

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO. 12-CV-80-CEJ

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.)
)

**PLAINTIFF’S MOTION TO COMPEL PRODUCTION
OF DOCUMENTS FROM RELIEF DEFENDANT MORRISS HOLDINGS, LLC**

Plaintiff Securities and Exchange Commission, Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, moves the Court to compel Relief Defendant Morriss Holdings, LLC, to comply with its discovery obligations and produce the documents requested in the Commission’s January 19, 2012 First Request for Production of Documents. After a lengthy extension of time, on February 28, 2012, Morriss Holdings served its Response to the Commission’s request. In its Response, Morriss Holdings raised a number of erroneous objections, but agreed to produce documents responsive to certain portions of the Commission’s request “subject to its ability to find someone to assist in the collection” of documents. During a March 26, 2012 telephone conference, the Commission agreed to alter certain requests to address Morriss Holdings’ concerns. Morriss Holdings, however, advised that it would not produce *any*

documents until the company appoints a new agent. To date, Morriss Holdings has failed to produce a single document.

Morriss Holdings' failure to produce documents has hampered the Commission's discovery, preventing it from setting and preparing for depositions. Consequently, the Commission asks this Court to order Morriss Holdings' prompt and complete response to the Commission's First Request for Production of Documents by a date certain so that fact discovery can be completed in a timely manner.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Commission filed this action against Defendant Burton Douglas Morriss, the private equity funds and their management companies Morriss controlled (collectively, the "Investment Entities"), and Morriss Holdings as Relief Defendant on January 17, 2012. The Complaint alleged, among other things, that Morriss defrauded investors in the Investment Entities by transferring more than \$9 million in investor funds to himself and Morriss Holdings. (D.E. 1). Morriss disguised these transfers as loans or accounts receivables from the Investment Entities without the knowledge or consent of investors. (*Id.*, ¶ 1) The Commission's Complaint also alleges Morriss Holdings received a significant portion of the funds Morriss misappropriated. (*Id.*, ¶ 24). On the same day it filed the Complaint, the Commission also filed *ex parte* motions seeking asset freezes over all defendants but Morriss and over Morriss Holdings, and to appoint a Receiver over the Investment Entities. (D.E. 3 & 6). After reviewing the Commission's pleadings and exhibits, the Court granted both motions. *See, e.g.*, Asset Freeze Order and Other Emergency Relief (D.E. 17).

In its January 17, 2012 Order, the Court ruled "[i]mmediely upon the entry of this Order . . . the parties shall be entitled to serve interrogatories, requests for the production of documents,

and requests for admissions. The parties shall respond to such discovery requests within two days of service.” (*Id.* at 6). Pursuant to the Court’s Order, on January 19, 2012, the Commission served its First Request for the Production of Documents From Relief Defendant Morriss Holdings, LLC, via overnight mail to Morriss, Morriss Holdings’ registered agent, and its then president, Dixon Brown. Copy of First Request for Documents, attached as Exhibit A. The Commission’s request asked Morriss Holdings to produce 17 types of documents including, among other things, communications it had with the Investment Entities, Morriss, and investors as well as the company’s financial records. On February 7, 2012, Morriss Holdings filed its motion for additional time to respond to the Commission’s document request, respond to the Commission’s Complaint, and provide its Court-ordered sworn accounting. (D.E. 64). The Commission consented, and the Court granted the motion and reset Morriss Holdings’ response deadline to February 28, 2012. (D.E. 68).

On February 28, 2012, Morriss Holdings served the Commission via e-mail, its Response to Plaintiff’s First Request for Production of Documents. Morriss Holdings’ February 28, 2012 Response, attached as Exhibit B. Morriss Holdings’ Response included six general objections and specific objections to 12 of the Commission’s 17 requests. *Id.* As to Commission requests 4, 5, 7, 9, and 11, Morriss Holdings advised “[s]ubject to its ability to find someone to assist in the collection of these documents, Morriss Holdings will produce responsive, non-privileged documents at a mutually agreeable time and place.” *Id.* On March 26, 2012, the Commission and Morriss Holdings’ counsel conducted a telephone conference in attempt to resolve Morriss Holdings’ objections. During the conference, the Commission agreed to revise certain document requests to satisfy Morriss Holdings’ concerns. Morriss Holdings’ advised that it would not produce any documents until the company appointed a new agent. On March 26, 2012, the

Commission sent a letter to Morriss Holdings' counsel in which it detailed its responses to Morriss Holdings' general and specific objections, modified certain requests, and demanded production of documents by April 6, 2012. Mar. 26, 2012 Ltr., attached as Exhibit C. To date, Morriss Holdings has failed to produce a single document, and the parties have been unable to resolve this issue.

Pursuant to Local Rule 37-3.04(A), counsel for the Commission certifies that he and counsel for Morriss Holdings have conferred orally in a good-faith effort to resolve the issues this motion raises, but have been unable to resolve them.¹ *See* Ex. C.

II. LEGAL STANDARD

Rule 26(b)(1) of the Federal Rules of Civil Procedure provides for liberal discovery. *St. Paul Reins. Co., Ltd. v. Commercial Fin. Corp.*, 198 F.R.D. 508, 512 (N.D. Iowa 2000) (citations omitted). In part, it provides that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). Courts have interpreted Rule 26 to provide for liberal discovery. *St. Paul Reins. Co.*, 198 F.R.D. at 511 (citing cases). *See also Liberty Mut. Fire Ins. Co. v. Centimark Corp.*, 08CV230-DJS, 2009 WL 539927, at *1 (E.D. Mo. Mar. 4, 2009) (holding that Rules 26(b) and 34 provide for broad discovery) (citations omitted). “Thus, as long as the parties request information or documents relevant to the claims at issue in the case, and such requests

¹ The telephone conference on March 23, 2012, occurred at 9:30 a.m., EDT, and included undersigned counsel, on behalf of the Commission, and David Corwin, Esq., on behalf of Relief Defendant Morriss Holdings.

are tendered in good faith and are not unduly burdensome, discovery shall proceed.” *St. Paul Reins. Co.*, 198 F.R.D. at 511 (citing *M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.*, 103 F.R.D. 635, 637 (D. Mass. 1984)). *See also Liberty Mut. Fire Ins.*, 2009 WL 539927, at *1 (holding that requesting party need only make a “threshold showing of relevance” under Rule 26(b)).

The party resisting production bears the burden of establishing lack of relevance or undue burden. *St. Paul Reins. Co.*, 198 F.R.D. at 511 (citations omitted). The objecting party “must demonstrate to the court ‘that the requested documents either do not come within the broad scope of relevance defined pursuant to Fed.R.Civ.P. 26(b)(1) or else are of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure.’” *Id.* (quoting *Burke v. New York City Police Dep’t*, 115 F.R.D. 220, 224 (S.D.N.Y.1987)).

Use of “boilerplate” objections such as: “the request is overly broad and as a result, the request is burdensome and harassing,” and “the request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence,” are insufficient and “are textbook examples of what federal courts have routinely deemed to be improper objections.” *Id.* at 512. Instead, the party resisting discovery must show specifically how each request is overly broad, oppressive, irrelevant or unduly burdensome. *Id.* (citing *Redland Soccer Club v. Dep’t of Army*, 55 F.3d 827, 856 (3d Cir. 1995); *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990); *Paulsen v. Case Corp.*, 168 F.R.D. 285, 289 (C.D. Cal. 1996); *Burns v. Imagine Films Entert., Inc.*, 164 F.R.D. 589, 592-93 (W.D.N.Y. 1996). Indeed, “[g]eneral objections are not useful to the court ruling on a discovery motion. Nor does a general objection fulfill [a party’s] burden to explain its objections.” *Chubb Integrated Sys. Ltd v. Nat’l*

Bank of Wash., 103 F.R.D. 52, 58 (D.D.C. 1984). As discussed in detail below, Morriss' generalized, boilerplate objections are insufficient.

III. MORRISS HOLDINGS' GENERAL OBJECTIONS

In its Response, Morriss Holdings' raised six general objections. Ex. B at 2-3. As discussed above, general objections are insufficient as a matter of law; Morriss must state a specific objection to each item the Commission requested. *Creighton St. Joseph Regional Healthcare, LLC v. Lakeland Eng'g Equip. Co.*, 8:07CV113, 2007 WL 4052064, at *3 (D. Neb. Nov. 13, 2007) (holding that general objections not related to specific requests were insufficient and ordering defendant to produce requested documents and pay attorney's fees) (citing Fed. R. Civ. P. 34(b)). Consequently, the Court should overrule Morriss Holdings' general objections as insufficient as a matter of law.² *Id.* The Commission, however, addresses a number of its general objections here because they relate to Morriss Holdings' specific objections, which are discussed below.

A. Morriss Holdings Must Produce a Privilege Log

In its first General Objection, Morriss Holdings stated it "objects generally to these document requests to the extent they seek documents that are protected by the attorney-client privilege and/or the work product doctrine. Morriss Holdings responds to these requests subject to and without waiving any of these privileges and protections." Ex. C at 2. Federal Rule of Civil Procedure 26(b)(5)(A)(ii), requires a party withholding otherwise discoverable information on the basis of privilege to "describe the nature of the documents, communications, or tangible things not produced or disclosed" and do so "to enable other parties to assess the claim." Pursuant to Rule 26(b)(5)(A), as stated in paragraph 11 of the Commission's Request (Ex. A at

² The Commission addressed each of Morriss Holdings' general objections in its March 26, 2012 letter to Morriss Holdings' counsel. *See* Ex. C. The Commission incorporates by reference its responses here.

3), the Commission requests Morriss Holdings produce a privilege log for any documents for which it claims privilege.

B. The Commission's Defined Terms Are Consistent With Fed. R. Civ. P. 26(b) & 34

Morriss Holdings also objected to the defined terms “you”, “your”, “Investment Entities”, and “Documents” as overbroad. Morriss Holdings, however, fails to explain with sufficient particularity how that is the case. *Creighton St. Joseph Regional Healthcare*, 2007 WL 4052064, at *3 (citing Fed. R. Civ. P. 34(b)). The Commission’s definitions of “you” and “your” is intended to include all employees, agents, representatives, contractors, or anyone working on Morris Holdings’ behalf. Ex. A at 2. Moreover, the Commission’s definition of “Investment Entities” clearly describes which entities are included under the term – Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP (“ATP”); and Gryphon Investments III, LLC. Ex. A at 2. Likewise, the Commission’s definition of “document” (*id.*) describes in considerable detail the types of writings and other matter the Commission requests and is consistent with Fed. R. Civ. P. 26(b) and 34. Indeed, all of the Commission’s instructions and definitions are consistent with Fed. R. Civ. P. 26(b) and 34, which provide for “broad discovery.” *Liberty Mut. Fire Ins.*, 2009 WL 539927, at *1 (citations omitted).

C. Morriss Holdings Must Produce All Documents In Its Possession, Custody, or Control

In its General Objections, Morriss Holdings also stated it “objects to Paragraph 8 of the Request because it is unable to produce documents to which it does not have access.” Ex. B at 3. Although Morriss Holdings fails to explain what it means by “access,” the Commission understands it to mean that it refuses to provide documents that are not in its physical possession. Morriss Holdings’ limitation is improper.

Pursuant to Fed. R. Civ. P. 34(a)(1), Morriss Holdings must produce any documents in his possession, custody, or control whether *personal* or not. *Huggins v. Fed. Express Corp.*, 250 F.R.D. 404, 408 (E.D. Mo. 2008) (“Control is defined broadly as the ability to obtain upon demand documents in the possession of another. The party to whom the discovery is directed need not have legal ownership or actual physical possession, but rather a practical ability to obtain the documents.”) (citation and internal quotations omitted); *In re Hallmark Capital Corp.*, 534 F. Supp. 2d 981, 981 (D. Minn. 2008) (same).

A party need not have actual possession of documents to be required to produce them under Fed. R. Civ. P. 34. *In re Domestic Air Transp. Antitrust Litig.*, 142 F.R.D. 354, 356 (N.D. Ga. 1992) (“A party need not have actual possession of the documents to be deemed in control of them. The test is whether the party has a legal right to control them.”) (internal citations omitted). Courts have defined “control” as the legal right to obtain documents upon demand. *Searock v. Stripling*, 736 F.2d 650 (11th Cir. 1984). “Production may be ordered when a party has the legal right to obtain papers, even though he has no copy, and regardless of whether a paper is beyond the jurisdiction of the court.” *Buckley v. Vidal*, 50 F.R.D. 271, 274 (S.D.N.Y. 1970). In other words, the responding party cannot furnish only that information within his immediate knowledge or possession; he is under an affirmative duty to seek all information reasonably available to him. *Weaver v. Gross*, 107 F.R.D. 715, 717 (D.D.C. 1985) (declaring that “a party cannot take a purposefully restricted approach to discovery by furnishing only that information within his immediate knowledge or possession” and further adding that “a party has a duty to seek that information reasonably available to him from his employees, agents, or others subject to his control.”).

IV. MORRISS HOLDINGS' SPECIFIC OBJECTIONS

The majority of Morriss Holdings' specific objections consist of some variation of the boilerplate language "Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of evidence." Ex. B at specific objections 6, 8, 10, 12-15, 17. Morriss Holdings failed to provide any explanation as to why each of the specific requests was overbroad, burdensome, and would not lead to the discovery of admissible evidence. Quite the contrary, the Commission's requests relate directly to the heart of the Complaint's allegations with respect to Morriss Holdings – namely, Morriss Holdings assets and whether it received funds, which Morriss obtained through fraud. As discussed in Section II above, such boilerplate objections, are insufficient as a matter of law, and should not be considered by the Court. *St. Paul Reins. Co.*, 198 F.R.D. at 511 (citations omitted).

Moreover, in its responses to document requests 4-5, 7, 9 and 11, Morriss Holdings did not object to the Commission's request, but instead stated "[s]ubject to the availability to find someone to assist in the collection of these documents, Morriss Holdings will produce responsive, non-privileged documents at a mutually agreeable time and place." Ex. B at specific objections 4-5, 7, 9 and 11. The Commission objects to Morriss Holdings' placement of a condition precedent to production of the requested documents. Rule 34 requires Morriss Holdings to produce requested documents. Lack of funds is not an excuse to avoid discovery obligations. *Tech. Chem. Co. v. IG-LO Prod. Corp.*, 812 F.2d 222, 224 (5th Cir. 1987); *Herstgaard v. Cherryden, LLC*, No. 1:07CV02-MP/AK, 2009 WL 2191862, at *3 (N.D. Fla. Jul. 22, 2009).

The Commission also notes that During the March 23, 2012 telephone conference, counsel for Morriss Holdings advised that it was "not in a position" to produce *any* documents, even at

the Commission's request to schedule a mutually agreeable time and place to review such documents. In other words, in violation of Fed. R. Civ. P. 26 and 34, Morriss Holdings is refusing to produce documents responsive to requests for which it does not object, and it has failed to produce a single document in response to the Commission's now three-month-old First Request for the Production of Documents.

In addition to the forgoing, the Commission replies to Morriss Holdings' responses as follows:

Request No. 1: All documents reflecting or relating to communications you had with the Investment Entities, including, but limited to letters, emails, contracts, promissory notes, and voicemails.

Relief Defendant's Response: Morriss Holdings objects to this Request because it is overly broad in that "Communications" is an undefined term. As a result, the Request is burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the forgoing and without waiving its objection, Morriss Holdings will produce documents responsive to this Request if the Plaintiff Securities and Exchange Commission ("SEC") agrees to limit the term communication.

Commission's Reply: As the Commission advised Morriss Holdings in its March 26, 2012 letter, the term "communications" as used by the Commission reflects its standard, ordinary usage – *i.e.* information imparted, interchanged, or transmitted between parties. Even with this clarification, Morriss Holdings has yet to produce a single document. Moreover, Morriss Holdings failed to specify how the definition is overbroad, burdensome, harassing, or seeks documents that are not relevant. Communications between Morriss and Morriss Holdings are highly relevant given the Complaint's allegations that Morriss Holdings received a large portion of investor funds and used those funds for Morriss' benefit. These communications will likely demonstrate, among other things, Morriss Holdings received investor funds at Morriss' direction and used investor funds for

Morriss' personal benefit. Consequently, the Commission has made a "threshold showing of relevance" as required under Fed. R. Civ. P. 26(b). *Liberty Mut. Fire Ins.*, 2009 WL 539927, at *1.

Request No. 2: All documents reflecting or relating to communications you had with the Investment Entities' existing and potential investors, including, but not limited to, offering materials, letters, emails, and voicemails.

Relief Defendant's Response: Morriss Holdings objects to this Request because it is overly broad and does not specify with reasonable particularity whom the existing and potential investors are. Furthermore, the term "communication" is undefined and thus overbroad. As a result, the Request is vague, burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Commission's Reply: As the Commission advised Morriss Holdings in its March 26, 2012 letter, the phrase "existing and potential investors," includes the 97 individuals who invested in the Investment Entities and others the Investment Entities solicited, and the term "communications" as used by the Commission reflects its standard ordinary usage – *i.e.* information imparted, interchanged, or transmitted between parties. Even with this clarification, Morriss Holdings has yet to produce a single document. Morriss Holdings fails to specify how the request is, burdensome, harassing, or seeks documents that are not relevant. The requested documents are highly relevant and will likely demonstrate Morriss Holdings' receipt of investor funds. Consequently, the Commission has made a "threshold showing of relevance" as required under Fed. R. Civ. P. 26(b). *Id.*

Request No. 3: All documents reflecting or relating to any email account(s) you have used.

Relief Defendant's Response: Morriss Holdings objects to this Request because it seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence. Based upon a reasonable investigation and subject to the foregoing and without waiving its objections, Morriss Holdings does not have any documents responsive to this Request. If Plaintiff SEC is looking for actual emails, Morriss Holdings is attempting to collect the emails which may be responsive to this request.

Commission's Reply: The Commission objects because documents reflecting or relating to the email accounts Morriss Holdings used is highly relevant. Indeed, based upon Morriss' and

Dixon Brown's, Morriss Holdings' former president, investigative testimonies and incomplete document production, the Defendants heavily utilized email in making misrepresentations to investors and in their schemes to defraud. Documents reflecting or relating to the email accounts Morriss Holdings used is highly relevant as their production would demonstrate Morriss Holdings receipt of Morriss' ill-gotten gains. These documents clearly meet the "threshold showing of relevance" requirement under Fed. R. Civ. P. 26(b). *Id.* Consequently, the Commission requests documents showing all email addresses Morriss Holdings utilized in the past six years, which relate to and reflect communications regarding the Investment Entities and Morriss.

Request No. 6: All documents reflecting or relating to your funds used for the benefit of Burton Douglas Morriss.

Relief Defendant's Response: Morriss Holdings objects to this Request because it is overly broad vague and ambiguous. As a result, the Request is burdensome and harassing.

Commission's Reply: The Commission objects because Morriss Holdings fails to explain how the request is overbroad, burdensome, or not reasonably calculated to lead to the discovery of admissible evidence as required by Fed. R. Civ. P. 26(b) and 34. *Id.* Moreover, in its March 26, 2012 letter, the Commission clarified that its request includes any financial transactions be it loans, wire transfers, or purchases of items or property by Morriss Holdings which Morriss utilized. It also requests any pay stubs, invoices, account ledgers, checks, or any other document detailing any services Morriss provided to Morriss Holdings. Even after these clarifications, however, Morriss Holdings has yet to produce a single document.

Request No. 8: Monthly statements for all bank accounts you control, are in your name, and/or have any beneficial interest in including, without limitation, offshore accounts.

Relief Defendant's Response: Morriss Holdings objects to this request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Commission's Reply: The Commission objects because Morriss Holdings fails to provide "specific explanations or factual support as to how [this] discovery request is improper" as required by Fed. R. Civ. P. 26(b) and 34. *Id.* The *request* is specific and limited. The Commission requests monthly bank statements that Morriss Holdings controls, is in its name, or for which it has any beneficial interest. The information is highly relevant as the Commission alleges Morriss Holdings received a significant portion of misappropriated investor funds, and the requested bank records will show Morriss Holdings' receipt of ill-gotten gains from the Investment Entities. Moreover, the requested documents are particularly necessary because Morriss Holdings has failed to provide a sworn accounting of its assets as ordered by the Court. (D.E. 82).

Request No. 10: All documents reflecting or relating to your use of the Investment Entities' investor funds.

Relief Defendant's Response: Morriss Holdings objects to this Request because it is vague, overbroad, ambiguous, irrelevant and improperly assumes that Morriss Holdings used Investment Entities' funds, which is beyond any allegations asserted in this action.

Commission's Reply: The Commission objects because Morriss Holdings fails to provide "specific explanations or factual support as to how [this] discovery request is improper" as required by Fed. R. Civ. P. 26(b) and 34. *Id.* Contrary to Morriss Holdings' claims, the Complaint alleges that Morriss "fraudulently transferred approximately \$9.1 million of investor funds to himself and his family's holding company [Morriss Holdings] for personal use." (D.E. 1, ¶ 1). Moreover, the Commission premised this request upon Morriss' and Brown's investigative testimony transcripts, in which both admit that Morriss Holdings received investor funds from the Investment Entities. That being said, in its March 26, 2012 letter, the Commission modified its request to include all documents reflecting or relating to the receipt, use, and/or transfer of funds Morriss Holdings received from the Investment Entities. Even after this modification, however, Morriss Holdings has yet to produce a single document.

Request No. 12: All documents reflecting or relating to the enrollment in and the monthly statements for all securities brokerage accounts you control, are in your name, and/or which you have any beneficial interest.

Relief Defendant's Response: Morriss Holdings objects to this request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Commission's Reply: The Commission objects because Morriss Holdings fails to provide "specific explanations or factual support as to how [this] discovery request is improper" as required by Fed. R. Civ. P. 26(b) and 34. *Id.* The request is specific and limited. The Commission requests only enrollment and monthly statement documents for brokerage accounts that Morriss Holdings controls, is in its name, or for which it has any beneficial interest. The information is highly relevant because the Commission alleges Morriss Holdings received a significant portion of the funds Morriss misappropriated from investors, and the requested records will show Morriss Holdings' receipt of ill-gotten gains from the Investment Entities. Moreover, the requested documents are particularly necessary because Morriss Holdings has failed to provide a sworn accounting of its assets as ordered by the Court. (D.E. 82).

Request No. 13: All documents reflecting or relating to any payments and/or disbursements you made and/or authorized from any of your bank or securities brokerage accounts.

Relief Defendant's Response: Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Commission's Reply: The Commission reasserts its replies to Morriss Holdings' objections to requests 8 and 12. In addition, in its March 26, 2012 letter, the Commission clarified the request is limited to such transactions which are not reflected in the requested monthly bank and brokerage statements. Despite this clarification, Morriss Holdings has yet to produce a single document.

Request No. 14: All documents reflecting or relating to any of your real estate ownership interests and/or investments.

Relief Defendant's Response: Morriss Holdings objects to this request because it is overly broad, burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Commission's Reply: The Commission objects because Morriss Holdings fails to provide "specific explanations or factual support as to how [this] discovery request is improper" as required by Fed. R. Civ. P. 26(b) and 34. *Id.* The request is specific and limited to documents regarding Morriss Holdings' real estate portfolio. The information is highly relevant because the Commission alleges Morriss Holdings received a significant portion of the funds Morriss misappropriated from investors, and the requested records will show Morriss Holdings' receipt of ill-gotten gains from the Investment Entities. Moreover, the requested documents are particularly necessary because Morriss Holdings has failed to provide a sworn accounting of its assets as ordered by the Court. (D.E. 82).

Request No. 15: All documents reflecting or relating to any real estate leases in your name.

Relief Defendant's Response: Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Commission's Reply: The commission reasserts its reply to Morriss Holdings objection to request 15, above.

Request No. 16: All documents reflecting or relating to any services that you provided to the Investment Entities.

Relief Defendant's Response: Morriss Holdings objects to this Request because it is overly broad, vague and ambiguous as the term "services" is undefined.

Commission's Reply: As the Commission advised Morriss Holdings in its March 26, letter, the Commission's request uses the ordinary meaning for the term "services" – *i.e.* the act of

doing something useful for a person or company for a fee. Even though this clarification should have cured Morriss Holdings' objection, it has failed to produce a single document responsive to this request.

Request No. 17: All documents reflecting or relating to your assets and liabilities as well as monthly income and expenses.

Relief Defendant's Response: Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Commission's Reply: The Commission objects because the requested documentation is exactly the type of information the Court required Morriss Holdings to provide in a sworn accounting. (D.E. 17). Indeed, the requested documents are particularly necessary because Morriss Holdings has failed to comply with the Court's order to do so. (D.E. 82). Moreover, the information is highly relevant because the Commission alleges Morriss Holdings received a significant portion of the funds Morriss misappropriated from investors, and the requested records will show Morriss Holdings' receipt of ill-gotten gains from the Investment Entities.

CONCLUSION

For the forgoing reasons, the Commission respectfully requests the Court grant the Commission's Motion to Compel and overrule Morriss Holdings' objections and require it to produce, by a date certain, all documents responsive to the Commission's First Request for the Production of Documents.

Respectfully submitted,

April 30, 2012

By: s/ Adam L. Schwartz
Adam L. Schwartz
Senior Trial Counsel
New York Bar No. 4288783
Direct Dial: (305) 982-6390
E-mail: schwartz@sec.gov

Attorney for Plaintiff

**SECURITIES AND EXCHANGE
COMMISSION**

801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Stephen B. Higgins, Esq.
Brian A. Lamping, Esq.
Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
Telephone: 314.552.6047
Facsimile: 314.552.7047
Counsel for Receiver

Catherine Hanaway, Esq.
The Ashcroft Law Firm LLC
1100 Main Street, Suite 2710
Kansas City, Missouri 64105
Telephone: 314.863.7001
Facsimile: 314.863.7008
Counsel for Defendant Burton D. Morriss

David S. Corwin, Esq.
Vicki L. Little, Esq.
Sher Corwin LLC
190 Carondelet Plaza, Suite 1100
St. Louis, Missouri 63105
Telephone: 314.721.5200
Facsimile: 314.721.5201
Counsel for Relief Defendant Morriss Holdings, LLC

s/Adam L. Schwartz
Adam L. Schwartz

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO.: 12-CV-80-CEJ

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.)

**PLAINTIFF’S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS FROM RELIEF DEFENDANT MORRISS HOLDINGS, LLC**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and the Court’s January 17, 2012 Asset Freeze Order and other Emergency Relief, Plaintiff Securities and Exchange Commission requests that Relief Defendant Morriss Holdings, LLC, produce the following documents in its possession, custody or control at the Miami Regional Office of the Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131. Pursuant to the Court’s Order, all documents shall be produced within two (2) days of service of this request.

DEFINITIONS AND INSTRUCTIONS

1. Unless otherwise specified, the applicable time period for these requests is January 1, 2005 through the present.
2. “Person” means a natural person, firm, partnership, corporation, proprietorship, joint

venture or any other organization or entity.

3. “You” or “Your” refers to Morriss Holdings, its agents, servants, employees, representatives, contractors, attorneys, investigators, and anyone acting on its behalf or pursuant to its direction, and any entity or company of which it is a principal, director or officer, or otherwise controls.

4. “Investment Entities” means Acartha Group, LLC; Acartha Technology Partners, LP; MIC VII, LLC; and Gryphon Investments III, LLC, including any of their subsidiaries, affiliates, predecessors, successors, and any of their officers, directors, principals, consultants, representatives, agents, employees, attorneys, or any other person acting on their behalf.

5. “Documents” includes all writings and graphic matter of any kind, including, but not limited to, the original, all interim drafts, and each copy containing interlineations, deletions, marginal notes, or which is otherwise non-conforming and which shall include, but not be limited to, any file, financial statement or report, note, bank statement, canceled checks, analysis, deposit slip, credit and debit memoranda, telex, bill (including telephone and credit card), correspondence, prospectus, script, transcript, offering materials, e-mails, ledger sheet, receipt, transcript, photograph, sketch, chart, graph, diagram, diary, telephone log, appointment calendar, telegram, telecopy, fax, diary, mailgram, accounting work paper, report, computer printout, filing with any state or federal agency, inter- or intra-office communication, minutes of meetings, invoices, and any tangible items of readable or visual material, whether printed, typed, handwritten, microfilmed, or recorded on tape, computer hard drive or disk or other means of recording or data entry. The term “documents” also includes voice recordings, film, tapes, and other compilations from which information can be obtained.

7. A document “relating to”, “regarding”, “reflecting”, “underlying” or “supporting”

a given subject matter means any document or communication that constitutes, contains, embodies, comprises, reflects, identifies, describes, analyzes, or in any way relates to that subject, including, but not limited to, documents concerning the presentation of the documents.

8. This request calls for all documents in your possession, custody or control, regardless of where such documents are located.

9 These requests are intended to be continuing in nature so as to require the addition of supplemental information under the terms and conditions set forth in Federal Rule of Civil Procedure 26(e).

10. Morriss Holdings may comply with the request by providing legible copies of the responsive documents. Morriss Holdings may provide copies in an electronic format if consented to by the Commission prior to its response. The Commission retains the right to inspect the originals of the documents produced prior to the trial of this cause.

11. If you object to any request or any part thereof on the basis of any claimed privilege, create a privilege log that identifies the privilege claimed, the statement or communication for which such privilege is claimed, and provide the following information with respect to each such statement, communication or document:

- (a) date;
- (b) names of persons present;
- (c) subject matter;
- (d) location or custodian; and
- (e) the basis on which the privilege is claimed.

DOCUMENTS REQUESTED

1. All documents reflecting or relating to communications you had with the Investment Entities, including, but not limited to letters, emails, contracts, promissory notes, and voicemails.

2. All documents reflecting or relating to communications you had with the Investment Entities' existing and potential investors, including, but not limited to, offering materials, letters, emails, and voicemails.

3. All documents reflecting or relating to any email account(s) you have used.

4. All documents reflecting or relating to any money transfers to you from the Investment Entities. Include, without limitation, all documents concerning communications with the Investment Entities, bank records, promissory notes, and any other documentation related to such transfers.

5. All documents reflecting or relating to money transferred by you to Burton Douglas Morriss.

6. All documents reflecting or relating to your funds used for the benefit of Burton Douglas Morriss.

7. All documents reflecting or relating to your employees and/or agents, including but not limited to employment contracts, agency agreements, and/or pay stubs.

8. Monthly statements for all bank accounts you control, are in your name, and/or have any beneficial interest in including, without limitation, offshore accounts.

9. Monthly statements for all bank accounts in your name.

10. All documents reflecting or relating to your use of the Investment Entities' investor funds.

11. All documents reflecting or relating to your ownership interests in any limited liability company and/or limited partnership.

12. All documents reflecting or relating to the enrollment in and the monthly statements for all securities brokerage accounts you control, are in your name, and/or which you have any beneficial interest.

13. All documents reflecting or relating to any payments and/or disbursements you made and/or authorized from any of your bank or securities brokerage accounts.

14. All documents reflecting or relating to any of your real estate ownership interests and/or investments.

15. All documents reflecting or relating to any real estate leases in your name.

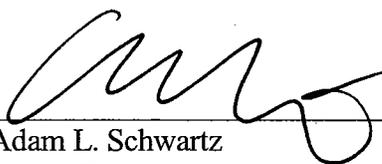
16. All documents reflecting or relating to any services that you provided to the Investment Entities.

17. All documents reflecting or relating to your assets and liabilities as well as monthly income and expenses.

Respectfully submitted,

January 19, 2012

By:



Adam L. Schwartz
Senior Trial Counsel
Court Id. No. A5501169
Direct Dial: (305) 982-6390
E-mail: schwartza@sec.gov

Robert K. Levenson
Regional Trial Counsel
Florida Bar No. 0089771
Direct Dial: (305) 982-6341
E-mail: levensonr@sec.gov

Attorneys for Plaintiff

**SECURITIES AND EXCHANGE
COMMISSION**

801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by overnight mail
on this 19th day of January 2012 on the following:

Burton Douglas Morriss
10048 Litzinger Road
St. Louis, MO 63124

Morriss Holdings, LLC
c/o Corporation Service Company
221 Bolivar Street
Jefferson City, MO 65101

Dixon Brown
President of Morriss Holdings, LLC
1192 Park Avenue, Apt. 5-E
New York, NY 10128



Adam L. Schwartz, Esq.

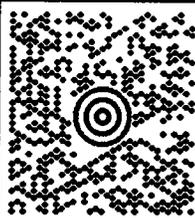
MIRO USERS
305-982-6353
SEC. MIAMI
801 BRICKELL AVE., SUITE 1800
MIAMI FL 33131

0.0 LBS LTR

1 OF 1

SHIP TO:

BURTON DOUGLAS MORRIS
10048 LITZINGER ROAD
SAINT LOUIS MO 63124-1132



MO 630 9-31



UPS NEXT DAY AIR

1

TRACKING #: 1Z A37 48W 01 9697 1979



BILLING: P/P

Reference #1: 66211



CS 14.0.25. WXPJERO 24.0A 01/2012

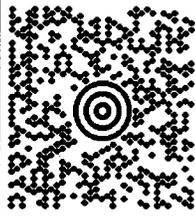
MIRO USERS
305-982-6353
SEC. MIAMI
801 BRICKELL AVE., SUITE 1800
MIAMI FL 33131

0.0 LBS LTR

1 OF 1

SHIP TO:

C/O CORPORATION SERVICE COMPANY
MORRIS HOLDINGS, LLC
221 BOLIVAR STREET
JEFFERSON CITY MO 65101-1574



MO 651 0-01



UPS NEXT DAY AIR

1

TRACKING #: 1Z A37 48W 01 9986 4188



BILLING: P/P

Reference #1: 66211



CS 14-0.25. WPDE80 24.0A 01/2012

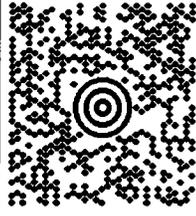
MIRO USERS
305-982-6353
SEC. MIAMI
801 BRICKELL AVE., SUITE 1800
MIAMI FL 33131

0.0 LBS LTR

1 OF 1

SHIP TO:

DIXON BROWN
MORRIS HOLDINGS LLC
1192 PARK AVENUE
NEW YORK NY 10128-1314



NY 100 9-35



UPS NEXT DAY AIR

1

TRACKING #: 1Z A37 48W 01 9726 6999

4133



BILLING: P/P

Reference #1: 66211



CS 14.0.25. WXPTE60 24.0A.01/2012

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 4:12-cv-00080-CEJ
)	
BURTON DOUGLAS MORRISS, <i>et al.</i> ,)	
)	
Defendants,)	
)	
And)	
)	
MORRISS HOLDINGS, LLC,)	
)	
Relief Defendant.)	

**RESPONSE OF RELIEF DEFENDANT MORRISS HOLDINGS, LLC TO
PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Relief Defendant, Morriss Holdings, LLC ("Morriss Holdings"), responds as follows to Plaintiff Securities and Exchange Commission's First Request for Production of Documents ("Request"):

Introduction

Morriss Holdings is a single member limited liability company organized in the state of Missouri. Morriss Holdings' single member is the Barbara Burton Morriss Revocable Trust ("BBMRT"). BBMRT has designated Doug Morriss as its agent to represent it in the management of Morriss Holdings. Morriss Holdings currently does not have any employees. The last remaining employee, Dixon Brown, resigned on January 23, 2012. (Doc. 42 at pp. 2-3). Counsel has been engaged in attempting to determine what documents, if any are in Morriss Holdings' possession

and which are responsive to these requests. This process has been complicated by the fact that there are no employees to help determine that which may be protected by privilege, those that are responsive, those which may be otherwise protected from disclosure due to the criminal investigation of Douglas Morriss, and those which the SEC already has. With these substantial limitations, counsel will endeavor to respond to these responses in good faith. Relief defendant further states that the documents requested are voluminous and would be extremely costly to produce. As is evident from Relief defendants' response to this Courts Order for accounting, Morriss Holdings does not currently have any liquid assets.

General Objections

Morriss Holdings objects generally to these document requests to the extent they seek documents that are protected by the attorney-client privilege and/or the work-product doctrine. Morriss Holdings responds to these requests subject to and without waiving these privileges and protections.

Morriss Holdings objects to the definition of "You" and "your" found in Paragraph 3 of the Request because it is overly broad in its description.

Morriss Holdings objects to the definition of "Investment Entities" found in Paragraph 4 of the Request because it is overly broad in its description.

Morriss Holdings objects to the definition of "Documents" in Paragraph 5 of the Request because it is overly broad, burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Morriss Holdings objects to the definition of “relating to,” “regarding,” “Reflecting,” “underlying,” or “supporting” in Paragraph 7 of the Request because it is overly broad, burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Morriss Holdings objects to Paragraph 8 of the Request because it is unable to produce documents to which it does not have access.

Responses to Documents Requested

1. Morriss Holdings objects to this Request because it is overly broad in that “Communications” is an undefined term. As a result, the Request is burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing and without waiving its objection, Morriss Holdings will produce documents responsive to this Request if the Plaintiff Securities and Exchange Commission (“SEC”) agrees to limit the term communication.

2. Morriss Holdings objects to this Request because it is overly broad and does not specify with reasonable particularity whom the existing and potential investors are. Furthermore, the term “communication” is undefined and thus overbroad. As a result, the Request is vague, burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence.

3. Morriss Holdings objects to this Request because it seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence. Based upon a reasonable investigation and subject to the foregoing and without waiving its objections, Morriss Holdings does not have any documents responsive to this Request. If Plaintiff SEC is looking for actual emails, Morriss Holdings is attempting to collect the emails which may be responsive to this request.

4. Subject to its ability to find someone to assist in the collection of these documents, Morriss Holdings will produce responsive, non-privileged documents at a mutually agreeable place and time.

5. Subject to its ability to find someone to assist in the collection of these documents, Morriss Holdings will produce responsive, non-privileged documents at a mutually agreeable place and time.

6. Morriss Holdings objects to this Request because it is overly broad vague and ambiguous. As a result, the Request is burdensome and harassing.

7. Subject to its ability to find someone to assist in the collection of these documents, Morriss Holdings will produce responsive, non-privileged documents at a mutually agreeable place and time.

8. Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

9. Subject to its ability to find someone to assist in the collection of these documents, Morriss Holdings will produce responsive, non-privileged documents at a mutually agreeable place and time.

10. Morriss Holdings objects to this Request because it is vague, overbroad, ambiguous, irrelevant and improperly assumes that Morriss Holdings used Investment Entities' funds, which is beyond any allegations asserted in this action.

11. Subject to its ability to find someone to assist in the collection of these documents, Morriss Holdings will produce responsive, non-privileged documents at a mutually agreeable place and time.

12. Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

13. Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

14. Morriss Holdings objects to this Request because it is overly broad, burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence.

15. Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

16. Morriss Holdings objects to this Request because it is overly broad, vague and ambiguous as the term "services" is undefined.

17. Morriss Holdings objects to this Request because it is overly broad and as a result, the request is burdensome and harassing. Furthermore, this request seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

SHER CORWIN LLC

/s/ David S. Corwin
David S. Corwin, #38360MO
Richard P. Sher, #4351
Vicki L. Little, #3690
190 Carondelet Plaza
Suite 1100
St. Louis, Missouri 63105
Tel: (314) 721-5200
Fax (314) 721-5201

Attorney for Relief Defendant

CERTIFICATE OF SERVICE

I certify that I provided an electronic copy of the foregoing on February 28, 2012 to the following attorneys of record:

Kevin Carnie
Stephen B. Higgins
THOMPSON COBURN, LLP
One US Bank Plaza
St. Louis, MO 63101
314-522-6047
314-552-7047 (fax)

Brian T. James
Robert K. Levenson
Adam L. Schwartz
Securities and Exchange Commission
801 Brickell Ave.
Suite 1800
Miami, FL 33131
305-982-6300
305-536-4146 (fax)

Catherine L. Hanaway
222 S. Central Avenue
Suite 110
St. Louis, MO 63105
(314) 863-7001
(314) 863-7008

/s/ David S. Corwin

EXHIBIT C



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
MIAMI REGIONAL OFFICE
SUITE 1800
801 BRICKELL AVENUE
MIAMI, FLORIDA 33131
Direct Telephone: (305) 982-6390
E-mail: schwartz@sec.gov**

March 26, 2012

Via UPS and E-Mail

David S. Corwin, Esq.
Sher Corwin, LLC
190 Carondelet Plaza, Suite 1100
Clayton, MO 63105
E-Mail: dcorwin@shercorwin.com

**RE: SEC v. Burton Douglas Morriss, et al.
Case No.: 12-CV-80-CEJ (E.D. Mo.)**

Dear Mr. Corwin:

I am writing in response to Relief Defendant Morriss Holdings, LLC's February 27, 2012, response to our first request for production of documents and our March 26, 2012 telephonic conference. I wish to address your responses and objections in hopes to resolve your concerns and to schedule a date and time for the production of documents in response to our requests.

General Objections:

Our position regarding Morriss Holdings' general responses and objections are as follows:

A. Morriss Holdings objects generally to these document requests to the extent they seek documents that are protected by the attorney-client privilege and/or the work-product doctrine. Morriss Holdings responds to these requests subject to and without waiving these privileges and protections.

RESPONSE: The Commission requests, with respect to any requested documents for which Morriss Holdings claims a privilege, a privilege log as described in paragraph 11 of our instructions and Fed. R. Civ. P. 26(b)(5).

B. Morriss Holdings objection to the definition of "You" and "your" found in Paragraph 3 of the Request because it is overly broad in its description.

RESPONSE: Morriss Holdings fails to explain with sufficient particularity how the Commission's definition is overbroad. See *Creighton St. Joseph Regional Healthcare, LLC v. Lakeland Eng'g Equip. Co.*, 8:07CV113, 2007 WL 4052064, at *3 (D. Neb. Nov. 13, 2007) (citing Fed. R. Civ. P. 34(b)). The Commission's definitions of "you" and "your" is intended to include all employees, agents, representatives, contractors, any anyone working on Morris Holdings' behalf. The

Page 2

Commission's instructions and definitions are consistent with Fed. R. Civ. P. 26(b) and 34, which provide for "broad discovery." *Liberty Mut. Fire Ins. Co. v. Centimark Corp.*, 08CV230-DJS, 2009 WL 539927, at *1 (E.D. Mo. Mar. 4, 2009) (citations omitted).

C. Morriss Holdings objects to the definition of "Investment Entities" found in Paragraph 4 of the Request because it is overly broad.

RESPONSE: Morriss Holdings fails to explain with sufficient particularity how the Commission's definition is overly broad. *Creighton St. Joseph Reg'l Healthcare*, 2007 WL 4052064, *3. The Commission's definition clearly describes which entities are included under the term Investment Entities – Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP ("ATP"); and Gryphon Investments III, LLC. Again, the Commission's instructions and definitions are consistent with Fed. R. Civ. P. 26(b) and 34, which provide for "broad discovery." *Liberty Mut. Fire Ins.*, 2009 WL 539927, at *1.

D. Morriss Holdings objects to the definition of "Documents" in Paragraph 4 of the Request because it is overly broad, burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Morriss Holdings fails to explain how the Commission's definition of "document" is overbroad. To the contrary, the Commission's definition is consistent with Fed. R. Civ. P. 34(a)(1)(A)'s list of discoverable items as well as Fed. R. Civ. P. 26(b) and 34, which provide for "broad discovery." *Liberty Mut. Fire Ins.*, 2009 WL 539927, at *1.

E. Morriss Holdings objects to the definition of "relating to," "regarding," "reflecting," "underlying," or supporting in Paragraph 7 of the Request because it is overly broad, burdensome and harassing and seeks documents that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Morriss Holdings fails to explain how the above-listed definitions are overbroad. To the contrary, the Commission defined these terms with precision to aid Morriss Holdings' preparation for production. The definitions are consistent with the types of discovery Fed. R. Civ. P. 26(b) and 34 allow.

F. Morriss Holdings objects to Paragraph 8 of the Request because it is unable to produce documents to which it does not have access.

RESPONSE: Paragraph 8 is consistent with the requirements imposed by Fed. R. Civ. P. 34(a)(1), which requires the production of any documents in party's possession, custody or control. Control is defined broadly to include a practicable ability to obtain the documents. *Huggins v. Fed. Express Corp.*, 250 F.R.D. 404, 408 (E.D. Mo. 2008) ("Control is defined broadly as the ability to obtain upon demand documents in the possession of another. The party to whom the discovery is directed need not have legal ownership or actual physical possession, but rather a practical ability to obtain the documents.") (citation and internal quotations omitted); *In re Hallmark Capital Corp.*, 534 F. Supp. 2d 981, 981 (D. Minn. 2008) (same). The Commission's request includes all documents in Morriss Holdings' possession, legal ownership, or for which it has practical ability to obtain.

Responses to Morriss Holdings' Specific Document Request Objections

1. The term “communications” as used by the Commission reflects its standard ordinary usage – *i.e.* information imparted, interchanged, or transmitted between parties. Morriss Holdings fails to specify how the definition is overbroad, burdensome, harassing, or seeks documents that are not relevant. Communications between Morriss and Morriss Holdings are highly relevant given the Complaint’s allegations that Morriss Holdings received a large portion of investor funds and used those funds for Morriss’ benefits. These communications will likely demonstrate, among other things, Morriss Holdings received investor funds at Morriss’ direction, used investor funds for Morriss’ personal benefit, and was controlled by Morriss. Consequently, the Commission has made a “threshold showing of relevance” as required under Fed. R. Civ. P. 26(b). *Liberty Mutual Fire Ins.*, 2009 WL 539927, at *1.

2. The phrase “existing and potential investors,” includes the 97 individuals who invested in the Investment Entities and others the Investment Entities solicited. The term “communications” as used by the Commission reflects its standard ordinary usage – *i.e.* information imparted, interchanged, or transmitted between parties. Morriss Holdings fails to specify how the request is, burdensome, harassing, or seeks documents that are not relevant. The requested documents are highly relevant and will likely demonstrate Morriss Holdings’ receipt of investor funds. Consequently, the Commission has made a “threshold showing of relevance” as required under Fed. R. Civ. P. 26(b). *Id.*

3. In this request, the Commission seeks documentation reflecting the email addresses Morriss Holdings’ utilized. Documents reflecting or relating to the email accounts Morriss Holdings used is highly relevant their production would lead to the discovery of relevant, admissible evidence. Indeed, based upon Morriss’ and Dixon Brown, Morriss Holdings’ former president, testimony and incomplete document production, the defendants heavily utilized email in making misrepresentations to investors and in his schemes to defraud. Consequently, the Commission has made a “threshold showing of relevance” as required under Fed. R. Civ. P. 26(b). *Liberty Mutual Fire Ins.*, 2009 WL 539927, at *1.

4-5, 7, 9, & 11. The Commission objects to Morriss Holdings’ condition precedent to production of the requested documents. Fed. R. Civ. P. 34 requires Morriss Holdings to produce requested documents. Lack of funds is not an excuse to avoid discovery obligations. *Tech. Chem. Co. v. IG-LO Prod. Corp.*, 812 F.2d 222, 224 (5th Cir. 1987); *Herstgaard v. Cherryden, LLC*, No. 1:07CV02-MP/AK, 2009 WL 2191862, at *3 (N.D. Fla. Jul. 22, 2009). Furthermore, the Commission requests, with respect to any requested documents for which Morriss Holdings claims a privilege, a privilege log as described in paragraph 11 of our instructions and Fed. R. Civ. P. 26(b)(5). We request that these documents be produced no later than **April 6, 2012**.

6. Morriss Holdings fails to explain how the request is overbroad, burdensome, or not reasonably calculated to lead to the discovery of admissible evidence as required by Fed. R. Civ. P. 26(b) and 34. *Liberty Mutual Fire Ins. Co.*, 2009 WL 539927, at *1. That being said, the Commission requests any financial transactions be it loans, wire transfers, or purchases of items or property by Morriss Holdings which Morriss utilized. It also requests any pay stubs, invoices, account ledgers, checks, or any other document detailing any services Morriss provided to Morriss Holdings.

8. Morriss Holdings fails to provide “specific explanations or factual support as to how [this] discovery request is improper” as required by Fed. R. Civ. P. 26(b) and 34. *Id.* The request is specific and limited. The Commission requests only monthly bank statements that Morriss Holdings controls, is in its name, or have any beneficial interest in. The information is highly relevant as Morriss

Page 4

Holdings is a relief defendant, and the Commission alleges Morriss Holdings received a significant portion of misappropriated investor funds.

10. Morriss Holdings fails to provide “specific explanations or factual support as to how [this] discovery request is improper” as required by Fed. R. Civ. P. 26(b) and 34. *Id.* The Commission premised this request upon Morriss’ and Brown’s investigative testimony transcripts, in which both admit that Morriss Holdings received investor funds from the Investment Entities. That being said, the Commission will modify its request to include all documents reflecting or relating to the receipt, use, and/or transfer of funds Morriss Holdings received from the Investment Entities.

12. Morriss Holdings fails to provide “specific explanations or factual support as to how [this] discovery request is improper” as required by Fed. R. Civ. P. 26(b) and 34. *Id.* The request is specific and limited. The Commission requests only enrollment and monthly statement documents for brokerage accounts that Morriss Holdings controls, is in its name, or have any beneficial interest in. The information is highly relevant as Morriss Holdings is a relief defendant, and the Commission alleges Morriss Holdings received a significant portion of the funds Morriss misappropriated from investors.

13. The Commission reincorporates its responses to Morriss Holdings’ objections to requests 8 and 12, and adds: this request is limited to such transactions which are not reflected in the requested monthly bank and brokerage statements.

14 & 15. Morriss Holdings fails to provide “specific explanations or factual support as to how [this] discovery request is improper” as required by Fed. R. Civ. P. 26(b) and 34. *Id.* The requests are specific and limited to documents regarding Morriss Holdings’ real estate portfolio. This information is highly relevant as Morriss Holdings is a relief defendant, and the Commission alleges Morriss Holdings received a significant portion of the funds Morriss misappropriated from investors. Information regarding Morriss Holdings’ real estate portfolio and related income will be relevant as to Morriss’ likely defenses and for a future judgment of disgorgement.

16. In its request, the Commission uses the ordinary meaning for the term “services” – *i.e.* the act of doing something useful for a person or company for a fee. This clarification should cure Morriss Holdings’ objections.

17. The Commission reincorporates its responses to Morriss Holdings’ objections to requests 8, 12, and 13.

Page 5

Please consider this letter, my prior correspondence on this matter, and our March 26, 2012 telephonic conference as our attempts to meet and confer with you in a good faith effort to resolve these issues prior to bringing a motion to compel. During our telephonic conference you advised that Morriss Holdings could not produce documents requested until the company appoints a new agent. The Commission has already agreed to extend Morriss Holdings' production deadline on two occasions, yet, to date, the Commission has yet to receive a single document. We believe Morriss Holdings has had ample time to satisfy our request for documents. Consequently, pursuant to our responses above, we request the production of the requested documents on or before **April 6, 2012**. After that date, the Commission will have no choice but to file a motion to compel production.

If you have any questions, please do not hesitate to contact me at (305) 982-6390.

Very truly yours,

A handwritten signature in black ink, appearing to read 'AS', with a long horizontal stroke extending to the right.

Adam L. Schwartz
Senior Trial Counsel