

**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, et al.,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	

**MEMORANDUM OF LAW IN SUPPORT OF RECEIVER’S MOTION FOR  
AUTHORIZATION TO DISTRIBUTE FUNDS HELD BY  
EVERGRID ACQUISITION, LLC, LIBRATO ACQUISITION II, LLC AND  
EVERGRID/MIC VII, LLC**

In keeping with the Receiver’s duties to act as sole and exclusive managing member and/or partner of the Receivership Entities (as defined below) and administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, the Receiver respectfully requests that the Court enter an Order that, among other things, (A) lifts the asset freeze<sup>1</sup> with respect to certain funds received by EverGrid Acquisition, LLC, Evergrid/MIC VII, LLC, and Librato Acquisition II, LLC (together the “Librato SPVs”), as more fully defined herein, and (B) authorizes the Receiver to distribute funds received by the Librato SPVs, after payment of or reservation for fees and expenses, to members of the Librato SPVs in

---

<sup>1</sup> On January 17, 2012, this Court entered its Asset Freeze Order and Other Emergency Relief (“Asset Freeze Order”) (Dkt. No. 17). In paragraph 1.B., the Court froze funds and assets held “in the name, for the benefit or under the control of [the Receivership Entities], directly or indirectly.” To the extent that the Court’s asset freeze extends to the funds described in this Motion, the Receiver requests that the asset freeze be lifted so that the Receiver can execute the authority requested in this Motion with respect to such funds.

keeping with the Schedule of Proposed Distribution (“Distribution Schedule”) (**Exhibit A-1** hereto; redacted) attached to the Declaration of Timothy O’Shaughnessy (the “O’Shaughnessy Declaration”) (**Exhibit A** hereto; redacted).<sup>2</sup>

**I. Background**

A. The Receivership

On January 17, 2012, the United States Securities and Exchange Commission (the “SEC”) filed its *Complaint for Injunctive and Other Relief* (the “Complaint”) (Dkt. No. 1) against Burton Douglas Morriss (“Morriss”), Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, L.P. (“ATP”), MIC VII, LLC (“MIC”), Gryphon Investments III, LLC (“Gryphon” and together with Acartha, ATP and MIC, the “Receivership Entities”) and Morriss Holdings, LLC (“Morriss Holdings”) <sup>3</sup> in this Court as Case No. 4:12-cv-00080-CEJ (the “SEC Case”). *See* Complaint. In the Complaint and other papers filed by the SEC on January 17, 2012, the SEC alleges various securities laws violations by the SEC Defendants.

Also, on January 17, 2012, the SEC moved for the immediate appointment of a receiver over the Receivership Entities to (i) administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, (ii) act as sole and exclusive managing member or partner of the Receivership Entities, (iii) maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the Receivership Entities’ estates, (iv) marshal and safeguard all of the assets of the Receivership Entities, and (v) take whatever actions are necessary for the protection of investors. The Court

<sup>2</sup> The Receiver is filing redacted copies of Exhibits A and A-1. The Receiver will file unredacted copies of Exhibits A and A-1 under seal with the Clerk of the Court, in accordance with E.D. Mo. Local Rule 5-2.17(B). Also, the Receiver will provide unredacted copies of Exhibits A and A-1 to all Librato SPV members served with a copy of this Motion.

<sup>3</sup> Morriss, Acartha, ATP, MIC, Gryphon and Morriss Holdings are collectively referred to as the “SEC Defendants.”

entered the requested relief by order dated January 17, 2012 (the “Receivership Order”). *See* Receivership Order (Dkt. No. 16). As established in the Receivership Order, the Receiver is “authorized, solely and exclusively, to operate and manage the businesses and financial affairs of [the Receivership Entities] and the Receiver Estates.” Receivership Order, p. 8.

#### B. The Librato Sale

In connection with her appointment as receiver and through information provided to her by former management, the Receiver learned that MIC, ATP, and the Librato SPVs each invested in Librato, Inc., a San Francisco-based cloud monitoring company (“Librato”).<sup>4</sup> According to information provided by Librato in its January 29, 2015 press release, the company

enables full-stack performance monitoring of infrastructure and applications on public clouds such as AWS and Heroku, or in a company's own data centers using a rich set of OSS data collection agents and instrumentation libraries for a variety of technologies and languages such as StatsD, collectd, Rails, Ruby, Python, Node.js and Java. Librato also offers the unique ability to monitor and alert on unlimited metrics from hundreds of sources with second precision, correlate and analyze them to produce actionable results.

Press Release, *SolarWinds Expands Its Cloud Monitoring and Management Footprint with Acquisition of Librato*, Jan. 29, 2015, at <http://blog.librato.com/posts/librato-solarwinds-press-release> (last visited Oct. 12, 2015).

On or about January 29, 2015, SolarWinds Worldwide, LLC (“SolarWinds”), a provider of IT performance management solutions, acquired Librato (the “Librato Sale”) pursuant to an Agreement and Plan of Merger (the “SolarWindsLibrato Merger Agreement”) for a cash purchase price of \$40 million. *Id.*

---

<sup>4</sup> ATP and MIC also invested in Librato. Because ATP and MIC are Receivership Entities, the proceeds that ATP and MIC gained from the Librato Sale are assets of the Receivership Estate and are not the subject of the relief requested in this Motion. A separate motion will be filed for those entities and funds will be distributed subject to the approval of the Court.

At the time of the Librato Sale, the Librato SPVs held Librato common (capital) stock as follows:

EverGrid Acquisition, LLC	9,568 shares
Evergrid/MIC VII, LLC	51,398 shares
Librato Acquisition II, LLC	442,391 shares

Pursuant to the SolarWindsLibrato Merger Agreement, each share of capital stock was converted and exchanged into the right to receive an amount of cash equal to the Final Per Share Consideration (as defined in the SolarWindsLibrato Merger Agreement), without interest. The SolarWindsLibrato Merger Agreement also provided for the establishment of a \$4,000,000 escrow fund for the payment of indemnification claims (“SolarWindsLibrato Escrow Fund”). The SolarWindsLibrato Escrow Fund was funded with a portion of the consideration otherwise payable to the Librato stockholders. Monies remaining in the SolarWindsLibrato Escrow Fund will be released eighteen months after closing, or July 28, 2016.

As a result of the Librato Sale, the Librato SPVs received the following gross proceeds:

	<i>Gross Proceeds on Sale</i>
EverGrid Acquisition, LLC	\$16,271
Evergrid/MIC VII, LLC	\$87,405
Librato Acquisition II, LLC	\$752,307

(collectively, “Gross Proceeds”). Further, the Librato SPVs had funds deposited in the SolarWindsLibrato Escrow Fund as follows:

	<i>Amounts in Escrow</i>
EverGrid Acquisition, LLC	\$2,129
Evergrid/MIC VII, LLC	\$11,435
Librato Acquisition II, LLC	\$98,423

(collectively, “Escrow Proceeds”). Small sums continue to be paid on a monthly basis from the SolarWindsLibrato Escrow Fund and as a result, the total balance in escrow for the Librato SPVs as of July 31, 2015 was \$111,985.

For the reasons set forth herein, the Receiver requests that this Court (A) lift the asset freeze with respect to the Gross Proceeds and Escrow Proceeds; (B) approve the Receiver’s payment of, or reservation for, fees and expenses<sup>5</sup> of the Librato SPVs from the Gross Proceeds (and Escrow Proceeds, if necessary); and (C) authorize the Receiver to distribute to the members of the Librato SPVs (1) the Gross Proceeds, minus fees and expenses, following issuance of this Court’s order approving the distribution and (2) the Escrow Proceeds (if any), minus any additional fees and expenses (if necessary), following release of such Escrow Proceeds, in accordance with the O’Shaughnessy Declaration and the Distribution Schedule attached thereto.

## **II. Argument**

The Receiver seeks an Order from this Court authorizing the distribution of funds to the members of the Librato SPVs, minus fees and expenses. Such an Order is consistent with the Receiver’s authority and obligations under the Receivership Order and this Court’s broad discretion in supervising the Receivership.

Pursuant to the Receivership Order, the Court authorized the Receiver to, among other things, administer and manage the businesses and financial affairs of the Receivership Entities and take all actions necessary for the protection of investors. *See* Receivership Order, p. 1. The Court gave the Receiver sole authority to operate and manage the businesses and financial affairs of the Receivership Entities. Receivership Order, p. 8. The Receiver succeeded to all rights and powers of the managing member and/or managing partner of the Receivership Entities --

<sup>5</sup> The fees and expenses listed on the Distribution Schedules are estimates only. To the extent that additional expenses arise prior to distribution, the Receiver reserves the right to pay or reserve for such additional expenses from the Escrow Proceeds.

including Acartha Group -- and has the sole and exclusive authority to take all actions necessary in such capacity. *Id.* As managing member of Acartha Group, the Receiver also serves as the manager of the Librato SPVs<sup>6</sup> and is authorized and empowered to make decisions with respect to the management and control of the Librato SPVs, including determining when distributions shall be made.

The requested Order also is consistent with this Court's broad discretion in supervising an equity receivership and in determining how the receivership will proceed. *See SEC v. Black*, 163 F.3d 188, 199 (3d Cir. 1998) (“[W]here there is a receiver with equitable power in a proceeding before it, the District Court has wide discretion as to how to proceed.”); *FDIC v. Bernstein*, 786 F. Supp. 170, 177 (E.D.N.Y. 1992) (“[O]ne common thread keeps emerging out of the cases involving equity receiverships-that is, a district court has extremely broad discretion in supervising an equity receivership.”). Here, the Court should exercise its broad discretion to authorize the Receiver's distribution of funds received as a result of the SolarWindsLibrato Merger Agreement to the Librato SPV members in accordance with the Distribution Schedule. The Receiver has oversight of these monies because of her position as managing member of the Receivership Entities and the corporate structures that were in place prior to her appointment as Receiver. These funds do not belong to the Receivership Entities and may be released from the asset freeze in place under the Court's Asset Freeze Order. *See SEC v. Black*, 163 F.3d 188, 198

---

<sup>6</sup> According to documents and other information made available to the Receiver, Acartha Group is the managing member of Acartha Merchant Partners (“AMP”), which in turn is the managing member of Evergrid/MIC VII, LLC. Acartha Group also is the managing member of Librato Capital II, LLC, which in turn is the managing member of Librato Acquisition II, LLC. Therefore, as the managing member of Acartha Group, the Receiver also is the managing member of Evergrid/MIC VII, LLC and Librato Acquisition II, LLC.

As to the final Librato SPV, Evergrid Acquisition, LLC, the B. Douglas Morriss Irrevocable Trust was the managing member of this entity until September 12, 2012. On September 12, 2012, B. Douglas Morriss, as trustee of the B. Douglas Morriss Trust, executed a Delegation of Management Authority to Claire M. Schenk as Receiver for Acartha Group, LLC.

(affirming release of assets from the asset freeze of the receivership estate that were not property or deemed to be property of a defendant or culpable third party). The distribution to the Librato SPV members will allow the Receiver to move towards wind down of the Librato SPVs and help to avoid future costs associated with management of the Librato SPVs. Additionally, the release of these funds will also allow the members of the Librato SPVs to receive distributions in keeping with the relevant corporate documents. Therefore, an order authorizing the distribution of these funds is a proper subject of the Court's discretionary power.<sup>7</sup>

### **III. Proposed Distribution**

The Distribution Schedule attached to the O'Shaughnessy Declaration is based upon (i) the corporate governance documents of the Librato SPVs, AMP, and the Delegation of Management Authority of the Trustee of the B. Douglass Morriss Irrevocable Trust; (ii) former management's investment schedule; (iii) the business records of the Librato SPVs and AMP; (iv) bank records; (v) general ledger entries; and (vii) documentation pertinent to fees and expenses attributable to the Librato SPVs. Accordingly, the Receiver requests authorization from the Court to distribute the Gross Proceeds and Escrow Proceeds as outlined in the Distribution Schedule. *See Exhibit A-1.*

As noted on the service list, the Receiver is providing notice to the Librato SPV members (or to their counsel, to the extent that the Receiver knows of such representation) and to other

---

<sup>7</sup> The authorization requested in this Motion is similar to the authorization requested by the Receiver for the distribution of the Integrien funds as well as the return of the Acartha Special Situations Funding, LLC funds. *See* Receiver's Motion for Return of Funds to Investors in Acartha Special Situations Funding, LLC and accompanying Memorandum in Support (Dkt. Nos. 120, 121; filed Apr. 10, 2012), and order approving requested relief (Dkt. No. 139; entered Apr. 25, 2012); Receiver's Motion for Authorization to Distribute Funds Held by Integrien Acquisition, LLC and Integrien Acquisition II, LLC and accompanying Memorandum in Support (Dkt. Nos. 241, 242; filed May 3, 2013), and order approving requested relief (Dkt. No. 262; entered June 25, 2013).

interested parties a copy of this filing along with an unredacted copy of the Distribution Schedule.

**IV. Conclusion and Request for Relief**

For all the foregoing reasons, the Receiver requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit B**,

(A) lifting the asset freeze of the Asset Freeze Order with respect to the Gross Proceeds and Escrow Proceeds;

(B) authorizing the Receiver to distribute the Gross Proceeds in accordance with the ownership percentages identified on the Distribution Schedule attached to the O'Shaughnessy Declaration;

(C) approving the Receiver's payment of, or reservation for, fees and expenses of the Librato SPVs in accordance with the Distribution Schedule attached to the O'Shaughnessy Declaration;

(D) authorizing the Receiver to distribute the Escrow Proceeds (when available), minus fees and expenses (if necessary), to the members of the Librato SPVs in accordance with the ownership percentages identified on the Distribution Schedule attached to the O'Shaughnessy Declaration following release of such Escrow Proceeds in accordance with the SolarWindsLibrato Merger Agreement; and

(E) granting such other and further relief as is just and appropriate under the circumstances.



Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Kathleen E. Kraft

Stephen B. Higgins, #25728MO  
One US Bank Plaza  
St. Louis, Missouri 63101  
Phone: 314-552-6000  
Fax: 314-552-7000  
shiggins@thompsoncoburn.com

Kathleen E. Kraft, #58601MO  
1909 K Street NW, Suite 600  
Washington, DC 20006  
Phone: 202-585-6922  
Fax: 202-508-1035  
kkraft@thompsoncoburn.com

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2015, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system to all parties receiving CM/ECF electronic service.

I further certify that on October 14, 2015, I served the above document with exhibits via electronic mail on the individuals or entities listed on the attached service list.

/s/ Kathleen E. Kraft

Service List

A. Scott Ritchie III L/T  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
sritchie3@ritchie-exp.com

Andrew Klocke  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
klocke@prairiecapital.com

Bruno Mueller  
Rigistrasse 45  
CH-8802 Kilchberg  
Switzerland  
bruno.mueller@murotex.ch

Bernard Federko, IRA  
2219 Devonsbrook Drive  
Chesterfield, MO 63005  
b\_federko@hotmail.com

Beau W. Wehrle  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
beau@caerus-llc.com

Blue Tiger Ventures, LLC  
Louis P. Bansbach IV  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
lpb4@columbiner.com

Bradford M. Epsten  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
bradsten@swbell.net

Brian N. Kaufman  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
kaufman@prairiecapital.com

Charles A. Dill  
9909 Clayton Rd., Suite 107  
St. Louis, MO 63124  
cdill@tworiversassociates.com

CAK Family Partnership  
Curtis A. Krizek  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
krizek@prairiecapital.com

Carol A. Bueker Revocable Trust  
Carol A. Bueker  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
cbueker@comcast.net

Cody Ventures, LLC  
Jonathan L. Vinnik  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
jonathan@thevinnikcompanies.com

Curtis A. Krizek  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
krizek@prairiecapital.com

Cynthia L. Tucci  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
btucci@jaywolfe.com

David & Julie Gatchell JTWROS  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
dgatchell@jaywolfe.com

David W. Bueker Revocable Trust  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
dbueker@comcast.net

Dominik Sigg  
Quarzstrasse 30  
Ch-8053 Zurich  
Switzerland  
siggdominik@gmail.com

Edward A. Labry  
c/o John Speer  
8021 Forsyth Blvd  
St. Louis, MO 63105  
jspeer@bassberry.com

Fred H. Pryor Trust  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com

GPK Investments, L.P.  
Gerhard J. Kuti  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com

J.A.S. Trust DTD 7/6/72  
Attn: Richard A. Caspermeyer  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
dcaspermeyer@countryclubtrust.com

Talley Family Trust U/A DTD  
12/27/06  
Attn: Jason P. Talley, Amarilis V.  
Talley and Chris Bramhall  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
jason@nuvio.com

Jeffrey B. Hanes  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
jeff@hanesv.com

JML Management Partners, L.P.  
Jerome Nerman and Lewis Nerman  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com

John T. Olds  
33 Hook Road  
Bedford, NY 10506  
jtolds@aol.com

Jeffrey H. Salzman  
166 Indian Head Road  
Riverside, CT 06878  
jhsalzman@optonline.net

John McConnell Jr.  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
johnmc@labconco.com

John H. Kramer Rev. Trust  
c/o R. Thomas Avery  
Blitz, Bardgett & Deutsch, LLC  
120 South Central Ave. Suite 1650  
St. Louis, MO 63105  
rtavery@bbdlc.com;  
dstockenbergl@bbdlc.com

John S. Wehrle  
c/o Amy L. Fehr, Sanford J.  
Boxerman  
Capes & Sokol  
7701 Forsyth Boulevard, 12th Floor  
St. Louis, MO 63105  
fehr@capessokol.com;  
boxerman@capessokol.com

Kaufman Investment Partnership  
Craig H. Kaufman  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
craig.kaufman@quarles.com

Laurie S. Kirby  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
lkirby1208@yahoo.com

Lee Schlessman  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
pamidendorf@gwestoffice.net

Lewis E. Nerman Revocable Trust  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com

Larry Leedy Trust  
c/o Christian Leedy  
2464 Taylor Road #109  
Gover, MO 63040  
cvleedy@gmail.com

Lemro Finance Ltd.  
c/o Carey Group  
Alderstrasse 49  
CH-8034 Zurich  
Switzerland  
info@careygroup.ch;  
rsigg@tendo.ch

Martin Trust #2  
Attn: Susan C. Phelps  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
candy.phelps@gmail.com

Markus Schroedel  
(Lundell Holding & Finance Ltd.)  
Grundwiesstrasse 19  
CH-8700 Kuesnacht  
Switzerland  
markus.schroedel@hfinvest.ch

Maya Merkli  
c/o Balz Merkl  
Gottlieb Binder Strasse 17  
CH-8802 Kilchberg  
Switzerland  
balzmerkli@bluewin.ch

Omolon SA (Dieter Sigg)  
Residenza Romantica  
CH-6815 Mecide  
Switzerland  
dietersigg@bluewin.ch;  
ralph.sigg@tendo.ch

Pacific Mutual Door Company  
Partnership  
Sanders Ray Lambert III  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
slambertiii@pamudo.com

Paul Caron  
c/o Nicolas Caron  
Pictet North America Advisors SA  
Route des Acacias 48  
1211 Geneva 73 – Switzerland  
nicolas.caron@pictetadvisors.com

The Richard B. Klein Revocable  
Trust  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
rklein@lynkinc.com

Robert A. Tucci  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
btucci@jaywolfe.com

Robert N. Epsten  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com

Rene Saner  
Zweierstr, 49  
CH-8004 Zurich  
Switzerland  
rene.sane@tendo.ch

Ralph Sigg  
Residenza Romantica  
CH-6815 Mecide  
Switzerland  
dietersigg@bluewin.ch;  
ralph.sigg@tendo.ch

Stefanie Schmid  
Moosackerweg 18  
CH-4105 Biel-Benken  
Switzerland  
ralph.sigg@tendo.ch

Sandra H. Fried Trust  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
sandiwf@gmail.com

Stephen T. McDonald  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
mac@kitchensofcolorado.com

Stephen H. McKnight  
1001 Liberty Avenue (KWBH)  
11th Floor  
Pittsburgh, PA 15222  
rbender@kwbhlaw.com;  
dpoetting@gmail.com

Susan Seidler Revocable Trust  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com

Shirley J. Pryor Trust  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com

WF Holdings, LLC  
Attn: Gerald White, Sandra Fried  
c/o Prairie Capital  
4900 Main Street, Suite 700  
Kansas City, MO 64112  
infocenter@prairiecapital.com;  
jerry.white@colliers.com;  
sandiwf@gmail.com

Welde Trust Inc. (Billy Guinness)  
P.O. Box 153  
CH-1066 Epalinges  
Switzerland  
pat.outumro@gmail.com

**EXHIBIT A**

**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, et al.,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	

**DECLARATION OF TIMOTHY S. O’SHAUGHNESSY  
IN SUPPORT OF RECEIVER’S MOTION FOR DISTRIBUTION OF FUNDS HELD BY  
EVERGRID ACQUISITION, LLC, LIBRATO ACQUISITION II, LLC AND  
EVERGRID/MIC VII, LLC**

I, Timothy S. O’Shaughnessy, being duly sworn, declare:

1. I am the partner-in-charge of tax services for the St. Louis region of CliftonLarsonAllen LLP (“CLA”). I specialize in business and individual tax planning and compliance and have more than 15 years of public accounting experience.

2. In June 2012, CLA was retained by Claire M. Schenk, as Receiver for Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, L.P. (“ATP”), MIC VII, LLC (“MIC”), Gryphon Investments III, LLC (“Gryphon” and together with Acartha, ATP and MIC, the “Receivership Entities”), to work as an independent contractor and to provide external accounting and tax services, including bookkeeping and tax planning and preparation, for the Receivership Entities and the approximately thirteen entities managed by Acartha Group (collectively, the “Managed Entities”).

3. Following CLA’s retention by the Receiver and the Court’s approval of the engagement, the Receiver requested that I prepare a distribution schedule for funds received by EverGrid Acquisition, LLC (“EGA”), Evergrid/MIC VII, LLC (“EGMIC”), and Librato Acquisition II, LLC (“LAI” and together with EGA and EGMIC, the “Librato SPVs”) as a result of the sale of Librato, Inc. to SolarWinds Worldwide, LLC (the “Distribution Schedule”).

4. The Distribution Schedule is attached hereto as **Exhibit A-1**.

5. In order to prepare the Distribution Schedule, I reviewed investor schedules, documents relating to the Librato Sale<sup>1</sup>, information supplied by investors and interested parties, back-up documentation pertaining to expense items, corporate documentation outlining corporate governance matters, and former management’s distribution calculations.

6. The Distribution Schedule contains three calculation sheets, one for each of EGA, EGMIC, and LAII. The calculation sheets contain (i) the Gross Proceeds received, (ii) the estimated remaining Escrow Proceeds to be received, (iii) a distribution summary and allocation analysis for the specific entity, and (iv) the fees and expenses attributable to the specific entity.

7. As shown on the Distribution Schedule, the Gross Proceeds and estimated remaining Escrow Proceeds are allocated among the EGMIC members as follows:

████████████████████	\$3,628
████████████████████████████	\$181
████████████████	\$3,628
██	\$13,402
████████████████████	\$4,577
████████████████	\$190
████████████████	\$181
██	\$5,701
████████████████████	\$8,255

---

<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Receiver’s Memorandum of Law in Support of Receiver’s Motion for Authorization to Distribute Funds Held by EverGrid Acquisition, LLC, Librato Acquisition II, LLC and Evergrid/MIC VII, LLC (the “Motion”).

██████████	\$682
██████████████████	\$10,519
██████████████████████████████	\$4,219
██████████████████	\$4,234
██████████████████████████	\$459
██████████	\$5,644
██████████	\$726
██████████████████	\$1,008
██████████	\$4,562
Acartha Merchant Partners, LLC (Managing Member; carried interest only)	\$0
<b>Total:</b>	<b>\$71,797</b>

8. As shown on the Distribution Schedule, there is no allocation of Gross Proceeds and estimated remaining Escrow Proceeds because the fees and expenses allocable to EGA exceeded the Gross Proceeds and estimated remaining Escrow Proceeds from the Librato Sale. As a result, there are no funds available for distribution to the members of EGA.

9. As shown on the Distribution Schedule, the Gross Proceeds and estimated remaining Escrow Proceeds are allocated among the LAII members as follows:

██████████████████████████	\$12,987
██████████████████	\$3,227
██████████████████	\$3,227
██████████████████████████	\$103,252
██████████████████	\$19,924
██████████████████	\$11,051
██████████████████	\$16,456
██████████████████████████	\$23,393
██████████████████	\$6,534
██████████████████████████	\$40,333
██████████████████	\$9,841
██████████████████	\$12,987
██████████████████████████	\$3,227
██████████████████	\$12,987
██████████████████	\$13,028
██████████████████████████	\$65,097
██████████	\$71,631
██████████████████	\$2,259
██████████████████	\$32,508
██████████████████████████	\$12,987
██████████████████	\$32,508



[REDACTED]	\$6,534
[REDACTED]	\$3,227
[REDACTED]	\$26,055
[REDACTED]	\$12,987
[REDACTED]	\$3,227
[REDACTED]	\$27,507
[REDACTED]	\$11,455
[REDACTED]	\$12,987
[REDACTED]	\$19,521
[REDACTED]	\$6,534
[REDACTED]	\$26,055
[REDACTED]	\$12,987
[REDACTED]	\$12,987
[REDACTED]	\$4,759
[REDACTED]	\$11,374
[REDACTED]	\$1,371
[REDACTED]	\$2,985
[REDACTED]	\$18,311
[REDACTED]	\$21,054
[REDACTED]	\$8,389
[REDACTED]	\$11,293
[REDACTED]	\$9,115
[REDACTED]	\$2,017
[REDACTED]	\$11,455
[REDACTED]	\$13,028
Librato Capital II, LLC	\$0
(Managing Member; carried interest only)	
<b>Total:</b>	<b>\$806,657</b>

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This Declaration was executed this 14th day of October, 2015.

Timothy S. O'Shaughnessy

**EVERGRID MIC VII**

	Calculated 2015	REF
Gross Proceeds On Sale (Per May, 2015 Bank Statement) - Received	87,405	
Estimated Remaining Escrow Proceeds To Be Received	11,435	
Less: Allocable Fees and Expenses (See Summary Below)	(27,043)	
Net Distributable To Evergrid MIC VII. Members	71,797	
Less: Carried Interest	-	
Net Distributed To Members	71,797	

**Cash Distribution Summary**

Members	Ownership %	Total Capital Contributions	
[REDACTED]	5.0529023%	79,523	3,628
[REDACTED]	0.2526449%	3,976	181
[REDACTED]	5.0529023%	79,523	3,628
[REDACTED]	18.6670987%	400,112	13,402
[REDACTED]	6.3750514%	100,331	4,577
[REDACTED]	0.2648192%	4,168	190
[REDACTED]	0.2526449%	3,976	181
[REDACTED]	7.9405603%	124,969	5,701
[REDACTED]	11.4971770%	180,943	8,255
[REDACTED]	0.9499901%	14,951	682
[REDACTED]	14.6510902%	230,580	10,519
[REDACTED]	5.8769582%	92,492	4,219
[REDACTED]	5.8968781%	92,805	4,234
[REDACTED]	0.6396081%	10,066	459
[REDACTED]	7.8614406%	123,724	5,644
[REDACTED]	1.0105802%	15,905	726
[REDACTED]	1.4036293%	22,090	1,008
[REDACTED]	6.3540242%	100,000	4,562
Acartha Merchant Partners, LLC. (Managing Member - Carried Interest ONLY)	0.0000000%		-
	100.0000000%		
Total Cash Distribution			71,797

**Special Allocation Analysis**

Net Distributable To Evergrid MIC VII Members	71,797
Less: 20% Carried Interest to Managing Member (Not Applicable)	0%
Carried Interest	-

4.4 **Distributions.** Cash from the investments and operations of the Company that is available for distribution, as determined by the Managing Member from time to time, shall first be allocated among the Members in accordance with their respective Sharing Percentages, and the share allocated to each Investor Member shall then be divided between such Investor Member and the Managing Member and distributed in the following order and priority:

First, 100% to the Investor Member until such Investor Member has received cumulative distributions of an amount equal to his Capital Contributions; and

Second, thereafter, 20% to the Managing Member and 80% to the Investor Member.

Per section 4.4 of operating agreement, there will be no carried interest portion of this distribution, as all partners have not received distributions in excess of capital contributions.

**Summary of Allocable Fees and Expenses (All Incurred Since 1/17/12)**

<i>Estimated</i> Future Wire Transfer Fee	20
Wire Transfer Fee	10
<i>Estimated</i> Future State of Delaware LLC Taxes	300
2015 State of Delaware LLC Taxes	300
2014 State of Delaware LLC Taxes	250
2013 State of Delaware LLC Taxes	754
Legal and Consulting Fees	10,000
CliftonLarsonAllen Fees - 2011 Tax Return Filing Fees (Accounts Payable)	1,942
CliftonLarsonAllen Fees - 2012 Tax Return Filing Fees	1,549
CliftonLarsonAllen Fees - 2013 Tax Return Filing Fees	958
CliftonLarsonAllen Fees - 2014 Tax Return Filing Fees and Consulting Fees	825
<i>Estimated</i> CliftonLarsonAllen Fees - 2015 Tax Return Filing Fees	2,800
<i>Estimated</i> CliftonLarsonAllen Fees - Final Dist. Analysis	1,500
Due To Acartha Group (Intercompany Account Payable From Prior Years)	4,835
"Wind-Down" Costs	1,000
<b>Total Allocable Fees and Expenses</b>	<b>27,043</b>

**Footnote Disclosure****General Disclosure**

All calculations based on information provided by prior management. Only limited verification was performed, no audit or attestation procedures were completed.

**EVERGRID Acquisition**

	Calculated 2015	REF
Gross Proceeds On Sale (Per May, 2015 Bank Statement) - Received	16,271	
Estimated Remaining Escrow Proceeds To Be Received	2,129	
Less: Allocable Fees and Expenses (See Summary Below)	(29,853)	
Net Distributable To Evergrid Acquisition Members	(11,454)	
Less: Carried Interest	-	
Net Distributed To Members	(11,454)	

**Cash Distribution Summary**

Members	Ownership %	
██████████ (Abandoned Interest in 2014)	0.0000000%	-
██████████ (Abandoned Interest on 1/7/15)	0.0000000%	-
██████████	51.8518520%	(5,939)
██████████	48.1481480%	(5,515)
	100.0000000%	
Total Cash Distribution		(11,454)

**Special Allocation Analysis**

No Carried Interest Provision Per Operating Agreement

4.4 Distributions. Cash from the investments and operations of the Company that is available for distribution, as determined by the Managing Member from time to time, shall be allocated among the Investor Members in accordance with their respective Sharing Percentages.

**Summary of Allocable Fees and Expenses (All Incurred Since 1/17/12)**

<b>Estimated</b> Future Wire Transfer Fee	20
Wire Transfer Fee	10
<b>Estimated</b> Future State of Delaware LLC Taxes	300
2015 State of Delaware LLC Taxes	300
2014 State of Delaware LLC Taxes	250
2013 State of Delaware LLC Taxes	754
Legal and Consulting Fees	10,000
CliftonLarsonAllen Fees - 2011 Tax Return Filing Fees (Accounts Payable)	2,604
CliftonLarsonAllen Fees - 2012 Tax Return Filing Fees	1,220
CliftonLarsonAllen Fees - 2013 Tax Return Filing Fees	925
CliftonLarsonAllen Fees - 2014 Tax Return Filing Fees	1,135
<b>Estimated</b> CliftonLarsonAllen Fees - 2015 Tax Return Filing Fees	2,800
<b>Estimated</b> CliftonLarsonAllen Fees - Final Dist. Analysis	1,500
Due To Acartha Group (Intercompany Account Payable From Prior Years)	7,035
"Wind-Down" Costs	1,000
<b>Total Allocable Fees and Expenses</b>	<b>29,853</b>

**Footnote Disclosure**

**General Disclosure**

All calculations based on information provided by prior management. Only limited verification was performed, no audit or attestation procedures were completed.

**Librato Acquisition II, LLC.**

	Calculated 2015	REF
Gross Proceeds On Sale (Per May, 2015 Bank Statement) - Received	752,307	
Estimated Remaining Escrow Proceeds To Be Received	98,423	
Less: Allocable Fees and Expenses (See Summary Below)	(44,073)	
Net Distributable To Librato Acquisition II, LLC. Members	<u>806,657</u>	
Less: Carried Interest	-	
Net Distributed To Members	<u><u>806,657</u></u>	

**Cash Distribution Summary**

Members	Ownership %	Total Capital Contributions	
[REDACTED]	1.61000000%	28,360	12,987
[REDACTED]	0.40000000%	7,090	3,227
[REDACTED]	0.40000000%	7,090	3,227
[REDACTED]	12.80000000%	225,000	103,252
[REDACTED]	2.47000000%	43,360	19,924
[REDACTED]	1.37000000%	24,106	11,051
[REDACTED]	2.04000000%	35,955	16,456
[REDACTED]	2.90000000%	51,048	23,393
[REDACTED]	0.81000000%	14,180	6,534
[REDACTED]	5.00000000%	87,916	40,333
[REDACTED]	1.22000000%	21,420	9,841
[REDACTED]	1.61000000%	28,360	12,987
[REDACTED]	0.40000000%	7,090	3,227
[REDACTED]	1.61000000%	28,360	12,987
[REDACTED]	1.61500000%	28,360	13,028
[REDACTED]	8.07000000%	141,800	65,097
[REDACTED]	8.88000000%	155,980	71,631
[REDACTED]	0.28000000%	5,000	2,259
[REDACTED]	4.03000000%	70,900	32,508
[REDACTED]	1.61000000%	28,360	12,987
[REDACTED]	4.03000000%	70,900	32,508
[REDACTED]	0.81000000%	14,180	6,534
[REDACTED]	0.40000000%	7,090	3,227
[REDACTED]	3.23000000%	56,720	26,055
[REDACTED]	1.61000000%	28,360	12,987
[REDACTED]	0.40000000%	7,090	3,227
[REDACTED]	3.41000000%	60,000	27,507
[REDACTED]	1.42000000%	25,000	11,455
[REDACTED]	1.61000000%	28,360	12,987
[REDACTED]	2.42000000%	42,540	19,521
[REDACTED]	0.81000000%	14,180	6,534
[REDACTED]	3.23000000%	56,720	26,055
[REDACTED]	1.61000000%	28,360	12,987
[REDACTED]	1.61000000%	28,360	12,987
[REDACTED]	0.59000000%	10,340	4,759
[REDACTED]	1.41000000%	24,824	11,374
[REDACTED]	0.17000000%	2,950	1,371
[REDACTED]	0.37000000%	6,544	2,985
[REDACTED]	2.27000000%	39,945	18,311
[REDACTED]	2.61000000%	45,826	21,054
[REDACTED]	1.04000000%	18,368	8,389
[REDACTED]	1.40000000%	24,605	11,293
[REDACTED]	1.13000000%	19,861	9,115
[REDACTED]	0.25000000%	4,370	2,017
[REDACTED]	1.42000000%	24,923	11,455
[REDACTED]	1.61500000%	28,360	13,028
[REDACTED]	0.00000000%		-
Librato Capital II, LLC. (Managing Member - Carried Interest ONLY)	100.00000000%		

Total Cash Distribution 806,657

**Special Allocation Analysis**

Net Distributable To Evergrid MIC VII Members	806,657
Less: 20% Carried Interest to Managing Member (Not Applicable)	<u>0%</u>
Carried Interest	<u>-</u>

**4.4 Distributions.** Cash realized from the investments and operations of the Company that is available for distribution, net of appropriate reserves for expenses (other than ordinary, necessary and recurring costs and expenses incurred in the organization, establishment and operation of the Company), if any, and as determined by the Managing Member from time to time, shall be distributed in the following order and priority:

First, 100% to each Member, allocated in accordance with their respective Sharing Percentages, until such Member has received cumulative distributions of an amount equal to its Capital Contributions plus all Management Fees paid through such date of distribution; and

Second, thereafter, 20% to the Managing Member and 80% allocated to each Member in accordance with Section 4.6.

Per section 4.4 of operating agreement, there will be no carried interest portion of this distribution, as all partners have not received distributions in excess of capital contributions.

**Summary of Allocable Fees and Expenses**

<i>Estimated</i> Future Wire Transfer Fee	20
Wire Transfer Fee	10
<i>Estimated</i> Future State of Delaware LLC Taxes	300
2015 State of Delaware LLC Taxes	300
2014 State of Delaware LLC Taxes	250
2013 State of Delaware LLC Taxes	754
Legal and Consulting Fees	10,000
CliftonLarsonAllen Fees - 2011 Tax Return Filing Fees (Accounts Payable)	1,615
CliftonLarsonAllen Fees - 2012 Tax Return Filing Fees	997
CliftonLarsonAllen Fees - 2013 Tax Return Filing Fees	898
CliftonLarsonAllen Fees - 2014 Tax Return Filing Fees	2,800
<i>Estimated</i> CliftonLarsonAllen Fees - 2015 Tax Return Filing Fees	1,500
Due To Acartha Group (Intercompany Account Payable From Prior Years)	23,629
"Wind-Down" Costs	1,000
<b>Total Allocable Fees and Expenses</b>	<b><u>44,073</u></b>

**Footnote Disclosure**

**General Disclosure**

All calculations based on information provided by prior management. Only limited verification was performed, no audit or attestation procedures were completed.

**EXHIBIT B**

**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, et al.,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	

**ORDER**

This matter is before the Court on the *Receiver’s Motion for Authorization to Distribute Funds Held By Evergrid Acquisition, LLC, Librato Acquisition II, LLC and Evergrid/MIC VII, LLC* and Memorandum in Support (the “Motion”) filed by Claire M. Schenk, the court-appointed receiver (the “Receiver”) for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, L.P. and Gryphon Investments III, LLC in this action; and

Having fully considered the Motion and accompanying papers 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 asset freeze of the Asset Freeze Order is lifted with respect to the Gross Proceeds and Escrow Proceeds (as those terms are defined in the Motion).
3. The Receiver is authorized to distribute the Gross Proceeds to the members of EverGrid Acquisition, LLC, Librato Acquisition II, LLC and Evergrid/MIC VII, LLC

(collectively, the “Librato SPVs”) in accordance with the ownership percentages identified on the Distribution Schedule attached to the O’Shaughnessy Declaration upon entry of this Order.

4. The Receiver is authorized to pay, or reserve for, fees and expenses (which expenses are only estimated at this time and may exceed or fall below the numbers listed in the Distribution Schedule) of the Librato SPVs in accordance with the Distribution Schedule attached to the O’Shaughnessy Declaration.

5. The Receiver is authorized to distribute the Escrow Proceeds to the members of the Librato SPVs in accordance with the ownership percentages identified on the Distribution Schedule attached to the O’Shaughnessy Declaration following release of such Escrow Proceeds in accordance with the SolarWindsLibrato Merger Agreement.

**SO ORDERED** this the \_\_\_\_ day of \_\_\_\_\_, 2015.

---

THE HONORABLE CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE