Case: 4:12-cv-00080-CEJ Doc. #: 329 Filed: 06/04/14 Page: 1 of 4 PageID #: 8334

# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)
Plaintiff,	)
ν.	) ) Case No. 4:12-cv-00080-CEJ
BURTON DOUGLAS MORRISS, et al.,	)
Defendants, and	)
MORRISS HOLDINGS, LLC,	)
Relief Defendant.	)
	1

## RECEIVER'S NOTICE OF NO OBJECTION AND REQUEST FOR ENTRY OF AN ORDER ON RECEIVER'S NINTH INTERIM APPLICATION FOR ALLOWANCE AND PAYMENT OF FEES AND EXPENSES INCURRED BY THE RECEIVER, RETAINED COUNSEL, AND OTHER PROFESSIONALS

By Order entered January 17, 2012, the Court appointed Claire M. Schenk as Receiver ("<u>Receiver</u>") over Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC (collectively, the "<u>Receivership Entities</u>"). On May 20, 2014, in accordance with the Order Appointing Receiver, the Receiver filed her *Ninth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel and Other Professionals* (the "<u>Ninth Application</u>") (Dkt. No. 326).<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> On September 20, 2012, the Court granted the *Receiver's First Interim Application for Allowance and Payment of Expenses Incurred by the Receiver, Counsel and Other Professionals* (Dkt. No. 199). The Court granted the *Receiver's Second Interim Application for Allowance and Payment of Expenses Incurred by the Receiver, Counsel and Other Professionals* on November 28, 2012 (Dkt. No. 213). The Court granted the *Receiver's Third Interim Application for Allowance and Payment of Expenses Incurred by the Receiver, Counsel and Other Professionals* on February 11, 2013 (Dkt. No. 227). The Court granted the *Receiver's Fourth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fourth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fourth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fourth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fourth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fourth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fifth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fifth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fifth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fifth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fifth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fifth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Fifth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver, Second and Conter Professionals conterver's Fifth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver, Second and Conterver's Fifth Interim Application for Allowance an* 

### Case: 4:12-cv-00080-CEJ Doc. #: 329 Filed: 06/04/14 Page: 2 of 4 PageID #: 8335

In the Ninth Application, the Receiver sought an order from the Court authorizing (i) a total award of fees and costs in the amount of \$126,468.12 and (ii) the Receiver to make payment of eighty percent (80%)<sup>2</sup> of the total legal and professional fees and one hundred percent (100%) of the incurred costs as follows based upon the authority submitted by the Receiver in support of the Ninth Application: (a) \$92,208.67 in legal fees and \$240.61 in costs for Thompson Coburn LLP, the Receiver's primary counsel; (b) \$3,613.54 in professional fees for Segue Equity Group, LLC, the Receiver's investment fund manager; and (c) \$5,159.80 in professional fees for CliftonLarsonAllen LLP, the Receiver's tax preparer. The Receiver served a copy of the Ninth Application upon all parties receiving notice in this case. Objections to the relief requested in the Ninth Application were due on or before Friday, May 30, 2014. *See* E.D.Mo. L.R. 7-4.01(B); Fed. R. Civ. P. 6. No objections have been filed.

Additionally, on May 20, 2014, the Receiver filed redacted copies of Exhibits C and D-1A through D- $3E^3$  to the Ninth Application.<sup>4</sup> The Receiver also posted a copy of the Ninth Application, along with redacted Exhibits C and D-1A through D-3E to the Ninth Application,

Counsel and Other Professionals on July 15, 2013 (Dkt. No. 268). The Court granted the Receiver's Sixth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver, Counsel and Other Professionals on August 27, 2013 (Dkt. No. 281). The Court granted the Receivers' Seventh Interim Application for Allowance and Payment of Expenses Incurred by the Receiver, Counsel and Other Professionals on December 13, 2013 (Dkt. No. 303). The Court granted the Receiver's Eighth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver's Eighth Interim Application for Allowance and Payment of Expenses Incurred by the Receiver, Counsel and Other Professionals on April 9, 2014 (Dkt. No. 323).

<sup>&</sup>lt;sup>2</sup> The Receiver has agreed, at the request of the Securities and Exchange Commission ("<u>SEC</u>") and pursuant to discussions with the SEC, to request payment of only eighty percent (80%) of the legal and professional fees accrued through March 31, 2014, as opposed to the full amount of the invoiced fees. The Receiver seeks a finding that the total requested fees and costs of \$126,468.12 are reasonable and appropriate. The remaining twenty percent (20%) of accrued legal and professional fees not authorized for payment at this time would be payable upon further application to this Court.

<sup>&</sup>lt;sup>3</sup> Exhibits C and D-1A through D-3E contain individualized and detailed descriptions of the daily services rendered and hours expended by various attorneys, paralegals and professionals employed on behalf of the Receiver in this case during the Application Period.

<sup>&</sup>lt;sup>4</sup> Unredacted copies of Exhibits C and D-1A through D-3E were filed with the Court under seal.

#### Case: 4:12-cv-00080-CEJ Doc. #: 329 Filed: 06/04/14 Page: 3 of 4 PageID #: 8336

on the Receiver's external website, at http://www.thompsoncoburn.com/news-andinformation/acartha-receivership-information/receiversfeeapplications.aspx. The Receiver's posting permitted investors and other parties-in-interest access to both the Receiver's Ninth Application and the redacted bills supporting the Receiver's request for allowance and payment of fees and expenses.

The parties in the case, investors, and other parties-in-interest have had time to review the Receiver's Ninth Application and redacted Exhibits c AND D-1A through D-3E, and no objections to the relief requested in the Ninth Application have been filed. Therefore, the Receiver respectfully requests that the Court grant the Ninth Application and enter the proposed Order, filed simultaneously herewith as Exhibit A to this Notice.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: June 4, 2014

By <u>/s/ Kathleen E. Kraft</u> Stephen B. Higgins, #25728MO Brian A. Lamping #61054MO One US Bank Plaza St. Louis, Missouri 63101 Phone: (314) 552-6000 Fax: (314) 552-7000 shiggins@thompsoncoburn.com blamping@thompsoncoburn.com

Kathleen E. Kraft #58601MO 1909 K Street NW Washington, DC 20006 Phone: (202) 585-6922 Fax: (202) 508-1035 kkraft@thompsoncoburn.com

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 4, 2014, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

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

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

/s/ Kathleen E. Kraft