's objections and the Receiver's response are before the Court in separate motion papers (*see* ECF Nos. 337, 344, 347-51, 378-79, 448-50, 452, 486). Mr. Teylouni's objection awaits decision by the Court.

The Receiver and her professionals also resolved a number of potential objections through the claims process itself. With respect to a number of high-dollar claims, the Receiver issued notices of determination that contained the factual and legal bases for the disallowance of such claims. Following receipt of the Receiver's grounds for disallowance, the claimants elected not to contest the Receiver's disallowance determinations.

Claim No.	Treatment	Amount of Claim Disallowed
12	Disallow in full	\$100,000.00
17	Disallow in full	\$450,363.05
18	Disallow in part	\$6,459,707.25
19	Disallow in full	\$25,718.85
43	Disallow in full	\$432,391.24
59	Disallow in full	\$61,066.33
67	Disallow in full	\$172,734.91
68	Disallow in full	\$1,053,333.33
226	Disallow in full	\$350,000.00
	TOTAL:	\$9,105,314.96

In consideration of the information obtained in the claims process and the results of any objections filed with the Receiver and this Court, the Receiver seeks the Court's approval of her

⁷ Mr. Teylouni filed Claim No. 20 against Acartha Group and ATP seeking \$352,532.15 in deferred salary, plus interest thereon, for the period August 1, 2008 to April 15, 2010.

recommendations for allowance as shown on Ex. A-1.⁸ Concurrently, the Receiver seeks the Court's approval of her recommendations for disallowance as shown on Ex. A-2.

IV. CLAIM CLASSIFICATION AND PRIORITY

The Receiver proposes (1) dividing the Allowed Claimants into four classes (cash investors, exchange investors, unsecured creditors, and professionals and employees (insiders)) and (2) elevating the Allowed Claims of cash investors above those of the other Allowed Claimants, as described below.

A. Classes of Claimants

The Receiver divided the 120 Allowed Claims into four main classes: (1) Cash Investors, (2) Exchange Investors, (3) Unsecured Creditors, and (4) Professionals and Employees.

Class	Receivership Entity	Description	No. in Class
<i>Cash Investors</i>			
1-A	Acartha	All-cash investors and partial-cash investors up to the amount of their cash investment	12
1-B	ATP	Investors	56
1-C	MIC VII	Investors and Acartha Group Funding investors (via Morriss Administration share)	43
1-D	Gryphon III	Investors	4
<i>Exchange Investors</i>			
2-A	Acartha	All-exchange investors plus partial-exchange investors up to the amount of their exchange investment	8
2-B	ATP	N/A	0
2-C	MIC VII	N/A	0
2-D	Gryphon III	N/A	0
<i>Unsecured Creditors</i>			
3-A	Acartha	Unsecured creditors	2
3-B	ATP	Unsecured creditors	1
3-C	MIC VII	N/A	0
3-D	Gryphon III	N/A	0
<i>Professionals and Employees</i>			
4-A	Acartha	Professional and employee claimants	1*

⁸ In this Memorandum, a claim recommended for allowance is referred to as an "Allowed Claim" and the holder of such claim as an "Allowed Claimant." The Schedule of Disallowed Claims lists Claim No. 20—Mr. Teylouni's claim—as disallowed pursuant to the Receiver's determination on that claim; that claim, however, is subject to the pending objection before the Court, described *infra*.

4-B	ATP	Professional and employee claimants	1*
4-C	MIC VII	Professional claimants	1
4-D	Gryphon III	Professional claimants	1

* The Receiver has recommended disallowance of Claim No. 20 filed by Hany Teylouni. Mr. Teylouni objected to the Receiver's determination. The matter has been briefed (*see* ECF Nos. 337, 344, 347-51, 378-79, 448-50, 452, 486) and is awaiting a decision by the Court. If Mr. Teylouni's objection is sustained, the number of claimants in Classes 4-A and 4-B will increase by 1 in each such class.

1. Cash Investors (Class 1)

The first class of Allowed Claimants (Class 1) consists of investors in each of the four Receivership Entities who through documentation and other forms of proof demonstrated to the Receiver the existence and amount of their cash investment(s) into one or more of the Receivership Entities. This class of Allowed Claimants is divided into sub-classes based on the Receivership Entity into which each Allowed Claimant made his or her cash investment. For example, an investor who contributed \$50,000 of funds to Acartha is classified as a "Class 1-A" investor, while an investor who contributed \$50,000 of funds to MIC VII is classified as a "Class 1-C" investor. *See* Ex. A-1.

(a) Acartha Cash Investors (Class 1-A)

The Acartha investor class (Class 1-A) consists of twelve claimants who made direct, cash contributions in Acartha. Six of the claimants' claims are based solely on cash contributions to Acartha. Four of the claimants' claims are based on a combination of cash contributions to Acartha and an exchange of interests with Acartha. For these claimants, the Receiver is proposing to treat only the amount of their cash contributions to Acartha as Class 1-A claims. (These claimants' exchange contributions are being proposed for treatment as Class 2-A claims, discussed below.)

The remaining claims proposed for treatment as Class 1-A claims are Claim Nos. 13 and 14. This claimant filed two claims against Acartha based on the claimant's alleged status as a secured lender to Acartha. In return, claimant received two promissory notes issued with

“original issue discount”⁹ that entitled the claimant to obtain one or more warrant(s) for ordinary shares of Acartha equal to 1 percent of the outstanding fully diluted capital of the company on the date of the issuance of the warrant in the event of Acartha’s non-payment of the notes on their initial maturity dates.¹⁰ The claimant transferred \$2,000,000 to Acartha in exchange for the first promissory note in the amount of \$3,000,000. The claimant transferred \$1,500,000 to Acartha in exchange for the second promissory note in the amount of \$2,250,000. Both notes reached their initial maturity dates *after* the institution of the Receivership.¹¹

Although the documents and communications regarding the claimant’s payments to Acartha reflect concepts of both a loan and an investment, the majority of this information suggests that the claimant’s claims should be treated as investment interests along with the other Acartha investors. First, there is no indication in the Acartha documents that the claimant’s funds were used differently than any other Acartha investor who made a cash contribution in exchange for Acartha interests. Second, the length of the loans is suspect. A loan that is payable in three to ten years may not be “short” enough to be considered short-term financing. *See Sec. & Exch. Comm’n v. J.T. Wallenbrock & Assocs.*, 313 F.3d 532 (9th Cir. 2002). Additionally, the communications between Morriss and the claimant indicate that even though the claimant received promissory notes, the claimant thought he was an investor. Third, the claimant was defrauded by Morriss along with the other Acartha investors and as such is similarly situated to

⁹ Original issue discount is a form of interest on a debt instrument such as a bond or note issued at less than its face amount. A debt instrument generally has original issue discount when the instrument is issued for a price less than its stated redemption price at maturity. It is only fair and equitable that any claim that the claimant may raise for amounts over and above his original cash payment for the promissory notes (\$3.5 million in total) should be rejected to the extent such amounts would have “accrued” post-Receivership.

¹⁰ Both notes provided that the claimant would continue to be entitled to warrants for each year that Acartha did not pay the notes, up to ten years after the issuance of notes. The \$2,250,000 note, however, was explicit that the warrants it granted were duplicative of the warrants promised in the \$3,000,000 note.

¹¹ The initial maturity date of the \$3,000,000 note was December 3, 2013. The initial maturity date of the \$2,250,000 note was January 13, 2014.

the defrauded investors. *Cf. RFF GP, LLC*, No. 4:13-CV-382, 2014 WL 491639 (E.D. Tex. Feb. 4, 2014) (unsecured creditor objected to priority scheme under which his claim was subordinated to the claims of investors; because creditor was not able to link any fraudulent conduct committed by the defendant to its losses, the court approved the priority scheme and rejected the creditor's objection).

For similar reasons, the Receiver does not propose to treat the claimant's claims as "secured claims" with priority above the other Acartha investors. The documentation provided by the claimant and the Receivership's own business records do not support the claimant's claim to secured status. The Receiver indicated her intention to recommend disallowance of the claimant's assertion of a secured claim against Acartha in the notices of determination served on the claimant. The claimant did not utilize the objections process set out in the Claims Bar Date Order to contest the Receiver's determination on secured status.

(b) ATP Cash Investors (Class 1-B)

The ATP investor class (Class 1-B) consists of 56 investors who made direct, cash contributions (investments) in ATP.

(c) MIC VII Cash Investors (Class 1-C)

The MIC VII investor class (Class 1-C) consists of 26 investors who made direct, cash contributions (investments) in MIC VII.

Additionally, the Receiver proposes to include seventeen investors who provided cash funding to a separate entity, Morriss Administration d/b/a Acartha Group Funding LLC, as Allowed Claimants in Class 1-C (collectively, the "AGF Investors"). The AGF Investors invested \$2,500,000 million in Acartha Group Funding, an SPV formed by Morriss, for the purpose of funding the contribution by Acartha, as MIC VII's managing member, of a like amount to MIC VII. *See* Acartha Group Funding, LLC Side Letter to Prairie Capital

Management, LLC, Sept. 30, 2010 (“AGF Side Letter”) (ECF No. 18-43). The AGF Investors further intended that their funding capital be used by MIC VII to satisfy the outstanding corporate debt owed by MIC VII to Wells Fargo Bank. *Id.*; Ex. C, Deposition of Brian Kaufman (“Kaufman Dep.”), Dec. 13, 2011, at 205:6-13. The AGF Investors deposited their contributions directly into MIC VII’s account at Wells Fargo. *See* AGF Side Letter (ECF No. 18-43). They understood that Wells Fargo was calling the loan to MIC VII, and MIC VII risked foreclosure absent additional capital. *See* Ex. C at 191:14-23.

Setting aside the contractual disputes that may exist as between the various investors with respect to the manner of the AGF Investors’ investment in MIC VII to focus on the equities of the situation, the AGF Investors provided (and lost) \$2,500,000 in capital to MIC VII and apparently prevented a foreclosure of MIC VII by Wells Fargo. For this reason, the Receiver submits that the most equitable result available is to allow the AGF Investors to participate in the MIC VII distribution in a proportion equal to their share in Acartha Group Funding divided by Acartha Group Funding’s investment share in MIC VII. For example, if Acartha Group Funding’s pro rata percentage in MIC VII is 10 percent and an AGF Investor’s pro rata percentage in Acartha Group Funding is 5 percent, that investor would be entitled to a distribution of MIC VII assets equal to 5 percent of Acartha Group Funding’s 10 percent share in MIC VII.

(d) Gryphon III Cash Investors (Class 1-D)

The Gryphon III investor class (Class 1-D) is composed of four investors who made direct, cash contributions (investments) in Gryphon III.

2. Exchange-Loss Investors (Class 2-A)

The second class of claimants consists of eight investors in Acartha who, for either their entire Acartha interest or for a portion thereof, exchanged rights to carried interest in Hela Capital Partners, LLC (“Hela Capital”) or shares in Morriss Enterprises LLC (“Morriss Enterprises”) (two other Morriss investment entities) for their Acartha shares.

Some of the exchange investors in this class obtained their interests in Hela Capital in 2003 through agreements to purchase a certain percentage of the carried interest in Hela Capital owned by Morriss Ventures, LLC. In 2004, these exchange investors entered into contribution agreements with Acartha, whereby they contributed their rights to the economic rights and benefits of the Hela Capital carried interest for shares in Acartha.¹² The Acartha shares were issued to the exchange investors in an amount equal to the purchase price of each exchange investor’s right to carried interest in Hela Capital. The exchange investors, however, did not provide documentation sufficient to establish the value of the Hela Capital carried interest at the time the interest was exchanged for Acartha shares. And in fact, subsequent documentation valued the Hela Capital interests as worthless. In particular, an independent auditor’s report dated December 31, 2006 stated that the exchange transactions did not result in an increase to Acartha’s contributed capital because, in the opinion of management, the Hela Capital interests had no value at the time they were exchanged.

¹² Notwithstanding the contribution of the exchange investors’ right to carried interest in Hela Capital, the exchange investors retained a stated percentage interest in the sharing percentage of Hela Capital in Kanbay Capital, L.L.C., which owned an indirect interest in shares of Kanbay International, Inc. According to a 2005 mid-year update from Acartha, Hela Capital’s only investment to date was Kanbay.

Other exchange investors in this class exchanged interests in Morriss Enterprises¹³ for some of their interest in Acartha. Like the investors who exchanged interests in Hela Capital for shares of Acartha, these other investors obtained a portion of their Acartha interest without the outlay of funds to Acartha. And like the Hela Capital interest exchange, the exchange of the Morriss Enterprises interests did not result in an increase to Acartha's contributed capital. An auditor's report on Acartha's financial statements for 2007 and 2008 reported that the mid-2004 exchange of Acartha Series A shares for shares of Morriss Enterprises was accounted for as a treasury stock transaction. At the time of the exchange, Morriss Enterprises' only asset was shares of Acartha.

Groups of investors may be treated differently based on their dealings with the defrauder or other facts and circumstances. *See Sec. & Exch. Comm'n v. Enter. Trust Co.*, 559 F.3d 649, 652-53 (7th Cir. 2009) (approving the receiver's proposed different treatment for custodial and managed account holders, reasoning, among various factors, the custodial account holders were in the dark about the investments, and had the entity's strategy succeeded, the managed account holders would have reaped the gains). Here, the exchange-loss investors are not similarly situated to the cash investors. The exchange-loss investors did not make a cash contribution into Acartha. Instead, they exchanged interests in Hela Capital or Morriss Enterprises for their shares in Acartha. By doing so, the exchange-loss investors incurred less risk than those investors who contributed cash; for the investors that previously held an interest in Hela Capital, this was especially true because their interests were considered worthless at or around the time of the exchange, and the exchange investors retained what may have been the only valuable portion of the Hela Capital carried interest, *i.e.*, the sharing percentage in the Kanbay investment.

¹³ As reported in Acartha's Confidential Private Placement Memorandum dated November 2005, Morriss Enterprises owned all of the issued and outstanding ordinary shares of Acartha. Morriss Enterprises was controlled by Morriss and managed by a board of directors, of which Morriss was the only member.

3. Unsecured Creditors (Classes 3-A and 3-B)

The third class of claimants (Class 3) consists of unsecured creditors of Acartha (Class 3-A) and ATP (Class 3-B). In particular, these claims consist of two vendor claims against Acartha for services rendered prior to the institution of the Receivership and one claim filed by a claimant against ATP for an investment made by the claimant in Tervela Acquisition II, LLC with a potential commitment from ATP that it would purchase the claimant's interest in Tervela Acquisition II, LLC with interest at a rate of 10 percent, which purchase never occurred.

4. Employee and Professional Creditors (Classes 4-A through 4-D)

The fourth class of claimants (Class 4) consists of professional and employee claims against the Receivership Entities. In particular, these claims consist of the claim of UHY Advisors MO, Inc. ("UHY") against all four Receivership Entities and, if allowed by the Court, the claim of Hany Teylouni against Acartha Group and ATP for deferred compensation.

The claimants in Class 4 are not similarly situated to the unsecured-creditor claimants in Class 3, even though what each of the Class 4 claimants holds is essentially an unsecured claim against one or more of the Receivership Entities. The claimants in Class 4 held employment and professional relationships with the Receivership Entities and with those persons engaging in the actions alleged in the *SEC Complaint*. These claimants, as professionals engaged by the Receivership Entities and/or employees of the Receivership Entities, may have, through their activities with the Entities, contributed to the harm to investors as alleged in the *SEC Complaint*:

1. Mr. Teylouni worked for Acartha and ATP beginning in July 2005 as Managing Director of ATP. He left Acartha and ATP in early 2010. As managing director, Mr. Teylouni was a highly-paid employee of Acartha and ATP. He enjoyed a high base

salary¹⁴ and incentive-compensation benefits, including but not limited to cash-incentive options and a profits interest in Morriss Enterprises, LLC. According to Mr. Teylouni, he provided strategic technical, systems, and systems implementation expertise to Acartha's portfolio companies and conducted technology due diligence for ATP. Apparently, Acartha and ATP used Mr. Teylouni's credentials and work to encourage investments in ATP. *See* ATP Website Printout (ECF No. 18-1 at 9). As a senior employee, Mr. Teylouni 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.

2. UHY performed accounting and tax services for the Receivership Entities through two primary UHY employees (Brian Peterson and Patrick Stark), both of whom were certified public accountants. By 2007, UHY was preparing tax returns for various Receivership Entities. On or before March of 2009, UHY assumed accounting responsibilities for the Receivership Entities. UHY continued to perform accounting work for the Receivership Entities until shortly before the Receivership commenced. Documentation suggests that UHY played a role in documentation of the related-party transactions and other dealings involving the removal of funds from the Receivership Entities. The Receiver asserted certain civil claims against UHY, Peterson, and Stark on behalf of the Receivership Entities, arising out of alleged acts and omissions of UHY, Stark, and Peterson in the provision of professional services to the Receivership Entities, during the period March 3, 2009 until shortly before the commencement of the Receivership. The parties ultimately settled the Receiver's claims against UHY, Stark, and Peterson.¹⁵

The Receiver submits that these facts justify classifying the claims of Mr. Teylouni and UHY separate from the claims of other unsecured creditors of the Receivership Entities. Further,

¹⁴ When the Receivership Entities experienced financial difficulties, Mr. Teylouni and other senior personnel agreed to salary reductions. Those salary reductions form, in part, the basis for Mr. Teylouni's claim to deferred compensation.

¹⁵ As stated above, as part of the settlement, the Receiver agreed to withdraw the notice of determination recommending that the Court disallow UHY's claim against the Receivership Estate (Claim No. 16). There is no agreement between the parties as to whether or not UHY will receive any portion of the funds pursuant to the proposed Distribution Plan or any other such plan.

the Receiver submits that both Mr. Teylouni and UHY lack equitable rights to their claims, which justifies the subordination of their claims.¹⁶ In SEC-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, 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"); *Sec. & Exch. Comm'n v. Byers*, 637 F. Supp. 2d 166, 173, 184 (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 and stating "Receiver's proposal to treat differently those involved in the fraudulent scheme when distributions are being made is eminently reasonable and is 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 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)); *see also Sec. & Exch. Comm'n v. Aquacell Batteries, Inc.* No. 6:07-cv-608, 2009 WL 1854671, at *2 (M.D. Fla. June 29, 2009) (disallowed claim of receivership entity's former vice president of operations and board member based on his work done for the entity and

¹⁶ 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). The Receiver has recommended disallowance of Mr. Teylouni's claim. Mr. Teylouni has objected to the Receiver's determination. The matter has been briefed (*see* ECF Nos. 337, 344, 347-51, 378-79, 448-50, 452, 486) and is awaiting the Court's decision. The Receiver notes, however, that, practically, Mr. Teylouni's objection to disallowance is moot under the proposed Distribution Plan. The investor liabilities of the Receivership Estate greatly outweigh the assets available for distribution, and given the Receiver's decision to prioritize the claims of defrauded investors (*see* Section II.C. below), the Receivership Estate does not have sufficient funds available to pay claims of non-investor creditors after providing for an equitable distribution to investors.

for imputed knowledge of illegal activities, where entity's business plan extolled the claimant's business acumen and stated that his analytical knowledge would be used in creating the budgets).

B. Priority of Claims

The Receiver is proposing a Distribution Plan that will give priority to investors. The Receiver submits that as between the two classes of investors described above, the highest priority should be afforded to the cash investors (Class 1). These claimants will recover from the available assets in each Receivership Entity on a pro rata basis (as discussed below). The remaining classes (Class 2, Class 3, and Class 4) will follow in second, third, and fourth priority, respectively. Claimants in Class 2, Class 3, and Class 4 will not receive a distribution of Receivership assets after administrative costs and expenses and Allowed Claims in Class 1 have been paid.

The Receiver submits that the proposed priority scheme is fair and equitable and best fulfills the Receivership's ultimate objective—to maximize the recovery for the investors. *See Quilling v. Trade Partners, Inc.*, No. 1:03-CV-236, 2006 WL 3694629 (W.D. Mich. Dec. 14, 2006) (stating that “as 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.”); *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”). The proposed priority scheme, which elevates the claims of the cash investors (Class 1), ensures that those investors benefit the most from the assets gathered by the Receiver because they have suffered the most harm as a result of the scheme alleged in the *SEC Complaint*, Morriss' fraudulent transfer of investor funds to himself and his family's holding company for personal use, all achieved without knowledge or consent of the investors and in violation of the offering documents and subscription agreements pursuant to which the investors

made their contributions to Morriss' investment entities. As such, it is fair and equitable to elevate cash-investor claims above those of the other claimants. *See Sec. & Exch. Comm'n v. Enter. Trust Co.*, 559 F.3d 649, 652-53 (7th Cir. 2009) (affirming district court's approval of receiver's plan that elevated certain investor claims [over other investor claims] based on the facts of the situation, including the amount of risk that the different types of investors faced).

C. The Receiver's Determinations Regarding Claim Classification and Priority Are Fair and Equitable and Within This Court's Discretion to Approve

Courts possess discretion in classifying claims in receivership proceedings. *See Enter. Trust Co.*, 559 F.3d at 652 (citing, among others, *Sec. & Exch. Comm'n v. Wang*, 944 F.2d 80, 84–85 (2d Cir. 1991); *Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)). In deciding what claims should be recognized and in what amounts, “the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly situated investors or customers treated alike.” *Sec. & Exch. Comm'n v. Homeland Commc'ns Corp.*, No. 07-80802 CIV, 2010 WL 2035326, at *2 (S.D. Fla. May 24, 2010) (quoting *Sec. & Exch. Comm'n v. Credit Bancorp. Ltd.*, No. 99-CIV-11395–RSW, 2000 WL 1752979, at *13 (S.D.N.Y. Nov. 29, 2000)).

Further, when considering how to classify investors versus creditors, there is no one-size-fits-all approach—but “courts regularly grant defrauded investors a higher priority than defrauded creditors.” *RFF GP, LLC*, 2014 WL 491639, at *2. Placing defrauded investors before creditors is the most common and supported hierarchy in distribution plans. *See Sec. & Exch. Comm'n v. HKW Trading*, No. 8:05-CV-1076-T-24-TB, 2009 WL 2499146, at *3 (M.D. Fla. Aug. 14, 2009); *Quilling*, 2006 WL 3694629, at *1; *see also U.S. Commodity Futures Trading Comm'n v. PrivateFX Glob. One*, 778 F. Supp. 2d 775, 786 (S.D. Tex. 2011); *U.S. Commodity Futures Trading Comm'n v. Capitalstreet Fin., LLC*, No. 3:09-cv-387, 2010 WL 2572349, at *2

(W.D.N.C. June 18, 2010). Such a plan effectively subordinates the claims of creditors and may in effect “reject” such claims if there are not enough receivership assets to provide for a distribution to creditors after investors are at least made whole (*i.e.*, cases where the total amount of investor losses exceed the assets that are available for redistribution to investor-victims). *See Homeland Commc'ns Corp.*, 2010 WL 2035326, at *5–6 (discussing justification for subordination and/or rejection of trade creditor claims); *see also id.* at *7, quoting *Sec. & Exch. Comm'n v. Mutual Benefits Corp.*, No. 04–60573–Civ–Moreno, DE 2188, at *3 (S.D. Fla. Oct. 22, 2008) (where judge summarily subordinated six trade creditors’ claims, noting that the SEC enforcement action before the court was “designed to protect the investors, not the creditors” and the “fraudulent conduct was directed toward [the] investors, not [the] creditors. . .”).

Here, the Receiver’s classification and priority determinations are fair and equitable. The Receiver proposes to treat all similarly situated investors and other claimants alike by grouping Allowed Claimants into four classes determined by the Allowed Claimant’s (1) status as an investor, trade creditor, or former employee or professional and (2) for investors, the method of contribution (cash or exchange). Within these four classes of claims, the Receiver is not proposing differing treatment.¹⁷ Further, the Receiver’s differing treatment of the cash investors and the exchange investors in Acartha is reasonable and equitable based upon the manner in which the two groups of investors participated in Acartha. *See Enter. Trust Co.*, 559 F.3d at 652-53, and discussion in Section IV.A.2. above. The Receiver also proposes to prioritize the claims of the cash investors because the Receiver was appointed in connection with the SEC’s civil enforcement action against the Receivership Defendants, and Morriss’ fraudulent conduct was directed toward the investors, who did not consent to and were harmed by Morriss’ misuse and

¹⁷ Although, as explained below, investor claimants may be impacted due to the allocation of assets.

misappropriation of investor funds to fund a lavish personal lifestyle (*see* ECF Nos. 1, 16). As such, the Receiver submits that her proposal to (1) divide the Allowed Claimants into four classes (cash investors, exchange investors, unsecured creditors, and professionals and employees (insiders)) and (2) elevate the Allowed Claims of certain defrauded cash-investors above those of the other Allowed Claimants is fair and equitable under the circumstances of this case.

VI. THE RECEIVER'S PROPOSED DISTRIBUTION PLAN

The Receiver's proposed Distribution Plan is outlined below and in the Declaration of Timothy O'Shaughnessy and the schedules attached thereto (Ex. B). In summary, the Receiver proposes to make an initial distribution to Allowed Claimants pursuant to the priorities established in Section V above, pay certain amounts in satisfaction of professional claims for work incurred since the inception of the Receivership, achieve a final distribution of remaining assets in accordance with the same priorities and parameters as the initial distribution following the approval of this (or a modified) Distribution Plan, assign illiquid assets to Allowed Claimants, and handle other matters necessary to effectuate a winding-up of the Receivership Entities.

A. Assets of the Receivership Entities

As of March 31, 2017, the sum total of cash held in the accounts of the Receivership Entities totaled \$5,946,033.67. The Receivership Estate also holds certain illiquid assets, namely interests in Tervela, interests in Cirqit, and the default judgment against Morriss Holdings. Details regarding the recoveries that the Receiver achieved during the Receivership proceeding can be found above in Section I.C.

B. Division of Receivership Estates' Assets Among Receivership Entities

As noted above, the Receiver engaged in efforts both to recover assets for the general benefit of all Receivership Entities (*i.e.*, the Federal Insurance Company interpleader settlement, the UHY Advisors MO, Inc. settlement) and to achieve recoveries particular to one or more Receivership Entities (*i.e.*, sale of Pollen interests). Because of the different statuses, roles, and investment portfolios of the Receivership Entities,¹⁸ the Receiver submits that it would be inequitable to pool the assets of the Receivership Estate for payment to all investors through a single *pro rata* distribution. Instead, the Receiver proposes to allocate the assets of the Receivership Estate among the four Entities in the following manner, with the Allowed Claimants of each Entity participating in a *pro rata* distribution from the assets allocated to that Entity:

1. Where an asset or recovery can be linked to a harm particular to a single Receivership Entity or an investment or portfolio interest held by one or more, but not all, Receivership Entities, that asset or recovery will be allocated to the particular Receivership Entity(ies) involved.
2. Where an asset or recovery cannot be linked to a harm particular to a single Receivership Entity or an investment or portfolio interest held by one or more, but not all, Receivership Entities, but instead results from a jointly-held asset or a recovery sought for the benefit of the entire Estate, that asset or recovery will be allocated between the four Receivership Entities in proportion to the size of the initial cash investment in each of the Receivership Entities. For example, if relative initial cash investments in each entity were \$1,000,000, \$2,000,000, \$3,000,000, and \$4,000,000, and the Receiver recovered \$100,000 for the benefit of the entire Estate, the Receiver would allocate the \$100,000 recovery between the four entities as follows: \$10,000 to

¹⁸ For instance, two of the four Receivership Entities (ATP and MIC VII) were formed to, and did, actively invest in start-up companies, whereas Acartha was formed to manage private equity entities like ATP and MIC VII. ATP and MIC VII came in to the Receivership with active investment interests, which the Receiver has managed throughout the course of this Receivership.

the first entity; \$20,000 to the second entity; \$30,000 to the third entity; and \$40,000 to the fourth entity.

This division of assets and recoveries, which is discussed in Ex. B, results in the following asset allocation between the Receivership Entities:

Cash Assets as of 3/31/17:		\$ 5,946,033.67
Initial Distribution Amount:		\$ 4,739,532.10
<hr/>		
Initial Distribution Amount on Entity-by-Entity Basis:		
	<i>Acartha Group</i>	\$ 126,543.79
	<i>MIC VII</i>	\$ 647,523.26
	<i>ATP</i>	\$ 3,872,352.93
	<i>Gryphon III</i>	\$ 93,350.70

C. Allocation of Receivership Expenses

In furtherance of the Receiver's objectives as set forth in the Receivership Order, the Receiver is empowered to "employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses" (ECF No. 16). Pursuant to this authority, the Receiver has filed 20 interim fee applications with the Court, seeking payment of legal and professional fees and expenses incurred during the reporting period, subject to a 20 percent holdback on legal and professional fees pursuant to an agreement with the SEC, and one application for partial payment of the holdback amounts. (See ECF Nos. 155, 190, 221, 239, 258, 272, 289, 318, 326, 341, 361, 371, 406, 419, 428, 445, 461, 476, 500, and 509.) As approved by the Court, these fees and expenses have been paid out of Receivership assets.¹⁹

¹⁹ Notably, the Receivership assets includes sums recovered by the Receiver from Federal Insurance Company for

Throughout the Receivership, the Receiver has worked for the benefit of all Receivership Entities to marshal and realize upon the assets of the Entities and pursue claims and litigation aimed at bringing in additional assets for distribution to all Allowed Claimants. The Receiver's proposed allocation of expenses across the four Entities parallels the Receiver's proposal for the allocation of general recoveries received for the benefit of all Entities. In sum, for purposes of this final allocation, the Receiver allocated Receivership expenses between the four Receivership Entities in proportion to the size of the initial cash investment in each of the Receivership Entities.²⁰ The Receiver submits that the proposed allocation of the Receivership expenses is fair and equitable under the facts of this case and well within the Court's discretion to approve as fair and equitable. *See Elliott*, 953 F.2d at 1576 ("The district court appointing the receiver has discretion over who will pay the costs of the receiver.") (internal citations omitted); *see also Clark on Receivers* § 641 (3d ed. 1959) ("property which is benefitted by the receivership should bear its share of the costs and expenses of the receivership including receiver's fees").

D. Method of Distribution

In an equity receivership, "the court has wide discretion under its general equitable powers to approve any method of distribution that is fair and equitable." *In re The Vaughan Co., Realtors*, 543 B.R. 325, 336–37 (Bankr. D.N.M. 2015) (citing *Byers*, 637 F. Supp. 2d at 174 (observing that the court has broad authority to approve a receiver's proposed distribution plan); *Commodity Futures Trading Comm'n v. Equity Fin. Grp., Inc.*, No. CIV.04-1512 RBK AMD, 2005 WL 2143975, at *24 (D.N.J. Sept. 2, 2005) ("The Court has wide discretion in determining the appropriate form of relief in a receivership in equity.") (citation omitted); *U.S. Commodity*

defense costs despite the Court's earlier ruling that such funds were not an asset of the Receivership estate.

²⁰ As explained in the Declaration of Tim O'Shaughnessy (Exhibit B), for purposes of this final allocation, the original entries are reversed.

Futures Trading Comm'n v. Lake Shore Asset Mgmt. Ltd., No. 07C3598, 2010 WL 960362, at *6 (N.D. Ill. Mar. 15, 2010) (“The court is afforded wide discretion in approving a distribution plan of receivership funds.”) (citing *Enter. Trust Co.*, 559 F.3d at 652); *Enter. Trust Co.*, 2008 WL 4534154, at *3 (“There are no hard rules governing a district court’s decisions in matters like these. The standard is whether a distribution is equitable and fair in the eyes of a reasonable judge.”) (citations omitted)). In reviewing a proposed plan for distribution, the court’s role is to ensure that the plan is both fair and reasonable. See *Sec. & Exch. Comm’n v. Harris*, No. 3:09-CV-01809, 2015 WL 418107, at *2 (N.D. Tex. Feb. 2, 2015); *Wealth Mgmt., LLC*, 628 F.3d at 333; *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. Sec. & Exch. Comm’n*, 467 F.3d 73, 82-83 (2d Cir. 2006); *Wang*, 944 F.2d at 85. Courts are given broad and substantial power in making these determinations, with appellate courts only narrowly reviewing decisions for abuse of discretion. *Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 298 (6th Cir. 2009); *Sec. & Exch. Comm’n v. Mgmt. Sols., Inc.*, No. 2:11-CV-01165-BSJ, 2013 WL 594738, at *2 (D. Utah Feb. 15, 2013); *Wealth Mgmt.*, 628 F.3d at 332-33; *Official Comm. of Unsecured Creditors of WorldCom, Inc.*, 467 F.3d at 83-84.

Receivers may use tracing or pro rata distribution methods to remedy the losses of claimants. Pro rata methods of distribution are more commonly used, especially where (as here) the assets recovered are insufficient to satisfy the outstanding claims of investors.²¹ Once a receiver decides to employ pro rata distribution, she has further discretion to decide how to calculate the distributions. Two common methods of pro rata distribution are “net investment” and “rising tide.” Both of these methodologies take into account, in different ways, pre-
Receivership distributions provided to investors, grounded in the rationale that those pre-

²¹ The assets of the Receivership Estate total approximately \$6,000,000. In contrast, the Allowed Claims in Class 1 alone, considering only the Allowed Claimants’ asserted and/or verified contribution amounts, total more than \$62 million.

Receivership distributions were obtained by the “winning” investors at the expense, or to the detriment, of the “losing” investors.

The net investment method has been approved for use in SEC receivership cases. *See Byers*, 637 F. Supp. 2d 166 (approving net investment method of distribution in Ponzi scheme case because it would “provide the greatest number of investors with the greatest recovery possible without inequitably rewarding some investors at the expense of others”). The net investment method of distribution tabulates the total money each investor lost in the scheme (the total amounts invested minus amounts withdrawn and transferred). Funds are then allocated pro rata according to the net loss of each investor. Distributions are equal to the amount lost by each investor multiplied by the percentage calculated by dividing the amount to be distributed by the total of all the investors’ losses. All investors are treated equally in that all investors who lost the same amount of money receive the same distribution from the receivership.

The rising tide method of pro rata distribution also has been approved for use in equitable receiverships, *see In re The Vaughan Co., Realtors*, 543 B.R. at 336-37, and in fact “appears to be the method most commonly used (and judicially approved) for apportioning receivership assets[.]” *Sec. & Exch. Comm’n v. Huber*, 702 F.3d 903, 906 (7th Cir. 2012) (internal citations omitted). The goal of the rising tide methodology is to equalize, as far as possible, each investor’s percentage return on his investment. Under rising tide, a receiver distributes the receivership assets, to the extent they are available, on an increasing basis, devoting available assets to those investors who lost the greatest percentage of their investment until they reach parity with other investors who lost a smaller percentage of their investment. *See In re Receiver*, No. CA 3:10-3141-MBS, 2011 WL 2601849, at *2 (D.S.C. July 1, 2011); *Equity Fin. Grp., Inc.*, 2005 WL 2143975, at *24; *Sec. & Exch. Comm’n v. Parish*, No. 2:07-CV-00919-DCN, 2010

WL 5394736, at *3 (D.S.C. Feb. 10, 2010); *Sec. & Exch. Comm'n v. Callahan*, No. 12CV1065ADSAYS, 2016 WL 3245336, at *18-19 (E.D.N.Y. June 9, 2016). For example, no investor who, prior to the institution of a receivership, received 50 percent of his total investment back in distributions or other payments would receive any distribution until all other investors who received less than half of their investment received distributions bringing them up to 50 percent.

The Receiver submits that the most equitable methodology for distribution in this case is the rising tide method for the following reasons:

1. For investors in Acartha, each method of pro rata distribution produces the same total recovery for each investor. Each Acartha investor will achieve a 0.82 percent total return on investment no matter the distribution method because these investors did not report any pre-Receivership distributions. *See* Ex. B and Attachment 1 thereto.
2. For the investors in the remaining Entities—ATP, MIC VII, and Gryphon III—the rising tide method of distribution most equitably (a) distributes the available funds to those investors who benefited the least from pre-Receivership distributions and (b) equalizes, to the greatest extent possible, the total recoveries (pre- and post-Receivership) of each investor on an Entity-by-Entity basis. By using rising tide, the Receiver is able to reduce the amount of variation in each investor's total percentage recovery—thereby equalizing the recoveries of all investors to the greatest extent possible. For example, the use of rising tide reduces the standard deviation²² of total percentage recoveries of ATP investors to 0.170 (*cf.* a high of 0.402 under an ownership pro rata method of distribution²³ and 0.230 under a net investment method of distribution). The reduction is similar for MIC VII investors—the standard deviation in percentage recoveries is 0.060 under rising tide, 0.117 under net investment, and 0.121 under ownership pro rata. Rising tide also best equalizes the

²² “Standard deviation” is a statistical measure that is used to quantify the amount of variation or dispersion of a set of data values.

²³ The ownership pro rata method is another method of pro rata distribution; it is discussed in more detail in the Declaration of Timothy O’Shaughnessy. *See* Ex. B.

recoveries of Gryphon III investors by bringing all investors up to a 9.04 percent return of investment. *See* Ex. B. As described in the *SEC Complaint*, given that all investors were equally victimized by Morriss' conduct, there is a strong basis for equalizing, to the greatest extent possible, the recovery of investors in each Receivership Entity. *See Lake Shore Asset Mgmt. Ltd.*, 2010 WL 960362, at *9 (approving the use of rising tide as the "most equitable" because it "prevents an investor who previously received funds . . . from 'benefitting at the expense of other investors' . . ."); *see id.* (in approving rising tide method, finding that "there is no reason to allow certain investors to receive different percentages of their initial investment given that all of the investors were all equally victimized by the conduct of the Receivership Defendants").

Based on these considerations, the Receiver proposes to distribute the assets of the Receivership Estate to Allowed Claimants using the rising tide method of distribution. Under this method, any pre- Receivership distributions received by an Allowed Claimant are considered, and on an Entity-by-Entity basis, Receivership funds are distributed first to those investors who received lesser percentages of their contributions back in pre- Receivership distributions.

Using the rising tide method in this case, all Class 1-A and 1-D Allowed Claimants receive a distribution from the Receivership Estate. The result is different for Allowed Claimants in Classes 1-B and 1-C, primarily because of the significant (and sometimes substantial) pre- Receivership distributions received by those Claimants.²⁴ There is, however, no reason to allow those Allowed Claimants who benefited from pre- Receivership distributions to benefit again at the expense of other Allowed Claimants who did not profit as greatly pre- Receivership.

Given the considerations outlined above, the Receiver submits that a rising-tide approach to distribution is the most equitable and appropriate under the facts of this case.

²⁴ In accounting for pre- Receivership contributions and distributions, the Receiver primarily relied on the information provided to her by Claimants in their proof of claim and supplemental claim filings. In one instance, however, the Receiver resolved discrepancies between a claimant's filing and Receivership records (*i.e.*, general ledger entries, copies of K-1 forms).

E. Treatment of Issues Pertinent to Claimants, including Intercompany Entries and Federal Income Tax Considerations

In connection with the Receiver's analysis of the general ledger, the promissory note from Morriss Holdings held by Acartha, and other relevant documentation, the Receiver became aware of various due to/from entries reflecting the misappropriation of funds and dishonest acts as described in the SEC pleadings. Given the apparent uncollectability of the debts held by the various Receivership Entities and SPVs managed by the Receivership Entities as reflected in these various entries, the Receiver anticipates significant debt cancellation during calendar year 2017, which will be reflected in the issuance of future K-1s.

Based on existing case law and Internal Revenue Service pronouncements, the Receiver and her professionals believe that each Receivership Entity is entitled to claim a so-called "theft loss" for federal income tax purposes by reason of the misappropriation of funds and dishonest acts described in the SEC pleadings. Accordingly, each Receivership Entity intends to report a "theft loss" allocated to the Allowed Claimants in Classes 1 and 2, which will be shown on the final K-1s issued to each such Allowed Claimant for the 2017 reporting year. The overall effect of an Allowed Claimant in Class 1 or 2 claiming a theft loss is that the Allowed Claimant would be entitled to an ordinary deduction on the Allowed Claimant's federal income tax return for 2017 in an amount equal to the arithmetic sum of the cash invested by the Allowed Claimant, plus the cumulative amount of income and gain allocated to the Allowed Claimant (any cash distributed to the Allowed Claimant minus any cumulative losses allocated to the Allowed Claimant). All Allowed Claimants should note that the Internal Revenue Service could take the position that, under certain case law, no theft loss occurred. Therefore, the Receiver cannot give assurances that the Internal Revenue Service will not challenge a claimed theft loss by the Receivership Entities, which challenge, if successful, would mean that an Allowed Claimant

would not be entitled to the theft loss allocated to the Allowed Claimant by the applicable Receivership Entity. In lieu of taking a theft loss, an Allowed Claimant may take the position, depending on the facts and the actions of the Allowed Claimant, that the Allowed Claimant abandoned the Allowed Claimant's interest in the applicable Receivership Entity. In that case, the Allowed Claimant would be required to report income gain, loss, deduction, and cash distributions from the Receivership Entity(ies) through the date of abandonment. If the Allowed Claimant's position on abandonment is sustained, the Allowed Claimant may be entitled to an ordinary loss. No opinion whatsoever is expressed regarding the tax treatment to an Allowed Claimant and each Allowed Claimant is urged to consult the Allowed Claimant's tax adviser.

F. Distribution of Illiquid Assets

To the extent that an event of liquidity does not present prior to wind up of this proceeding, to the extent feasible, the Receiver proposes to distribute and assign the unliquidated assets of the Receivership Entities to the Allowed Claimants in those Entities in proportion to the respective interests held by such Allowed Claimants prior to or as part of the wind up of this proceeding.

VII. REQUEST FOR PAYMENT OF PORTION OF ADMINISTRATIVE EXPENSES REMAINING UNPAID PURSUANT TO HOLDBACK AGREEMENT WITH SEC

In connection with approval of the Receiver's proposed Distribution Plan and authorization to make the first interim distribution described herein, the Receiver requests that this Court approve the Receiver's payment of 80 percent of legal and other professional fees accumulated through December 31, 2016 and remaining unpaid as the result of the 20 percent holdback of the total fees for legal and other professional services rendered to the Receivership

Estate (the “holdback”).²⁵ At the request of the SEC, the Receiver voluntarily agreed to the 20 percent holdback in each of the interim fee applications submitted to the Court since the inception of the Receivership.²⁶

To date, and in keeping with SEC billing guidelines, the Receiver prepared fee applications for submission to the Court on a quarterly basis.²⁷ Each fee application was accompanied by the requisite standardized fund account report (“SFAR”). The Receiver also routinely submitted Receivership Reports, typically on a quarterly basis. No objections were filed by any interested party to any of the Receiver’s 20 fee applications. The Court allowed all of the Receiver’s fee applications, concluding in each instance that the requested fees and costs are reasonable and appropriate (ECF Nos. 199, 213, 227, 254, 268, 281, 303, 323, 343, 353, 367, 393, 394, 411, 425, 457, 471, 485, 504, 512).

Following a determination that services were rendered and costs expended in furtherance of the Receivership, the Court may award compensation for presented fees and costs. *See, e.g., Sec. & Exch. Comm’n v. Striker Petroleum, LLC*, No. 3:09-CV-2304-D, 2012 WL 685333, at *2 (N.D. Tex. Mar. 2, 2012) (“A receiver appointed by a court who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred”) (internal citation and quotation omitted). The Court should use the lodestar method to determine reasonable attorney (or other professional) fees. *Sec. & Exch. Comm’n v. Petters*, No. 09-1750, 2009 WL 3379954, at *3 (D. Minn. Oct. 20, 2009) (citing *Fish v. St. Cloud State University*, 295 F.3d 849, 851 (8th Cir. 2002)); *see Sec. & Exch. Comm’n v. Byers*, 590 F. Supp.

²⁵ The Receiver is requesting 80 percent of the holdback at this time, pursuant to discussions with the SEC. The Receiver will request payment of the remaining holdback amounts upon further application to this Court.

²⁶ Legal and professional costs and expenses that have been approved and paid as a part of each fee application are not the subject of this request.

²⁷ Copies of the Receiver’s Fee Applications may be accessed via the Receivership’s website at <http://www.thompsoncoburn.com/acartha>.

2d 637, 644 (S.D.N.Y. 2008) (recognizing that lodestar method is the method that makes sense in receivership proceeding). Under the lodestar method, the Court multiplies the number of hours reasonably expended by the reasonable hourly rate. *Id.* A reasonable hourly rate is the ordinary fee for similar work in the community. *Petters*, 2009 WL 3379954, at *3 (quoting *Avalon Cinema Corp. v. Thompson*, 689 F.2d 137, 140 (8th Cir. 1982)); *see also Fish*, 295 F.3d at 851 (“A reasonable hourly rate is usually the ordinary rate for similar work in the community where the case has been litigated.”).

The Receiver respectfully suggests that for the reasons stated herein and in each of the Receiver’s interim fee applications and Receivership Reports, and based upon the background information regarding rates and qualifications set forth in the Proposals and the Receivership Reports, the Receiver’s request for payment of 80 percent of the unpaid holdback amounts meets the criteria for allowance and payment under governing law. In particular, the Receiver’s attorneys, paralegals, accountants, and experts have incurred reasonable fees and costs consistent with the Court’s orders. The rates charged by the Receiver, her counsel, and other professionals are reasonable. In fact, the Receiver and many of her attorneys and professionals performed services for the Receivership at deeply discounted rates. The discounts enjoyed by the Receivership Estate have, in most instances, increased over the past five years because the Receiver’s attorneys and professionals have not increased their rates to reflect standard annual rate increases. Additionally, the Receiver’s primary counsel provided additional discounts to the Receivership Estate by performing, but not charging for, many hours of legal and other services, including the work of summer associates and other professionals.

The substance of this Memorandum and the Receiver’s prior filings with the Court demonstrate that the Receiver and her counsel and other professionals have made substantial and

diligent efforts to improve the Receivership's financial position through affirmative litigation, the claims process, and other activities for the benefit of the Receivership, the investors in the entities managed by the Receiver, and Allowed Claimants. As a result, the cash position of the Receivership Estate grew from approximately \$60,000 at the initiation of the proceeding to approximately \$6,000,000 at the time of this filing. The Receiver's efforts also have resulted in the maintenance of the Receivership's illiquid investments and distributions and/or return of funds to investors in multiple SPVs set up by the Receivership Entities (*see* ECF Nos. 139, 262, and 423). In addition to the recoveries described above, the Receiver and her professionals achieved recoveries for and/or enabled distributions from Integrien Acquisition, LLC and Integrien Acquisition II, LLC ("Integrien SPVs"), totalling \$840,000; EverGrid Acquisition, LLC, Evergrid/MIC VII, LLC, and Librato Acquisition II, LLC ("Librato SPVs"), totalling approximately \$800,000; Clearbrook Acquisition, LLC; and Acartha Special Situation Fund (\$146,023.78) (*see* ECF No. 426).

Beyond these recoveries, the Receiver worked diligently to avoid millions of dollars of expenses that would have significantly depleted the cash reserves available for distribution to Allowed Claimants. For example, the Receiver immediately closed the Receiverships Entities' two offices, thereby avoiding substantial further lease and rent obligations. The Receiver absorbed all documents, files, and electronic records into the offices of the Receiver's counsel without charge to the Estate. The Receiver also declined an offer from three former members of Acartha management to provide consulting to the Estate at a cost of \$900,000 per year, exclusive of various expenses and benefits. Moreover, as described hereinabove, the Receiver reduced the potential liability of the Receivership Estate through the claims process by more than \$13,000,000.

As such, the Receiver respectfully requests that the Court find as reasonable and authorize the Receiver to pay fees incurred by the following professionals in the below amounts (which amounts represent 80 percent of the holdback incurred as of December 31, 2016 and remain unpaid):

Thompson Coburn LLP	\$221,902.66
Segue Equity Group, LLC	\$11,827.43
CliftonLarsonAllen LLP	\$20,270.46
Pepper Hamilton LLP	\$453.14
FTL Capital	\$2,387.20
Total	\$256,840.85

A summary chart in support of the Receiver's request for payment of 80 percent of the unpaid holdback amounts as of December 31, 2016 (Ex. D) shows: (i) the interim fee application number; (ii) the interim fee application date; (iii) the reporting period covered by the interim fee application; (iv) the date of the Court's approval of each interim fee application; (v) the docket number of the Court's order approving the interim fee application; (vi) the name of the provider of the services; (vii) the total award requested; (viii) the total invoice amount for professional services; (ix) the amount paid for professional services pursuant to an approved fee application; (x) the amount initially withheld as the result of the holdback; (xi) the amount of the holdback paid previously; (xii) the amount of the unpaid holdback; and (xiii) the total requested to be paid to each provider of services as the result of this motion. Each of the invoices (along with the detailed narrative describing the legal and/or professional services) supporting these totals were filed with the Court at the time of each fee application and remain available for review by interested parties on the Receiver's website.

VIII. SERVICE OF MOTION; OBJECTIONS TO PROPOSED DISTRIBUTION PLAN

Concurrently with the filing of this Motion and Memorandum, the Receiver will electronically serve all persons and entities who hold claims that have been recommended for allowance by the Receiver (“Interested Parties”).²⁸ In addition, the Receiver will include in the service communication to Interested Parties the time limits for filing objections to motions under the Court’s local rules. The Receiver also will post a copy of the filed Motion and Memorandum on the Receivership website.

Should an Interested Party object to any of the relief requested herein, the Receiver respectfully submits that the procedure for objections to motions under this Court’s local rules are sufficient to protect Interested Parties’ rights to be heard in this case. *Commodity Futures Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1113 (9th Cir. 1999) (“For the claims of nonparties to property claimed by receivers, summary proceedings satisfy due process so long as there is adequate notice and opportunity to be heard.”) (quoting *Sec. & Exch. Comm’n v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1146 (9th Cir. 1996), *abrogated on other grounds*, *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 118 S.Ct. 1003, 1012 (1998)): *see United States v. Fairway Capital Corp.*, 433 F. Supp. 2d 226, 241 (D.R.I. 2006) (“Receivership courts can employ summary procedures in allowing, disallowing and subordinating claims of creditors.”) (internal citations omitted).

IX. CONCLUSION

For all the foregoing reasons, the Receiver respectfully requests that the Court:

1. Grant the Receiver’s Motion;

²⁸ Mr. Teylouni will receive service via his counsel through the Court’s CM/ECF filing system.

2. Approve the Receiver's determination of claims as set forth in this Memorandum and in the attached Schedule of Allowed Claims (Ex. A-1) and Schedule of Disallowed Claims (Ex. A-2);

3. Authorize the Receiver to allocate the assets of the Receivership Estate between the four Receivership Entities in the manner described in this Memorandum and in the attached Declaration of Timothy O'Shaughnessy (Ex. B);

4. Authorize the Receiver to allocate the expenses of the Receivership Estate between the four Receivership Entities in the manner described in this Memorandum and in the attached Declaration of Timothy O'Shaughnessy (Ex. B);

5. Approve the Receiver's determinations on the classification and priority of claims as described in this Memorandum;

6. Approve the rising tide method of distribution as set forth above and in the attached Declaration of Timothy O'Shaughnessy and its accompanying schedules (Ex. B) as the proper method for calculating distributions to Allowed Claimants in Class 1;

7. Authorize the Receiver's first interim distribution of Receivership assets to Allowed Claimants in Class 1;

8. Authorize future distributions of Receivership assets in accordance with the claim classification, priority, and distribution methodology proposed herein;

9. Authorize the Receiver to distribute and assign any unliquidated assets of the Receivership Entities to the Allowed Claimants in those Entities in proportion to the respective interests held by such Allowed Claimants prior to or as part of the wind up of this proceeding;

10. Approve the Receiver's request for allowance and payment of 80 percent of the legal and professional fee holdback incurred and remaining unpaid as of December 31, 2016 and

authorize the Receiver to pay the following amounts from the accounts of the Receivership Estate:

Thompson Coburn LLP	\$221,902.66
Segue Equity Group, LLC	\$11,827.43
CliftonLarsonAllen LLP	\$20,270.46
Pepper Hamilton LLP	\$453.14
FTL Capital	\$2,387.20
Total	\$256,840.85 ; and

11. Provide for such other and further relief as is just and appropriate under the circumstances.

Dated: April 20, 2017

Respectfully Submitted,

THOMPSON COBURN LLP

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EXHIBIT A-1**Schedule of Allowed Claims**

<u>Claim No.</u>	<u>Receiver's Recommended Determination</u>	<u>Receivership Entity</u>	<u>Claim Amount¹</u>	<u>Proposed Class</u>
4	Allow	Acartha	<i>Exchange</i>	2-A
5	Allow	Acartha	<i>Exchange</i>	2-A
6	Allow	Acartha	<i>Exchange</i>	2-A
7	Allow	Acartha	<i>Exchange</i>	2-A
8	Allow	MIC VII	\$100,000	1-C
9	Allow	MIC VII	\$250,000	1-C
11	Allow	Gryphon	\$500,000	1-D
13	Allow	Acartha	\$2,000,000	1-A
14	Allow	Acartha	\$1,500,000	1-A
15	Allow	MIC VII	\$20,000	1-C
16	Allow	Acartha	\$119,551	4-A
16	Allow	ATP	\$38,667	4-B
16	Allow	MIC VII	\$58,622	4-C
16	Allow	Gryphon	\$3,220	4-D
18	Allow in part	Acartha	\$2,500,000	1-A
18	Allow in part	Acartha	<i>Exchange</i>	2-A
22	Allow	Acartha	\$1,500,000	1-A
22	Allow	MIC VII	\$2,020,898.74	1-C
23	Allow	Gryphon	\$250,000	1-D
24	Allow	MIC VII	\$632,911.39	1-C
26	Allow	Acartha	\$200,000	1-A
27	Allow	MIC VII	\$550,000	1-C
28	Allow	Acartha	\$1,500,000	1-A
29	Allow	Acartha	\$1,250,000	1-A
29	Allow	Acartha	<i>Exchange</i>	2-A
30	Allow	Acartha	\$1,250,000	1-A
30	Allow	Acartha	<i>Exchange</i>	2-A
31	Allow	MIC VII	\$3,259,576.96	1-C
32	Allow	MIC VII	\$3,259,576.96	1-C
33	Allow	Acartha	\$500,000	1-A
34	Allow	Acartha	\$14,000	3-A
35	Allow	MIC VII	\$1,300,000	1-C
36	Allow	MIC VII	\$30,000	1-C
37	Allow	MIC VII	\$154,676.05	1-C
38	Allow	MIC VII	\$700,000	1-C
39	Allow	MIC VII	\$100,000	1-C
40	Allow	MIC VII	\$20,000	1-C
41	Allow	ATP	\$9,650,000	1-B
42	Allow	MIC VII	\$649,336.24	1-C
44	Allow	MIC VII	\$975,821.19	1-C

¹ Claim Amount is either (a) the investor's asserted and/or verified cash contribution amount to the applicable Receivership Entity, not deducting any pre-Receivership distributions; or (b) the creditor's asserted claim amount.

<u>Claim No.</u>	<u>Receiver's Recommended Determination</u>	<u>Receivership Entity</u>	<u>Claim Amount¹</u>	<u>Proposed Class</u>
45	Allow	MIC VII	\$1,044,303.80	1-C
46	Allow	MIC VII	\$537,974.68	1-C
47	Allow	MIC VII	\$2,140,805	1-C
48	Allow in part	Acartha	\$2,500,000	1-A
48	Allow in part	Acartha	<i>Exchange</i>	2-A
48	Allow in part	MIC VII	\$3,496,597	1-C
49	Allow	Acartha	\$500,000	1-A
49	Allow	MIC VII	\$500,000	1-C
50	Allow	MIC VII	\$25,000	1-C
52	Allow	Acartha	\$300,000	1-A
53	Allow	MIC VII	\$550,000	1-C
54	Allow	MIC VII	\$400,000	1-C
60	Allow	ATP	\$100,000	3-B
62	Allow in part	Gryphon	\$450,000	1-D
69	Allow	MIC VII	\$50,000	1-C
70	Allow	MIC VII	\$1,250,000	1-C
71	Allow	MIC VII	\$250,000	1-C
72	Allow	MIC VII	\$50,000	1-C
73	Allow	MIC VII	\$40,000	1-C
74	Allow	MIC VII	\$70,000	1-C
75	Allow	MIC VII	\$250,000	1-C
76	Allow	MIC VII	\$33,000	1-C
77	Allow	MIC VII	\$33,000	1-C
78	Allow	MIC VII	\$34,000	1-C
79	Allow	MIC VII	\$100,000	1-C
80	Allow	MIC VII	\$75,000	1-C
81	Allow	MIC VII	\$25,000	1-C
82	Allow	MIC VII	\$25,000	1-C
83	Allow	MIC VII	\$50,000	1-C
84	Allow	MIC VII	\$100,000	1-C
85	Allow	MIC VII	\$65,000	1-C
86	Allow	ATP	\$100,000	1-B
87	Allow	ATP	\$50,000	1-B
88	Allow	ATP	\$25,000	1-B
89	Allow	ATP	\$50,000	1-B
90	Allow	ATP	\$50,000	1-B
91	Allow	ATP	\$50,000	1-B
92	Allow	ATP	\$50,000	1-B
93	Allow	ATP	\$50,000	1-B
94	Allow	ATP	\$300,000	1-B
95	Allow	ATP	\$25,000	1-B
96	Allow	ATP	\$50,000	1-B
97	Allow	ATP	\$129,000	1-B
98	Allow	ATP	\$80,000	1-B
99	Allow	ATP	\$300,000	1-B
100	Allow	ATP	\$27,500	1-B

<u>Claim No.</u>	<u>Receiver's Recommended Determination</u>	<u>Receivership Entity</u>	<u>Claim Amount¹</u>	<u>Proposed Class</u>
101	Allow	ATP	\$165,000	1-B
102	Allow	ATP	\$243,500	1-B
103	Allow	ATP	\$32,500	1-B
104	Allow	ATP	\$55,000	1-B
105	Allow	ATP	\$130,000	1-B
106	Allow	ATP	\$341,000	1-B
107	Allow	ATP	\$100,000	1-B
108	Allow	ATP	\$25,000	1-B
109	Allow	ATP	\$25,000	1-B
110	Allow	ATP	\$75,000	1-B
111	Allow	ATP	\$27,500	1-B
112	Allow	ATP	\$32,500	1-B
113	Allow	ATP	\$115,000	1-B
114	Allow in part	MIC VII	\$267,527.49	1-C
114	Allow in part	Gryphon	\$200,000	1-D
115	Allow in part	MIC VII	\$410,381	1-C
116	Allow	ATP	\$27,500	1-B
117	Allow	ATP	\$115,000	1-B
118	Allow	ATP	\$65,000	1-B
119	Allow	ATP	\$125,000	1-B
120	Allow	ATP	\$155,000	1-B
121	Allow	ATP	\$155,000	1-B
122	Allow	ATP	\$135,000	1-B
123	Allow	ATP	\$32,500	1-B
124	Allow	ATP	\$250,000	1-B
125	Allow	ATP	\$465,000	1-B
126	Allow	ATP	\$110,000	1-B
127	Allow	ATP	\$110,000	1-B
128	Allow	ATP	\$220,000	1-B
129	Allow	ATP	\$150,000	1-B
130	Allow	ATP	\$125,000	1-B
131	Allow	ATP	\$125,000	1-B
132	Allow	ATP	\$125,000	1-B
133	Allow	ATP	\$220,000	1-B
134	Allow	ATP	\$275,000	1-B
135	Allow	ATP	\$99,000	1-B
136	Allow	ATP	\$60,000	1-B
137	Allow	ATP	\$112,500	1-B
138	Allow	ATP	\$770,000	1-B
139	Allow	ATP	\$275,000	1-B
140	Allow	ATP	\$750,000	1-B
141	Allow	ATP	\$100,000	1-B
142	Allow	ATP	\$250,000	1-B
143	Allow	ATP	\$1,650,000	1-B
227	Allow	Acartha	\$74,594	3-A

EXHIBIT A-2**Schedule of Disallowed Claims**

Claim No.	Receiver's Recommended Determination	Receivership Entity(ies)	Claim Amount¹
1	Disallow	Acartha, ATP, MIC VII, Gryphon	\$28,946.18
2	Disallow	Acartha	\$1,738.89
3	Disallow	MIC VII	\$30,000
10	Disallow	Gryphon	\$244,692.15
12	Disallow	Acartha, ATP, MIC VII, Gryphon	\$100,000
17	Disallow	Acartha	\$450,363.05
18	Disallow in part	Acartha	\$10,959,707.25
19	Disallow	Acartha	\$25,718.85
20	Disallow ²	Acartha, ATP	\$352,532.15
21	Disallow	Acartha, ATP, MIC VII	\$2,764,524.49
25	Disallow	Acartha	Equity 33.33% + \$10,845.25
43	Disallow	Acartha	\$432,391.24
48	Disallow in part	Acartha	\$2,500,000
48	Disallow in part	MIC VII	\$3,496,597
51	Disallow	Gryphon	None given
55	Disallow	Acartha	\$10,000
56	Disallow	ATP	\$10,000
57	Disallow	MIC VII	\$42,500
58	Disallow	Gryphon	\$10,000
59	Disallow	Acartha	\$61,066.33
61	Disallow	Acartha, ATP, MIC VII, Gryphon	\$1,301,756.93
62	Disallow in part	Gryphon	\$427,882.24
63	Disallow	Acartha	20.833333% plus \$6,778.96
64	Disallow	Acartha	8.3333333% plus \$2,710.75
65	Disallow	Acartha	16.66666667% plus \$5,423.17
66	Disallow	Acartha	20.83333334% plus \$6,778.96
67	Disallow	Acartha	\$172,734.91
68	Disallow	Acartha, MIC VII, Gryphon	\$1,053,333.33 plus other equity
114	Disallow in part	MIC VII, Gryphon	\$862,453.64
115	Disallow in part	MIC VII	\$62,650.34

¹ Claim Amount is the total claim amount provided by the claimant on the proof of claim form filed with the Receiver, regardless of whether the claim was disallowed in full or in part.

² Pending Court resolution on objection to disallowance determination (*see* ECF Nos. 337, 344, 347-51, 378-79, 448-50, 452, 486).

Claim No.	Receiver's Recommended Determination	Receivership Entity(ies)	Claim Amount¹
144	Disallow	Acartha	Equity 1.61%
145	Disallow	Acartha	Equity 1.61%
146	Disallow	Acartha	Equity 3.23%
147	Disallow	Acartha	Equity 1.61%
148	Disallow	Acartha	Equity 1.61%
149	Disallow	Acartha	Equity 1.61%
150	Disallow	Acartha	Equity 1.61%
151	Disallow	Acartha	Equity 3.23%
152	Disallow	Acartha	Equity 4.03%
153	Disallow	Acartha	Equity 1.22%
154	Disallow	Acartha	Equity 0.81%
155	Disallow	Acartha	Equity 1.37%
156	Disallow	Acartha	Equity 8.88%
157	Disallow	Acartha	Equity 4.03%
158	Disallow	Acartha	Equity 8.07%
159	Disallow	Acartha	Equity 12.8%
160	Disallow	Acartha	\$5,439
161	Disallow	Acartha	\$5,439
162	Disallow	Acartha	\$5,439
163	Disallow	Acartha	\$10,878
164	Disallow	Acartha	\$13,598
165	Disallow	Acartha	\$4,079
166	Disallow	Acartha	\$2,720
167	Disallow	Acartha	\$4,623
168	Disallow	Acartha	\$29,915
169	Disallow	Acartha	\$13,598
170	Disallow	Acartha	\$27,196
171	Disallow	Acartha	\$5,439
172	Disallow	Acartha	\$13,598
173	Disallow	Acartha	\$81,587
174	Disallow	Acartha	\$5,439
175	Disallow	Acartha	\$1,360
176	Disallow	Acartha	\$1,360
177	Disallow	Acartha	\$5,439
178	Disallow	Acartha	\$2,720
179	Disallow	Acartha	\$1359.78
180	Disallow	Acartha	\$2,720
181	Disallow	Acartha	\$5,439
182	Disallow	Acartha	\$5,439
183	Disallow	Acartha	\$5,439
184	Disallow	Acartha	\$1,360
185	Disallow	Acartha	\$16,317
186	Disallow	Acartha	\$5,439
187	Disallow	Acartha	\$5,439
188	Disallow	Acartha	\$10,878
189	Disallow	Acartha	\$5,439

Claim No.	Receiver's Recommended Determination	Receivership Entity(ies)	Claim Amount¹
190	Disallow	Acartha	\$1,874
191	Disallow	Acartha	\$3,748
192	Disallow	Acartha	\$11,243
193	Disallow	Acartha	\$937
194	Disallow	Acartha	\$11,061
195	Disallow	Acartha	\$5,622
196	Disallow	Acartha	\$9,790
197	Disallow	Acartha	\$1,359.78
198	Disallow	Acartha	\$2,720
199	Disallow	Acartha	\$5,439
200	Disallow	Acartha	\$16,861
201	Disallow	Acartha	\$5,439
202	Disallow	Acartha	\$4,079
203	Disallow	Acartha	\$1,360
204	Disallow	Acartha	\$1,360
205	Disallow	Acartha	Equity 0.28%
206	Disallow	Acartha	Equity 2.42%
207	Disallow	Acartha	Equity 2.9%
208	Disallow	Acartha	Equity 0.4%
209	Disallow	Acartha	Equity 1.61%
210	Disallow	Acartha	Equity 5%
211	Disallow	Acartha	Equity 0.4%
212	Disallow	Acartha	Equity 0.4%
213	Disallow	Acartha	Equity 0.4%
214	Disallow	Acartha	Equity 0.81%
215	Disallow	Acartha	Equity 0.81%
216	Disallow	Acartha	Equity 1.61%
217	Disallow	Acartha	Equity 1.615%
218	Disallow	Acartha	Equity 1.615%
219	Disallow	Acartha	Equity 1.42%
220	Disallow	Acartha	Equity 0.4%
221	Disallow	Acartha	Equity 2.47%
222	Disallow	Acartha	Equity 3.41%
223	Disallow	Acartha	\$24,960.92
224	Disallow	Acartha	Equity 4.94957%
225	Disallow	Acartha	Equity 8.1357527%
226	Disallow	Acartha	\$350,000

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, and)	
)	
MORRISS HOLDINGS, LLC,)	
)	
Relief Defendant.)	

**DECLARATION OF TIMOTHY S. O’SHAUGHNESSY
IN SUPPORT OF RECEIVER’S PLAN FOR DISTRIBUTION OF FUNDS HELD BY
ACARTHA GROUP, LLC, ACARTHA TECHNOLOGY PARTNERS, L.P., MIC VII,
LLC, AND GRYPHON INVESTMENTS III, LLC**

I, Timothy S. O’Shaughnessy, being duly sworn, declare:

1. I am the Managing Principal for the St. Louis region of CliftonLarsonAllen LLP (“CLA”).¹ I specialize in business and individual tax planning and compliance. I have more than fifteen years of public accounting experience. CLA is the tenth largest accountancy firm in the United States, and Federal Equity Receivership Services are offered along with many other services by CLA.

2. In June of 2012, following the approval of the Court, CLA was retained by Claire M. Schenk, as Receiver for Acartha Group, LLC (“Acartha”), Acartha Technology Partners, L.P.

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Receiver’s *Memorandum of Law in Support of Receiver’s Motion to Approve Plan of Distribution, Approve Schedule of Claims, Authorize First Interim Distribution of Receivership Assets, and Approve Partial Payment of Holdback Amount Pertaining to Legal and Professional Services Rendered by the Receiver, Retained Counsel, and Other Professionals*, filed concurrently herewith.

(“ATP”), MIC VII, LLC (“MIC VII”), Gryphon Investments III, LLC (“Gryphon III” and together with Acartha, ATP and MIC VII, the “Receivership Entities”), to work as an independent contractor and provide external accounting and tax services, including bookkeeping and tax planning and preparation, for the Receivership Entities and the special purpose vehicles entities managed by Acartha Group (collectively, the “Managed Entities”).

3. Following CLA’s retention by the Receiver and the Court’s approval of the engagement, CLA handled all required state, federal, and local tax filings on behalf of the Receivership Entities and the Managed Entities. Additionally, CLA directly issued K-1s to each of the investors in the Receivership Entities and the Managed Entities every year since the inception of the Receivership. In the process of preparing investor K-1s, I learned that a number of the investors abandoned their interests in the Receivership and Managed Entities. In those instances where investors abandoned their interests, the abandonment was documented, notices were provided to investors along with their K-1s, and capital accounts were adjusted to zero. CLA has directly prepared and issued the required Form 1099s on behalf of the Receiver. Also, CLA provided tax and accountancy advice to the Receiver. As part of the process of preparing these filings and rendering these services, CLA reviewed all items pertaining to income and expense of the Receivership Entities and Managed Entities on a periodic but no less than an annualized basis.

4. At the request of the Receiver, following various events of liquidity, I prepared distribution schedules for the Managed Entities. In order to prepare the distribution schedules, I reviewed, among other things, investor schedules, documents relating to the various events of liquidity, information supplied by investors and interested parties, back-up documentation pertaining to expense items, corporate documentation including operating agreements, former

management, and accountant's distribution calculations, the pre-Receivership general ledger entries, and the post-Receivership income and expense summaries prepared by the Receivership bookkeepers, Segue Capital, LLC.

5. I prepared distribution schedules for distributions to: Integrien Acquisition, LLC, Integrien Acquisition II, LLC, EverGrid Acquisition, LLC, Evergrid/MIC VII, LLC, Librato Acquisition II, LLC and Clearbrook Acquisition, LLC. The Receiver submitted each of these distribution schedules to the Receivership Court, and the Court approved the requested distributions as reflected in the schedules. Although a distribution schedule was not required by the Receiver due to the specificity of the bank records, I have reviewed and am familiar with the distribution to Acartha Special Situation Fund, another former Managed Entity.

6. Based upon my familiarity with the books and records of the Receivership Entities and Managed Entities, and ongoing and continuous involvement in the tax and distribution work for the Receivership Entities and Managed Entities described above, the Receiver requested that I assist her in the preparation of a distribution plan in anticipation of wind up of the Receivership proceeding. In addition to my review of the relevant financial information available to me² and which is described hereinabove, I personally participated in multiple planning sessions with the Receiver and her counsel in order to develop the Distribution Schedule which is attached hereto as **Attachments 1-4**. Following each detailed planning session, I further developed, updated, and refined the Distribution Schedule.

7. To prepare the Distribution Schedule, I began with a review and reconciliation of the Receivership Entities' starting and ending cash positions. The Receivership Entities began

² In connection with the preparation of the distribution plan schedules, the Receiver made available to me the claims forms and all supporting documentation provided by Allowed Claimants through the claims filing and bar date process.

with cash positions as follows: Acartha, \$56,762.61; MIC VII, \$2,584.50; ATP, \$614.79; and Gryphon, \$34. Five years later, these Entities, as of March 31, 2017, hold the combined sum of \$5,946,033.67.

8. I also prepared an income and expense analysis. For income, monies were divided into separate pools of funds depending on whether they were general pool or asset-specific funds. Monies pertaining to asset-specific funds are assigned to the Entity(ies) that held the original asset. General pool funds are shared and allocated based upon the size of the original cash investment of the Class 1 Allowed Claimants in each Receivership Entity. I relied upon a similar methodology for expense allocation, *i.e.*, expenses are shared and allocated based upon the size of the original cash investment of the Class 1 Allowed Claimants in each Receivership Entity. Upon completion of this process, my calculations show the following asset allocation between the Receivership Entities:

Cash Assets as of 3/31/17:	\$ 5,946,033.67
Initial Distribution Amount:	\$ 4,739,532.10
Initial Distribution Amount on Entity-by-Entity Basis:	
	<i>Acartha</i> \$ 126,543.79
	<i>MIC VII</i> \$ 647,523.26
	<i>ATP</i> \$ 3,872,352.93
	<i>Gryphon III</i> \$ 93,350.70

9. At the request of the Receiver, I analyzed three different distribution methodologies for comparison purposes: (a) ownership pro rata; (b) net investment pro rata; and

(c) rising tide pro rata. I prepared a distribution analysis relying upon each of the identified methods of pro rata distribution.

10. The ownership pro rata methodology relies on the ownership percentages of each investor-claimant to distribute assets. For example, an investor that owns 25 percent of an entity would be entitled to a distribution of 25 percent of that entity's assets. The methodology does not take into account distributions or other entity income received by an investor pre-Receivership and does not exclude the participation of investors who may have recovered their capital contributions through pre-Receivership distributions.

11. The net investment pro rata methodology tabulates the total money each investor lost (the total amounts invested minus amounts withdrawn, transferred, or received in distributions) and then allocates Receivership funds pro rata according to the net loss of each investor. Distributions are equal to the amount lost by each investor multiplied by the percentage calculated by dividing the amount to be distributed by the total of all the investors' losses. All investors are treated equally in that all investors who lost the same amount of money receive the same distribution.

12. Under the rising tide pro rata methodology, assets are distributed on an increasing basis, devoting available assets to those investors who lost the greatest percentage of their investment until they reach parity with other investors who lost a smaller percentage of their investment. As an example, no investor who received 50 percent of his total investment back in distributions or other payments pre-Receivership would receive any Receivership distribution until all other investors who received less than half of their investment received Receivership distributions bringing them up to a 50 percent return. This approach excludes net gain investors from any distributions and avoids the potential under the net investment method for net loss

investors to receive more than their proportionate share when compared to other net loss investors.

13. I reviewed and calculated distribution amounts for each investor under each method, using as the distribution pool the amounts available to each Receivership Entity based on the income and expense analysis described above. In each instance where my analysis takes into account pre-Receivership distributions received by Allowed Claimants, I relied on the claims information provided by Allowed Claimants to the Receiver as part of the claims filing process.³ The results of my calculations are summarized below and detailed in **Attachments 1 through 4**.

14. **Acartha (Class 1-A) – All Methodologies**. There are eleven (11) Allowed Claimants⁴ in Class 1-A (claimants entitled to participate as cash investors, per the Receiver's claims classification and priority determinations). I determined the ownership pro rata distribution percentages of the Class 1-A Claimants by dividing each Claimant's total cash contribution by the total cash contributions of all Class 1-A Allowed Claimants (*i.e.*, \$2,500,000 ÷ 15,500,004.20 = 16.13%). I then divided up the assets allocated to Acartha based on each Claimant's ownership pro rata percentage. The results are shown on **Attachment 1** under the "Ownership Pro Rata" column. I also analyzed the results for Class 1-A Claimants using the net investment and rising tide methodologies. The results are shown on **Attachment 1** under the "Net Investment Pro Rata" and "Rising Tide Pro Rata" columns. The net investment and rising tide methodologies typically produce different results than an ownership pro rata analysis because they take into account pre-Receivership distributions. None of the Class 1-A Claimants,

³ In one instance, I resolved a discrepancy between an Allowed Claimant's claim information and Receivership records (in particular, copies of K-1 forms issued to the Allowed Claimant pre-Receivership).

⁴ These eleven Claimants represent twelve (12) filed Claims.

however, received pre-Receivership distributions. As such, the Class 1-A Claimants' distribution amounts are identical under each of the three distribution methodologies. Furthermore, under each scenario, the Class 1-A Allowed Claimants each recover the same percentage of their investments through the Receivership's distribution.

15. **ATP (Class 1-B) – Ownership Pro Rata.** There are 56 Allowed Claimants in Class 1-B (claimants entitled to participate as cash investors, per the Receiver's claims classification and priority determinations). I determined the ownership pro rata distribution percentages of the Class 1-B Claimants using each Claimant's current ownership percentage reflected on its 2015 K-1 form for ATP. I then divided up the assets allocated to ATP based on the pro rata percentages. The results are shown on **Attachment 2** under the "Ownership Pro Rata" column. This method provides for a Receivership recovery for all Class 1-B Allowed Claimants and results in a standard deviation in total percentage recoveries between Allowed Claimants of 0.402.

16. **ATP (Class 1-B) – Net Investment.** I also analyzed the results for Class 1-B Claimants using the net investment methodology. For these Claimants, the net investment and rising tide methodologies produced different results than the ownership pro rata methodology because many of the Class 1-B Claimants received distributions prior to the institution of the Receivership. In fact, of the 56 Class 1-B Allowed Claimants, nineteen received more in distributions than they had invested; thus, under both net investment and rising tide, these nineteen Claimants would not be entitled to a distribution from the Receivership Estate. Under net investment, each Allowed Claimant's pro rata distribution percentage is determined by calculating each Allowed Claimant's "net loss" (contributions minus distributions) and then dividing that "net loss" by the total "net loss" of all Allowed Claimants. For Class 1-B, the

results are shown on **Attachment 2** under the “Net Investment Pro Rata” column. The net investment method provides for distributions to 66 percent of Class 1-B Allowed Claimants and reduces the standard deviation between total percentage recoveries to 0.230.

17. **ATP (Class 1-B) – Rising Tide**. I also analyzed the results for Class 1-B Claimants using the rising tide methodology. As stated above, the object of rising tide is to devote available assets to those investors who lost the greatest percentage of their investment until they reach parity with other investors who lost a smaller percentage of their investment. Excluding Allowed Claimants who recovered more than their investment pre-Receivership, the pre-Receivership recoveries of the Class 1-B Allowed Claimants ranged from no pre-Receivership recovery of investment to recovery of 98.11 percent of investment. The results are shown on **Attachment 2** under the “Rising Tide Pro Rata” column. Rising tide results in the distribution of the available assets to twenty Class 1-B Allowed Claimants, raising the lowest percentage of pre-Receivership recovery from no recovery (0 percent) to a 76.02 percent recovery. It reduces the standard deviation between total percentage recoveries to 0.170.

18. **MIC VII (Class 1-C) – Ownership Pro Rata**. There are 43 Allowed Claimants in Class 1-C (claimants entitled to participate as cash investors, per the Receiver’s claims classification and priority determinations). I determined the ownership pro rata distribution percentages of the Class 1-C Claimants using each Claimant’s current ownership percentage reflected on its 2015 K-1 form for MIC VII. I then divided up the assets allocated to MIC VII based on the pro rata percentages. The results are shown on **Attachment 3** under the “Ownership Pro Rata” column. Using this method, all Class 1-C Allowed Claimants receive a distribution from the Receivership estate. This method results in a standard deviation in total percentage recoveries between Allowed Claimants of 0.121.

19. **MIC VII (Class 1-C) – Net Investment**. I also analyzed the results for Class 1-C Claimants using the net investment methodology. For these Claimants, the net investment and rising tide methodologies produced different results than the ownership pro rata methodology because many of the Class 1-C Claimants received distributions prior to the institution of the Receivership. Under net investment, each Allowed Claimant's pro rata distribution percentage is determined by calculating each Allowed Claimant's "net loss" (contributions minus distributions) and then dividing that "net loss" by the total "net loss" of all Allowed Claimants. For Class 1-C, the results are shown on **Attachment 3** under the "Net Investment Pro Rata" column. The net investment method provides for distributions to all Class 1-C Allowed Claimants and reduces the standard deviation between total percentage recoveries to 0.117.

20. **MIC VII (Class 1-C) – Rising Tide**. I also analyzed the results for Class 1-C Claimants using the rising tide methodology. As stated above, the object of rising tide is to devote available assets to those investors who lost the greatest percentage of their investment until they reach parity with other investors who lost a smaller percentage of their investment. The pre-Receivership recoveries of the Class 1-C Allowed Claimants ranged from no pre-Receivership recovery of investment to recovery of 34.04 percent of investment. The results of the rising tide methodology for this group of Claimants are shown on **Attachment 3** under the "Rising Tide Pro Rata" column. Rising tide results in the distribution of the available assets to twenty-one Class 1-C Allowed Claimants, raising the lowest percentage of investment recovery from no pre-Receivership recovery (0 percent) to a 14.35 percent recovery. It reduces the standard deviation between total percentage recoveries to 0.060.

21. **Gryphon III (Class 1-D) – Ownership Pro Rata**. There are four (4) Allowed Claimants in Class 1-D (claimants entitled to participate as cash investors, per the Receiver's

claims classification and priority determinations). I determined the ownership pro rata distribution percentages of the Class 1-D Claimants using each Claimant's current ownership percentage reflected on its 2015 K-1 form for Gryphon III. I then divided up the assets allocated to Gryphon III based on the pro rata percentages. The results are shown on **Attachment 4** under the "Ownership Pro Rata" column. Using this method, all Class 1-D Allowed Claimants receive a distribution from the Receivership estate. This method results in a standard deviation in total percentage recoveries between Allowed Claimants of 0.00363.

22. **Gryphon III (Class 1-D) – Net Investment.** I also analyzed the results for Class 1-D Claimants using the net investment and rising tide methodologies. For these Claimants, the net investment and rising tide methodologies produced different results than the ownership pro rata methodology because the four Class 1-D Claimants received distributions prior to the institution of the Receivership. Under net investment, each Allowed Claimant's pro rata distribution percentage is determined by calculating each Allowed Claimant's "net loss" (contributions minus distributions) and then dividing that "net loss" by the total "net loss" of all Allowed Claimants. For Class 1-D, the results are shown on **Attachment 4** under the "Net Investment Pro Rata" column.

23. **Gryphon III (Class 1-D) – Rising Tide.** As stated above, the object of rising tide is to devote available assets to those investors who lost the greatest percentage of their investment until they reach parity with other investors who lost a smaller percentage of their investment. The pre- Receivership recoveries of the Class 1-D Allowed Claimants ranged between 2.12 percent of investment and 2.86 percent of investment. The results of the rising tide methodology for this group of Claimants are shown on **Attachment 4** under the "Rising Tide Pro Rata" column. Rising tide results in the distribution of the available assets to all four Class 1-


D Allowed Claimants, raising the lowest percentage of investment recovery from a 2.12 percent recovery to a 9.04 recovery. It brings all investors up to a 9.04 percent return on investment.

24. I understand that the Receiver is recommending that available assets be distributed to Allowed Claimants in Classes 1-B through 1-D using the rising tide methodology. As to Class 1-A Allowed Claimants, the results are consistent under each method since there were no pre-Receivership distributions. Upon wind up and final distribution, I will work with the Receiver, following the rising tide methodology, to determine the appropriate amount for allocation to each Claimant from the cash which remains available at the time of distribution.

25. As part of the planning process involving the Receiver and her counsel, we considered the treatment of issues pertinent to Claimants, including intercompany entries and federal income tax considerations. In line with those discussions, each Receivership Entity intends to report a “theft loss” allocated to the Allowed Claimants in Classes 1 and 2, as described in the Receiver’s Memorandum, which will be shown on the final K-1s issued to each such Allowed Claimant for the 2017 reporting year. Additionally, I understand that given the apparent uncollectability of the debts held by the various Receivership and Managed Entities as reflected in many intercompany entries, the Receiver anticipates significant debt forgiveness and cancellation of various receivables currently reflected on the books during calendar year 2017, which will be reflected in the issuance of future K-1s to be issued to the Claimants.

- Signature page follows -

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This Declaration was executed this 18th day of April, 2017.



Timothy S. O'Shaughnessy

Acartha Group, LLC (Class 1-A) - All Methodologies

Claim No.	Initial Investment	Pre-Receivership Distributions	Ownership Pro Rata		Rising Tide Pro Rata		Net Investment Pro Rata	
			Distribution Amount	Total Return %	Distribution Amount	Total Return %	Distribution Amount	Total Return %
13	2,000,000.00	-	16,328.23	0.82%	16,328.23	0.82%	16,328.23	0.82%
14	1,500,000.00	-	12,246.17	0.82%	12,246.17	0.82%	12,246.17	0.82%
18	2,500,000.00	-	20,410.28	0.82%	20,410.28	0.82%	20,410.28	0.82%
22	1,500,000.00	-	12,246.17	0.82%	12,246.17	0.82%	12,246.17	0.82%
26	199,970.00	-	1,632.58	0.82%	1,632.58	0.82%	1,632.58	0.82%
28	1,500,000.00	-	12,246.17	0.82%	12,246.17	0.82%	12,246.17	0.82%
29	1,250,000.00	-	10,205.14	0.82%	10,205.14	0.82%	10,205.14	0.82%
30	1,250,000.00	-	10,205.14	0.82%	10,205.14	0.82%	10,205.14	0.82%
33	500,104.20	-	4,082.91	0.82%	4,082.91	0.82%	4,082.91	0.82%
48	2,500,000.00	-	20,410.28	0.82%	20,410.28	0.82%	20,410.28	0.82%
49	499,965.00	-	4,081.77	0.82%	4,081.77	0.82%	4,081.77	0.82%
52	299,965.00	-	2,448.95	0.82%	2,448.95	0.82%	2,448.95	0.82%
TOTALS	15,500,004.20	-	126,543.79		126,543.79		126,543.79	

Acartha Technology Partners, L.P. (Class 1-B) - All Methodologies

Claim No.	Initial Investment	Pre-Receivership Distributions	Ownership Pro		Rising Tide Pro		Net Investment	
			Rata Distribution Amount	Total Return %	Rata Distribution Amount	Total Return %	Pro Rata Distribution Amount	Total Return %
41	9,650,000.00	4,414,146.00	1,772,075.67	64.11%	2,921,507.17	76.02%	2,829,925.96	75.07%
86	100,000.00	-	33,845.01	33.85%	76,017.13	76.02%	54,048.99	54.05%
87	50,000.00	-	16,922.51	33.85%	38,008.57	76.02%	27,024.49	54.05%
88	25,000.00	-	8,461.25	33.85%	19,004.28	76.02%	13,512.25	54.05%
89	50,000.00	-	16,922.51	33.85%	38,008.57	76.02%	27,024.49	54.05%
90	50,000.00	-	16,922.51	33.85%	38,008.57	76.02%	27,024.49	54.05%
91	50,000.00	-	16,922.51	33.85%	38,008.57	76.02%	27,024.49	54.05%
92	50,000.00	-	16,922.51	33.85%	38,008.57	76.02%	27,024.49	54.05%
93	50,000.00	-	101,535.06	203.07%	38,008.57	76.02%	27,024.49	54.05%
94	300,000.00	-	101,535.06	33.85%	228,051.39	76.02%	162,146.96	54.05%
95	25,000.00	-	8,461.26	33.85%	19,004.28	76.02%	13,512.25	54.05%
96	50,000.00	-	16,922.51	33.85%	38,008.57	76.02%	27,024.49	54.05%
97	129,000.00	49,490.23	26,910.10	59.23%	48,571.87	76.02%	42,974.22	71.68%
98	80,000.00	24,745.12	18,701.02	54.31%	36,068.59	76.02%	29,864.70	68.26%
99	300,000.00	148,470.70	51,285.12	66.59%	79,580.69	76.02%	81,900.05	76.79%
100	27,500.00	12,372.57	5,129.70	63.64%	8,532.14	76.02%	8,176.22	74.72%
101	165,000.00	74,235.35	30,803.59	63.66%	51,192.92	76.02%	49,057.37	74.72%
102	243,500.00	220,756.23	50,671.77	111.47%	-	90.66%	12,292.78	95.71%
103	32,500.00	30,660.59	6,591.34	114.62%	-	94.34%	994.18	97.40%
104	55,000.00	61,321.18	9,769.75	129.26%	-	111.49%	-	111.49%
105	130,000.00	122,642.34	26,364.68	114.62%	-	94.34%	3,976.74	97.40%
106	341,000.00	380,191.27	60,746.74	129.31%	-	111.49%	-	111.49%
107	100,000.00	122,642.34	16,154.99	138.80%	-	122.64%	-	122.64%
108	25,000.00	30,660.59	4,038.74	138.80%	-	122.64%	-	122.64%
109	25,000.00	30,660.59	4,037.69	138.79%	-	122.64%	-	122.64%
110	75,000.00	92,281.76	12,116.25	139.20%	-	123.04%	-	123.04%
111	27,500.00	30,660.59	4,899.09	129.31%	-	111.49%	-	111.49%

Claim No.	Initial Investment	Pre-Receivership Distributions	Ownership Pro Rata		Rising Tide Pro Rata		Net Investment Pro Rata	
			Distribution Amount	Total Return %	Distribution Amount	Total Return %	Distribution Amount	Total Return %
112	32,500.00	30,660.59	6,591.34	114.62%	-	94.34%	994.18	97.40%
113	115,000.00	122,642.34	21,231.74	125.11%	-	106.65%	-	106.65%
116	27,500.00	30,660.59	4,899.09	129.31%	-	111.49%	-	111.49%
117	115,000.00	61,321.54	30,104.85	79.50%	26,098.16	76.02%	29,012.66	78.55%
118	65,000.00	28,530.74	13,182.34	64.17%	20,880.40	76.02%	19,711.27	74.22%
119	125,000.00	122,642.34	24,672.43	117.85%	-	98.11%	1,274.29	99.13%
120	155,000.00	122,642.86	34,826.10	101.59%	-	79.12%	17,488.71	90.41%
121	155,000.00	122,642.86	34,826.11	101.59%	-	79.12%	17,488.71	90.41%
122	135,000.00	122,642.35	28,050.50	111.62%	-	90.85%	6,679.18	95.79%
123	32,500.00	30,660.59	6,591.34	114.62%	-	94.34%	994.18	97.40%
124	250,000.00	197,147.70	50,344.77	99.00%	-	78.86%	28,566.13	90.29%
125	465,000.00	367,927.06	104,428.39	101.58%	-	79.12%	52,466.94	90.41%
126	110,000.00	122,642.34	19,595.68	129.31%	-	111.49%	-	111.49%
127	110,000.00	122,642.34	19,595.89	129.31%	-	111.49%	-	111.49%
128	220,000.00	245,284.69	39,191.69	129.31%	-	111.49%	-	111.49%
129	150,000.00	122,642.34	33,133.69	103.85%	-	81.76%	14,786.54	91.62%
130	125,000.00	122,642.34	24,672.43	117.85%	-	98.11%	1,274.29	99.13%
131	125,000.00	122,642.34	24,672.43	117.85%	-	98.11%	1,274.29	99.13%
132	125,000.00	23,236.70	24,672.43	38.33%	71,784.71	76.02%	55,002.03	62.59%
133	220,000.00	245,284.69	39,191.69	129.31%	-	111.49%	-	111.49%
134	275,000.00	306,605.86	48,989.53	129.31%	-	111.49%	-	111.49%
135	99,000.00	91,981.75	20,281.70	113.40%	-	92.91%	3,793.29	96.74%
136	60,000.00	61,321.18	11,490.09	121.35%	-	102.20%	-	102.20%
137	112,500.00	104,245.99	23,086.85	113.18%	-	92.66%	4,461.21	96.63%
138	770,000.00	674,532.90	163,621.18	108.85%	-	87.60%	51,599.00	94.30%
139	275,000.00	306,605.86	48,989.53	129.31%	-	111.49%	-	111.49%
140	750,000.00	613,211.72	165,668.77	103.85%	-	81.76%	73,932.68	91.62%
141	100,000.00	122,642.34	16,155.06	138.80%	-	122.64%	-	122.64%
142	250,000.00	306,605.86	40,387.48	138.80%	-	122.64%	-	122.64%

Claim No.	Initial Investment	Pre- Receivership Distributions	Ownership Pro Rata		Rising Tide Pro Rata		Net Investment Pro Rata	
			Distribution Amount	Total Return %	Distribution Amount	Total Return %	Distribution Amount	Total Return %
143	1,650,000.00	1,839,617.19	293,538.90	129.28%	-	111.49%	-	111.49%
TOTALS	19,405,000.00	12,760,447.44	3,872,352.93		3,872,353.70		3,872,353.70	

MIC VIII, LLC (Class 1-C) - All Methodologies

Claim No.	Initial Investment	Pre-Receivership Distributions	Ownership Pro		Rising Tide Pro		Net Investment	
			Rata Distribution Amount	Total Return %	Rata Distribution Amount	Total Return %	Pro Rata Distribution Amount	Total Return %
8	100,000.00	19,096.00	2,482.88	21.58%	-	19.10%	2,465.26	21.56%
9	250,000.00	69,910.48	6,389.23	30.52%	-	27.96%	5,487.58	30.16%
15	20,000.00	5,388.63	496.57	29.43%	-	26.94%	445.23	29.17%
22	2,020,898.74	349,343.82	50,161.69	19.77%	-	17.29%	50,934.62	19.81%
24	632,911.39	109,776.88	16,109.88	19.89%	-	17.34%	15,940.64	19.86%
27	550,000.00	156,244.06	14,650.03	31.07%	-	28.41%	11,998.30	30.59%
31	3,259,576.96	802,641.00	80,798.79	27.10%	-	24.62%	74,866.29	26.92%
32	3,259,576.96	802,641.00	76,345.92	26.97%	-	24.62%	74,866.29	26.92%
35	1,300,000.00	367,388.01	33,791.00	30.86%	-	28.26%	28,418.00	30.45%
36	30,000.00	6,907.13	744.87	25.51%	-	23.02%	703.67	25.37%
37	154,676.05	41,946.17	3,833.89	29.60%	-	27.12%	3,435.04	29.34%
38	700,000.00	197,815.09	18,194.15	30.86%	-	28.26%	15,302.28	30.45%
39	100,000.00	13,695.00	2,482.88	16.18%	658.29	14.35%	2,629.83	16.32%
40	20,000.00	5,668.36	523.20	30.96%	-	28.34%	436.71	30.53%
42	649,336.24	109,778.73	16,110.55	19.39%	-	16.91%	16,441.07	19.44%
44	975,821.19	201,938.44	24,209.65	23.18%	-	20.69%	23,581.29	23.11%
45	1,044,303.80	170,778.66	25,928.87	18.84%	-	16.35%	26,617.54	18.90%
46	537,974.68	50,826.46	13,357.31	11.93%	26,390.62	14.35%	14,844.09	12.21%
47	2,140,805.00	400,058.00	50,161.69	21.03%	-	18.69%	53,043.00	21.16%
48	3,496,597.00	257,827.87	94,286.84	10.07%	244,048.92	14.35%	98,689.84	10.20%
49	500,000.00	170,197.21	15,714.89	37.18%	-	34.04%	10,049.55	36.05%
50	25,000.00	7,098.73	654.22	31.01%	-	28.39%	545.48	30.58%
53	550,000.00	157,388.42	14,409.33	31.24%	-	28.62%	11,963.43	30.79%
54	400,000.00	86,354.97	10,480.79	24.21%	-	21.59%	9,557.20	23.98%
114	267,527.49	50,787.56	6,444.22	21.39%	-	18.98%	6,604.37	21.45%
115	410,381.00	41,549.42	10,181.87	12.61%	17,353.76	14.35%	11,238.82	12.86%
N/A	2,500,000.00	-	58,578.07	2.34%	358,832.31	14.35%	76,178.51	3.05%

Claim No.	Initial Investment	Pre- Receivership Distributions	Ownership Pro		Rising Tide Pro		Net Investment	
			Rata Distribution Amount	Total Return %	Rata Distribution Amount	Total Return %	Pro Rata Distribution Amount	Total Return %
TOTALS	25,895,386.50	4,653,046.10	647,523.26		647,283.91		647,283.91	
69	50,000.00	-	1,171.56	2.34%	7,176.65	14.35%	1,523.57	3.05%
70	1,250,000.00	-	29,289.03	2.34%	179,416.16	14.35%	38,089.25	3.05%
71	250,000.00	-	5,857.81	2.34%	35,883.23	14.35%	7,617.85	3.05%
72	50,000.00	-	1,171.56	2.34%	7,176.65	14.35%	1,523.57	3.05%
73	40,000.00	-	937.25	2.34%	5,741.32	14.35%	1,218.86	3.05%
74	70,000.00	-	1,640.19	2.34%	10,047.30	14.35%	2,133.00	3.05%
75	250,000.00	-	5,857.81	2.34%	35,883.23	14.35%	7,617.85	3.05%
76	33,000.00	-	773.23	2.34%	4,736.59	14.35%	1,005.56	3.05%
77	33,000.00	-	773.23	2.34%	4,736.59	14.35%	1,005.56	3.05%
78	34,000.00	-	796.66	2.34%	4,880.12	14.35%	1,036.03	3.05%
79	100,000.00	-	2,343.12	2.34%	14,353.29	14.35%	3,047.14	3.05%
80	75,000.00	-	1,757.34	2.34%	10,764.97	14.35%	2,285.36	3.05%
81	25,000.00	-	585.78	2.34%	3,588.32	14.35%	761.79	3.05%
82	25,000.00	-	585.78	2.34%	3,588.32	14.35%	761.79	3.05%
83	50,000.00	-	1,171.56	2.34%	7,176.65	14.35%	1,523.57	3.05%
84	100,000.00	-	2,343.12	2.34%	14,353.29	14.35%	3,047.14	3.05%
85	65,000.00	-	1,523.03	2.34%	9,329.64	14.35%	1,980.64	3.05%
SUB-TOTALS	2,500,000.00	-	58,578.07		358,832.31		76,178.51	

Gryphon Investments III, LLC (Class 1-D) - All Methodologies

Claim No.	Initial Investment	Pre- Receivership Distributions	Ownership Pro Rata		Rising Tide Pro Rata		Net Investment Pro Rata	
			Distribution Amount	Total Return %	Distribution Amount	Total Return %	Distribution Amount	Total Return %
11	500,000.00	10,615.70	33,339.54	8.79%	34,580.66	9.04%	33,923.64	8.91%
23	250,000.00	5,307.85	16,669.77	8.79%	17,290.33	9.04%	16,961.82	8.91%
62	427,882.24	9,554.00	30,005.58	9.25%	29,123.44	9.04%	28,998.10	9.01%
114	200,000.00	5,722.28	13,335.81	9.53%	12,356.26	9.04%	13,467.14	9.59%
TOTALS	1,377,882.24	31,199.83	93,350.70		93,350.70		93,350.70	

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No.: FL-03707
ACARTHA GROUP, LLC)

WITNESS: Brian Kaufman

PAGES: 1 through 249

PLACE: Securities and Exchange Commission

801 Brickell Avenue

Suite 1800

Miami, Florida 33131

DATE: Tuesday, December 13, 2011

The above-entitled matter came on for hearing,
pursuant notice, at 10:20 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

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1 APPEARANCES:
 2
 3 On behalf of the Securities and Exchange Commission:
 4 TRISHA D. SINDLER, ESQ.
 5 BRIAN JAMES, ESQ.
 6 MICHELLE LAMA, ACCOUNTANT
 7 Division of Enforcement
 8 Securities and Exchange Commission
 9 801 Brickell Avenue
 10 Suite 1800
 11 Miami, Florida 33131
 12
 13 On behalf of the Witness:
 14 GREGORY DIMEGLIO, ESQ.
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1 PROCEEDINGS
 2 MS. SINDLER: We are on the record at
 3 10:20 a.m. on December 13th, 2011. We're here in
 4 Miami, Florida at the offices of the Securities
 5 and Exchange Commission to take the testimony of
 6 Mr. Brian Kaufman.
 7 Mr. Kaufman, can you, please, raise your
 8 right hand.
 9 Do you swear to tell the truth, the
 10 whole truth and nothing but the truth?
 11 MR. KAUFMAN: I do.
 12 Whereupon,
 13 BRIAN KAUFMAN
 14 was called as a witness and, having been first duly
 15 sworn, was examined and testified as follows:
 16 EXAMINATION
 17 BY MS. SINDLER:
 18 Q Please, state and spell your full name
 19 for the record?
 20 A Brian Nelson Kaufman, B-R-I-A-N
 21 N-E-L-S-O-N K-A-U-F-M-A-N.
 22 Q Have you ever been known by any other
 23 name?
 24 A No.
 25 Q My name is Trisha Sindler. I'm a Senior

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1 Counsel with the Division of Enforcement of the
 2 United States Securities and Exchange Commission.
 3 With me is Brian James, also a Senior Counsel with
 4 the Division of Enforcement. And joining us
 5 shortly will be Michelle Lama, an Accountant with
 6 the Division of Enforcement. We are officers of
 7 the Commission for the purposes of this
 8 proceeding.
 9 This is an investigation by the
 10 Commission in the matter of Acartha Group, LLC,
 11 file number FL-3707 to determine whether there
 12 have been violations of certain provisions of the
 13 federal securities laws; however, the facts
 14 developed in this investigation might constitute
 15 violations of other federal or state, civil or
 16 criminal laws.
 17 I'm going to briefly explain the
 18 procedure that we're going to follow today. We
 19 will be asking you a series of questions. All
 20 three of us can ask questions at different times.
 21 If, at any time, you want to take a
 22 break, please, feel free to tell us, and we'll be
 23 happy to accommodate you. All we ask is that if
 24 there's a pending question, if you answer that
 25 before we take a break.

<p style="text-align: right;">Page 190</p> <p>1 A That should be that total column less 2 the Librato investment amount.</p> <p>3 Q Okay. And then after that where it 4 says, Direct Investment Librato, it looks like, 5 Acquisition II?</p> <p>6 A Correct. That should match column two.</p> <p>7 Q Okay. And then the next column, Per 8 ATP, slash, LA Roman numeral II Records?</p> <p>9 A So we must of been trying to reconcile 10 to their records.</p> <p>11 Q But what does it mean?</p> <p>12 A Oh, that that's the total amount they 13 showed as opposed to the one seventy-eight, three 14 sixty, like on that first one. The total amount 15 they showed we'd invested was one eighty-four, 16 forty-five. So the next column, there's a 17 difference between the two, which is the manager 18 fee pre-call.</p> <p>19 MS. LAMA: So based on Exhibit 46, as of 20 December 2010, the total investment made into 21 ATP and Librato by Prairie Capital Management 22 investors is, approximately -- well, 23 according to this schedule, ten million, 24 three hundred and twenty thousand? 25 THE WITNESS: Correct.</p>	<p style="text-align: right;">Page 192</p> <p>1 THE WITNESS: I think we're in -- I 2 think we're in 2011 now.</p> <p>3 MR. JAMES: Not right now, but when --</p> <p>4 THE WITNESS: No. I mean -- no. I 5 mean -- I think we're in -- I think we're in 6 2011 with MIC VII.</p> <p>7 MR. JAMES: Okay.</p> <p>8 THE WITNESS: Sorry. Sorry. I know the 9 question wasn't what's today. It's been a 10 long meeting, but --</p> <p>11 MR. JAMES: Mr. Morriss contacted you. 12 Was this by Email or by telephone, if you 13 recall?</p> <p>14 THE WITNESS: Well, this was -- this is 15 similar to ATP. This is drawn out over an 16 extended period of time, you know, months 17 before -- between when he first brought it up 18 and when we actually invested.</p> <p>19 MR. JAMES: In that initial discussion, 20 whether verbally or by Email, you testified 21 that he stated that there was a need to 22 satisfy a note to Wells Fargo? 23 THE WITNESS: I think it was Wells 24 Fargo. 25 MR. JAMES: Do you recall any of the</p>
<p style="text-align: right;">Page 191</p> <p>1 MS. LAMA: In the first total column? 2 THE WITNESS: Uh-huh. Of which we 3 received almost -- this doesn't show the 4 proceeds back, but probably close to that 5 amount back also from the sale of Integrien.</p> <p>6 MR. JAMES: I think we've covered ATP. 7 What was the next deal that was 8 presented to you by Mr. Morriss and his 9 related entities?</p> <p>10 THE WITNESS: I think the next 11 investment, I think, was in MIC VII.</p> <p>12 MR. JAMES: Again, how did that came to 13 be?</p> <p>14 THE WITNESS: That came to us, again, 15 from contact with Doug. And our 16 understanding was that MIC VII had borrowed 17 money. I think it was from Wells Fargo. And 18 Wells Fargo was calling the note. And so 19 they needed capital to prevent, basically, a 20 foreclosure on MIC VII. And we understood 21 that some at ATP, that the existing investors 22 were unwilling or unable to put up funds. So 23 they negotiated with us on that.</p> <p>24 MR. JAMES: And just for chronology, 25 what year are we in now and what month?</p>	<p style="text-align: right;">Page 193</p> <p>1 circumstances around that note? 2 THE WITNESS: He told me it was a -- 3 that the MIC VII had borrowed the funds and 4 they were, basically, calling the note, that 5 the bank was calling the note.</p> <p>6 MR. JAMES: Did he say why or what was 7 the purpose of the loan being obtained from 8 Wells Fargo? Why did MIC VII need to --</p> <p>9 THE WITNESS: I think initially -- I 10 think, as I recall, he said, initially, it 11 was to fund their commitments to underlying 12 companies.</p> <p>13 MR. JAMES: And at that time, what was 14 your understanding of the structure of MIC 15 VII?</p> <p>16 THE WITNESS: That it was a predecessor 17 fund ATP. It had about six or seven 18 portfolio companies, two of which had been 19 sold at that point in time.</p> <p>20 MR. JAMES: Okay. Do you recall what 21 those companies were? 22 THE WITNESS: That had been sold? 23 MR. JAMES: Yes. 24 THE WITNESS: Well, Integrien and, I 25 think, it may have been Vantos. Vantos is</p>

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1 THE WITNESS: I don't recall whether we
 2 deposited funds into this referenced account
 3 number or where our funds went.
 4 MR. JAMES: I want to show you another
 5 exhibit. Earlier I had mentioned about
 6 whether or not the note was in default, and I
 7 think your testimony was that you weren't
 8 sure it was in default. You did know it was
 9 from a few years earlier, so I want to
 10 introduce the next exhibit.
 11 (Whereupon, a document was marked as Exhibit
 12 No. 48 for identification, after which the
 13 following was had:)
 14 BY MS. SINDLER:
 15 Q The court reporter just marked as
 16 Exhibit No. 48 a multi-page document beginning
 17 with Bate UHY00090319 through 90325. It appears
 18 to be a copy of an amended and restated promissory
 19 note in the amount of two point five million
 20 dollars, dated January 25th, 2008. And the top
 21 says, MIC VII referencing Wachovia Bank. And it
 22 appears -- the last page appears to be signed by
 23 B. Douglas Morriss, President. It says, MIC VII
 24 by Acaritha Group as managing member.
 25 Do you recognize this document?

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1 A I don't know if -- I don't recall this
 2 document. I don't recall if I ever saw the note.
 3 MR. JAMES: So beyond the Exhibit 47,
 4 which appears to be the confirming letter
 5 from Wells Fargo of the existence of the
 6 note, you have no recollection of actually
 7 seeing the documented note?
 8 THE WITNESS: Yeah. I don't remember
 9 seeing the note document. I remember wanting
 10 to see a payoff that it was owed, but I don't
 11 remember seeing the note itself.
 12 MR. JAMES: But based on the document
 13 itself, does it appear to be the note that's
 14 referenced in Exhibit 47 based on parties,
 15 amounts, terms, guarantee, guarantor?
 16 THE WITNESS: Yeah. Well, it seems to
 17 have Wachovia, MIC VII, the amounts, two
 18 point five is close to two point four one
 19 zero. So it seems to be consistent with this
 20 payoff letter.
 21 MR. JAMES: And as far as the purpose
 22 for the initial acquisition of this note, and
 23 it's dated back on July 25th, 2008, at least
 24 the amended promissory note, did Mr. Morriss
 25 represent to you why -- and I may have asked

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1 you this before -- why this debt was
 2 incurred, why MIC VII needed to obtain this
 3 two point five million dollar loan?
 4 THE WITNESS: He didn't state
 5 specifically, other than it was for MIC VII
 6 investments, I think, is what he said. It
 7 it's look the original date -- the original
 8 note's October 2nd, 2007.
 9 MR. JAMES: Did he, at any point, either
 10 contemporaneously with these negotiations or
 11 sometime thereafter suggest that this note
 12 was obtained to satisfy the Integrien capital
 13 call?
 14 THE WITNESS: No.
 15 MR. JAMES: At any point, did he discuss
 16 with you or did you come to learn whether the
 17 funds actually went to MIC VII or to some
 18 other entity or individual?
 19 THE WITNESS: On this note?
 20 MR. JAMES: Yes.
 21 THE WITNESS: No. I mean, this note
 22 predated our involvement. I don't have
 23 really any knowledge about where the proceeds
 24 of the loan went.
 25 MR. JAMES: And the same with the note,

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1 and we'll get into the actual remaining terms
 2 of the deal, but part of the deal Prairie
 3 Capital agrees to invest two point five
 4 million into MIC VII?
 5 THE WITNESS: Correct.
 6 MR. JAMES: And the purpose of those
 7 proceeds were exclusively to satisfy the
 8 Wachovia/Wells Fargo two point five million
 9 dollar loan?
 10 THE WITNESS: (The witness shakes head.)
 11 MR. JAMES: You have to verbally
 12 respond.
 13 THE WITNESS: Correct.
 14 MR. JAMES: At any point, did you
 15 receive any confirmation of that actually
 16 occurring whether there was some type of
 17 payoff notification or something along those
 18 lines?
 19 THE WITNESS: I don't recall. I thought
 20 we did, but I don't recall specifically.
 21 MR. JAMES: And as far the actual
 22 interest in MIC VII, did Prairie Capital
 23 bases on this contribution obtain the
 24 interest in MIC VII, MIC VII?
 25 THE WITNESS: Yes.

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1 wasn't the best business person. He over
 2 committed to his underlying funds and should
 3 of kept a reserve, never be in the position
 4 where someone like us can come in and
 5 negotiate a preference. So he didn't run the
 6 fund the way I would run a fund if I was
 7 setting up a commitment schedule.
 8 But as far as the way -- as far as I
 9 knew, and I guess I just don't know anything,
 10 is that the ethics in kind of his business
 11 acumen seemed validated by everybody we spoke
 12 to who he either dealt with as a coinvestor
 13 or the underlying companies, they all spoke
 14 highly of him.
 15 BY MS. SINDLER:
 16 **Q Is there anything you'd like to clarify**
 17 **or add? Because we know you have to leave now.**
 18 **You've got a seven o'clock flight. Is there**
 19 **anything you want to add to what's been discussed**
 20 **to clarify?**
 21 A Nothing.
 22 MS. SINDLER: Okay. Counsel, we want to
 23 offer you an opportunity.
 24 MR. DIMEGLIO: I don't think we have any
 25 clarifying questions.

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1 MS. SINDLER: Okay. We appreciate you
 2 coming in. Thank you for staying an extra
 3 five minutes. I know we agreed to get you
 4 out of here at 5:00.
 5 So we are off the record at 5:05.
 6 (Whereupon, at 5:05 p.m., the examination
 7 was concluded.)
 8 * * * * *
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1 PROOFREADER'S CERTIFICATE
 2
 3 In the Matter of: ACARTHA GROUP, LLC
 4 Witness: Brian Kaufman
 5 File Number: FL-03707-A
 6 Date: Tuesday, December 13, 2011
 7 Location: Miami, FL
 8
 9
 10 This is to certify that I, Donna S. Raya,
 11 (the undersigned), do hereby swear and affirm
 12 that the attached proceedings before the U.S.
 13 Securities and Exchange Commission were held
 14 according to the record and that this is the
 15 original, complete, true and accurate transcript
 16 that has been compared to the reporting or recording
 17 accomplished at the hearing.
 18
 19
 20
 21 _____
 22 (Proofreader's Name) (Date)
 23
 24
 25

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1 UNITED STATES SECURITIES AND EXCHANGE
 2 REPORTER'S CERTIFICATE
 3
 4 I, BRIGITTE ROTHSTEIN, Court Reporter, hereby
 5 certify that the foregoing transcript of 247 pages
 6 (December 13th, 2011) is a complete, true and
 7 accurate transcript of the testimony indicated
 8 held on December 13th, 2011 at 10:20 a.m. in the
 9 matter of: ACARTHA GROUP, LLC.
 10
 11 I further certify that this proceeding was
 12 recorded by me, and that the foregoing transcript
 13 was prepared under my direction.
 14
 15 Date: December 19th, 2011
 16 Official Reporter: Brigitte Rothstein
 17 Diversified Reporting Services, Inc.
 18
 19
 20
 21 -----
 22 BRIGITTE ROTHSTEIN, Court Reporter
 23 Notary Public - State of Florida
 24 Commission No.: DD 761890
 25 Commission Expires: March 17th, 2012
 Transmittal Number: M000059

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Diversified Reporting Services, Inc.
1101 Sixteenth Street, N.W.
2nd Floor
Washington, DC 20036

In the Matter of:

Witness:

File Number:

Date:

Location:

This is a letter to inform you that we do not
release our tapes and notes. I do maintain
them for a period of one (1) year.

Sincerely,

Interim App. No.	Interim App. Date	Period	Date of Court Approval	ECF No. of Court Approval Order	Company	Total Award Requested	Invoice Amount for Prof Serv	Amount Paid (80% fees + 100% costs)	Amount Unpaid (20% fees)	Amount of Holdback Paid Previously	Amount of Unpaid Holdback	Amount of Holdback to Be Paid (80% of unpaid holdback)
1	5/4/2012	1/17/2012 - 3/31/2012	9/20/2012	199	Thompson Coburn	\$397,742.37	\$376,583.70	\$322,425.63	\$75,316.74	\$37,658.37	\$37,658.37	\$30,126.70
2	9/14/2012	4/1/2012 - 6/30/2012	11/28/2012	213	Thompson Coburn	\$246,908.08	\$245,381.40	\$197,831.80	\$49,076.28	\$24,538.14	\$24,538.14	\$19,630.51
3	12/21/2012	7/1/2012 - 9/30/2012	2/11/2013	227	Thompson Coburn	\$152,149.38	\$151,023.75	\$121,944.63	\$30,204.75	\$15,102.38	\$15,102.38	\$12,081.90
4	4/22/2013	10/1/2012 - 12/31/2012	5/30/2013	254	Thompson Coburn	\$154,097.82	\$153,225.25	\$123,452.77	\$30,645.05	\$15,322.53	\$15,322.53	\$12,258.02
5	6/19/2013	1/1/2013 - 3/31/2013	7/15/2013	268	Thompson Coburn	\$178,868.77	\$174,349.44	\$143,998.89	\$34,869.88	\$17,434.94	\$17,434.94	\$13,947.95
6	8/8/2013	4/1/2013 - 6/30/2013	8/27/2013	281	Thompson Coburn	\$202,187.39	\$196,142.58	\$162,958.87	\$39,228.52	\$19,614.26	\$19,614.26	\$15,691.41
7	11/8/2013	7/1/2013 - 9/30/2013	12/13/2013	303	Thompson Coburn	\$124,262.11	\$123,553.02	\$99,551.51	\$24,710.60	\$12,355.30	\$12,355.30	\$9,884.24
8	3/14/2014	10/1/2013 - 12/31/2013	4/9/2014	323	Thompson Coburn	\$139,273.86	\$139,150.09	\$111,443.84	\$27,830.02	\$13,915.01	\$13,915.01	\$11,132.01
9	5/20/2014	1/1/2014 - 3/30/2014	9/2/2014	343	Thompson Coburn	\$115,501.45	\$115,260.84	\$92,449.28	\$23,052.17	\$11,526.09	\$11,526.09	\$9,220.87
10	8/31/2014	4/1/2014 - 6/30/2014	9/25/2014	353	Thompson Coburn	\$76,450.79	\$76,310.52	\$61,188.69	\$15,262.10	\$7,631.05	\$7,631.05	\$6,104.84
11	12/4/2015	7/1/2014 - 9/30/2014	1/7/2015	367	Thompson Coburn	\$86,214.71	\$85,959.21	\$69,022.87	\$17,191.84	\$8,595.92	\$8,595.92	\$6,876.74
12	2/16/2015	10/1/2014 - 12/31/2014	6/15/2015	393	Thompson Coburn	\$58,690.90	\$57,949.60	\$47,100.98	\$11,589.92	\$5,794.96	\$5,794.96	\$4,635.97
13	5/11/2015	1/1/2015 - 3/31/2015	6/15/2015	394	Thompson Coburn	\$65,342.27	\$64,811.22	\$52,380.03	\$12,962.24	\$6,481.12	\$6,481.12	\$5,184.90
14	8/6/2015	4/1/2015 - 6/30/2015	9/2/2015	411	Thompson Coburn	\$134,520.62	\$134,164.82	\$107,687.65	\$26,832.97	\$13,416.49	\$13,416.49	\$10,733.19
15	11/4/2015	7/1/2015 - 9/30/2015	11/25/2015	425	Thompson Coburn	\$101,137.86	\$100,174.11	\$81,103.04	\$20,034.82	\$10,017.41	\$10,017.41	\$8,013.93
16	2/9/2016	10/1/2015 - 12/31/2015	5/5/2016	457	Thompson Coburn	\$100,304.66	\$99,789.56	\$80,346.75	\$19,957.91	N/A	\$19,957.91	\$15,966.33
17	5/16/2016	1/1/2016 - 3/31/2016	6/9/2016	471	Thompson Coburn	\$54,161.23	\$54,122.47	\$43,336.74	\$10,824.49	N/A	\$10,824.49	\$8,659.59
18	8/5/2016	4/1/2016 - 6/30/2016	8/24/2016	485	Thompson Coburn	\$55,278.88	\$55,190.06	\$44,240.87	\$11,038.01	N/A	\$11,038.01	\$8,830.41
19	11/7/2016	7/1/2016 - 9/30/2016	1/12/2017	504	Thompson Coburn	\$56,709.07	\$56,663.55	\$45,376.36	\$11,332.71	N/A	\$11,332.71	\$9,066.17
20	2/3/2017	10/1/2016 - 12/31/2016	3/3/2017	512	Thompson Coburn	\$24,135.75	\$24,105.99	\$19,276.55	\$4,821.20	N/A	\$4,821.20	\$3,856.96
SUBTOTAL						\$2,523,937.97	\$2,483,911.18	\$2,027,117.75	\$496,782.22	\$219,403.95	\$272,557.07	\$221,902.62
1	5/4/2012	1/17/2012 - 3/31/2012	9/20/2012	199	Segue	\$15,905.76	\$15,905.76	\$12,724.61	\$3,181.15	\$1,590.58	\$1,590.58	\$1,272.46
2	9/14/2012	4/1/2012 - 6/30/2012	11/28/2012	213	Segue	\$31,791.35	\$31,791.35	\$25,433.08	\$6,358.27	\$3,179.14	\$3,179.14	\$2,543.31

Interim App. No.	Interim App. Date	Period	Date of Court Approval	ECF No. of Court Approval Order	Company	Total Award Requested	Invoice Amount for Prof Serv	Amount Paid (80% fees + 100% costs)	Amount Unpaid (20% fees)	Amount of Holdback Paid Previously	Amount of Unpaid Holdback	Amount of Holdback to Be Paid (80% of unpaid holdback)
3	12/21/2012	7/1/2012 - 9/30/2012	2/11/2013	227	Segue	\$10,166.63	\$10,166.63	\$8,133.30	\$2,033.33	\$1,016.67	\$1,016.67	\$813.33
4	4/22/2013	10/1/2012 - 12/31/2012	5/30/2013	254	Segue	\$4,480.76	\$4,480.76	\$3,584.61	\$896.15	\$448.08	\$448.08	\$358.46
5	6/19/2013	1/1/2013 - 3/31/2013	7/15/2013	268	Segue	\$17,435.18	\$17,435.18	\$13,948.14	\$3,487.04	\$1,743.52	\$1,743.52	\$1,394.82
6	8/8/2013	4/1/2013 - 6/30/2013	8/27/2013	281	Segue	\$9,951.63	\$9,951.63	\$7,961.30	\$1,990.33	\$995.17	\$995.17	\$796.13
7	11/8/2013	7/1/2013 - 9/30/2013	12/13/2013	303	Segue	\$2,049.19	\$2,049.19	\$1,639.35	\$409.84	\$204.92	\$204.92	\$163.94
8	3/14/2014	10/1/2013 - 12/31/2013	4/9/2014	323	Segue	\$955.18	\$955.18	\$764.14	\$191.04	\$95.52	\$95.52	\$76.42
9	5/20/2014	1/1/2014 - 3/30/2014	9/2/2014	343	Segue	\$4,516.92	\$4,516.92	\$3,613.54	\$903.38	\$451.69	\$451.69	\$361.35
10	8/31/2014	4/1/2014 - 6/30/2014	9/25/2014	353	Segue	\$8,377.46	\$8,377.46	\$6,701.97	\$1,675.49	\$837.75	\$837.75	\$670.20
11	12/4/2015	7/1/2014 - 9/30/2014	1/7/2015	367	Segue	\$2,064.94	\$2,064.94	\$1,651.95	\$412.99	\$206.50	\$206.50	\$165.20
12	2/16/2015	10/1/2014 - 12/31/2014	6/15/2015	393	Segue	\$2,241.17	\$2,241.17	\$1,792.94	\$448.23	\$224.12	\$224.12	\$179.29
13	5/11/2015	1/1/2015 - 3/31/2015	6/15/2015	394	Segue	\$4,009.57	\$4,009.57	\$3,207.66	\$801.91	\$400.96	\$400.96	\$320.76
14	8/6/2015	4/1/2015 - 6/30/2015	9/2/2015	411	Segue	\$1,579.14	\$1,579.14	\$1,263.31	\$315.83	\$157.92	\$157.92	\$126.33
15	11/4/2015	7/1/2015 - 9/30/2015	11/25/2015	425	Segue	\$10,460.57	\$10,460.57	\$8,368.46	\$2,092.11	\$1,046.06	\$1,046.06	\$836.84
16	2/9/2016	10/1/2015 - 12/31/2015	5/5/2016	457	Segue	\$1,702.19	\$1,702.19	\$1,361.75	\$340.44	N/A	\$340.44	\$272.35
17	5/16/2016	1/1/2016 - 3/31/2016	6/9/2016	471	Segue	\$5,215.40	\$5,215.40	\$4,172.32	\$1,043.08	N/A	\$1,043.08	\$834.46
18	8/5/2016	4/1/2016 - 6/30/2016	8/24/2016	485	Segue	\$1,544.05	\$1,544.05	\$1,235.24	\$308.81	N/A	\$308.81	\$247.05
19	11/7/2016	7/1/2016 - 9/30/2016	1/12/2017	504	Segue	\$915.32	\$915.32	\$732.26	\$183.06	N/A	\$183.06	\$146.45
20	2/3/2017	10/1/2016 - 12/31/2016	3/3/2017	512	Segue	\$1,551.75	\$1,551.75	\$1,241.40	\$310.35	N/A	\$310.35	\$248.28
SUBTOTAL						\$136,914.16	\$136,914.16	\$109,531.33	\$27,382.83	\$13,691.42	\$14,473.94	\$11,827.43
3	12/21/2012	7/1/2012 - 9/30/2012	2/11/2013	227	CliftonLarsonAllen	\$42,674.94	\$42,569.49	\$34,161.04	\$8,513.90	\$4,256.95	\$4,256.95	\$3,405.56
4	4/22/2013	10/1/2012 - 12/31/2012	5/30/2013	254	CliftonLarsonAllen	\$1,908.50	\$1,908.50	\$1,526.80	\$381.70	\$190.85	\$190.85	\$152.68
5	6/19/2013	1/1/2013 - 3/31/2013	7/15/2013	268	CliftonLarsonAllen	\$25,371.65	\$23,347.00	\$20,702.25	\$4,669.40	\$2,334.70	\$2,334.70	\$1,867.76
6	8/8/2013	4/1/2013 - 6/30/2013	8/27/2013	281	CliftonLarsonAllen	\$8,257.67	\$8,250.50	\$6,607.57	\$1,650.10	\$825.05	\$825.05	\$660.04

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7	11/8/2013	7/1/2013 - 9/30/2013	12/13/2013	303	CliftonLarsonAllen	\$25,179.79	\$25,069.00	\$20,165.99	\$5,013.80	\$2,506.90	\$2,506.90	\$2,005.52
8	3/14/2014	10/1/2013 - 12/31/2013	4/9/2014	323	CliftonLarsonAllen	\$12,859.00	\$12,859.00	\$10,287.20	\$2,571.80	\$1,285.90	\$1,285.90	\$1,028.72
9	5/20/2014	1/1/2014 - 3/30/2014	9/2/2014	343	CliftonLarsonAllen	\$6,449.75	\$6,449.75	\$5,159.80	\$1,289.95	\$644.98	\$644.98	\$515.98
10	8/31/2014	4/1/2014 - 6/30/2014	9/25/2014	353	CliftonLarsonAllen	\$7,386.22	\$6,932.50	\$5,999.72	\$1,386.50	\$693.25	\$693.25	\$554.60
11	12/4/2015	7/1/2014 - 9/30/2014	1/7/2015	367	CliftonLarsonAllen	\$16,852.16	\$16,495.00	\$13,553.16	\$3,299.00	\$1,649.50	\$1,649.50	\$1,319.60
12	2/16/2015	10/1/2014 - 12/31/2014	6/15/2015	393	CliftonLarsonAllen	\$2,997.50	\$2,997.50	\$2,398.00	\$599.50	\$299.75	\$299.75	\$239.80
13	5/11/2015	1/1/2015 - 3/31/2015	6/15/2015	394	CliftonLarsonAllen	\$2,099.36	\$1,613.75	\$1,776.61	\$322.75	\$161.38	\$161.38	\$129.10
14	8/6/2015	4/1/2015 - 6/30/2015	9/2/2015	411	CliftonLarsonAllen	\$8,518.50	\$8,397.50	\$6,839.00	\$1,679.50	\$839.75	\$839.75	\$671.80
15	11/4/2015	7/1/2015 - 9/30/2015	11/25/2015	425	CliftonLarsonAllen	\$23,357.25	\$22,268.25	\$18,903.60	\$4,453.65	\$2,226.83	\$2,226.83	\$1,781.46
16	2/9/2016	10/1/2015 - 12/31/2015	5/5/2016	457	CliftonLarsonAllen	\$9,670.00	\$9,670.00	\$7,736.00	\$1,934.00	N/A	\$1,934.00	\$1,547.20
17	5/16/2016	1/1/2016 - 3/31/2016	6/9/2016	471	CliftonLarsonAllen	\$2,146.96	\$2,120.00	\$1,722.96	\$424.00	N/A	\$424.00	\$339.20
18	8/5/2016	4/1/2016 - 6/30/2016	8/24/2016	485	CliftonLarsonAllen	\$5,041.50	\$4,902.50	\$4,061.00	\$980.50	N/A	\$980.50	\$784.40
19	11/7/2016	7/1/2016 - 9/30/2016	1/12/2017	504	CliftonLarsonAllen	\$14,299.25	\$14,299.25	\$11,439.40	\$2,859.85	N/A	\$2,859.85	\$2,287.88
20	2/3/2017	10/1/2016 - 12/31/2016	3/3/2017	512	CliftonLarsonAllen	\$6,119.75	\$6,119.75	\$4,895.80	\$1,223.95	N/A	\$1,223.95	\$979.16
SUBTOTAL						\$221,189.75	\$216,269.24	\$177,935.90	\$43,253.85	\$17,915.78	\$24,114.13	\$20,270.46
1	5/4/2012	1/17/2012 - 3/31/2012	9/20/2012	7/17/1900	Pepper Hamilton	\$5,882.10	\$5,664.32	\$4,749.24	\$1,132.86	\$566.43	\$566.43	\$453.14
SUBTOTAL						\$5,882.10	\$5,664.32	\$4,749.24	\$1,132.86	\$566.43	\$566.43	\$453.14
1	5/4/2012	1/17/2012 - 3/31/2012	9/20/2012	199	FTL Capital	\$15,845.00	\$15,845.00	\$12,676.00	\$3,169.00	\$1,584.50	\$1,584.50	\$1,267.60
2	9/14/2012	4/1/2012 - 6/30/2012	11/28/2012	213	FTL Capital	\$12,595.00	\$12,595.00	\$10,076.00	\$2,519.00	\$1,259.50	\$1,259.50	\$1,007.60
3	12/21/2012	7/1/2012 - 9/30/2012	2/11/2013	227	FTL Capital	\$700.00	\$700.00	\$560.00	\$140.00	\$70.00	\$70.00	\$56.00
4	4/22/2013	10/1/2012 - 12/31/2012	5/30/2013	254	FTL Capital	\$700.00	\$700.00	\$560.00	\$140.00	\$70.00	\$70.00	\$56.00
SUBTOTAL						\$29,840.00	\$29,840.00	\$23,872.00	\$5,968.00	\$2,984.00	\$2,984.00	\$2,387.20

Interim App. No.	Interim App. Date	Period	Date of Court Approval	ECF No. of Court Approval Order	Company	Total Award Requested	Invoice Amount for Prof Serv	Amount Paid (80% fees + 100% costs)	Amount Unpaid (20% fees)	Amount of Holdback Paid Previously	Amount of Unpaid Holdback	Amount of Holdback to Be Paid (80% of unpaid holdback)
								COMBINED TOTAL	\$574,519.76	\$254,561.58	\$314,695.56	\$256,840.85