

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.)

**ORDER ON MOTION TO ESTABLISH CLAIMS BAR DATE,
APPROVE MANNER AND FORM OF NOTICE OF CLAIMS BAR
DATE AND APPROVE PROCESS FOR SUBMITTING CLAIMS**

This matter is before the Court on the Motion to Establish Claims Bar Date, Approve Manner and Form of Notice of Claims Bar Date and Approve Process for Submitting Claims and the additional memorandum filed by Claire M. Schenk, the court-appointed receiver (the “Receiver”) for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, L.P. and Gryphon Investments III, LLC (collectively, the “Receivership Entities”) in this action. Having fully considered the Motion and accompanying filings, any Objections related thereto and being duly advised as to the merits,

THE COURT DOES HEREBY ORDER THAT:

1. The Motion is granted as described herein.
2. Objections Overruled. All objections not withdrawn or resolved by the Order are overruled in all respects.
3. Claims. For purposes of this Order (the “Claims Bar Date Order”), a “Claim” is defined as: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, against one or more of the Receivership Entities; (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, against one or more of the Receivership Entities; or (c) a right to a distribution from one or

more of the Receivership Entities, including but not limited to a right based on an investment in or through one or more of the Receivership Entities.

4. Claimants. For purposes of this Claims Bar Date Order, a “Claimant” is defined as and includes any person or entity (including, without limitation, individuals, partnerships, corporations, estates, trusts, and governmental units) that holds a Claim.

5. Bar Date. **The Court hereby establishes 11:59 p.m. Prevailing Central Time on MONDAY, MAY 6, 2013 as the deadline for Claimants to submit Proofs of Claim against the Receivership Entities (the “Bar Date”).**

6. Claims Procedures. The following Claims Procedures, including the Notices and the Proof of Claim Form (each defined further below), are approved:

(a) Eligibility to Submit Proofs of Claim. Proofs of claim shall be submitted by all persons or entities (including, without limitation, individuals, partnerships, corporations, joint ventures, estates, trusts and governmental units) that are Claimants and believe that they are owed any money by or have a right to distribution (including distribution of debt, equity or hybrid type interest) from any of the Receivership Entities, regardless of whether the Claim at issue has been acknowledged by the Receiver or whether the Claim at issue is held with or through any person or entity or based on primary, secondary, direct, indirect, secured, unsecured or contingent liability.

(b) Administrative and Professional Claims. Creditors holding claims based on the provision of goods or services to the Receivership Entities or the Receiver at the request of the Receiver (“Administrative Claims”) arising after the January 17, 2012 appointment of the Receiver will not be required to submit proofs of claim on or before the Bar Date and will not be subject to the Bar Date. Additionally, the Receiver and retained professionals will not be required to submit proofs of claim on or before the Bar Date, and all claims of the Receiver and retained professionals (“Professional Claims”) will be addressed in accordance with the *Order Appointing Receiver* (Dkt. No. 16) (“Receivership Order”) and other relevant orders of this Court.

(c) Notice. The Receiver shall provide the following notice:

1. Notice by Electronic Mail and/or Mail. The Receiver shall serve all known potential Claimants by electronic mail, or by regular mail (only if no electronic mail address is available), within twenty (20) business days after entry of the Claims Bar Date Order, with: (a) a notice of the Bar Date and the procedures for submitting proofs of claim, substantially in the form of the notice attached to the Supplemental Memorandum as **Exhibit B** (the "Bar Date Notice") and (b) a proof of claim form substantially in the form of the document attached to the Supplemental Memorandum as **Exhibit C** (the "Proof of Claim Form"). With respect to known potential Claimants for which the Receiver does not have an electronic mail address, the Receiver shall serve (i) those located in the United States by United States first class mail and (ii) those located outside the United States by any method she deems reasonable in her discretion. With respect to those potential known Claimants that have communicated with the Receiver through counsel or that the Receiver has been advised are represented by counsel, the Receiver shall serve such potential known Claimants through their counsel according to the methods described above.

2. Notice by Publication. The Receiver proposes to make the Bar Date Notice and the Proof of Claim Form available, within ten (10) calendar days from the entry of this Claims Bar Date Order, on the Receiver's website (<http://www.thompsoncoburn.com/news-and-information/acartha-receivership-information.aspx>). Further, the Receiver shall publish, within thirty (30) calendar days after the entry of the Claims Bar Date Order, a notice of the Bar Date and the procedures for submitting proofs of claim, substantially in the form of the notice attached to the Supplemental Memorandum as **Exhibit D** (the "Bar Date Publication Notice" and together with the Bar Date Notice, the "Notices"), on two days that are two weeks apart in the following publications: the St. Louis Post-Dispatch and the Star-Ledger (Newark).

3. Notice upon Inquiry. The Receiver shall promptly provide the Bar Date Notice and Proof of Claim Form to any Claimant who makes a written request for such documents to the Receiver's electronic mail address (acartha.receivership@thompsoncoburn.com) or to the physical address 505 North 7th Street, St. Louis, Missouri 63101.

(d) Procedures for Submitting Proofs of Claim. Except as otherwise ordered by the Court or provided below, each Claimant must submit a completed and signed Proof of Claim Form under penalty of perjury and evidencing such Claimant's Claim, together with supporting documentation (a "Proof of Claim"), with the Receiver in the manner indicated below. Proofs of Claim may be submitted to the Receiver (a) in person, by courier, or by mail addressed to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101, or (b) by electronic mail, as an attachment in portable document format (.pdf) to acartha.receivership@thompsoncoburn.com. Proofs of Claim filed in any other manner, including with the Court, will not be considered properly submitted. To be considered timely, Proof of Claim Forms must be (i) officially postmarked on or before the Bar Date, if sent by mail, (ii) actually received by the Receiver on or before the Bar Date, if hand-delivered or sent by courier, or (iii) transmitted on or before the Bar Date, if sent by electronic mail.¹ Claimants who choose to submit Proofs of Claim by courier service, hand delivery, or electronic mail should retain a copy of their bill of lading or other proof that their Proof of Claim was received by the Bar Date. **Prior submissions by Claimants will not be treated as properly filed Claims; such Claimants must submit completed and signed Proof of Claim Forms to the Receiver on or before the Bar Date.**

¹ Date and time of transmission will be determined by the time stamp given to the email by the Claimant's email provider (adjusted to prevailing Central Time as necessary).

(e) Notification of Receipt of Proof of Claim. The Receiver will not notify a Claimant that the Receiver has received such Claimant's Proof of Claim Form. A Claimant, however, may request confirmation of the Receiver's receipt of the Claimant's Proof of Claim Form. Requests for confirmation of receipt of a particular Proof of Claim Form (each, a "Request for Confirmation of Receipt") shall be made (i) in writing and (ii) delivered to the Receiver by mail (Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101) or electronic mail (acartha.receivership@thompsoncoburn.com). The Receiver shall use her best efforts to respond to the Request for Confirmation of Receipt within ten (10) business days of the Receiver's receipt of the Request for Confirmation of Receipt.

(f) Contents and Form of Proof of Claim. Each Proof of Claim submitted to the Receiver must conform substantially to and must contain all of the information sought in the Proof of Claim Form approved by the Court. The Receiver reserves the right to reject any altered Proof of Claim Form or any Proof of Claim Form that is not filled out completely and properly executed by the correct legal entity or individual. The following rules shall apply to the preparation and submission of Proofs of Claim:

1. General. Each Proof of Claim must be signed by the Claimant or the authorized agent of the Claimant. The Claimant must attest under penalty of perjury that the information in the Proof of Claim is true and correct. Each Proof of Claim must be legible, written in English and denominated in United States currency.

2. Supporting Documentation. Each Claimant should attach to each Proof of Claim copies of all documents, including any electronic data, available to the Claimant that substantiate the Proof of Claim, including, but not limited to, copies of personal checks, cashier's checks, wire transfer advices and other documents evidencing the investment funds; copies of signed investment contracts; a chronological accounting of all money received by the Claimant from any Receivership Entity or the Receiver, whether such payments are denominated as the return of principal, interest, commissions,

finder's fees, sponsor payments or otherwise; copies of all 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 other documents evidencing the amount and basis of the Claim. If supporting documentation is not available, the Claimant must attach an explanation of why the documentation is unavailable.

3. Identify Receivership Entity(ies). Each Proof of Claim must identify the Receivership Entity to which the Claim relates. If the Claimant has a claim against more than one Receivership Entity, the Claimant does not need to file a separate Proof of Claim Form for each Receivership Entity, but must indicate on the Proof of Claim Form each such Receivership Entity to which the Claim relates and the Claim amount(s) attributable to each such Receivership Entity.

(g) Submission to Jurisdiction of the Court. The submission of a Proof of Claim will subject the Claimant to the jurisdiction of the United States District Court for the Eastern District of Missouri.

(h) Effect of Failure to Submit Proof of Claim Before Bar Date. Any Claimant who is required to submit a Proof of Claim, but fails to do so in a timely manner or in the proper form, (a) shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Claim against the Receiver, the Receivership Entities and their respective estates or property, (b) shall not be permitted to object to any distribution plan proposed by the Receiver on account of such Claim, (c) shall be denied any distributions under any distribution plan implemented by the Receiver on account of such Claim, and (d) shall not receive any further notices on account of such Claim. Further, the Receivership Entities and their respective property or estates will be discharged from any and all indebtedness or liability with respect to such Claim.

(i) Requests for Additional Information on Submitted Proofs of Claim. If after receiving a Proof of Claim, the Receiver determines that she needs additional information to review and process a Claim, the Receiver may contact the Claimant by telephone or email to request such additional information from the Claimant. A Claimant shall submit to a recorded interview by the Receiver if the Receiver, in her discretion, determines that an interview will facilitate the processing of the Claimant's Claim.

(j) Notice of Deficiency. Prior to disallowing a Claim for lack of information, the Receiver shall send, by email or mail to an email or physical address provided by the Claimant in the Proof of Claim (if provided) or if no such address was provided, to the original email or physical address to which the Bar Date Notice was sent, a written Notice of Deficiency to the Claimant that specifically identifies the information required to process the Claim. Such Notice of Deficiency shall be substantially in the form attached to the Supplemental Memorandum as **Exhibit E** (the "Notice of Deficiency"). If the Receiver determines that a Notice of Deficiency is required, the Receiver shall provide the Notice of Deficiency to the Claimant on or before the date that is sixty (60) days after the Bar Date. The Notice of Deficiency shall further state that the Claim will be disallowed for lack of sufficient information if the Claimant does not provide the additional information within sixty (60) days of issuance of the Notice of Deficiency. The Receiver may disallow a Claim if a Claimant fails to respond to a Notice of Deficiency within sixty (60) days of the Notice of Deficiency.

(k) Proofs of Claim Processing and Verification. The Receiver shall make a written determination of each Claim submitted, and the determination shall be based on the provisions of this Order, the applicable law, and a review of the information submitted by the Claimant in light of the information available to the Receiver, including information from the books and records of the Receivership Entities.

(l) Notice of Determination. The Receiver shall provide a written Notice of Determination to each Claimant that submits a Proof of Claim. For Proof of Claim

Forms for which the Receiver does not issue a Notice of Deficiency as described above, the Receiver shall provide a Notice of Determination to such Claimants on or before the date that is sixty (60) days after the Bar Date. For Proof of Claim Forms for which the Receiver issues a Notice of Deficiency, the Receiver shall provide a Notice of Determination to such Claimants on or before the later of (i) the date that is sixty (60) days after the date the Receiver issued the Notice of Deficiency to the Claimant or (ii) the date that is sixty (60) days after the date the Receiver receives the Claimant's response to the Notice of Deficiency. Such Notice of Determination shall be substantially in the form attached to the Supplemental Memorandum as **Exhibit F** (the "Notice of Determination"). If the Receiver has disallowed the Claim in whole or in part, the Notice of Determination shall so state and include a statement setting forth the reasons for disallowing the Claim and the date of the Receiver's determination.

(m) Claimant Objections to Determinations. In order to object to the Receiver's determination of a Claim, the Claimant shall first serve, but not file with the Court, a written objection to the Receiver's determination in accordance with the instructions included with the Receiver's Notice of Determination. The objection shall be served on the Receiver (a) in person, by courier, or by mail addressed to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101, or (b) by electronic mail, as an attachment in portable document format (.pdf) to acartha.receivership@thompsoncoburn.com within thirty (30) days of the date of the Receiver's Notice of Determination. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for the Claimant's objection to the Receiver's determination; (iii) copies of any document or other writing upon which the Claimant relies; and (iv) mailing, phone, and email contact information for the Claimant. Objections not timely served shall be deemed waived and overruled without the need for further order of this Court or action by the Receiver.

(n) Attempt to Resolve Objection. The Claimant and the Receiver shall attempt to resolve the objection served on the Receiver by the Claimant. All Claimants

submitting a Proof of Claim are directed to work in good faith with the Receiver to resolve any objections before submitting them to the Court for determination.

(o) Filing of Objection with Court. If the Receiver and Claimant are unable to resolve an objection served upon the Receiver within ninety (90) days of the date of the Receiver's Notice of Determination, the Claimant shall file the written objection to the Receiver's Notice of Determination with the Court in accordance with the instructions included with the Receiver's Notice of Determination. The objection shall be filed with the Court no earlier than ninety (90) days of the date of the Receiver's Notice of Determination and no later than one hundred and twenty (120) days of the date of the Receiver's Notice of Determination. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for the Claimant's objection to the Receiver's Notice of Determination; (iii) copies of any document or other writing upon which the Claimant relies; (iv) mailing, phone, and email contact information for the Claimant; and (v) a certification that the Claimant has conferred in good faith with the Receiver in an effort to resolve the objection without the need for a ruling from the Court. Objections not timely filed with the Court shall be deemed waived and overruled without the need for further order of this Court or action by the Receiver.


(p) Court Ruling on Determinations and Objections. The Receiver may file a response to the Claimant's objection within thirty (30) days of the date on which the Claimant filed with the Court a written objection to the Receiver's Notice of Determination and shall serve a copy of the response on the Claimant or Claimant's counsel. Following the filing of the Receiver's response to the Claimant's objection or, if the Receiver fails to file a response, the expiration of the thirty (30) day response period provided herein, the Court shall consider and rule on the Claimant's objection to the Notice of Determination. Notwithstanding the procedures outlined herein, the Claimant and the Receiver may stipulate to informally resolve their dispute and may extend by agreement without leave of Court the deadline for either party to file a motion to have the Court rule on the objection and determination.

(q) No Discovery or Motion Practice. No discovery or other motion practice shall occur regarding the Receiver's Notice of Determination or facts giving rise to such determination unless the Claimant first seeks and obtains leave of Court, upon a showing of good cause and substantial need to pursue such motion practice or discovery. Filing of such a motion for leave shall not suspend or extend any deadlines set forth in this Order.

(r) Authority to Compromise and Settle. The Receiver is authorized to compromise and settle any Claim, at any time, as appropriate, subject to Court approval sought in connection with a proposed plan of distribution, and all parties are directed to cooperate with the Receiver to the maximum extent possible to achieve swift resolution of disputes concerning Claims.

(s) Reservation of Rights. Nothing herein shall prejudice any right of the Receiver to dispute, or assert offsets or defenses as to the nature, amount, liability, classification or otherwise against, any amounts asserted in any Proof of Claim. Nothing herein is intended to preclude the Receiver from objecting to any Proof of Claim on any grounds.

SO ORDERED this the 4th day of March, 2013.



THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE