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NANCY A. MITCHELL *(pro hac vice)*
JOSEPH P. DAVIS *(pro hac vice)*
MARIA J. DICONZA *(pro hac vice)*
GREENBERG TRAURIG, LLP
The MetLife Building
200 Park Avenue
New York, New York 10166
Telephone: 212-801-9200
Facsimile: 212-801-6400
Email: mitchelln@gtlaw.com
diconzam@gtlaw.com

Proposed Counsel for the Debtors and Debtors in Possession

GREGORY E. GARMAN, NV Bar # 6654
THOMAS H. FELL, NV Bar # 3717
TERESA M. PILATOWICZ, NV Bar #9605
MARK WEISENMILLER, NV Bar #12128
GORDON SILVER
3960 Howard Hughes Parkway, 9th Flr.
Las Vegas, Nevada 89169
Telephone: 702-796-5555
Facsimile: 702-369-2666
Email: ggarman@gordonsilver.com
tfell@gordonsilver.com
tpilatowicz@gordonsilver.com
mweisenmiller@gordonsilver.com

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re: TELEXFREE, LLC, ☐ Affects this Debtor	Case No.: BK-S-14-12524-abl Chapter 11 **Jointly Administered with:**
☒ Affects all Debtors	14-12525-abl TelexFree, Inc. 14-12526-abl TelexFree Financial, Inc
☐ Affects TELEXFREE, INC.	
☐ Affects TELEXFREE FINANCIAL, INC	Date: May 6, 2014 Time: 10:30 a.m.

MOTION TO STRIKE U.S. SECURITIES AND EXCHANGE COMMISSION'S SUPPLEMENTAL AUTHORITY IN REBUTTAL TO DEBTORS' INCORRECT STATEMENT AT MAY 2, 2014 HEARING REGARDING APPLICABILITY OF AUTOMATIC STAY TO ASSET FREEZE

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby submit this motion (the "**Motion**") requesting the Court strike the *U.S. Securities and Exchange Commission's Supplemental Authority in Rebuttal to Debtors' Incorrect Statement at May 2, 2014 Hearing Regarding Applicability of Automatic Stay to Asset Freeze* [ECF No. 167] (the "**Supplement**"), filed by the U.S. Securities and Exchange Commission's (the "**SEC**") on Saturday, May 3, 2014, after the Court deemed the matter submitted.[1]

[1] Any capitalized but undefined terms use herein shall have the meaning ascribed to them in the *Motion for an*

A. The Court Should Strike the Supplement as Untimely Filed.

On April 25, 2014, the Court entered the *Notice of Hearing and Order Shortening Time to Hear Motion for an Order Determining That: (I) Portions of the Temporary Restraining Order Entered at the Request of the Securities and Exchange Commission Violate the Automatic Stay of 11 U.S.C. § 362(a); (II) Portions of the Temporary Restraining Order are Void; and (III) Debtors are Entitled to Use Their Assets in the Ordinary Course of Business* [ECF No. 104] (the "**Hearing Notice**"). In the Hearing Notice, the Court ordered that "[a]ny oppositions to the Motion must be filed and served by April 29, 2014; that replies to any oppositions filed must be filed and served by May 1, 2014; and that this hearing may be continued from time-to-time without further notice except for the announcement of any adjourned dates and times at the above noticed hearing or any adjournment thereof." See Hearing Notice at 3. On May 2, 2014, after a full day of hearing evidence and argument at the hearing on the Motion (the "**Hearing**"), the Court deemed the Motion submitted. The Court further advised the parties that no additional evidence or argument would be taken prior to the Court issuing its ruling on the Motion on May 6, 2014.

Despite this clear direction, the SEC filed the Supplement on May 3, 2014, one day after the Hearing. Therefore, the Court should strike the Supplement from the Docket and not consider its contents. However, if the Court is inclined to consider the Supplement, the Supplement adds nothing new to the analysis because the Debtors already discussed the authorities relied upon in SEC v. Burton Douglas Morris, 2012 WL 2154903 (E.D. Mo. 2012) and Burton Douglas is distinguishable.

B. *Burton Douglas* is Distinguishable from the Chapter 11 Cases.

The Supplement attaches a case, Burton Douglas, which the SEC states directly contradicts certain statements made by the Debtors during argument at the May 2, 2014 hearing. See Supplement at 2. The SEC further states that the district court in Burton Douglas held that

(continued)

Order Determining that: (J) Portions of the Temporary Restraining Order Entered at the Request of the Securities and Exchange Commission Violated the Automatic Stay of 11 U.S.C. § 362(a); (Il) Portions of the Temporary Restraining Order are Void; and (III) Debtors are Entitled to Use Their Assets in the Ordinary Course of Their Business [ECF No. 70] (the "Motion").

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

the automatic stay did not apply to the SEC's actions when the district court entered an asset freeze and appointed a receiver in an action filed by the SEC after the debtor filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. See id. However, Burton Douglas is easily distinguished from the facts in the Chapter11 Cases and likewise, should not be considered by this Court.

1. Unlike in *Burton Douglas*, Where a Receiver Had Been Appointed to Control the Debtors' Assets, the TRO in These Chapter 11 Cases Frustrates this Court's Jurisdiction.

In Burton Douglas, a Missouri district court, on an *ex parte* basis, granted an order freezing the assets of several debtors *and appointing a receiver over those debtors*. See 2012 WL 2154903, at *1. Thus, while the district court's order restrained all individuals and entities *other than the receiver* from transferring or receiving any assets of the entity debtors, *the receiver was still able to access the assets and utilize them for the bankruptcy cases*. See id. The district court also gave the receiver authority to act as sole debtor-in-possession of the entity debtors.[2] See id.

The court in Burton Douglas relied primarily upon Co Petro for the proposition that the *appointment of a receiver and an order enforcing the receiver order* were excepted from the automatic stay under Section 362(b)(4). See id. at *2. In Co Petro, the court excepted a district court's receiver and turnover order from the automatic stay because: (1) it would not give the governmental unit or the defrauded investors preference over other creditors; and (2) the funds would be turned over to the bankruptcy estate for distribution with the rest of the debtor's creditors as the receiver was also the bankruptcy trustee. See Commodity Futures Trading Comm'n v. Co Petro Mfg., 700 F.2d 1279 (9th Cir. 1983).[3] As noted in the Motion and Reply,[4]

[2] The Court should not rely upon Burton Douglass because the district court's order appointing a receiver as debtor in possession was contrary to Section 105(b). Section 105 provides that "a court may not appoint a receiver in a case under this title." 11 U.S.C. § 105(b). See also In re Cassidy Land & Cattle Co., Inc., 836 F.2d 1130, 1133 (8th Cir. 1988) ("The power of the bankruptcy judge precluded by section 105(b) of the Bankruptcy Code is the power to appoint a receiver for the estate in lieu of a trustee.") (citing In re Memorial Estates, Inc., 797 F.2d 516, 520 (7th Cir. 1986)).

[3] The presence of a receiver was also critical in other cases relied upon by the court in Burton Douglass. See Sec. & Exch. Comm'n v. First Fin. Grp. of Texas, 645 F.2d 429, 439-40 (5th Cir. 1981) (as receiver appointed was required

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

the Chapter 11 Cases are distinguishable from Co Petro.

In particular, the SEC has appeared in the Chapter 11 Cases, has suggested that it is the Debtors' largest unsecured creditor, represents some but not all of the Debtors' creditors, and has requested that the Chapter 11 Cases be transferred to Massachusetts where it will likely seek dismissal – all while the TRO prohibits the use of the Debtors' assets to preserve the estates. Therefore, unlike in Co Petro, the portions of the TRO that violate Section 362(a) and that are not excepted under Section 362(b)(4) frustrate the Bankruptcy Court's jurisdiction because they ruin the Debtors' possibility of maximizing their estates and reorganizing their business for the benefit of *all* their creditors.[5]

Consequently, as portions of the TRO completely frustrate the Bankruptcy Court's jurisdiction by eliminating the use of any funds in the Chapter 11 Cases – a fact not present in Burton Douglas – this Court should not rely on Burton Douglas.[6]

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(continued)

to deliver estate property to bankruptcy trustee, appointment of receiver and asset freeze did not offend bankruptcy court's jurisdiction); S.E.C. v. Wolfson, 309 B.R. 612, 620 (D. Utah 2004) (citing Co Petro for the proposition that the automatic stay provision does not divest the district court of jurisdiction to issue an order to aid the receiver in collecting and preserving property of the estate because by directing return of funds to the receiver would in no way frustrate the jurisdiction of the bankruptcy court).

[4] The term "Reply" as used herein refers to the *Reply to U.S. Securities and Exchange Commission's Objection to Debtors' Motion for Order Determining That: (I) Portions of the Temporary Restraining … Violate the Automatic Stay, Etc.* [ECF No. 151].

[5] Furthermore, as noted in the Reply, Section 362(b)(4) was amended after Co Petro and, as discussed in S.E.C. v. Brennan, 230 F.3d 65 (2d Cir. 2000), the legislative history of the 1998 amendments provides that the amendments "should not be read to expand the exceptions to the automatic stay ***to cases*** where governmental units are merely seeking to exercise control of a debtor's property to satisfy debt." See Brennan, 230 F.3d at 74 (citing 143 cong. Rec. E2305 (1998) (statement of Rep. Conyers, Ranking Member of the Judiciary Committee); 143 cong. Rec. H10951 (1997) (statement of Rep. Gilman on behalf of Rep. Hyde, Chairman of the Judiciary Committee) (emphasis added).

[6] Furthermore, unlike in the Chapter 11 Cases, the debtors in Burton Douglas did not argue that the Missouri district court order violated Section 362(a)(4) as an act creating a lien on estate property. As noted in the Reply, although Section 362(b)(4) provides an exception to operation of the automatic stay as to subsections (a)(1), (a)(2), (a)(3), and (a)(6) of Section 362, it *does not* except subsection (a)(4)'s stay against "any act to create, perfect, or enforce a lien against property of the estate." See 11 U.S.C. §§ 362(a)(4), (b)(4). Portions of the TRO created a "lien" or "judicial lien" upon estate property as defined in 11 U.S.C. §§ 101(37) & (38). As such, portions of the TRO (or any preliminary injunction) violated Section 362(a)(4) of the automatic stay because portions of the TRO constituted an act to create a lien upon property of the Debtors' estate. The Burton Douglas court did not consider this argument and therefore, no court has ruled on the same.

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

2. The Chapter 11 Cases are Factually Distinct from *Burton Douglas*.

In Burton Douglas, the debtors each filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code on January 8, 2012. See *Emergency Motion to Debtors for Dismissal of Cases Pursuant to 11 U.S.C. § 1112(b)* (the "**Dismissal Motion**"), attached hereto as **Exhibit 1.** On January 17, 2012, the SEC filed an action in the Missouri district court (the "**Missouri Action**") and sought the appointment of a receiver and an asset freeze, which relief the Missouri district court granted that same day. See id. at ¶¶ 6-10. Following entry of the orders, on January 23, 2012, the receiver filed an emergency motion for dismissal of the bankruptcy cases. See generally id**.** The receiver informed the bankruptcy court that the Chapter 11 petitions were filed solely as a preemptive attempt to circumvent regulatory authorities and avoid the assumption of control of their respective assets by a receiver or other party acting on behalf of the public welfare. See id. at ¶ 23.

In seeking dismissal of the bankruptcy cases, the receiver informed the bankruptcy court that the district court had empowered and authorized the receiver to take possession of all such assets and to administer them for the benefit of defrauded investors. See id. at ¶¶ 12-13. The receiver further stated that by appointing the receiver, the district court determined that placing the entities in an equitable receivership under the sole management and authority of the receiver was in the best interest of the debtor entities. See id. at ¶ 21. Consistent therewith, the receiver also entered into a consent to the SEC's request for a permanent injunction in the Missouri Action. See *Plaintiff's Notice of Filing Consent of Defendants Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP; and Gryphon Investments III, LLC to Judgment of Permanent Injunction and Other Relief and Request for Entry of Judgment*, attached hereto as **Exhibit 2.**

The underlying facts in Burton Douglas are dramatically different than those present in the Chapter 11 Cases. First and foremost, the Missouri district court appointed a receiver in the Missouri Action who was ultimately able to control the frozen assets for the benefit of creditors. The receiver was tasked with deciding how or whether to continue operations. Here, no receiver has been appointed thus making the asset freeze a death knell of any future operations of the

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

Debtors instituted solely by the SEC without any independent decision making.

Second, the debtor entities identified in Burton Douglas were investment and investment management funds without any legitimate business other than collecting investments. See 2012 WL 2154903, at *1. Thus, the debtor entities in Burton Douglas did not earn any revenue which was unrelated to the alleged securities fraud, and as a result, all of the debtor entities' revenues were subject to disgorgement. The debtors in Burton Douglas, therefore, did not have any funds aside from the alleged fraud to operate with and the debtors had nothing to reorganize. Here, the Debtors have a legitimate business which, without question, has generated significant revenue.

Third, the debtors in Burton Douglas commenced the Chapter 11 proceedings *solely* to frustrate the SEC's efforts to take enforcement action. Here, unlike the debtors in Burton Douglas, even assuming the Debtors' products constituted securities, which they do not, the SEC acknowledges that the Debtors earned revenue unrelated to the sale of the alleged securities. Moreover, the Debtors commenced these Chapter 11 Cases to effect a reorganization, to reorganize their products and to develop a going-forward business plan, not to frustrate any on-going investigations. In fact, the Debtors have, and will continue, to work with the authorities to assist any on-going investigations.

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Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

As the procedural status and factual predicates evidenced in Burton Douglas are vastly different than those presented in the Chapter 11 Cases, the Supplement fails to enhance or reinforce the meandering argument advanced by the SEC at the May 2, 2014 hearing.

DATED this 5th day of May, 2014.

GORDON SILVER

By: /s/ *Mark M. Weisenmiller*
GREGORY E. GARMAN, ESQ.
THOMAS H. FELL, ESQ.
TERESA M. PILATOWICZ, ESQ.
MARK M. WEISENMILLER, ESQ.
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169

AND

NANCY A. MITCHELL *(pro hac vice)*
MARIA J. DICONZA *(pro hac vice)*
JOSEPH P. DAVIS *(pro hac vice)*
GREENBERG TRAURIG, LLP
The MetLife Building
200 Park Avenue
New York, New York 10166
Proposed Counsel for the Debtors
and Debtors in Possession

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: **ACARTHA GROUP, LLC**, Debtor.	)	Chapter 11 Case No. 12-10123-BLS **Hearing Date: TBD** **Objection Deadline: TBD**
In re: **ACARTHA TECHNOLOGY PARTNERS, LP**, Debtor.	)	Chapter 11 Case No. 12-10124-BLS **Hearing Date: TBD** **Objection Deadline: TBD**
In re: **MIC, VII, LLC**, Debtor.	)	Chapter 11 Case No. 12-10125-BLS **Hearing Date: TBD** **Objection Deadline: TBD**

EMERGENCY MOTION OF DEBTORS FOR DISMISSAL OF CASES PURSUANT TO 11 U.S.C. § 1112(b)

COMES NOW each of Acartha Group, LLC, Acartha Technology Partners LP and MIC VII, LLC (individually, a "Debtor", and together the "Debtors"), acting by and through Claire M. Schenk, the duly-appointed Receiver for each Debtor and related entity Gryphon Investments III, LLC[1] (the "Receiver"), and with the assistance of the undersigned counsel, moves this Court for an Order (a) dismissing their respective Chapter 11 cases pending before this Court for "cause" pursuant to 11 U.S.C. § 1112(b), and (b) granting such other and further

[1] Debtors are three of the four Receivership Entities more particularly described below. Each filed bankruptcy petitions in this Court on or about January 8, 2012 as follows: In re Acartha Group, LLC, Case No. 12-10123-BLS Bankr. D. Del.); In re Acartha Technology Partners, LP, Case No. 12-10124-BLS (Bankr. D. Del.); and In re MIC VII, LLC, Case No. 12-10125-BLS (Bankr. D. Del.). The Debtors' former primary manager, Burton Douglas Morriss, filed for Chapter 11 relief on or about January 8, 2012 in the Bankruptcy Court for the Eastern District of Missouri as Case No. 12-40164.

relief as may be just and proper under the circumstances. In support of this Motion, each of the Debtors states:

Jurisdiction and Venue

1. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. The statutory predicate for the relief requested herein is found at 11 U.S.C. §§ 105 and 1112(b).

Background

3. Each of the Debtors filed a voluntary petition for relief with this Court under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on or about January 8, 2012 (the "Petition Date") commencing the proceedings numbered as above referenced.

4. The principal place of business for each Debtor is in Clayton, Missouri. Acartha Group, LLC, also maintains an office in East Brunswick, New Jersey. Upon information and belief, Debtors' business records are located in Clayton, Missouri and East Brunswick, New Jersey.

5. Each Debtor was formed and exists under Delaware law. Acartha Group was established as a private equity fund management company. Each of MIC VII and Acartha Technology is a private equity fund formed to invest in early to mid-stage companies primarily in the financial services and technology sectors. Reference is made to filings in the SEC Case described below for further details regarding the business of Debtors.

6. On January 17, 2012, the United States Securities and Exchange Commission (the "SEC") filed its *Complaint for Injunctive and Other Relief* (the "Complaint") against Burton Douglas Morriss ("Morriss"), Acartha Group, LLC, Acartha Technology Partners, LP, MIC VII, LLC, Gryphon Investments III, LLC and Morriss Holdings, LLC (collectively, the "SEC Defendants") in the United States District Court for the Eastern District of Missouri (the "Missouri District Court"), Case No. 4:12-cv-00080-CEJ (the "SEC Case"). *See* Complaint (SEC Case, Dkt. No. 1).

7. Papers filed by the SEC in the SEC Case allege, among other things, that:

- From 2005 until the present, Morriss, through Debtors and other investment entities he controlled, defrauded investors by transferring more than $9 million in investor funds to himself and a related company, Morriss Holdings, LLC.
- Morriss, Debtors and other investment entities Morriss controlled made these transfers without disclosing to or seeking approval of investors.
- The transfers resulted not only in the misappropriation of investors' money, but the dilution of their shares of the Receivership Entities (as defined below) investments.
- Approximately 97 investors invested at least $88 million in Debtor Acartha Group, a private equity fund management company Morriss controlled, and the funds and other entities it managed – MIC VII, ATP, and Gryphon Investments.
- Those investments are now at risk as both Acartha Group and the investment entities controlled by Morriss are facing a financial shortfall.

8. Relief sought in the SEC Case included the immediate appointment of a receiver for Acartha Group, LLC, Acartha Technology Partners, LP, MIC VII, LLC, and Gryphon Investments III, LLC (collectively, the "Receivership Entities") to: (a) administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, (b) act as sole and exclusive managing member or partner of the

Receivership Entities, (c) maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the Receivership Entities' estate, (d) marshal and safeguard all of the assets of the Receivership Entities, and (e) take whatever actions are necessary for the protection of investors. *See* Emergency Motion for Appointment of Receiver and Memorandum of Law in Support (SEC Case, Dkt. No. 3), attached hereto as **Group Exhibit A** and incorporated herein, and Exhibits to Motion (SEC Case, Dkt. No. 4).

9. The SEC additionally sought to immediately freeze the assets of the Receivership Entities and for certain other emergency relief. *See Ex Parte* Emergency Motion for Asset Freeze and Other Relief and Memorandum of Law in Support (SEC Case, Dkt. No. 6), attached hereto as **Group Exhibit B** and incorporated herein, and other declarations and exhibits filed in support thereof (SEC Case, Dkt. No. 18).

10. On January 17, 2012, the Missouri District Court granted (a) the SEC's emergency motion for the appointment of a receiver pursuant to its Order Appointing Receiver (the "Receivership Order"); and (b) the SEC's emergency motion to freeze assets, pursuant to a certain Asset Freeze Order and Other Emergency Relief (as modified by the Missouri District Court's supplemental Order entered January 19, 2012, the "Asset Freeze Order").

11. The Receivership Order appoints the Receiver as receiver for the Receivership Entities, including the Debtors, with the full and exclusive power, duty and authority to:

> administer and manage the business affairs, funds, assets, choses in action and other property of the [Receivership] Entities; operate as the sole and exclusive managing member or partner of the [Receivership] Entities; maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the estates of the [Receivership] Entities; marshal and safeguard all of the assets of the [Receivership] Entities and take whatever actions are necessary for the protection of investors[.]

See Receivership Order (SEC Case, Dkt. No. 16), attached hereto as **Exhibit C** and incorporated herein.

12. Further pursuant to the Receivership Order, the Receiver is authorized, empowered and directed, among other things, to: (a) take immediate possession of all property, assets and estates of every kind of the Receivership Entities, including the Debtors, and to administer such assets as is required to comply with the Receivership Order; (b) investigate the manner in which the Receivership Entities' affairs were conducted and institute actions and legal proceedings for the benefit and on behalf of the Receivership Entities and their investors and other creditors; and (c) defend, compromise or settle legal actions involving the Receivership Entities. *See* Receivership Order, **Exhibit C**, at pp. 2-4.

13. Additionally under the Receivership Order, the Receiver is "fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to" the Receivership Entities. *See* Receivership Order, **Exhibit C**, at p. 6. The Receivership Order further provides (at pp. 8-9 thereof) that the Receiver shall succeed to all rights and powers of managing member and/or managing partner of the Receivership Entities and shall have the sole and exclusive right and authority to take all actions necessary in such capacity, including, but not limited to, filing bankruptcy petitions on behalf of the Receivership Entities and to act as debtor-in- possession, subject to further order of the Bankruptcy Court.

14. Pursuant to the Asset Freeze Order (SEC Case, Dkt Nos. 17 and 30), attached hereto as **Exhibit D** and incorporated herein, the Missouri District Court ordered, among other things, that:

- The Receivership Entities, including Debtors, are restrained from taking action relative to their respective assets except at the direction of the Receiver (*See* Asset Freeze Order, **Exhibit D**, at pp. 2-3).

- The automatic stay arising under 11 U.S.C. § 362 does not apply (*See* Asset Freeze Order, **Exhibit D**, at p. 3).

- The Missouri District Court determines the effect any bankruptcy proceeding may have on the receivership established thereby (*See* Asset Freeze Order, **Exhibit D**, at p. 3).

- Detailed accountings are required to be provided on an expedited basis by the Receivership Entities and Morriss (*See* Asset Freeze Order, **Exhibit D**, at p. 4).

- Expansive and expedited discovery is permitted respecting the Receivership Entities and Morriss (*See* Asset Freeze Order, **Exhibit D**, at p. 6).

15. The Debtors' Chapter 11 cases are in their infancy; however, certain significant deadlines required to maintain these proceedings are looming. Endeavoring to meet these deadlines will only duplicate efforts of the Receiver being undertaken in accordance with the orders of the Missouri District Court and offers no benefit to parties in interest. For example, the deadline for filing and serving Schedules of Assets and Liabilities and Statements of Financial Affairs in each of the Debtor's cases is January 23, 2012. Initial interviews of the Debtors with the Office of the U.S. Trustee remain to be conducted. Morriss, a resident of St. Louis, Missouri, and the primary manger of the Debtors prior to the Receiver's appointment, is the subject of a Chapter 11 proceeding pending in the Bankruptcy Court for the Eastern District of Missouri. His ability and willingness to provide reliable information on behalf of Debtors in this forum is uncertain. A meeting of creditors is scheduled in Morriss' case in St. Louis on February 7, 2012. Under the circumstances, allowing the Receiver to manage the affairs of Debtors and investigate Morriss through the Missouri proceedings makes the most sense.

16. Further, prior to the appointment of the Receiver, Debtors engaged counsel other than the undersigned to act in these Chapter 11 cases. The Receiver has authority pursuant to the Receivership Order to direct the course of the Debtors and to employ and manage

professionals to act on Debtors' behalf (*See* paragraphs 4, 13 and 14 of the Receivership Order, **Exhibit C**). Given the allegations set forth in the pending SEC Case, the Receiver believes it appropriate that counsel other than that initially engaged by Debtors at the outset of these proceedings be utilized to serve the interests of Debtors. As of the date of the filing of this Motion, an order approving retention of Debtors' counsel has not been entered; Debtors, acting by and through the Receiver, do not wish such an order to be entered in their cases and request that the Court refrain from entry of such order at this time. Additionally, upon information and belief, counsel filing these Chapter 11 cases may be holding funds as a retainer for services (together, the "Retainer"). Papers filed in the SEC Case suggest that Debtors may have transferred at least $88,000 to attorneys to pursue these Chapter 11 proceedings. *See* Emergency Motion for Appointment of Receiver and Memorandum of Law in Support (SEC Case, Dkt. No. 3), **Group Exhibit A**, at p. 17. These Chapter 11 proceedings have offered no benefit to parties in interest but rather appear to be an effort by the former principal of the Debtor to delay and hinder the relief sought in the SEC Receivership. Accordingly, the Retainer should be surrendered to the Receiver on behalf of the Debtors in such manner as the Receiver may direct concurrently with the dismissal of the cases.

17. Considering the foregoing, now is the optimum time to dismiss these cases to avoid further delay and minimize inefficiency and conflict in administering the assets of and claims against the Debtors.

Relief Requested: Dismissal for Cause Under § 1112(b)(1); Other as Proper

18. Section 1112(b)(1) states, in pertinent part:

> [O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall …

> dismiss a case under this chapter … if the movant establishes cause.

11 U.S.C. § 1112(b)(1).[2]

19. Cause exists to dismiss each of the Debtor's bankruptcy cases.

20. Although Section 1112 contains a list of circumstances constituting "cause" for purposes of subsection (b), the Court is not limited to the grounds enumerated in the statute. *See In re Property Management and Investment, Inc.*, 19 B.R. 202, 206 (Bankr. M.D. Fla. 1982).

21. Through the Receivership Order, the District Court vested title to the assets of the Receivership Entities in the Receiver and empowered and authorized the Receiver to take possession of all such assets and to administer them for the benefit of defrauded investors (*See* paragraphs 1 and 17 of the Receivership Order, **Exhibit C**). And pursuant to 28 U.S.C. § 754, the Receiver has the authority to gain complete jurisdiction and control over all assets of the Receivership Entities, wherever located, and therefore is in a position to centralize administration of all matters relating to the receivership. As such, an SEC receivership proceeding, like the one instituted in the SEC Case, is the proper vehicle for protecting investors of the Receivership Entities, particularly considering the prior management of the Receivership Entities is accused of malfeasance and likely unable to best serve the interests of the Receivership Entities and their legitimate constituents, due to conflicts of interest, among other reasons. By appointing the Receiver for the Receivership Entities, including the Debtors, the District Court determined that placing the Receivership Entities in an equitable receivership under the sole management and authority of the Receiver was in the best interests of the Receivership Entities.

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[2] The Receiver, as the managing member and/or partner of each of the Debtors, has standing and authority to cause the Debtors to move for dismissal of these cases because the Receiver has the authority and capacity to manage each such Debtor's bankruptcy proceeding as the applicable debtor-in-possession. *See In re Bayou Group, LLC*, 564 F.3d 541 (2d Cir. 2009).

22. Conducting the SEC receivership concurrently with proceedings in this Court unnecessarily drains judicial and other resources and creates conflicts of authority that are disadvantageous to and against the best interests of the Receivership Entities' investors, creditors and estates.

23. Furthermore, Debtors' intentions in commencing their respective Chapter 11 cases within eight days of the filing of the SEC Case are suspect in this instance. For example, the Chapter 11 petitions filed by each of Acartha Group and Acartha Technology disclose estimated assets well in excess of estimated liabilities and identify very few creditors. Acartha Technology identified only two creditors on its list of creditors holding the twenty largest unsecured claims. Circumstances suggest that none of the Debtors' cases were commenced to shelter and reorganize an entity suffering financial distress as a result of usual economic factors and risks. Rather, Debtors' bankruptcy filings appear to be a preemptive attempt to circumvent regulatory authorities and avoid the assumption of control of their respective assets by the Receiver or some other party acting on behalf of the public welfare. Debtors' commencing proceedings before this Court as a means of avoiding an SEC or other enforcement action provides sufficient cause to dismiss this case. *See In re Ofty Corp.*, 44 B.R. 479 (Bankr. D. Del. 1984); *see also In re Bilzerian*, 276 B.R. 285 (M.D. Fla. 2002) (affirming dismissal of Chapter 7 bankruptcy case upon motion of SEC and court-appointed receiver); *In re First Financial Enterprises, Inc.*, 99 B.R. 751 (Bankr. W.D. Tex. 1989) (deciding case under 11 U.S.C. §§ 305 and 1112); *In re Horizon Hospital, Inc.*, 10 B.R. 672, 675 (Bankr. M.D. Fla. 1981) (a fraudulent or improper invocation of the bankruptcy court's jurisdiction is certainly "cause" for dismissal).

Conclusion; Final Prayer for Relief

WHEREFORE, each of the Debtors, acting by and through Receiver Claire M. Schenk, respectfully requests that the Court enter an Order dismissing each of their respective Chapter 11 proceedings before this Court for cause under 11 U.S.C. § 1112(b)(1), requiring the Retainer be delivered to the Receiver on behalf of the Debtors in such manner as the Receiver may direct, and for such other and further relief as the Court deems just and proper.

Dated: January 23, 2012

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer
Evelyn J. Meltzer (DE Bar No. 4581)
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
Wilmington, DE 19899-1709
Tele: 302-777-6500
Fax: 302-421-8390
Email: meltzere@pepperlaw.com

-and-

THOMPSON COBURN LLP

Cheryl A. Kelly, E.D. Mo. #36821MO
Kathleen Kraft, E.D. Mo. #58601MO
One US Bank Plaza, Suite 2700
St. Louis, Missouri 63101
Tele: 314-552-6000
Fax: 314-552-7000
Email: ckelly@thompsoncoburn.com
kkraft@thompsoncoburn.com

Attorneys for Debtors acting by and through Receiver Claire M. Schenk

Group Exhibit A

Emergency Motion for Appointment of Receiver and Memorandum of Law in Support

Exhibit B

Ex Parte Emergency Motion for Asset Freeze and Other Relief and Memorandum of Law in Support

Exhibit C

Receivership Order

Exhibit D

Asset Freeze Order

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO. 12-CV-00080-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 NOTICE OF FILING CONSENT OF DEFENDANTS ACARTHA GROUP, LLC; MIC VII, LLC; ACARTHA TECHNOLOGY PARTNERS, LP; AND GRYPHON INVESTMENTS III, LLC TO JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AND REQUEST FOR ENTRY OF JUDGMENT

Plaintiff Securities and Exchange Commission files the Consent to Permanent Injunctions and Other Relief of Claire M. Schenk, the court-appointed Receiver of Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP; and Gryphon Investments III, LLC (collectively, the "Investment Entities") and the Proposed Judgment to which the Receiver has consented. The Commission received the Receiver's consent on March 6, 2012. If the Court enters the Judgment, then the only remaining issues in this case as to the Investment Entities

would be the amounts of disgorgement and civil penalty. The Receiver and the Commission will attempt to resolve these remaining issues in the future.

March 6, 2012

Respectfully submitted,

By: s/ Adam L. Schwartz
Adam L. Schwartz, Esq.
Senior Trial Counsel
Court ID No. A5501169
Direct Dial: (305) 982-6335
Email: 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 on March 6, 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.
Kevin Carnie, 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