

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
BURTON DOUGLAS MORRISS, *et al.*,)
)
Defendants,)
)
and)
)
MORRISS HOLDINGS, LLC,)
)
Relief Defendant.)

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

**MEMORANDUM OF RELIEF DEFENDANT, MORRISS HOLDINGS, LLC,
IN OPPOSITION TO PLAINTIFF’S MOTION FOR ORDER TO SHOW CAUSE
WHY RELIEF DEFENDANT SHOULD NOT BE HELD IN CONTEMPT
FOR FAILING TO PROVIDE SWORN ACCOUNTING**

Relief Defendant, Morriss Holdings, LLC (“Morriss Holdings”), opposes Plaintiff’s motion to show cause why Morriss Holdings should not be held in contempt for failing to provide a sworn accounting. Morriss Holdings should not be held in contempt: Despite Morriss Holdings’ willingness to comply with this Court’s order to provide a sworn accounting, it has no practical ability to do so. Plaintiff’s motion should be denied.

Factual Background

On January 17, 2012, this Court entered, upon Plaintiff’s *ex parte* motion, an order freezing the assets of all Defendants, including those of Relief Defendant Morriss Holdings, and requiring that all Defendants, including Morriss Holdings,

provide an accounting of their assets and finances. The required accounting was to include detailed statements regarding Morriss Holdings' assets, receipts, payments, income, expenses, and accounts, including payments to and from Defendant Doug Morriss and related entities. (Doc. 17.) Morriss Holdings was given until February 28, 2012 to respond to this requirement. (Doc. 68.)

On February 28, Morriss Holdings responded that it was unable to provide the sworn accounting because it no longer had any employees who could provide that information. (Doc. 82.; *see also* Transcript of Dixon Brown Testimony, excerpts of which are attached hereto as Exhibit A, at p. 24.) Morriss Holdings' last employee, its president, Dixon Brown, resigned on January 23, 2012. (Doc. 42, pp. 2-3.) Moreover, its agent, Doug Morriss, has already informed the Court in his response to the Court's asset freeze order that he could not respond based upon his Fifth Amendment right against self-incrimination, which protects him from giving testimonial evidence such as would be required for a sworn accounting. (Doc. 80.) Morriss Holdings is not in a position to force Doug Morriss to provide such an accounting.

Nor would Mr. Morriss, in any event, be an appropriate person to verify Morriss Holdings' assets and finances. Mr. Morriss did not hold a position that would familiarize him with the mechanical bookkeeping of Morriss Holdings, as Chris Aliprandi, the CFO, Mr. Dixon, and Brian Ziebarth did. (Exhibit A at pp. 67-

69, 74.)¹ As stated above, any employee who would have had that familiarity is no longer available.

Plaintiff's suggestion that Morriss Holdings' sole member, the Barbara Burton Morriss Revocable Trust ("BBMRT"), appoint a different agent to do the sworn accounting ignores the known realities of Morriss Holdings' situation. To complete the kind of accounting that Plaintiff claims it needs would require the services of a professional accountant. Morriss Holdings would be glad to hire such a person, and has advised Plaintiff of that fact. However, there are at least two impediments to that solution: (1) Morriss Holdings lacks the liquid assets to pay for an accountant's services (*see* Ex. B to Doc. 82), and (2) any assets it has were, in any event, frozen by this Court's order. Without the ability to pay for someone to do the work required for this task, Morriss Holdings is unable to complete it.

Despite these hurdles, Morriss Holdings has made good faith efforts to provide Plaintiff with the information it needs. For example, Morriss Holdings engaged Brian Ziebarth, its former accountant, as a consultant to assist counsel in determining what accounting records exist.² Although this review was limited in nature, Morriss Holdings was able as a result of it to provide Plaintiff with a 2011 trial balance sheet for the company. (Ex. B to Doc. 82.) To the extent that Plaintiff might later have additional questions about this document (or others produced in response to appropriate document requests), Plaintiff has the full range of federal

¹ As Plaintiff knows from its investigation, Morriss Holdings formerly employed Brian Ziebarth, a Certified Public Accountant, to keep its books.

² Mr. Ziebarth has indicated that he will not perform additional work unless he is compensated.

discovery tools at its disposal, including the power to subpoena Morriss Holdings' former employees who are no longer under the company's control. That Plaintiff has already utilized some of these tools is evident from its initial disclosures, which identify banks where Morriss Holdings accounts are or have been held and bank documents already available to Plaintiff. (*See* SEC Rule 26(a)(1) Disclosures attached hereto as Exhibit B; *see also* Ex. A at pp. 26-27.)

Under these facts and the legal standards discussed below, it would not be proper to hold Morriss Holdings in contempt for its failures to date. Rather, Morriss Holdings requests the opportunity to complete its discussions with Plaintiff regarding the production of available relevant documents, and to discuss with both Plaintiff and the Receiver any possible avenues for funding the work that Plaintiff seeks to have completed. Indeed, Morriss Holdings understands from the Receiver's most recent status report that funds are coming in, and the Receiver contemplates distributing them. (Doc. 134-1.) To the extent an accounting of Morriss Holdings' finances and assets would assist with that endeavor, funds held by the Receiver could potentially be put to that use.

Argument

Morriss Holdings' should not be held in contempt for failing to provide a sworn accounting because its compliance with the Court's order to do so is legally and practically impossible.

Civil contempt is a severe sanction. A party seeking a contempt order must, therefore, present clear and convincing evidence that such an order is appropriate.

Holt Cargo Sys., Inc. v. Delaware River Port Auth., No. 94-7778, 1998 U.S. Dist. LEXIS 4044, *16 (E.D. Pa. March 27, 1998); *Merchant & Evans, Inc. v. Roosevelt Bldg. Prods., Co., Inc.*, No. 90-7973, 1991 U.S. Dist. LEXIS 17755, *2-4 (E.D. Pa. Dec. 5, 1991). If there is any ground to doubt the wrongfulness of the alleged contemnor's conduct, the moving party will be deemed to have failed to meet this burden. *Holt*, 1998 U.S. Dist. LEXIS 4044, *16. Similarly, if a contempt order will not cure the violation because the party's compliance is not possible, a finding of contempt is improper. *U.S. v. Rylander*, 460 U.S. 752, 757 (1983) ("Where compliance is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action."); *Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733 (11th Cir. 2006) (court excused non-compliance caused by financial constraints); *S.E.C. v Simpson*, No. H88-212, 1988 U.S. Dist. LEXIS 18382 (N.D. Ind. Oct. 21, 1988) (contempt motion denied where non-compliance was due to party's assertion of 5th Amendment privilege); *see also Merchant & Evans*, 1991 U.S. Dist. LEXIS 17755, *5 (party failing to comply with court order not responsible for third party's non-performance; contempt motion denied).

In this case, Morriss Holdings has, despite its best efforts, found it impossible to comply with this Court's order to provide a sworn accounting. The first impediment to Morriss Holdings' compliance is Doug Morriss' Fifth Amendment privilege against self-incrimination. Although Plaintiff cites cases in support of its motion regarding the inapplicability of the Fifth Amendment privilege to an organization's *production of documents*, those cases do not apply to the compulsion

testimonial evidence from an organization's representative. See *Braswell v. U.S.*, 487 U.S. 99, 114-15 (1988); *Amato v. U.S.*, 450 F.3d 46 (1st Cir. 2006).

And, in fact, the U.S. Supreme Court has spoken clearly on this distinction: An organization's employees and agents will not be required to relinquish their Fifth Amendment *testimonial* privilege, even in response to questions relating to the organization:

. . . From the fact that the custodian [of records] has no privilege with respect to the union books in his possession, the Government reasons that he also has no privilege with respect to questions seeking to ascertain the whereabouts of books and records which have been subpoenaed but not produced. In other words, when the custodian fails to produce the books, he must, according to the Government, explain or account under oath for their nonproduction, even though to do so may tend to incriminate him.

The *Fifth Amendment* suggests no such exception. It guarantees that "No person . . . shall be compelled in any criminal case to be a witness against himself . . ." A custodian, by assuming the duties of his office, undertakes the obligation to produce the books of which he is custodian in response to a rightful exercise of the State's visitorial powers. But he cannot lawfully be compelled, in the absence of a grant of adequate immunity from prosecution, to condemn himself by his own oral testimony.

Curcio v. U.S., 354 U.S. 118, 123-24 (1957).

Because a sworn accounting is testimonial in nature, it falls squarely within this rule. And that was precisely the basis for the court's decision in the *Simpson* case cited above. There, the SEC sought a contempt order against the defendants for failing to provide a sworn accounting, and the court held that, because a sworn accounting is testimonial, the principal's assertion of his Fifth Amendment privilege

prevented the preparation of the ordered accounting and excused the defendants' non-performance. *S.E.C. v. Simpson*, 1988 U.S. Dist. LEXIS 18382.

Mr. Morriss' provision of a *sworn* statement regarding the details of Morriss Holdings' finances, including payments made to and from him personally, are testimonial in nature and implicate his own personal Fifth Amendment rights. Because Morriss Holdings has no employees who could take Mr. Morriss' place in this regard, its failure to comply with the Court's order does not constitute contempt.

There is also, though, the absolute impracticability of Morriss Holdings' completion of this assignment, independently of Mr. Morriss' Fifth Amendment rights. As stated above, Morriss Holdings has no employees, it has no agent sufficiently familiar with its finances to provide the sworn accounting, and it has no funds with which to hire someone who can become sufficiently familiar with them. Given these constraints making Morriss Holdings' compliance with this Court's order practically impossible, it would be improper to hold Morriss Holdings in contempt. *Rylander*, 460 U.S. at 757; *Parker*, 468 F.3d at 742; *Simpson*, 1988 U.S. Dist. LEXIS 18382, **11-12.

In addition, the alternative relief Plaintiff requests for Morriss Holdings' non-compliance—the preclusion against Morriss Holdings' offering of evidence of its finances at trial or in disgorgement proceedings—is unreasonably severe. As noted above, Morriss Holdings is in the process of gathering documents to be provided to Plaintiff pursuant to Plaintiff's document requests. All parties will then be able to

use other discovery tools—including deposition discovery—to obtain the necessary facts relating to those documents to present evidence at hearings and trial. And, in fact, as noted above, Plaintiff clearly already has many if not all of the documents it seeks, as evidenced by its Rule 26 disclosures. (*See* SEC Rule 26(a)(1) Disclosures, attached hereto as Exhibit B.) In these circumstances, Plaintiff should not be permitted to cripple the efforts of Morriss Holdings, a mere relief defendant in this case, to protect its own interests and assets. Plaintiff's motion should be denied.

Conclusion

Relief Defendant, Morriss Holdings, respectfully requests that Plaintiff's motion be denied.

SHER CORWIN LLC

/s/ David S. Corwin
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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing on April 27, 2012 with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

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THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

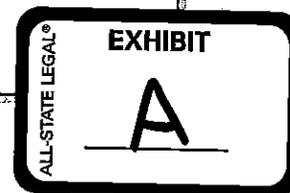
In the Matter of:)
) File No: FL-03707-A
ACARTHA GROUP, LLC)

WITNESS: Dixon Brown
PAGES: 1 through 141
PLACE: Securities and Exchange Commission
801 Brickell Avenue,
Suite 1800,
Miami, Florida 33131
DATE: Thursday, January 5, 2012

The above-entitled matter came on for hearing,
pursuant to notice, at 10:27 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200



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1 APPEARANCES:
 2
 3
 4 On behalf of the Securities and Exchange Commission:
 5 TRISHA D. SINDLER, ESQ.
 6 BRIAN T. JAMES, ESQ.
 7 ADAM SCHWARTZ, ESQ.
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 9 Division of Enforcement
 10 Securities and Exchange Commission
 11 801 Brickell Avenue,
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 13 Miami, Florida 33131
 14
 15
 16 On behalf of the Witness:
 17 ROBERT W. RAY, ESQ.
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1 PROCEEDINGS
 2 MS. SINDLER: We are on the record at 10:27
 3 a.m. on January 5, 2012.
 4 We are here at the Miami Regional Offices of
 5 the Securities and Exchange Commission to take
 6 the testimony of Mr. Dixon Brown.
 7 Mr. Brown, can you please raise your right
 8 hand.
 9 Whereupon:
 10 DIXON BROWN
 11 was called as a witness and, having been first duly
 12 sworn, was examined and testified as follows:
 13 EXAMINATION
 14 BY MS. SINDLER:
 15 Q. Please state and spell your full name for
 16 the record.
 17 A. Dixon, D-i-x-o-n, Rombauer, R-o-m-b-a-u-e-r,
 18 Brown, B-r-o-w-n.
 19 Q. Have you ever been known by any other name?
 20 A. No.
 21 Q. My name is Trisha Sindler. I am a Senior
 22 Counsel with the Division of Enforcement of the
 23 United States Securities and Exchange Commission.
 24 With me is Brian James, also a Senior Counsel with
 25 the Division of Enforcement. And Adam Schwartz, a

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1 Senior Counsel. And we will be joined by Michelle
 2 Lama, an accountant with the Division of
 3 Enforcement.
 4 We are officers of the Commission for the
 5 purpose of this proceeding.
 6 This is an investigation by the Commission
 7 in the matter of Acartha Group, LLC, File No.
 8 FL-3707, to determine whether there have been
 9 violations of certain provisions of the federal
 10 securities laws.
 11 However, the facts developed in this
 12 investigation might constitute violations of other
 13 federal or state, civil or criminal laws.
 14 I'm going to briefly explain the procedure
 15 we are going to be following.
 16 I'm going to ask a series of questions. All
 17 of us may ask questions at any time.
 18 If you would like to take a break at any
 19 time, please let us know and we will be happy to
 20 accommodate you. All we ask is if there is a
 21 question pending, that you answer that before we
 22 take a break.
 23 The court reporter transcribes these
 24 proceedings and will create a transcript of your
 25 testimony at the end. Please make sure that you

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1 A. It was "rolled" into a new note at Pulaski,
 2 of which the St. Andrews house is the collateral
 3 together with the cash reserves.
 4 Q. So what is the total debt on the St. Andrews
 5 home?
 6 A. \$3.4 million.
 7 Q. So that second reserve?
 8 A. There are two reserves, yes.
 9 One was a reserve for taxes and the other is
 10 a reserve for debt service for a nine-month period
 11 in 2012.
 12 Q. So \$156,000 is held in that reserve to pay
 13 this \$3.4 million debt, towards the debt?
 14 A. Yes. To pay the monthly components of that
 15 debt, monthly payments on that debt, which are
 16 \$21,000 a month.
 17 BY MS. SINDLER:
 18 Q. I know you mentioned that the Real Estate
 19 Trust has accounts at Pulaski Bank.
 20 Do the other two trusts have any bank
 21 account or financial account?
 22 A. Yes.
 23 The Insurance Trust has an account at
 24 Pulaski Bank, as well. I do not know where or if
 25 the '86 Trust has a bank account.

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1 Q. What is the balance on the Pulaski Bank
 2 account for the Insurance Trust?
 3 A. The balance?
 4 Q. Is there any reason --
 5 A. In the Insurance Trust, no.
 6 Q. Have you ever been named as a defendant in
 7 any litigation?
 8 A. No.
 9 Q. Can you just tell me very briefly your
 10 secondary education, where you went to school?
 11 A. I went to the University of Virginia. I
 12 graduated in 1970 with a BA in English literature.
 13 Q. Anything else?
 14 A. No.
 15 Q. How long have you known Mr. Morriss?
 16 A. Since 1993.
 17 Q. I'm sorry?
 18 A. 1993.
 19 Q. How did you come to meet him?
 20 A. I was introduced to Mr. Morriss through my
 21 brother, who knew him, and he was seeking some -- a
 22 way to manage some family office matters.
 23 My brother introduced me to him and after we
 24 met and consulted for a while, we decided to start a
 25 company together and that company was called the

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1 Witan Company, which progressed to Kinexus, which is
 2 the company that was sold in 2002.
 3 Q. When did you start the Witan Company
 4 together?
 5 A. We started in 1994. It had a prior name
 6 called Family Service Partners. We changed to the
 7 Witan Group, changed to Witan Company, which
 8 eventually ended up as Kinexus.
 9 Q. Have you worked together with Mr. Morriss
 10 from 1994 through the present?
 11 A. Yes.
 12 Q. Would you consider yourself a close friend
 13 of Mr. Morriss?
 14 A. Yes.
 15 BY MR. SCHWARTZ:
 16 Q. We talked a little bit about Morriss
 17 Holdings.
 18 You said you are the president of Morriss
 19 Holdings.
 20 Does Morriss Holdings have any other
 21 employees?
 22 Does it have any employees?
 23 A. Currently, no.
 24 It did. But currently, no.
 25 Q. When did it have employees?

Page 25

1 A. From 1999 through November of 2011.
 2 Q. Are there multiple shareholders in Morriss
 3 Holdings?
 4 A. No.
 5 Q. Who is the sole shareholder?
 6 A. It is not structured as a share. It is an
 7 LLC.
 8 Morriss Holdings is, if you say owned, is
 9 owned by a trust that is the Barbara Burton Morriss
 10 Revocable Trust.
 11 Q. Who is the trustee of that trust?
 12 A. Mrs. Morriss, which is Mr. Morriss' mother,
 13 and Doug Morriss.
 14 BY MS. SINDLER:
 15 Q. Have you ever been a trustee in that trust?
 16 A. No.
 17 BY MR. SCHWARTZ:
 18 Q. In your role as president of Morriss
 19 Holdings what are your responsibilities?
 20 A. Again, it is a family office. It wasn't
 21 really an operating company in that sense.
 22 My responsibilities were minimal. But I did
 23 provide family office advice to them in setting up
 24 their family office services back in the late '90s.
 25 Q. Can you explain what you mean by family

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1 services, family office services?
 2 A. Sure.
 3 Family office, a family office is for what
 4 network individuals are administrative entities that
 5 pay bills, prepare information for accountants to
 6 prepare tax returns, consolidate financial data.
 7 It basically serves the demands of the
 8 family office owners and that can range from making
 9 travel arrangements to interfacing with legal
 10 counsel on matters pertaining to the family.
 11 Q. So primarily Morriss Holdings was a company
 12 you use for the benefit of Mr. Morriss and his
 13 family?
 14 A. Yes.
 15 BY MS. SINDLER;
 16 Q. Was there any other function of Morriss
 17 Holdings other than for the benefit and use of Mr.
 18 Morriss and his family holdings?
 19 A. Not that I can think of.
 20 BY MR. SCHWARTZ:
 21 Q. What is the current status of Morriss
 22 Holdings?
 23 A. It is a functioning LLC.
 24 Q. Does it have any assets at the moment?
 25 A. Not that I know of. It has a bank account.

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1 Excuse me. I believe the amount of balance in that
 2 bank account is de minimis, under \$1,000.
 3 Q. Where is that account located?
 4 A. At Pulaski Bank.
 5 BY MR. JAMES:
 6 Q. Any other accounts held by Morriss Holdings?
 7 A. I don't believe there are.
 8 BY MS. SINDLER:
 9 Q. What is your role with the Acartha Group?
 10 A. My role is as a chief administrative
 11 officer.
 12 Q. Can you describe for us what you do in that
 13 role?
 14 A. Sure.
 15 I'm in charge of the operations of Acartha
 16 Group from the standpoint of its office, its
 17 responsibilities with respect to employment, its
 18 responsibilities with respect to the bank accounts
 19 that it has on its behalf and on behalf of the funds
 20 it manages and since 19 -- excuse me -- since 2009 I've
 21 been responsible for paying the bills, acting as a
 22 comptroller.
 23 Q. Any other functions?
 24 A. No.
 25 Well, I am the named secretary and director,

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1 but those are titles, they are not functions.
 2 Q. Are the offices of Acartha Group and Morriss
 3 Holdings at the same location?
 4 A. Yes and no.
 5 There are two offices for Acartha Group.
 6 One is 2 Tower Center Boulevard, East Brunswick, New
 7 Jersey, 08816 and it shared offices with Morriss
 8 Holdings in St. Louis, which is 7820 Maryland
 9 Avenue, Clayton, Mo. 63105.
 10 Q. Are there any other offices of any Acartha
 11 related entity, such as Gryphon III, MIC VII?
 12 A. No.
 13 They are all administered out of the New
 14 Jersey office.
 15 BY MS. LAMA:
 16 Q. You mentioned that Acartha Group shares
 17 space with Morriss Holdings?
 18 A. Shares space with Morriss Holdings.
 19 Q. Who pays the rent for that space?
 20 A. The lease is in the name of Morriss
 21 Holdings. Acartha Group pays a pro rata share or
 22 proportion share of rent and that proportion was
 23 determined by working with UHY, our accounting firm,
 24 to determine what was a fair portion for the
 25 activities of Acartha Group's activities in St.

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1 Louis.
 2 Q. And has that allocation of rent been since
 3 the time that the two entities shared space?
 4 A. No.
 5 That particular allocation of rent was begun
 6 when Morriss Holdings undertook that lease, which
 7 was in May of 2010.
 8 Prior to that Morriss Holdings owned its own
 9 facility, owned its own building, although Morriss
 10 Holdings didn't own it. An entity called MIC Realty
 11 owned it but Morriss Holdings occupied it and
 12 Acartha Group paid Morriss Holdings rent for its
 13 proportion share of that space for operations in St.
 14 Louis.
 15 Q. So it moved, Morriss Holdings moved offices?
 16 A. Right.
 17 Q. In May, 2010?
 18 A. In 2010, May of 2010 they moved from 18500
 19 Edison Avenue to 7820 Maryland Avenue.
 20 BY MS. SINDLER:
 21 Q. You mentioned MIC Realty?
 22 A. Uh-huh.
 23 Q. Can you tell us a little bit about that?
 24 A. MIC Realty is an entity that was formed to
 25 acquire the property in which was occupied by

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1 look at our schedules, but I believe that's the
 2 aggregate amount between all of our Tervela
 3 interests.
 4 Q. For the remaining portfolio companies is
 5 there a current estimate of the capital call
 6 requirement?
 7 A. I don't know.
 8 BY MR. SCHWARTZ:
 9 Q. Have you raised \$578,000 yet for that
 10 capital call?
 11 A. No.
 12 We make sure the call is going to be
 13 issued. It hasn't yet from the portfolio company.
 14 But they are planning to. We will raise the Tervela
 15 when it is called.
 16 BY MS. SINDLER:
 17 Q. Are there any moneys held in any of the SPV
 18 accounts?
 19 A. I beg your pardon?
 20 Q. Are there any moneys in any of the SPV bank
 21 accounts presently?
 22 A. They are nominal amounts to keep accounts
 23 open. I think they are just nominal amounts to keep
 24 the accounts open.
 25 BY MR. SCHWARTZ:

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1 Q. I want to talk about transfers made from the
 2 investment, from ATP, MIC VII and G III and Acartha
 3 Group II, Morriss Holdings and Douglas Morriss.
 4 When did those begin to occur?
 5 A. Those began in 2005.
 6 Q. Were there transfers from MIC VII, ATP and G
 7 III all going at some point in time to -- and Acartha
 8 Group going off at some point in time to Mr. Morriss
 9 directly and to Morriss Holdings?
 10 A. Yes.
 11 Q. These transfers, who directed those
 12 transfers to be made?
 13 A. Mr. Morriss either directly or indirectly.
 14 Q. Can you walk us through?
 15 Who would he ask to transfer?
 16 A. He would ask either his assistant or he
 17 would ask directly or he would send an e-mail or
 18 phone and ask that in addition to the note facility
 19 or agreement facilities that were in place be
 20 increased by whatever the amount of the transfer.
 21 Q. Who is his assistant?
 22 A. He had a number of them.
 23 When I started to make transfers, which was
 24 after Mr. Aliprandi left in 2009, it could be from
 25 one of several people.

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1 Nikki Roberts, Julie Shiblom, Brian Ziebarth
 2 all would from time to time make a request.
 3 Q. The netting agreement you are referring to,
 4 what is your understanding of that agreement and
 5 when was that first executed?
 6 A. The netting agreement that was put in place
 7 in June of 2006 between Morriss Holdings and Acartha
 8 Group. A similar agreement existed between Acartha
 9 Group and ATP. But it was -- let me give you some
 10 context around that netting agreement, if I may?
 11 Q. Sure.
 12 A. Chris Aliprandi, who was our CFO from
 13 basically 2005, he started in 2005, he had worked
 14 with us not as an employee but outside of an
 15 employment arrangement as he was coming onto the
 16 role of CFO.
 17 In early 2006 when he came on and started to
 18 get the books and records straight, which we needed,
 19 he noted that there were transfers, advances to
 20 Morriss Holdings and to Mr. Morriss and in May
 21 suggested a process of netting agreements, which I
 22 believe he drafted or counsel drafted for us.
 23 BY MR. JAMES:
 24 Q. This is May, 2005?
 25 A. Chris kind of started working with us in

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1 2005. But the issue became apparent to him in Q-1
 2 of 2006 and very shortly thereafter we put the
 3 netting agreements in place and it allowed at
 4 Acartha's direction to make offset.
 5 Mr. Morriss and Morriss Holdings was both a
 6 borrower and a lender to Acartha Group during those
 7 early years. He had advanced funds to support the
 8 start of the company and the extended long-term
 9 helped to raise capital for MIC VII and Acartha
 10 Group -- excuse me -- ATP.
 11 So in that context the netting agreements
 12 facilitated the ease of accounting entry. At least
 13 that's my understanding. Because I worked with
 14 Chris Aliprandi during this period of time and he's
 15 a CPA, an accomplished CFO. He thought this was the
 16 best way to manage it at the time.
 17 So it was really a way to facilitate the
 18 accounting and keeping due the two funds what we
 19 call intercompany transactions. He would issue
 20 e-mails to Morriss Holdings' accountant or
 21 comptroller. When he made a journal entry on an
 22 advance, he would issue an e-mail to them to add it
 23 to their books and entries as a payable against the
 24 netting agreement and then those netting agreements
 25 changed to the form of notes I believe in 2008.

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1 When Chris left I stepped into the
 2 comptroller's role. So I was the contact person for
 3 any transfers.
 4 Q. And no other -- at least to your knowledge did
 5 Ameet Patel have such an arrangement where he would
 6 take loans from the entities?
 7 A. No.
 8 The only transfers to Patel or anyone else
 9 were for like expense reports.
 10 Q. The only individual who had this sort of
 11 arrangement was Mr. Morriss?
 12 A. Yes.
 13 Q. By this arrangement I'm referring to
 14 transfers made from Acartha Group and Acartha
 15 entities to himself and to his holding company.
 16 A. To Morriss Holdings.
 17 But pursuant to the notes.
 18 Q. To the notes. Okay.
 19 A. We did every time such a transfer was made
 20 and you enter it into your accounting system, which
 21 is QuickBooks for us, they are offsetting
 22 enterprises. We increase the receivable.
 23 Q. Once Mr. Aliprandi left and I think Brian
 24 Peterson came in to take over a lot of the
 25 accounting functions.

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1 Is that right?
 2 A. Yes.
 3 Q. When he would track these transfers, how
 4 would they be reflected in QuickBooks or on the
 5 general ledger?
 6 A. As receivables from -- in 2010 after a long
 7 discussion with respect to the 2008 notes in place,
 8 we, Brian and myself principally determined that
 9 again for a different ease of accounting it would be
 10 better to roll all the notes into a consolidated
 11 master note under Morriss Holdings so that any
 12 distributions to Mr. Morriss himself or in the rare
 13 occasion to a third-party on behalf of Mr. Morriss
 14 were rolled into one obligation with respect to
 15 Morriss Holdings and I think it is documented in the
 16 2010 notes.
 17 However, the schedule of the amounts remain
 18 appended to those notes and tracked from 2008 when
 19 the note structure was originally put in place.
 20 Q. That consolidation, was that decided to do
 21 so at the time an audit was going to take place?
 22 A. Yes.
 23 Some context. Brown, Smith, Wallace did the
 24 2006 audit of Acartha Group and there were
 25 receivables due from Mr. Morriss during the course

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1 of the year, both Morriss Holdings and Mr. Morriss
 2 personally, and those receivables were discharged at
 3 the end of the year. They were noted as having
 4 been -- that the advances having been made pursuant to
 5 notes in the footnotes of that audit statement.
 6 Then going forward there is a hiatus of a
 7 year, '07 and '08 and when we did the '07 and '08
 8 audits, we had a new auditor and as we were
 9 preparing for the 2010 audit with the same auditor,
 10 Brian suggested we have one master note to replace
 11 the various individual notes and it would be I think
 12 a way to describe the notes in a consolidated way.
 13 At least I think that's the kind of conclusion we
 14 agreed to going forward to do this and enter those
 15 consolidations in the books and records in
 16 preparation for the audit.
 17 Q. So going back to the 2006 audit that was
 18 done, that stated that the notes -- it particularly
 19 lists notes that were personally provided to Mr.
 20 Morriss and Morriss Holdings?
 21 A. Advances, yes.
 22 Q. Advances. That those were just charged?
 23 A. That's correct.
 24 Q. Who was that distributed to, that audit?
 25 A. That was distributed to the shareholders of

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1 Acartha Group at the time. I wasn't in charge of
 2 distributions, but I believe it was distributed to
 3 the shareholders. It may have even been distributed
 4 to Mr. Aliprandi.
 5 Q. You said then there was a hiatus in 2007,
 6 2008?
 7 A. We had a two-year audit in '07 and '08
 8 because we went on to from Brown, Smith, Wallace to
 9 Holtz, Remenick in New York.
 10 So we did a two-year period then. And then
 11 after that and in context of that when the 2009/2010
 12 audit at Acartha Group was going to go forward, we
 13 decided to have for 2010 reflect them as one master
 14 note.
 15 Q. For '07/'08 were there reflections of the
 16 netting agreement whether Mr. Morriss was a net
 17 lender/borrower to the Acartha Group at that time?
 18 A. I believe there is. I haven't looked at the
 19 footnotes for that particular audit for sometime. I
 20 believe it would show the receivables. Whether it
 21 referenced the 2008 note structure or the netting
 22 agreement note structure, I'm not sure.
 23 Q. Are you aware have those audits been
 24 produced to us?
 25 A. I know I sent them to counsel for



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April 26, 2012

VIA E-Mail and U.S. Mail

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Receiver for Acartha Group, ATP, MIC VII, and Gryphon Investments III
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101

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Brian A. Lamping, Esq.
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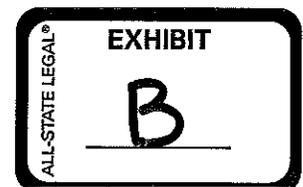
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Counsel for Relief Defendant Morriss Holdings, LLC

Re: SEC v. Morriss, et al., Case No. 4:12-cv-80-CEJ Rule 26(a)(1) Disclosure

Dear Counsel:

This letter contains the Securities and Exchange Commission's initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A) and the Amended Joint Scheduling and Discovery Report the parties submitted to the Court on March 28, 2012.



1. The name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the Commission may use to support its claims.

At this time, the Commission believes the following witnesses have discoverable information relating to facts supporting the Commission's allegations, including, but not limited to, that from 2005 through 2011, Defendant Burton Douglas Morriss through the private equity funds and management companies he controlled – Defendants Acartha Group, LLC, Acartha Technology Partners, LP ("ATP"), MIC VII, LLC, and Gryphon Investments III, LLC (collectively the "Investment Entities") – transferred approximately \$9.1 million of investor funds to himself and Relief Defendant Morriss Holdings. These witnesses have discoverable information related to Morriss' schemes to defraud investors, misrepresentations and omissions made to investors, and his improper transfers of investor funds to himself and Morriss Holdings. In addition, the Commission believes these witnesses have discoverable information regarding Morriss', Morriss Holdings', and the Investment Entities' finances, investments, and handling of investors' funds.

1. Burton Douglas Morriss
c/o Catherine Hanaway Esq
Aschroft Hanaway, LLC
222 South Central Avenue, Suite 110
Clayton, MO 63105
Telephone 314-863-7001
2. Dixon Brown
c/o Joann Trog, Esq.
Hardy C. Menees, Esq.
Menees, Whitney, Burnet & Trog
121 West Adams
St. Louis, MO 63122
Telephone 314-821-1111
3. Chris Aliprandi
c/o Robert J.A. Zito, Esq.
Carter Ledyard & Milburn LLP
Two Wall Street
New York City, NY 10005
Telephone 212-238-2740
4. Brian Peterson
UHY Advisors, Inc.
c/o Jonathan King, Esq.
Joseph Roselius, Esq.
DLA Piper LLP
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601

Telephone 312-368-4000

5. Wynne Morriss, Esq.
c/o Stephen Welby
The Welby Law Firm, LLC
1221 Locust Street, 4th Floor
St. Louis, MO 63105
Telephone 314-732-4285
6. David Truetzel
c/o J. Thomas Archer, Esq.
Gallop, Johnson & Neuman, LC
101 S. Hanley Road, Suite 1700
St. Louis, MO 63105
Telephone 314-615-6000
7. Ameet Patel
c/o Robert J.A. Zito, Esq.
Carter Ledyard & Milburn LLP
Two Wall Street
New York, NY 10005
Telephone 212-238-8768
8. James R. Mahassek
9. John S. Wehrle
c/o Guy Petrillo, Esq.
Petrillo Klein & Boxer LLP
655 Third Avenue, 22nd Floor
New York, NY 10017
Telephone 212-370-0331
10. Brian Zeibarth
Contact Information Unknown
11. Brown Smith Wallace LLC
1050 N. Lindbergh Boulevard
St. Louis, MO 63132
Telephone 314-938-1200
12. Matthew Penneycard
Contact Information Unknown

13. Jerry Sullivan
Contact Information Unknown
14. Hani Teylouni
LogicSource
20 Marshall Street
South Norwalk, CT 06854
Telephone 203-409-9770
15. John Wall
c/o Ryan O'Quinn, Esq.
O'Quinn Stumphauzer, PL
The SunTrust International Center
1 S.E. Third Avenue, Suite 1820
Miami, FL 33131
Telephone 305-371-9686
16. Scott Lutrell
Contact Information Unknown
17. Christian Leedy
Contact Information Unknown
18. Nikki Roberts
Contact Information Unknown
19. Robert Wetzel
c/o Jeff Jensen, Esq.
Mitch Stevens, Esq.
Jensen Bartlett & Schelp, LLC
222 S Central Ave, Suite 110
St. Louis, MO 63105
Telephone 314-725-3939

The Commission believes Ms. Michelle Lama, an employee of the Commission, may testify as a summary witness regarding Morriss', Morriss Holdings', and the Investment Entities' finances and their receipt and use of investors' funds.

20. Michelle Lama
Staff Accountant
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: 305-982-6396

The Commission believes the following investors have relevant knowledge about the facts and circumstances regarding their investments with the Investment Entities and the false and misleading statements made by Morriss and the Investment Entities.

21. Edward Labry III
c/o Norman Bennett
The Renaissance Center
1715 Aaron Brenner Drive, Suite 518
Memphis, TN 38120
22. Andrew Hobbs
Six Plus Management Company
32 Shady Lane
Tequesta, FL 33469
Telephone 302-540-3099
23. Leo Saenger
24. Charles Saenger
25. John Olds
26. Dale Turvey
27. Ron Nixon
c/o Brent Benoit, Esq.
Craig Weinstock, Esq.
Locke, Lord LLP
600 Travis, Suite 2800
Houston, TX 77002
Telephone 713-226-1570
28. Nolan Lehmann
Altazano Management
c/o Brent Benoit, Esq.

Locke Lord LLP
2800 JPMorgan Chase Tower
600 Travis
Houston, TX 77002
Telephone 713-226-1200

29. Harriett Elizabeth Goodman 1991 Trust
John Bailey Goodman Jr. 1991 Trust
Bailey Quin Daniel Goodman 1991 Trust
c/o Brent Benoit and Craig Weinstock
Locke, Lord LLP
600 Travis, Suite 2800
Houston, TX 77002
Telephone 713-226-1570
30. Daniel Breen
31. Charles, A. Dill
Two Rivers Advisors, LLC
8000 Maryland Avenue, Suite 330
St. Louis, MO 63105
Telephone 314-721-5707
32. David Gitlitz
c/o Sheldon M. Sager, Esq.
2855 Rock Creek Circle #166
Superior, CO 80027
Telephone 303-573-1164
33. William Guinness
c/o Alice Imhob
Welde Trust
Chemin de Ballegues, CP 153
Villa Zanroc
Epalinges, Switzerland CH-1066
34. Stephen McKnight
c/o David Oetting
35. Jeffrey H. Salzman

36. Marc Spiler
c/o David Oetting, Esq.

37. James W. Harpel
Palm Beach Capital Partners, LLC
505 S. Flagler Drive, Suite 1400
West Palm Beach, FL 33480
Telephone 561-659-9022

38. John H. Kramer

39. Jonathan Roberts
Klingenstein, Fields & Co., LLC
c/o Savannah Stevenson, Esq.
Lowenstein, Sandler PC
1251 Avenue of the Americas
New York, NY 10020
Telephone 212-262-6700

40. Paul Caron

41. Brian Kaufman
c/o Brian Holland, Esq.

42. Prairie Capital Management
c/o Gregory D. DiMeglio, Esq.
Stradley, Ronon, Stevens & Young LLP
1250 Connecticut Avenue, NW, Suite 500
Washington, DC 20036
Telephone 202-822-9611

43. Klingenstein Investments VII
c/o Savannah Stevenson, Esq.
Lowenstein, Sandler PC
1251 Avenue of the Americas
New York, NY 10020
Telephone 212-262-6700

The Commission believes the records custodians or representatives of the following institutions have information, about, among other things, the Morriss', Morriss Holdings', and the Investment Entities' finances and their use of investors' money.

44. VMware, Inc.
c/o Craig Norris, Esq.
VMware, Inc.
3401 Hillview Avenue
Palo Alto, CA 94304
Telephone 650-427-5000
45. Hotz Rubenstein Reminick LLP
c/o Mark I. Schlesinger, Esq.
Troutman Sanders LLP
One Gateway Center, Suite 2600
Newark, NJ 07102
Telephone 973-645-0899

The Commission believes the records custodians or representatives of the following institutions have information regarding accounts held by Morriss, Morriss Holdings, and the Investment Entities.

46. Wells Fargo
Legal Order Processing
2700 S. Price Road
Mail Code S3928-020
Chandler, AZ 85286
380-724-2000
47. Bank of America, N.A.
Northeast Legal Order Processing
NY7-501-01-17
5701 Horatio Street
Utica, NY 13502-1024
48. Wells Fargo Advisors
c/o Robert Funk

10369 Clayton Road
St. Louis, MO 63131
Telephone 314-991-7800

49. Merrill Lynch
c/o Tracie Cracchiolo
8235 Forsyth Boulevard
Clayton, MO 63105
314-290-4900
50. US Bank
f/k/a Firststar
c/o Helene Herbst
Legal Records Coordinator
Corporate Legal Department
301 North Tucker Boulevard
St. Louis, MO 63101
Telephone 612-303-7843
51. Pulaski Bank
c/o Jean Koch, Rita Custer
12300 Olive Boulevard
Creve Coeur, MO 63141
Telephone 314-878-2210
52. Lindell Bank
c/o April McGregor Ukman
6900 Clayton Avenue
St. Louis, MO 63139
Telephone 314-646-5060
53. Reliance Bank
c/o Martha Lamey
10401 Clayton Road
Frontenac, MO 63131
Telephone 314-569-7228
54. The Private Bank
1401 S. Brentwood Boulevard
St. Louis, MO 63144
Telephone 314-301-2200
55. M&I Bank
f/n/a Southwest Bank
c/o Laura Stadler
Legal Garnishments and Subpoena Group

180 N. Executive Drive
Brookfield, WI 53005
Telephone 262-938-6193

56. PNC Bank
c/o Mary Happe
4100 West 159th Street
Mail Stop B7-YB17-01-A
Cleveland, OH 44135
Telephone 412-768-3068

The Commission notes that discovery has just begun, and it may discover the names of additional witnesses with relevant information. We will supplement these disclosures pursuant to Rule 26(e) should that occur.

2. Documents in the Commission's possession that we may use to support the Commission's claims.

Documents in the Commission's possession are available for inspection and/or copying at the parties' convenience; however, we request that you provide us at least 72 hours advance notice of any inspection so we can arrange for a room in which the inspection can take place. The documents consist of the following:

- Investigative Testimony transcript of Burton D. Morriss taken on November 30, 2011.
- Investigative Testimony transcript of Brian Peterson taken on November 4, 2011.
- Investigative Testimony transcript of Brian Kaufman taken on December 13, 2011.
- Investigative Testimony transcript of David Truetzel taken on November 8, 2011.
- Investigative Testimony transcript of Burton D. Morriss taken on January 4, 2012.
- Investigative Testimony transcript of Dixon Brown taken on January 5, 2012.
- 2004 Exam transcript of Burton D. Morriss taken on March 28, 2012.
- Documents received on October 14, 2011 and October 27, 2011, from VMware, Inc. (Bates numbered VMW00000001-00000253).
- Excel spreadsheet from VMWARE detailing Integrin consolidated proceeds payable received March 29, 2012 from Receiver. (Not Bates numbered).
- Documents received on September 26, 2011, from M&I Bank, f/k/a Southwest Bank, for account ending in number 9966. (Not Bates numbered).
- Documents received on October 4, 2011, from Pulaski Bank, for accounts ending in numbers 0672, 0517 and 5317. (Bates numbered Pulaski Bank 1-780).
- Documents received on November 28, 2011, from Pulaski Bank, for accounts ending in numbers 0672, 0517 and 5317. (Bates numbered Pulaski Bank 1-79).
- Documents received on December 21, 2011, from Pulaski Bank, for accounts ending in numbers 0672, 0517 and 5317. (Not Bates numbered).

- Documents received on January 23, 2012, from Pulaski Bank, for accounts ending in numbers 3194, 5317, 8221, 4851, 5309, 0672 and 0517. (Bates numbered Pulaski Bank (1-23-12) 000001-000141).
- Documents received on November 3, 2011 and December 8, 2011, from Wells Fargo f/n/a Wachovia Bank, for account ending in number 8797. (Not Bates numbered).
- Documents received on October 11, 2011, November 16-18 and 21- 23, 2011, December 7, 2011 and January 4-5, 2012, from Acartha Group. (Bates numbered AG-00000005-0001910 and 0001921-0001938).
- Documents received on September 27, 2011, October 13, 2011, November 22 and 29, 2011 and January 6, 2012, from Reliance Bank for accounts ending in numbers 3256, 3215, 3223, 3199, 3231, 3207 and 0269. (Not Bates numbered).
- Documents received on January 24, 2012, from Reliance Bank for accounts ending in numbers 3256, 3231, 1977, 3264, 3280, 3470, 3215, 3223, 0269, 3207, 3249 and 3199. (Bates numbered Reliance Bank 000001-000304).
- Document received on November 21, 2011, from Bank Midwest, NA. (Not Bates numbered).
- Documents received on October 17, 2011, from UHY Advisors. (Bates numbered P-UHY-00001-10107).
- Documents received on October 24 and 28, 2011 and December 28, 2011, from UHY Advisors. (Bates numbered UHY 00000001-00107667).
- Documents received on October 14, 2011, November 2, 14, 21, and 29, 2011, December 5, 12, 16 and 22, 2011 and January 26, 2012, from Prairie Capital Management. (Bates numbered PCM 000001-104331).
- Documents received from John Wall.
- Documents received on September 22 and 30, 2011, October 18, 2011, November 10, 2011, December 2, 2011 and January 3, 2012, from K Investments VII, LLC. (Bates numbered KI7-0000001-0017760).
- Documents received on November 1, 2011, from Robert Wetzel. (Bates numbered BW1-561).
- Documents received on October 31, 2011 and December 6, 2011, from PNC Bank, NA, for accounts ending in numbers 6867 and 7205. (Not Bates numbered).
- Documents received on January 19, 2012, from PNC Bank, NA, for accounts ending in numbers 6867 and 7205. (Bates numbered PNC Bank 000001-000014).
- Documents received on October 24 and 28, 2011, from US Bank NA, for accounts ending in numbers 0886 and 0878. (Not Bates numbered).
- Documents received on January 24, 2012, from US Bank NA, for accounts ending in numbers 0886, 0878 and 4179. (Bates numbered US Bank 000001-000056).
- Documents received on October 26, 2011, from David Truetzel. (Bates numbered TWD 00001-05552).
- Documents received on November 2, 2011 and December 28, 2011, from Ron Nixon. (Bates numbered RNACARTHA 1-7569).
- Documents received on October 17, 2011, from Dale Turvey. (Not Bates numbered).
- Documents received Jim Mahassek. (Bates numbered JM-E-000000001-000497717; & non-Bates numbered documents).

- Documents received on October 17, 2011, from Nolan Lehmann. (Bates numbered NL ACARTHA 1-1010).
- Documents received from Brown Smith Wallace LLP. (Not Bates numbered).
- Documents received on November 2, 2011, from Chris Aliprandi. (Not Bates numbered).
- Documents received from Edward Labry. (Not Bates numbered).
- Documents received on October 21, 2011, from John T. Olds. (Not Bates numbered).
- Document received on November 30, 2011 from Armed Service Bank. (Not Bates numbered).
- Documents received on December 16, 2011, from JP Morgan Chase, for accounts ending in numbers 3018 and 2992. (Not Bates numbered).
- Documents received on November 29, 2011, from Burton Douglas Morriss. (Bates numbered BDM0000009-0000001-0000892).
- Documents received on January 20, 2012, from Lindell Bank, for accounts ending in numbers 1542, 2513, 2063, 1315 and 1572. (Bates numbered Lindell Bank 000001-000044).
- Documents received on January 26, 2012, from Bank of America, for accounts ending in numbers 0153 and 0166. (Bates numbered Boa 000001-000490).
- Documents received on January 24, 2012, from Wells Fargo Advisors for account ending in 9868. (Bates numbered WF Advisors 000001-000638).
- Documents received on April 18, 2012, from Wells Fargo Advisors for account ending in 9868. (Not Bates numbered).
- Documents received on February 8, 2012 from Brendan Geary. (Bates numbered RDV 000001-000031).
- Documents received on December 27, 2011, from Hotz Rubenstein Reminick LLP. (Bates numbered HHR000031-013981).
- Documents (PST files) received from Dixon Brown. (Not Bates numbered).
- Document received January 23, 2012 from Merrill Lynch. (Not Bares numbered).
- Documents received from David Sosne Bankruptcy Trustee for Estate of Burton Douglas Morriss. (Not Bates numbered).
- Documents received on April 4, 2012, from The Private Bank for accounts ending in numbers 5756 and 5798. (Not Bates numbered)

3. A computation of each category of damages the Commission claims.

The Commission seeks equitable and statutory monetary remedies, not legal damages, through a judgment ordering each Defendant to disgorge all ill-gotten proceeds they received as a result of the activity alleged in the Complaint. The Commission seeks full disgorgement, plus prejudgment interest, and a civil money penalty from each Defendant. The Commission notes, however, that discovery has just begun, and these calculations may change based upon the receipt of new information.

4. Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Not applicable.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS', is written over the typed name.

Adam L. Schwartz
Senior Trial Counsel