



or which clearly did not contain responsive documents. After spending over 120 hours reviewing the files in these hundreds of boxes, Mr. Morriss's legal team was able to eliminate approximately two-thirds of the documents as non-responsive.

3. Following this initial review, on June 12, 2012, Mr. Morriss provided the Plaintiff access to the remaining 90 boxes of hard copy documents that Mr. Morriss's legal team believed were likely to contain documents responsive to the Plaintiff's discovery requests. The Plaintiff sent four reviewers to examine the hard copy documents and spent a day determining which documents it wanted to have copied. The Plaintiff's access to these documents was not restricted in any way and no time limitation was placed on the review. The Plaintiff copied documents from 34 of the boxes. Mr. Morriss has also provided the Plaintiff with an index for many of the boxes.

4. Mr. Morriss has retained an e-discovery vendor to assemble all digital documents, and render them searchable. Due to the massive volume of documents involved, this has been a very time consuming and expensive endeavor. This search platform will allow Mr. Morriss and his legal team to more effectively respond to the Plaintiff's discovery requests.

5. Mr. Morriss's legal team has offered to provide all electronic documents in the database in digital format to the Plaintiff. Additionally, Mr. Morriss's legal team has offered to run specific searches in the electronic database on behalf of the Plaintiff. On July 12, the Plaintiff sent a letter requesting that Mr. Morriss run 63 distinct Boolean searches that Plaintiff had devised and listed in the letter.

6. Mr. Morriss's e-discovery vendor has copied for delivery to the Plaintiff all emails for seven custodians identified by the Plaintiff. This comprises approximately 280,000 emails. A hard drive containing these emails was sent to Plaintiff on Wednesday July 11, 2012. In addition, Plaintiff was provided with disks containing hard copy documents that were digitized prior to the document production on June 12, 2012.

7. Mr. Morriss's legal team has provided the Plaintiff with a directory structure reflecting the data and documents stored on all of the computers that were copied for the electronic database. The

Plaintiff has been able to identify folders within the directory it would like Mr. Morriss to provide. In its September 12<sup>th</sup> letter, Plaintiff has requested that Mr. Morriss provide it with the contents of 859 different file directories.

*See* accompanying Affidavit of Matthew Bartle (attached hereto as Exhibit A) ¶ 5.

Mr. Morriss's efforts to cooperate with the SEC have been extensive and are on-going. Mr. Morriss has complied with Rule 34(b)(2)(E) in that he has offered the documents to the SEC "as they are kept in the usual course of business." Further, his recent efforts go beyond the requirements of Rule 34(b). Mr. Morriss has incurred significant time and expense in retaining an e-discovery vendor and proposing multiple avenues for the Plaintiff to narrow the extremely large volume of data in a meaningful way, as described above.

### **CONCLUSION**

For the reasons set forth herein, and in his Response to Plaintiff's Motion to Compel, Mr. Morriss respectfully requests that the Court enter an order denying Plaintiff's Motion to Compel.

Respectfully submitted this 17th day of July, 2012.

ASHCROFT HANAWAY, LLC

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 17, 2012, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
v.	)	CASE NO. 4:12-CV-00080-CEJ
	)	
BURTON DOUGLAS MORRISS,	)	
ACARTHA GROUPS, LLC,	)	
MIC VII, LLC	)	
ACARTHA TECHNOLOGY PARTNERS, LP, and	)	
GRYPHON INVESTMENTS III, LLC,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	
	)	
	)	
	)	

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AFFIDAVIT OF MATTHEW BARTLE

STATE OF MISSOURI	)
	) ss:
COUNTY OF JACKSON	)

I, Matthew Bartle, of lawful age, being duly sworn under oath and under penalty of perjury, state as follows:

1. I am an attorney practicing with the law firm of Graves Bartle Marcus & Garrett, LLC. Our law firm has been retained by and entered into a joint defense agreement with the Ashcroft Law Firm, LLC d/b/a Ashcroft Hanaway to assist in the representation of Defendant Burton Douglas Morriss in the above-captioned matter.

2. I have been responsible for overseeing the assembly of documents relevant to the issues raised in the Plaintiff's complaint.

3. Plaintiff filed its Motion to Compel Production of Documents on April 18, 2012 (Doc. No. 128).

4. Mr. Morriss filed his Response thereto on May 21, 2012 (Doc. No. 168).

5. Since that time, there have been several developments in the course of Mr. Morriss's efforts to comply with the Plaintiff's document requests, including the following:

a. Mr. Morriss has entered into a claw-back agreement with the Plaintiff that preserves Mr. Morriss's ability to assert privilege objections in the event his production contains privileged documents. This agreement allows Mr. Morriss to produce documents to the Plaintiff without having to first conduct a time-consuming page-by-page privilege review.

b. Mr. Morriss's legal team completed an initial review of approximately 280 boxes of hard copy documents to eliminate those which were outside the date range of the Plaintiff's discovery requests, or which clearly did not contain responsive documents. After spending over 120 hours reviewing the files in these hundreds of boxes, Mr. Morriss's legal team was able to eliminate approximately two-thirds of the documents as non-responsive.

c. Following this initial review, on June 12, 2012, Mr. Morriss provided the Plaintiff access to the remaining 90 boxes of hard copy documents that Mr. Morriss's legal team believed were likely to contain documents responsive to the Plaintiff's discovery requests. The Plaintiff sent four reviewers to examine the hard copy documents and spent a day determining which

documents it wanted to have copied and scanned. The Plaintiff's access to these documents was not restricted in any way and no time limitation was placed on the review. The Plaintiff scanned documents from 34 of the boxes. Mr. Morris also provided Plaintiff with an index for many of the boxes.

d. Mr. Morriss has retained an e-discovery vendor to assemble all digital documents, and render them searchable. Due to the massive volume of documents involved, this has been a very time consuming and expensive endeavor. This search platform will allow us to more effectively respond to the Plaintiff's discovery requests.

e. Mr. Morriss's legal team has offered to provide all electronic documents in the database in digital format. Additionally, Mr. Morriss's legal team has offered to run specific searches in the electronic database on behalf of the Plaintiff. On July 12, the Plaintiff sent a letter requesting that Mr. Morriss run 63 distinct Boolean searches that Plaintiff had devised and listed in the letter.

f. Mr. Morriss's e-discovery vendor has copied for delivery to the Plaintiff all emails for seven custodians identified by the Plaintiff. This comprises approximately 280,000 emails. A disk containing these emails was sent to Plaintiff on Wednesday July 11, 2012. In addition, Plaintiff was provided with disks containing hard copy documents that were digitized prior to the document production on June 12, 2012.

g. Mr. Morriss's legal team has provided the Plaintiff with a directory structure reflecting the data and documents stored on all of the computers that were copied for the electronic database. The Plaintiff has been able to identify

folders within the directory it would like Mr. Morriss to provide. In its September 12 letter, Plaintiff has requested that Mr. Morriss provide it with the contents of 859 different file directories.

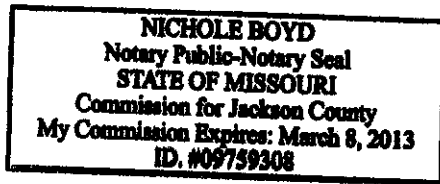
FURTHER AFFIANT SAYETH NOT

Matthew V. Bartle

Matthew Bartle

SWORN TO AND SUBSCRIBED before me, a Notary Public, on the 17<sup>th</sup> day of July, 2012.

[seal]



Nichole Boyd

Notary Public, State of Missouri

My commission expires: 3/8/2013

Nichole Boyd

Notary's Printed Name