

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.	)	

**RECEIVER’S NOTICE OF NO OBJECTION AND REQUEST FOR ENTRY OF AN ORDER ON RECEIVER’S MOTION TO APPROVE PLAN OF DISTRIBUTION, APPROVE SCHEDULE OF CLAIMS, AUTHORIZE DISTRIBUTIONS OF RECEIVERSHIP ASSETS, AND APPROVE PARTIAL PAYMENT OF HOLDBACK AMOUNT PERTAINING TO LEGAL AND PROFESSIONAL SERVICES RENDERED BY THE RECEIVER, RETAINED COUNSEL, AND OTHER PROFESSIONALS**

On April 20, 2017, Claire M. Schenk, as Receiver (“Receiver”) over Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP; and Gryphon Investments III, LLC (collectively, the “Receivership Entities”), filed the *Motion to Approve Plan of Distribution, Approve Schedule of Claims, Authorize Distributions of Receivership Assets, and Approve Partial Payment of Holdback Amount Pertaining to Legal and Professional Services Rendered by the Receiver, Retained Counsel, and Other Professionals* and *Memorandum in Support* thereof (ECF Nos. 515, 516) (collectively, the “Original Motion”). After providing notice to the Court that the Receiver intended to make minor adjustments to the distribution schedules attached to the filings (*see* ECF No. 519) (the “Notification of Intended Adjustments”), on May 9, 2017, the Receiver filed a *Motion to Amend/Correct Receiver’s Motion to Approve*

*Distribution Plan*, which included an *Amended Motion to Approve Plan of Distribution, Approve Schedule of Claims, Authorize Distributions of Receivership Assets, and Approve Partial Payment of Holdback Amount Pertaining to Legal and Professional Services Rendered by the Receiver, Retained Counsel, and Other Professionals* and *Memorandum in Support* thereof (ECF No. 525) (the “Motion”). That same day, the Receiver served a copy of the Motion upon all parties receiving notice in this case via this Court’s CM/ECF system and also electronically served Interested Parties (as defined in the Original Motion (ECF No. 516)). In addition, the Receiver posted a copy of the Motion to the Receiver’s external website, at <http://www.thompsoncoburn.com/acartha>.<sup>1</sup>

On May 10, 2017, the Court granted the Receiver leave to file to amend/correct the Original Motion, directed the clerk to enter the Motion on the docket, and mooted the Original Motion. The Clerk docketed the Motion (ECF No. 527).

The parties in the case and Interested Parties have had the opportunity to review the Motion. Objections to the relief requested in the Original Motion were due on or before Thursday, April 27, 2017. *See* E.D.Mo. L.R. 7-4.01(B); Fed. R. Civ. P. 6. Objections to the Motion were due on or before Wednesday, May 17, 2017. *See id.* No objections have been filed.

For each of the reasons stated in the Motion, the Receiver respectfully requests that the Court grant the Motion and enter the proposed Order, filed simultaneously herewith as **Exhibit A** to this Notice.

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<sup>1</sup> The Receiver also served a copy of the Original Motion and the Notification of Intended Adjustments upon all parties receiving notice in this case via this Court’s CM/ECF system and electronically served Interested Parties on the same day those documents were filed with the Court. In addition, the Receiver posted a copy of the Original Motion and the Notification of Intended Adjustments to the Receiver’s external website.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: May 19, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2017, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to all counsel of record receiving electronic service.

I further certify that I served the foregoing document via electronic mail on all Interested Parties (as defined in the Motion (ECF No. 516)).

/s/ Kathleen E. Kraft

**Exhibit A**

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

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

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

**[PROPOSED] ORDER**

This matter is before the Court on the *Amended Motion to Approve Plan of Distribution, Approve Schedule of Claims, Authorize Distributions of Receivership Assets, and Approve Partial Payment of Holdback Amount Pertaining to Legal and Professional Services Rendered by the Receiver, Retained Counsel, and Other Professionals*, the memorandum in support thereof, and all exhibits attached thereto (ECF No. 527, the “Motion”), filed by Claire M. Schenk, the court-appointed receiver (the “Receiver”) for Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP; and Gryphon Investments III, LLC (collectively, the “Receivership Entities”).<sup>1</sup>

<sup>1</sup> On April 20, 2017, the Receiver filed her *Motion to Approve Plan of Distribution, Approve Schedule of Claims, Authorize Distributions of Receivership Assets, and Approve Partial Payment of Holdback Amount Pertaining to Legal and Professional Services Rendered by the Receiver, Retained Counsel, and Other Professionals* and memorandum in support thereof (ECF Nos. 515, 516) (collectively, the “Original Motion”). On May 9, 2017, the Receiver filed her *Motion to Amend/Correct Receiver’s Motion to Approve Distribution Plan*, along with the *Amended Motion to Approve Plan of Distribution, Approve Schedule of Claims, Authorize First Interim Distribution of Receivership Assets, and Approve Partial Payment of Holdback Amount Pertaining to Legal and Professional*

The Motion seeks Court approval of: (i) the Receiver's determinations of allowance and/or disallowance on filed claims, (ii) the Receiver's methodology for allocation of assets and expenses between the Receivership Entities, (iii) the Receiver's determinations regarding classification and priority of allowed claims, (iv) the Receiver's methodology for distribution of Receivership assets to allowed claimants, and (v) the Receiver's request for allowance and payment of 80 percent of the legal and professional fees of the Receiver, her counsel, and her professionals incurred and remaining unpaid as of December 31, 2016.

Having fully considered the Motion, finding that no objections have been filed, and being duly advised as to the merits, the Court finds that there is good cause to grant the Motion. The actions to be taken by the Receiver in connection with the proposed plan of distribution are reasonable and within the Receiver's sound business discretion, are fair and equitable under the particular circumstances of this case, and are in the best interests of the Receivership estate and the allowed claimants of the Receivership Entities.

The Court also finds that interested parties were afforded adequate notice and an opportunity to be heard in a meaningful manner on the relief requested in the Motion. The Receiver electronically served all Interested Parties (as defined in the Motion), included in the service communication the time limits for filing objections to motions under the Court's local rules, and posted a copy of the Original Motion and the Motion on the Receivership's website. The procedure for objections to motions under this Court's local rules were available to interested parties as a means to object and be heard.

**NOW THEREFORE, THE COURT DOES HEREBY ORDER THAT**

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*Services Rendered by the Receiver, Retained Counsel, and Other Professionals* and updated exhibits to account for minor adjustments to certain of the numbers reported in the Motion (ECF No. 525). On May 10, 2017, the Court granted the Receiver leave to file the amended motion and mooted the Original Motion (ECF No. 526). The clerk entered the Receiver's amended motion on the docket on May 10, 2017 (ECF No. 527).

**1. MOTION.**

The Receiver's Motion is granted in its entirety.

**2. ALLOWANCE OF CLAIMS.**

The Receiver's recommendations on claim allowance and disallowance and the claim amounts as set forth in the Schedule of Allowed Claims and Schedule of Disallowed Claims, attached hereto as **Exhibit A-1** and **Exhibit A-2**, are approved *[excepting only Claim No. 20 filed by Hany Teylouni. The allowance or disallowance of Mr. Teylouni's claim will be [or has been] decided by the Court pursuant to an order on the briefings filed by the parties in connection with Mr. Teylouni's objection to the Receiver's recommendation of disallowance of Claim No. 20.]* All claims listed on the Schedule of Allowed Claims shall be referred to herein as "Allowed Claims." Holders of such Allowed Claims shall be referred to as Allowed Claimants.

**3. APPROVAL OF THE RECEIVER'S DISTRIBUTION PLAN.**

The Receiver's Distribution Plan, as set forth in the memorandum in support of the Motion, the Declaration of Timothy O'Shaughnessy, and the schedules attached thereto (which schedules are attached hereto as **Exhibit B-1**, **Exhibit B-2**, **Exhibit B-3**, and **Exhibit B-4** *[currently Attachments 1-4 of Exhibit B to Receiver's Motion]*), is approved. In particular, but without limiting the proposals set forth in the Distribution Plan:

**A. Allocation of Assets.**

The Receiver's methodology for the allocation of assets of the Receivership Estate between the Receivership Entities is approved. Where an asset or recovery can be linked to a harm particular to a single Receivership Entity or an investment or portfolio interest held by one or more, but not all, Receivership Entities, the Receiver shall allocate that asset or recovery to

the particular Receivership Entity(ies) involved. Where an asset or recovery cannot be linked to a harm particular to a single Receivership Entity or an investment or portfolio interest held by one or more, but not all, Receivership Entities, but instead resulted from a jointly-held asset or a recovery sought for the benefit of the entire Estate (“Shared Assets”), the Receiver shall allocate that asset or recovery between the Receivership Entities in proportion to the size of the initial cash investment in each of the Receivership Entities.

Pursuant to this methodology, the Receiver shall allocate the Shared Assets between the Receivership Entities as follows: 24.84 percent to Acartha Group, LLC; 41.66 percent to MIC VII, LLC; 31.26 percent to Acartha Technology Partners, L.P.; and 2.24 percent to Gryphon Investments III, LLC. The Receiver is authorized to take all actions necessary for effectuation of the allocations approved herein.

**B. Allocation of Receivership Expenses.**

The Receiver’s methodology for the allocation of expenses of the Receivership Estate between the Receivership Entities is approved. The Receiver shall allocate all Receivership expenses between the four Receivership Entities in proportion to the size of the initial cash investment in each of the Receivership Entities.

Pursuant to this methodology, the Receiver shall allocate the Receivership expenses between the Receivership Entities as follows: 24.84 percent to Acartha Group, LLC; 41.66 percent to MIC VII, LLC; 31.26 percent to Acartha Technology Partners, L.P.; and 2.24 percent to Gryphon Investments III, LLC. The Receiver is authorized to take all actions necessary for effectuation of the allocations approved herein.



**C. Claim Classification and Priority.**

The Receiver's proposal for the classification and priority treatment of Allowed Claims is approved. The Allowed Claims shall be divided into four main classes: (1) Cash Investors (Classes 1-A, 1-B, 1-C, and 1-D), (2) Exchange-Loss Investors (Class 2-A), (3) Unsecured Creditors (Classes 3-A and 3-B), and (4) Professional and Employee Claims (Classes 4-A, 4-B, 4-C, and 4-D). The Receiver's proposed classification of individual claims, as set forth in **Exhibit A-1** and **Exhibit A-2**, is approved as set forth in Paragraph 2 above. The Classes shall be prioritized in descending order. Allowed Claimants in Classes 1-A through 1-D (Cash Investors) shall receive the highest priority to Receivership assets. The remaining classes (Class 2, Class 3, and Class 4) will follow in second, third, and fourth priority, respectively.

The foregoing classification and priority treatment of Allowed Claims is fair and equitable under the circumstances of this case. Allowed Claimants are grouped with other similarly situated Allowed Claimants into one of four categories determined by the Allowed Claimant's (1) status as an investor, trade creditor, or former employee or professional and (2) for investors, the method of contribution (cash or exchange). Allowed Claimants within each of the Class categories will receive the same treatment. Further, the Receiver's differing treatment of the cash investors and the exchange-loss investors in Acartha Group, LLC is reasonable and equitable based upon the manner in which the two groups of investors participated in Acartha Group, LLC. The Receiver's prioritization of the claims of the cash investors is also fair and equitable because the Receiver was appointed in connection with the SEC's civil enforcement action against the Receivership Defendants. The SEC's allegations in its enforcement action against Burton Douglas Morriss resulted in the entry of a Judgment of Permanent Injunction and Other Relief as to Morriss on August 13, 2013 (ECF No. 275), which precluded Morriss from

arguing that he did not violate the federal securities laws as alleged in the *SEC Complaint* in connection with an SEC motion for disgorgement and/or civil penalty and determined, for purposes of such a motion, that the allegations in the *SEC Complaint* shall be accepted as and deemed true by the Court. On February 26, 2014, the Court entered its Final Judgment as to Morriss (ECF No. 314), in which the Court ordered that Morriss disgorge \$9.1 million, representing profits gained as result of the conduct alleged in the *SEC Complaint*, along with prejudgment interest of \$416,090.71.

As alleged by the SEC, Morriss's fraudulent conduct was directed toward the investors. Investors were not informed that Morriss would be taking invested monies and using them for personal purposes. Also, as alleged by the SEC, Morriss circumvented the requirements of the MIC VII operating documents to allow new investors into MIC VII, then effectively used the new investor funds to satisfy a personal loan. As such, affording cash investors the highest priority ensures that those investors benefit the most from the assets recovered by the Receiver.

**D. Distribution Methodology.**

The Receiver's proposed methodology for distributing the assets of the Receivership is approved. The Receiver shall distribute the assets of the Receivership Estate to Allowed Claimants using the rising tide pro rata method of distribution. In accordance with the calculations performed by the Receivership's accountant, the Receiver shall distribute the available assets to Allowed Claimants in Classes 1-A through 1-D on an increasing basis, devoting available assets to those Allowed Claimants who lost the greatest percentage of their investment until they reach parity with other Allowed Claimants who lost a smaller percentage of their investment. *See Exhibits B-1, B-2, B-3, and B-4.* Furthermore, in calculating the distributions to Allowed Claimants, the Receiver shall rely on the pre-Receivership investment

and distribution amounts provided to the Receiver through the claims filing and bar date process, except where it is necessary for the Receiver to resolve discrepancies in pre-Receivership investment or distribution amounts by relying on Receivership records. The initial investment and pre-Receivership distributions amounts for each Allowed Claim are set forth in **Exhibits B-1, B-2, B-3, and B-4**. Because the assets of the Receivership Estate are insufficient to fully satisfy Allowed Claims in Class 1, the Receiver need not determine pro rata participation percentages for allowed claimants in Classes 2 through 4.

Use of the foregoing methodology (rising tide pro rata) is fair, equitable, and reasonable under the circumstances of this case. First, distributing assets pro rata is a fair and equitable method of distribution where, as here, the assets to be distributed are insufficient to fully satisfy the outstanding claims against the estate. Second, as between the various methods of pro rata distribution, the rising tide method is most equitable for this case. Distribution using the rising tide methodology will most equitably distribute the available assets to those Class 1 Allowed Claimants who benefited the least from pre-Receivership distributions and will equalize, to the greatest extent possible, the total recoveries (pre- and post-Receivership) of each Allowed Claimant on an entity-by-entity basis. By using rising tide, the Receiver is able to reduce the amount of variation in each Class 1 Allowed Claimant's total percentage recovery—thereby equalizing the recoveries of all Allowed Claimants in Class 1 to the greatest extent possible.

**E. Distribution(s) of Liquid Assets.**

The Receiver is authorized to make one or more distributions of Receivership assets to Allowed Claimants in Class 1 in accordance with the claim classification, priority, and distribution methodology approved herein. The Receiver shall make a first interim distribution to Allowed Claimants in Class 1 of approximately 80 percent of the Receivership assets as

expeditiously as possible. Future distributions shall be made in accordance with the claim classification, priority, and distribution methodology approved herein. The Receiver is authorized to take any and all actions necessary to effectuate the first interim distribution and all subsequent distributions to Allowed Claimants.

**4. PAYMENT OF PORTION OF HOLDBACK EXPENSES.**

The Receiver’s request for allowance and authorization to pay 80 percent of the legal and professional fee holdback incurred and remaining unpaid as of December 31, 2016 is approved. The following fees are allowed and the Receiver is authorized to make the following payments out of the assets of the Receivership estate:

Thompson Coburn LLP	\$221,902.66
Segue Equity Group, LLC	\$11,827.43
CliftonLarsonAllen LLP	\$20,270.46
Pepper Hamilton LLP	\$453.14
FTL Capital	\$2,387.20
<b>Total</b>	<b>\$256,840.85</b>

**5. AUTHORIZATION TO TAKE STEPS NECESSARY FOR RECEIVERSHIP WIND-UP.**

In addition to the authorities described above, the Court further authorizes the Receiver to take all necessary steps to achieve a winding up of the Receivership’s assets and estate. These actions may include, but are not limited to, taking such actions to effectuate future distribution(s) of Receivership assets to Allowed Claimants in accordance with claim classification, priority, and distribution methodology approved herein, resolving the intercompany entries between Receivership Entities through debt cancellation during calendar year 2017, reporting a “theft loss” allocated to Allowed Claimants in Class 1 and 2 as described in the Receiver’s memorandum, and distributing and assigning any unliquidated assets of the

Receivership Entities to the Allowed Claimants in those Entities in proportion to the respective interests held by such Allowed Claimants prior to or as part of the wind up of this proceeding.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

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THE HONORABLE CAROL E. JACKSON  
UNITED STATES DISTRICT COURT JUDGE