

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

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

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

**RECEIVER'S MOTION FOR ENTRY OF AN ORDER  
APPROVING AND CONFIRMING THE RECEIVER'S  
FOURTEENTH INTERIM STATUS REPORT**

By Order entered January 17, 2012, the Court appointed Claire M. Schenk as Receiver (the "Receiver") over Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC (collectively, the "Receivership Entities").

The Receiver herein moves this Court for entry of the proposed Order Approving and Confirming her Fourteenth Interim Status Report of Receiver, filed simultaneously herewith as Exhibit A to this Motion.

This motion is administrative and not adversarial in nature.



**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
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SECURITIES AND EXCHANGE COMMISSION, )  
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 v. )  
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 BURTON DOUGLAS MORRISS, )  
 ACARTHA GROUP, LLC, )  
 MIC VII, LLC, )  
 ACARTHA TECHNOLOGY PARTNERS, LP, and )  
 GRYPHON INVESTMENTS III, LLC, )  
 )  
 Defendants, and )  
 )  
 MORRISS HOLDINGS, LLC, )  
 )  
 Relief Defendant. )  
 \_\_\_\_\_ )

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

**FOURTEENTH INTERIM STATUS REPORT OF RECEIVER**

Claire M. Schenk (the “Receiver”), the Receiver for Defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MCI VII, LLC (“MCI VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively, the “Receivership Entities”), submits this **Fourteenth Interim Status Report** to update the Court on the activities of the Receiver occurring since February 4, 2015:

**A. Receivership Litigation, Pending Motions and Filings**

All pending motions, except for the objections addressed in the Claims Process section below, and the Receiver’s Twelfth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals (“Twelfth Fee Application”), are resolved and summarized in previous Receivership Reports. The Receiver’s Twelfth Fee Application was filed on February 16, 2015 and was followed by the Receiver’s Notice of No Objection filed on March 3, 2015. The Receiver awaits the determination of the

Court and has not yet paid the vendors for the invoices submitted for the services rendered and the expenses advanced for the period between October 1, 2014 and December 31, 2014.

**B. Claims Process**

The Receiver has described the Claims Process in detail in preceding reports and will not repeat those details herein (*see* Receiver's Ninth, Tenth, Eleventh, and Twelfth Interim Status Reports, Dkt. Nos. 315-1, 328-1, 338-1, and 358-1). As previously noted, the Receiver issued a Notice of Determination to Claimant No. 227, who filed a late-received claim,<sup>1</sup> on February 3, 2015 and allowed the claim in part and denied the claim in part. On March 11, 2015 the claimant filed an objection with the Receiver, objecting to the disallowance of two parts of its claim. The Receiver engaged in a good-faith discussion with the claimant to see if matters might be resolved without the filing of an objection with the Court. The claimant submitted additional information to the Receiver during the objections process, and the additional information resulted in an additional allowance to the claim. On April 28, 2015, the Receiver issued a revised Notice of Determination as to Claimant No. 227, reflecting the additional allowance and the continued disallowance of one part of the claim. Issuance of the revised Notice of Determination did not impact the total number of claims submitted or recommended for allowance or disallowance.

Also, two claim objections remain outstanding with the Court: (1) Hany Teylouni (former management), Claim No. 20 (*see* Dkt. No. 337); and (2) UHY Advisors MO, Inc. ("UHY") (former professional-services provider), Claim No. 16 (*see* Dkt. No. 332). Based upon information received following the briefing of the objection to the Receiver's disallowance of

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<sup>1</sup> Claimant No. 227 submitted its original Proof of Claim form by the Claims Bar Date, and the mailing bore an official postmark of April, 23, 2013, which was before the Claims Bar Date of May 6, 2013. Although the envelope had the correct address, the U.S. Postal Service returned the mailing to the claimant. The claimant then re-submitted the information electronically. The claim was deemed timely filed although it was processed later than other claims.

Mr. Teylouni's claim, the Receiver filed a supplemental filing with the Court on March 19, 2015 (*see* Dkt. No. 378). Mr. Teylouni's objection has now been fully briefed and awaits decision by the Court. The Receiver continues to engage in settlement discussions with UHY, as described below. Subject to approval of the Court, the Receiver anticipates that UHY's claim objection will be handled as part of the proposed settlement between the Receiver and the UHY Parties.

Because recoveries for the Receivership Entities are likely to continue for the near term and objections remain pending, the Receiver has not yet proposed a plan of distribution to the Court. However, in an effort to respond to investor inquiries, the Receiver has worked to update the investor extranet sites. The additional information being provided to the investors reveals the number and names of allowed claimants as to each of the Receivership Entities. Viewers of the website are cautioned that this information is not intended to provide investors with an indication as to an amount or likelihood as to a potential recovery.

**C. Analysis of Affirmative Legal Claims and Related Proceedings**

Pursuant to paragraph 2 of the Order Appointing Receiver (Dkt. No. 16 "Receivership Order"), the Receiver is directed to investigate the manner in which the affairs of the investment entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities, as the Receiver deems necessary against those individuals and entities that the Receiver may claim have directly or indirectly misappropriated or transferred monies. As authorized by paragraph 6 of the Receivership Order, the Receiver may defend, compromise or settle legal actions in which the Receivership Entities are parties, with authorization of the Court. In keeping with the directives of the Court, the Receiver has developed the following matters during this reporting period.

1. *The UHY Parties*

In keeping with the above-described authorities, and as the Receiver described in the Thirteenth Interim Status Report, the Receiver continued to work with her retained counsel, Spencer Fane Britt & Browne LLP, to negotiate the settlement documentation involving UHY, Patrick Stark, and Brian Peterson (collectively, the “UHY Parties”). The parties have made progress but not yet reached an agreement that may be submitted to the Court. When the language has been agreed upon as between the parties, the Receiver will submit this understanding for the approval of the Receivership Court.

2. *John Wehrle, Gryphon Investments, II, LLC and Cirqit.Com, Inc.*

On March 13, 2015, the Receiver filed a complaint against John Wehrle, Gryphon Investments II, LLC (“Gryphon II”), and Cirqit.Com, Inc. (“Cirqit”) alleging that the contributions of Gryphon III investors were improperly comingled with the funds of Gryphon II and transferred to Mr. Wehrle, Gryphon II, Cirqit and others. Claims include breach of contract and breach of fiduciary duty against Mr. Wehrle, fraudulent transfers against Mr. Wehrle, Cirqit and Gryphon II along with other equitable and tort claims. On April 27, 2015, defendants responded with an answer and motion to dismiss various counts of the complaint. The Receiver’s response to the Motion to Dismiss is due to be filed on May 14, 2015.

The indictment returned against John Wehrle on January 7, 2015, remains pending. The defendant has entered a plea of not guilty and obtained extensions of time for the filing of pretrial motions. A trial date has not yet been set.

**D. Business Operations and Administrative Matters**

As directed by the Court, the Receiver continued to oversee the holdings of the Receivership Entities in the remaining portfolio company investments. The Receiver

participated in board and shareholder calls involving the portfolio concerns, reviewed periodic updates by management as to financials and operations involving the portfolio entities, analyzed information and handled compliance matters pertaining to potential tax claims and liability. Exploration of liquidation and sale opportunities continued during this reporting period.

As reported in the Thirteenth Interim Status Report, one of the Receivership portfolio companies, Librato, negotiated and executed a merger agreement with Austin-based SolarWinds, Inc. (“SolarWinds”) According to Librato, the cumulative holdings of the Receivership Entities and related special purpose vehicles are 858,337, or approximately 4% of the total shares on a fully diluted basis, which is estimated to result in gross sale proceeds per Acartha share (including amounts subject to an indemnification escrow) of a little under \$1.90. During this reporting period, the Receiver has worked with the transfer agent and the disbursing bank to obtain the funds, which will be placed into the accounts of two of the Receivership Entities (ATP and MIC VII), as well as three related special purpose vehicles, EverGrid Acquisition, LLC, Evergrid/MIC VII, LLC, and Librato Acquisition, II, LLC. New accounts have been opened for the latter four entities at East West Bank.

It is expected that the initial distribution will be made within the next several days. Reportedly, the total amount of this initial distribution will be \$1,459,642.99. Beyond the initial distribution, escrowed amounts are being retained and managed by Shareholder Representative Services (“SRS”). Currently, \$191,044.54 is being held in escrow. As stated by SRS, this sum was placed in escrow in order to reimburse the buyer for potential damages and in keeping with the terms of the acquisition agreement. The Receiver anticipates that the distributions allocated to the Receivership Entities, ATP and MIC VII, will be a part of the claims distribution process to be determined by the Court. Distributions to the remaining entities will also be made subject

to Court approval but as part of a separate process. The Receiver plans to submit her recommendations to the Court after disbursements have been completed and following consultation with her accountants.

**E. Tax Matters**

During this reporting period, the Receiver worked closely with the Receiver's accountants to close the Receivership books in preparation for the filing of the 2014 Receivership returns. Assessments and issues involving various states tax matters were handled. Filing deadlines were extended and returns will be timely filed in the coming months. The Receiver also worked with her accountants to plan for final filings for the Integrien entities which have completed distributions and have no further business purpose.

**F. Update in Proceedings Involving Burton Douglas Morriss**

*1. Criminal Matter*

Pursuant to the plea agreement described in earlier reports, the Receiver is informed that Burton Douglas Morriss remains incarcerated.

*2. Personal Bankruptcy of Burton Douglas Morriss*

During this reporting period, the Section 341 meeting of creditors was completed with Mr. Morriss participating by phone from prison. The deadline for objections to discharge is June 3, 2015. The Receiver and her counsel have been assessing and analyzing the appropriate course of action under the circumstances.

**G. Administrative Matters**

An updated copy of the Standardized Fund Accounting Report ("SFAR") is being submitted along with the Receiver's Thirteenth Interim Fee Application (for the first quarter of this year, covering January through March). This report reflects known and current bank



balances for the Receivership Entities and the accounts otherwise subject to the control of the Receiver. It also shows expenses and payments during this quarter. A final and fully detailed report will be submitted to the Court at the conclusion of the Receivership.

The Receiver has continuously updated the general website hosted by Thompson Coburn LLP (which is linked to the website for the District Court for the Eastern District of Missouri). Additionally, she has continued to post documents on the extranet sites created for the investors, including the information pertaining to the current status of the allowed claims. Access to the extranet sites is allowed subject to receipt of a nondisclosure agreement by the investors. Each site is periodically updated with information pertinent to business operations, *e.g.*, slide decks or presentations and transactional documents involving additional financings or other significant events. Claimants, investors, and other interested parties are encouraged by the Receiver to visit the sites that are available to them so that they will have a current understanding of Receivership operations and to avoid unnecessary expense through repeated individualized communications with the Receiver and her counsel.

### **Conclusion**

The Receiver will continue to update this Report on a periodic basis to summarize relevant Receivership activities.

Dated: May 6, 2015

Respectfully submitted,

/s/ Claire M. Schenk  
Claire M. Schenk, Receiver

**UNITED STATES DISTRICT COURT  
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Relief Defendant.	)	
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Case No. 4:12-CV-00080-CEJ

**ORDER**

Upon the Receiver’s Motion for Entry of an Order Approving and Confirming the Fourteenth Interim Status Report of Receiver, filed by Claire M. Schenk, the court-appointed receiver (the “Receiver”) for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC in this action; and

Having fully considered the Motion and the Fourteenth Interim Status Report and being duly advised as to the merits,

**THE COURT DOES HEREBY ORDER THAT**

1. The Receiver's Motion is granted in its entirety; and

2. The Fourteenth Interim Status Report of Receiver for the period February 5, 2015 through May 6, 2015, and every act and transaction reported therein, are hereby approved and confirmed.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_ 2015

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THE HONORABLE CAROL E. JACKSON  
UNITED STATES DISTRICT COURT JUDGE