

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 20-CV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*

Defendants.

**RECEIVER’S UNOPPOSED MOTION TO ALLOCATE,
BUT NOT DISTRIBUTE, PROPOSED DISTRIBUTIONS
ATTRIBUTABLE TO CLAIMS INVOLVING RODNEY ERMEL**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities,¹ by and through his undersigned counsel, files this Motion to allocate, but not distribute

¹ The “Receivership Entities” are Complete Business Solutions Group, Inc. d/b/a Par Funding (“CBSG”); Full Spectrum Processing, Inc.; ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; RE Income Fund 2 LLC; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel; ABFP Income Fund 3 Parallel; ABFP Income Fund 4 Parallel; and ABFP Income Fund 6 Parallel; ABFP Multi-Strategy Investment Fund LP; ABFP Multi-Strategy Fund 2 LP; MK Corporate Debt Investment Company LLC; Fast Advance Funding LLC; Beta Abigail, LLC; New Field Ventures, LLC; Heritage Business Consulting, Inc.; Eagle Six Consulting, Inc.; 20 N. 3rd St. Ltd.; 118 Olive PA LLC; 135-137 N. 3rd St. LLC; 205 B Arch St Management LLC; 242 S. 21st St. LLC; 300 Market St. LLC; 627-629 E. Girard LLC; 715 Sansom St. LLC; 803 S. 4th St. LLC; 861 N. 3rd St. LLC; 915-917 S. 11th LLC; 1250 N. 25th St. LLC; 1427 Melon St. LLC; 1530 Christian St. LLC; 1635 East Passyunk LLC; 1932 Spruce St. LLC; 4633 Walnut St. LLC; 1223 N. 25th St. LLC; 500 Fairmount Avenue, LLC; Liberty Eighth Avenue LLC; Blue Valley Holdings, LLC; LWP North LLC; The LME 2017 Family Trust; Recruiting and Marketing Resources, Inc.; Contract Financing Solutions, Inc.; Stone Harbor Processing LLC; LM Property

pending further order of the Court, the proposed distribution attributable to claims involving Rodeny Ermel, and states:

I. Introduction and Factual Background

On August 23, 2024, the Receiver filed his Motion to (1) Approve Proposed Plan of Distribution and (2) Authorize First Interim Distribution [ECF No. 2014] (the “Distribution Motion”). The Distribution Motion is now fully briefed, and the Receiver and other interested parties have submitted proposed orders on the Distribution Motion.

In anticipation of a potential Order on the Distribution Motion, the Receiver has been analyzing information relating to the claimants who are scheduled to receive a distribution through the proposed first interim distribution for which the Receiver has requested authorization in the Distribution Motion. Through this process of confirming that the Receiver has all necessary information to issue the proposed distribution payments, the Receiver identified that two of the claimants with Allowed Claims are associated with Rodney Ermel, an accountant with Rod Ermel Associates, Inc.

The first Claimant is the Tember C. Eaton Trust (the “Trust”) (Claim No. 312). Mr. Ermel, as trustee of the Trust, submitted this claim. The Receiver has learned that two of the remainder beneficiaries of the Trust filed a lawsuit (the “Trust Litigation”) against Mr. Ermel, alleging that Mr. Ermel breached his fiduciary duties to the beneficiaries, engaged in civil theft, and failed to account to the beneficiaries for the assets within the Trust. In addition, the beneficiaries are seeking the removal of Mr. Ermel as the trustee. Attached as **Exhibit 1** is a copy of the Complaint in the Trust Litigation.

Management LLC; and ALB Management, LLC; and the receivership also includes the property located at 107 Quayside Dr., Jupiter FL 33477.

The second Claimant is Nashi, Inc. (Claim No. 311). Based on the records of the Receivership Entities, it appears that Nashi, Inc. is a corporation that Mr. Ermel and his business partner, Kenneth Bacon, used to invest their own funds, as well as the funds of certain of their clients. Attached as **Exhibit 2** is an email from Mr. Bacon to Joseph Cole Barleta in which Mr. Bacon explained that the first promissory Nashi, Inc. received from CBSG was Mr. Bacon's and Mr. Ermel's initial investment in CBSG, and that future promissory notes would be "to secure our clients' funds." The Receiver does not have any detail beyond that email to confirm how much of the Nashi, Inc. investment in CBSG is comprised of Mr. Ermel and Mr. Bacon's own funds, versus the funds of their clients.

Mr. Ermel and Mr. Bacon provided tax and accounting services for Joseph LaForte and Lisa McElhone, individually, as well as for LaForte and McElhone's business entities. The government charged Mr. Ermel and Mr. Bacon—as well as LaForte, McElhone, and Joseph Cole Barleta—with tax evasion, wire fraud, conspiracy, and related offenses. *See* Superseding Indictment, *United States of America v. LaForte, et al.*, Case No. 2:24-cr-00065-MAK (E.D. Pa. Mar. 21, 2024) ("*Tax Fraud Case*") [Doc. 15]. Specifically, Mr. Ermel and Mr. Bacon were charged with assisting McElhone and LaForte in evading federal and state taxes that were required to be paid on the tens of millions dollars McElhone and LaForte drained out of CBSG. [*Id.*].

All of the defendants in the criminal case, except for Mr. Ermel, have pled guilty to these tax crimes, or otherwise resolved these charges as part of their agreements to plead guilty to other criminal charges related to the fraudulent operation of CBSG. Mr. Bacon, the business partner who worked together with Mr. Ermel in providing these tax services to McElhone and LaForte, pled guilty to nine charges, including for conspiracy, tax evasion, and wire fraud. *See* Government's Change of Plea Memorandum, *Tax Fraud Case* (Oct. 2, 2024) [Doc. 124]. Mr.

Ermel, the only remaining defendant in these criminal cases who has not pled guilty, is scheduled for trial beginning on May 14, 2025. *See Order, Tax Fraud Case* (Nov. 8, 2024) [Doc. 160].

Due to Mr. Ermel's involvement in CBSG, as well as the pending criminal charges related to his tax and accounting services for Laforte and McElhone, and the pending dispute between the Trust's remainder beneficiaries and Mr. Ermel, as trustee of the Trust, the Receiver believes that the proposed initial distribution on the Allowed Claim for the Trust should be allocated, but not distributed to the Trust, pending further clarity regarding the dispute in the Trust Litigation. Specifically, assuming these funds are due and owing to the beneficiaries of the Trust, the Receiver believes that amounts attributable to distributions on the Trust's claim should be issued directly to those beneficiaries, and not Mr. Ermel. Alternatively, if the funds are due and owing to Mr. Ermel, the Receiver would likely advocate for recategorizing this claim (or any portion that would be attributable to Mr. Ermel) as a Class 8 Claim based on Mr. Ermel's status as an insider.²

Similarly, given that Nashi, Inc. is owned and controlled by Mr. Ermel and Mr. Bacon—both of whom have been charged (and Mr. Bacon has pled guilty) for crimes related to propping up the CBSG fraud scheme and McElhone and LaForte's evasion of taxes—the Receiver believes that the proposed initial distribution on the Allowed Claim for Nashi, Inc. should be allocated, but not distributed, pending further clarity regarding whether the funds invested through Nashi, Inc. are those of Mr. Ermel and Mr. Bacon, their clients, or some combination thereof. If some or all of the invested funds are attributable to the clients of Mr. Ermel and Mr. Bacon, the Receiver would be reluctant to distribute these funds to Nashi, Inc without assurances that the funds will, in fact, be returned to those clients. Conversely, If Mr. Ermel and/or Mr. Bason are the beneficiaries

² To be clear, the Receiver is not requesting an insider determination against Mr. Ermel or the claims he submitted for the Trust or Nashi, Inc. as part of the current motion, but may seek this relief at a later time, if appropriate.

of, and entitled to retain, any portion of the distributions to Nashi, Inc., the Receiver would likely recommend recharacterizing this claim, or portions of the claim, as a Class 8 Claim based on Mr. Ermel and Mr. Bacon's status as insiders.

II. Memorandum of Law

At the time he recommended that the claims of the Tember C. Eaton Trust and Nashi, Inc. be allowed and included in the Receiver's proposed Distribution Plan, the Receiver was not aware that there was a dispute between the beneficiaries of that Trust and Mr. Ermel about his duties as trustee of the Trust. Similarly, the Receiver was unaware that Nashi, Inc.'s investments into CBSG potentially consisted of, in part, personal investments from Mr. Ermel and his business partner, Mr. Bacon.

Given their involvement in CBSG's underlying fraud scheme, Mr. Ermel and Mr. Bacon would likely be properly characterized as insiders. As this Court has previously held, "courts uniformly approve receivers' denials of insider claims." *See Order on Claims Motion* [ECF No. 1976] at 40. Courts have broad discretion making these determinations and properly exclude the claims of "those involved in the fraudulent scheme." *See, e.g., S.E.C. v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (approving distribution plan that excluded "those involved in the fraudulent scheme" and describing the plan as "eminently reasonable and [] supported by caselaw"); *Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 660-61, 667 (6th Cir. 2001) (upholding distribution plan that reduced the recovery for any investor who received a commission for referring additional investors); *S.E.C. v. Pension Fund of Am. L.C.*, 377 F. App'x 957, 963 (11th Cir. 2001) (upholding distribution plan that excluded a sales agent who received commissions for recruiting investors when the agent had no knowledge the pension fund was a fraudulent investment scheme).

CGSG operated as a Ponzi scheme. Through this fraudulent operation, McElhone and LaForte were able to extract tens of millions of dollars from the company for their own personal benefit. *See* Order Granting Receiver’s Motion to (1) Approve Proposed Treatment of ZClaims and (2) for Determination of Ponzi Scheme [ECF No. 1976] at 24. These funds were not legitimate profits of the company, which operated at a substantial loss for eight straight years. *Id.* Mr. Ermel and Mr. Bacon assisted McElhone and LaForte in this fraudulent scheme by preparing tax returns that allowed them to hide tens of millions of dollars in taxable income. Moreover, the allegations in the indictment against Mr. Ermel overlap substantially with the SEC’s claims that led to the appointment of the Receiver. For example, the Government has alleged that:

- Mr. Ermel established the corporate structure for CBSG, whereby McElhone would be the nominee owner, which was for the purpose of concealing LaForte’s identity and involvement with the company from investors;
- Mr. Ermel received “commissions” for referring additional investors to CBSG;
- Mr. Ermel was involved in creating the “flow-through” tax structure for Eagle Six and Heritage, whereby those entities received quarterly “consulting agreement” payments based on the total funding CBSG and its affiliated companies advanced to merchants;
- Mr. Ermel categorized those consulting payments as the repayment of non-existent loans, which was intended to underreport the profit McElhone would have otherwise been required to include in her tax returns;
- The consulting payments “financially incentivized the defendants to cause [CBSG] and [its] affiliates to fund as many MCA transactions as possible” (including through the “reload” process, which perpetuated the fraud and caused additional investor losses).

See generally Superseding Indictment, Tax Fraud Case (Mar. 21, 2024) [Doc. 15]. Given Mr. Ermel's and Mr. Bacon's substantial involvement and assistance in the underlying fraud—as well as Mr. Bacon's guilty plea to substantial criminal charges related to this misconduct—the Receiver recommends that any distributions to the Tember C. Eaton Trust or Nashi, Inc. be withheld pending further order of this Court.

If, ultimately, the designated recipients of any distributions on these two claims are the beneficiaries of the Trust (with respect to the Trust's claim) and clients of Mr. Ermel and Mr. Bacon (with respect to Nashi's claim), the Receiver would recommend allowing these distributions to be paid, subject to appropriate guidelines to ensure that the funds are delivered to the proper recipients. The Receiver envisions a procedure similar to that which the Receiver has proposed for distributions to Agent Funds, whereby the Receiver has requested permission to bypass certain Agent Funds and make direct distributions to the retail investors in those agent funds in circumstances where the Receiver is uncertain that the agent fund manager will properly allocate and issue any distributions to the retail investors.

Accordingly, to ensure appropriate treatment of any distributions on the claims of the Trust and Nashi, Inc., the Receiver recommends that the proposed distributions for these claims be allocated, but not distributed, to the Trust or Nashi, Inc at the current time. The Receiver also requests that the Court order Mr. Ermel, as the individual who submitted the claims for the Trust and Nashi, Inc., to cooperate with the Receiver and respond fully to all reasonable requests for information from the Receiver to confirm (a) whether the full amount of the allocated distributions to the Trust will be distributed to the beneficiaries of that Trust, and (b) whose funds comprise the Nashi, Inc. investment in CBSG and how Nashi, Inc. would intend to allocate any proposed distributions it receives between and among those clients/investors.

III. Conclusion

WHEREFORE, the Receiver requests that the Court grant the following relief regarding the claims of the Trust and Nashi, Inc.: (1) upon the entry of an Order on the Distribution Motion, any distributions to the Trust and Nashi, Inc. should be allocated, but not distributed, to those claimants pending further order of the Court; and (2) Mr. Ermel should be ordered to cooperate with the Receiver and respond fully to all reasonable requests for information from the Receiver to confirm (a) whether the full amount of the allocated distributions to the Trust will be distributed to the beneficiaries of that Trust, and (2) whose funds comprise the Nashi, Inc. investment in CBSG and how Nashi, Inc. would intend to allocate any proposed distributions it receives between and among those clients/investors. A proposed Order granting the Motion is attached as **Exhibit 3**.

CERTIFICATION REGARDING PRE-FILING CONFERENCE

Pursuant to Local Rule 7.1, the undersigned counsel for the Receiver certifies that he has conferred with counsel for Rodney Ermel regarding the relief requested in this Motion, and that counsel for Mr. Ermel has confirmed that Mr. Ermel does not oppose the relief requested herein.

Dated: December 10, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 10, 2024, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA

Exhibit “1”

<p>District Court of El Paso County, Colorado 270 South Tejon St. Colorado Springs, CO 80903 (719) 452-5000</p>	<p>DATE FILED April 22, 2024 4:56 PM FILING ID: 4B92870AA17B3 CASE NUMBER: 2024PR30428</p>
<p>In the Matter of:</p> <p>TEMBER C. EATON TRUST u/a/d May 30, 2017</p> <p>Petitioners:</p> <p>Margaret Gayle Selinger-Eaton and Justin Eaton, remainder beneficiaries of the Tember C. Eaton Trust</p> <p>Respondent:</p> <p>Rodney Ermel, a/k/a Rod Ermel, as Trustee of the Tember C. Eaton Trust</p>	<p style="text-align: center;">▲ Court Use Only ▲</p>
<p><i>Attorneys for Margaret Gayle Selinger-Eaton and Justin Eaton, Remainder Beneficiaries</i> Letitia M. Maxfield, #44108 Samuel O. Kesten, #57720 WADE ASH LLC 5251 DTC Parkway, Suite 825 Greenwood Village, Colorado 80111 Phone Number: 303-322-8943 Fax Number: 303-320-7501 E-mail: lmaxfield@wadeash.com E-mail: skesten@wadeash.com</p>	<p>Case Number:</p>
COMPLAINT	

COME NOW, Margaret Gayle Selinger-Eaton and Justin Eaton, remainder beneficiaries to the Tember C. Eaton Trust u/a/d May 30, 2017, Petitioners, by and through the law firm of Wade Ash LLC, and submit this Complaint against Rodney Ermel, a/k/a Rod Ermel, as Trustee of the Tember C. Eaton Trust, Respondent, and in support thereof states as follows:

Summary Statement

Petitioner Margaret Gayle Selinger-Eaton (“Peggy”) is the paternal aunt of Tember Eaton, deceased (“Tember”). Shortly after the death of Thomas Eaton (Tember’s Father), the Tember C. Eaton Trust u/a/d May 30, 2017¹ (“the Trust”), was established for the benefit of Tember. By court order issued June 29, 2023, Peggy, Michael McCarthy, Kathleen Jesse Joslin, and Justin Eaton, are the surviving remainder beneficiaries of the Trust.²

Peggy, as a beneficiary, sought information regarding the assets and final distribution of the Tember C. Eaton Trust from Respondent, who had acted at all times as the Trustee. Prior to the Court declaring Petitioners as beneficiaries to The Trust, Respondent argued he was not obligated to provide any such information on the basis that he could not determine whether Petitioners were beneficiaries. It took a lengthy time period, and the assistance of legal counsel and the Court, before Respondent disclosed any information to the remainder beneficiaries of the Trust.

Specifically, Peggy, through counsel, sent a letter to the Respondent, through his legal counsel, on May 25, 2022, requesting records of trust administration available to any qualified beneficiary under Colorado Uniform Trust Code.³ Significantly, the Trustee represented to the Court in El Paso County District Court, Case No. 2018PR030734, on August 23, 2021, that the balance of the Trust was \$361,744.37.

Ultimately, on or about, October 6, 2023, *more than five years after Tember’s death*, and only after being compelled by order of the Court⁴, Respondent disclosed a summary accounting (“Summary Accounting”)⁵ of the Trust, pursuant to court order, showing the balance of the Trust was diminished to a total value of \$1,738.37 as of June 30, 2023. The Respondent has declined, despite repeated requests, to provide access to the records of trust administration including, but not limited to, supporting documentation for the Summary Accounting.

¹ Exhibit 1 – Tember C. Eaton Trust u/a/d May 30, 2017.

² See Exhibit 2 – Order Granting Motion for Declaratory Relief.

³ See Exhibit 3 – Letter to Rod Ermel, dated May 25, 2022.

⁴ See Exhibit 4 – Order: Combined Motion for Reconsideration, Motion to Stay Order and Motion for Determination of Standing.

⁵ Exhibit 7 – Summary Accounting, Bates Labeled Tember Eaton Trust documents001-014.

The financial transactions and distributions disclosed in the Summary Accounting give rise to the claims stated herein, including, but not limited to, breach of fiduciary duties, demand for a full and complete accounting, breach of trust, surcharge, imposition of constructive trust, unjust enrichment, and civil theft.

Parties, Venue, and Jurisdiction

1. Tember created the Trust, by agreement dated May 30, 2017. During the life of Tember, the Tember C. Eaton Trust was revocable in Tember's sole discretion and amendable upon the consent of the Trustee. Respondent was the initial Trustee of the Trust.

2. Tember died on or about May 6, 2017.

3. Tember's will devised her residuary probate estate to the Trust.⁶

4. This Court may take judicial notice pursuant to C.R.E. 201, that Rod Ermel as Trustee of the Trust by has submitted to the jurisdiction and venue of the El Paso County District Court, State of Colorado, Estate of Tember C. Eaton, Case No. 2018PR30734 ("Estate" or "Estate Matter").⁷

5. Pursuant to §§ 15-5-202, 15-5-203, and 15-5-204 of the Colorado Uniform Trust Code this Court has subject-matter jurisdiction over this matter, personal jurisdiction over the Trustee and venue is proper.

6. The Estate of Tember C. Eaton is administered in the El Paso County District Court, Case No. 2018PR030734.

Factual Averments

7. The Tember C. Eaton Trust was created on May 30, 2017.

⁶ Exhibit 5 – Will of Tember C. Eaton, admitted to probate in El Paso County District Court, State of Colorado, Case No. 2018PR30734.

⁷ Exhibit 6 – Response to Petition for Declaratory Judgment Under C.R.C.P. 57 and Review of Trust Records and Accountings, dated December 26, 2022, filed in El Paso County District Court, State of Colorado, Case No. 2018PR30734.

8. Tember was the sole income and principal beneficiary of the Tember C. Eaton Trust during her lifetime.⁸

9. The Summary Accounting represents that on December 31, 2017, seven months after the Trust was created, the assets of the Trust totaled \$2,027,707.52.

10. Tember died on June 7, 2018.

11. Tember was not married, and she had no descendants. Accordingly, after the payment of final expenses, the balance of the Trust upon Tember's death was to be distributed pursuant to Article 8 of the Trust.

ARTICLE 8 - REMOTE CONTINGENT DISPOSITION

If at any time there is no person or entity qualified to receive final distribution of the trust estate or any part of it, then the portion of the trust estate with respect to which such failure of qualified recipients has occurred shall be distributed one-half to those persons who would inherit it had settlor then died intestate and unmarried owning such property, and one-half to those persons who would inherit it had settlor's spouse then died intestate and unmarried owning such property, all as determined and in the proportions provided by the laws of Colorado then in effect.

12. Tember was survived by her mother, Donna Eaton.

13. Donna Eaton died on February 12, 2021.⁹

14. On July 28, 2023, the Trustee represented to the Court in the Estate Matter that he distributed the entire balance of the Trust to Donna Eaton prior to her death in February, 2021.¹⁰

⁸ Exhibit 1 - Article 2, Section 2.3 of the Tember C. Eaton Trust.

⁹ In addition to the assets of the Trust, the Respondent, in his capacity as Personal Representative of the Tember C. Eaton Estate, represents in the Decedent's Inventory that Tember's net probate Estate was valued at \$194,390.32. It is unclear from the Respondent's records and accountings, whether these assets were ever added to the balance of the Trust, per the terms of Tember's will.

¹⁰ Exhibit 7 – Combined Motion for Reconsideration, Motion for Stay Order and Motion for Determination of Standing, ¶¶ 3-4.

15. However, on August 23, 2021, more than six months after Donna's death, the Trustee represented to the Court in the Estate Matter that the balance of the Trust was \$361,744.37.¹¹

16. Moreover, the Summary Accounting does not account for a single distribution to either Tember or Donna between January 1, 2018, through June 30, 2023.

17. Similarly, the Trustee has failed to provide any other supporting documentation, trust records, or evidence to corroborate his representation that the \$2,074,514.32 in cash and investments held by him as Trustee as of December 31, 2018¹² was distributed to either Tember, before her death, or Donna, prior to her death.

18. In fact, the only distribution to a beneficiary shown on the Summary Account occurred sometime in 2017, in the amount of \$50,205.30.¹³

Summary Accounting

19. More than five years after Tember's death and only after being compelled by an order of the Court, Respondent produced an incomplete, incongruous, and confusing set of information purporting to account for his actions as trustee from the time period of January 2017 to June 30, 2023.

20. Before detailing the troublingly inconsistencies in the Summary Trust accounting provided to the remainder beneficiaries by the Trustee of the Trust, it is important to note that Rodney Ermel, Trustee, is a certified public accountant, in the State of Colorado, License Number CPA.0006012, issued on December 16, 1980. The Trustee's CPA is license is still "active" as of the date of this filing.

¹¹ Conflictingly, the Summary Account provided by the Trustee on October 6, 2023, represents that as of December 31, 2020, the assets of the Trust totaled \$292,226.23.

¹² Exhibit 7 – Summary Accounting, Page 11.

¹³ Exhibit 7 – Summary Accounting, Page 13.

Primary source verification. License information provided by the Colorado Division of Professions and Occupations, established by 24-24-102 C.R.S.

Name	Public Address
Rodney Louis Ermel	675 Southpointe Ct, #100 Colorado Spgs, CO 80906

License Information

Colorado Certificate holders passed the AICPA Ethics course within 2 years immediately preceding their Colorado application and achieved a minimum score of 90%. Colorado does not provide exam scores. Licensees can obtain their exam score from NASBA, for a fee, by visiting www.nasbastore.org.

Minimum Training Requirements on the Date of First Issue:

- Prior to 7/1/2015 = 150 hours of education OR 120 hours of education + 1 year of work experience (1800 hours verified by a CPA)
- After 7/1/2015 = 150 hours of education + 1 year of work experience (1800 hours verified by a CPA)

License Number	License Method	License Type	License Status	Original Issue Date	Effective Date	Expiration Date
CPA.0006012	Examination	Certified Public Accountant	Active	12/16/1980	12/01/2023	11/30/2025

21. Pursuant to § 15-5-806 of the Colorado Uniform Trust Code, "...[a] trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.”

22. Based on the Summary Accounting, at the end of 2017, The Trust held \$2,027,707.52.¹⁴ Based on the Summary Accounting, at the end of 2023, The Trust held \$1,738.37.¹⁵

23. Based on the Summary Accounting, a grand total of \$50,205.30 was distributed to beneficiaries throughout the time reported. This distribution is reported in the “Liabilities & Equity” portion of the December 31, 2017 Balance Sheet.¹⁶ No other distributions are noted in the entire Summary Accounting. It is unclear if this represents a singular distribution or is cumulative for the year 2017.

24. Additional inconsistencies abound in the Summary Accounting. In 2018, Respondent reports losses to the Trust estate of \$145,089.00 in the Profit & Loss report, and yet, according to the Balance Sheet for the year-end 2018, the Trust estate gained \$46,806.80. At year-end 2018, per the Summary Accounting, the Trust Estate held \$2,074,514.32.

25. In 2017, the Summary Accounting Profit & Loss report shows \$20,233.50 for “Attorney Fees,” \$20,960.00 for “Rent,” and \$40,120.76 for “Trustee Fees.” In total, the 2017 expenses charged to The Trust were \$90,778.71.¹⁷ Respondent provides no further information

¹⁴ Exhibit 7 – Summary Accounting, Page 13.

¹⁵ Exhibit 7 – Summary Accounting, Page 7.

¹⁶ Exhibit 7 – Summary Accounting, Page 13.

¹⁷ Exhibit 7 – Summary Accounting, Page 14.

nor substantiation for what these expenses were or in support of the reasonableness of the expenses paid.

26. There are no reported beneficiary distributions for 2018 in the Summary Accounting.

27. In 2018, the Summary Accounting Profit & Loss report shows \$27,687.77 for “Real Estate Sale Expenses,” \$102,653.50 for “Attorney Fees,” \$63,953.44 for “Management Fee,” In total, the 2018 expenses charged to The Trust were \$247,942.15.¹⁸ Respondent provides no further information nor substantiation for what these expenses were or in support of the reasonableness of the expenses paid.

28. In 2019, the financial transactions reported in the Summary Accounting are nonsensical. Specifically, the Summary Accounting reports that on December 31, 2018, the balance of the Trust was \$2,074,514.32.

29. The Profit & Loss report for 2019 shows net losses of \$158,124.23 in 2019.¹⁹ However, the 2019 Statement of Assets, Liabilities and Trust Equity as of December 31, 2019 reports the Trust balance as \$352,285.14. The Summary Accounting reports no distributions in 2019.

30. Simple arithmetic shows this does not add up. If the gross income and gross expenses of the Trust resulted in the depletion of the Trust assets in the amount of \$158,124.23 during 2019, the net balance of the Trust on December 31, 2019, should have been \$1,916,390.09 and not \$352,285.14.

31. Assuming, *arguendo*, that the balance of the Trust on December 31, 2019 was in fact \$352,285.14, the Trust estate was somehow inexplicably diminished by \$1,772,229.18 in less than 12 months.

32. The 2019 Profit & Loss report also shows \$120,911.00 in “Attorney Fee”, \$63,892.89 in “Management Fee,” \$30,217.51 in “PR Fee,” and \$95,624.00 in “Tax Expense.”

¹⁸ Exhibit 7 – Summary Accounting, Page 12.

¹⁹ Exhibit 7 – Summary Accounting, Page 10.

In total, the 2019 expenses charged to The Trust were \$326,443.58. Respondent provides no further information nor substantiation for what these expenses were. Respondent provides no substantiation for what these expenses were or in support of the reasonableness of the expenses paid.

33. In the year 2020, the Profit & Loss report shows losses of \$66,259.96.²⁰ Yet, the 2020 year-end Statement of Assets, Liabilities and Trust Equity shows the Trust estate balance as \$292,226.23.²¹ It is unclear from the Summary Accounting which figure is correct. By comparing the 2019 year-end balance (\$352,285.14) with the 2020 year-end balance (\$292,226.23), the balance of the Trust should have only been diminished by \$60,058.91.

34. There are no reported beneficiary distributions for 2020 in the Summary Accounting.

35. In 2020 the Profit & Loss report shows \$50,673.00 in “Attorney Fees”, \$52,676.10 in “Management Fee,” \$994.00 in “PR Fee,” and \$5,000 in “Automobile Expense”.²² In total, the 2020 expenses charged to the Trust were \$125,612.43. Respondent provides no further information nor substantiation for what these expenses were or in support of the reasonableness of the expenses paid. The total expenses in 2020 resulted in the depletion of the purported balance of the Trust by nearly 50%.

36. In the year 2021, the Profit & Loss report shows interest income, dividend income, and other income totaling \$92,823.11. It is unclear how the Trust purportedly earned \$92,823.11 in interest income and dividend income in less than one year if its beginning balance was only \$292,226.23 as of January 1, 2021. This purported earned income would represent more than a 31% return on investment in less than 12 months.

37. Moreover, during the same period of time, the Profit & Loss report shows expenses totaling \$114,283.82 and a net loss to the Trust of \$21,460.63.²³ Yet, the 2021 year-end Statement of Assets, Liabilities and Trust Equity reports a Trust balance of only \$16,545.45

²⁰ Exhibit 7 – Summary Accounting, Page 8.

²¹ Exhibit 7 – Summary Accounting, Page 7.

²² Exhibit 7 – Summary Accounting, Page 8.

²³ Exhibit 7 – Summary Accounting, Page 6.

on December 31, 2021. How the total assets of the Trust purportedly diminished in 2021 in the amount of \$275,680.78²⁴ cannot be reconciled with the information provided in the Summary Accounting.

38. There are no reported beneficiary distributions for 2021 in the Summary Accounting.

39. In 2021 the Profit & Loss report shows \$52,458.46 in “Attorney Fees”, \$47,405.75 in “Management Fee,” \$2,940.73 in “Telephone Expense,” and \$2,500 in “Professional Fees.” Respondent provides no substantiation for what these expenses were or in support of the reasonableness of the expenses paid. The total expenses in 2021 are again equal to nearly 50% the purported total value of the total Trust estate.

40. In the years 2022 and 2023, the dollar values reported in the Summary Accounting match up mathematically. By this point, however, the total Trust estate is worth less than \$20,000. Still, the Profit & Loss report shows “Professional Fees” of \$4,056.75 and “Rent Expense” of \$4,697.00 in 2022.²⁵ It is unclear whose rent the Trust paid in 2022 as Tember died in 2018, and Donna died in February, 2021. Notably, during the lifetime of Tember and Donna, the Trust never purported to pay “rent” on behalf of either of them as beneficiaries.

41. In 2023, “Professional Fees” and “Rent Expense” jointly cost the Trust \$6,060.34, leaving the remaining assets, as reported at \$1,738.37. Again, it is unclear on whose behalf the Trust was paying rent in 2023, as both Tember and Donna were deceased.

42. In total, based on the Summary Accounting, administration of The Trust from 2017 through 2023 cost nearly a million dollars (\$919,876.26). The justification for these fees cannot be found in the Summary Accounting. Further, the Trustee has repeatedly refused or ignored requests to examine the books and records of the Trust.

43. Moreover, given that Tember died in 2018, a large portion of the fees and expenses were incurred after the death of the Trust’s primary beneficiary.

²⁴ Dollar amount derived by subtracting year-end 2021 assets (16,545.45) from 2020 assets (\$292,226.23).

²⁵ This dollar amount represents approximately 50% of the remaining trust estate.

44. Most significantly, based on the Summary Accounting, if you assume that the balance of the Trust on December 31, 2017, was in fact \$2,027,707.52, and that the income and expenses reported on the Profit and Loss reports between December 31, 2017, and June 30, 2023, are accurate then at least \$1,620,292.09 of Trust assets are completely unaccounted for.

45. Based on information and belief, Tember was destitute, despite being the sole beneficiary of a trust worth, at its outset, of over two million dollars.

46. Further, the Trustee has produced no evidence supporting that the Trust made cash or in-kind distributions to Donna Eaton after Tember's death on June 7, 2018, and before Donna's death on February 12, 2021.

First Claim for Relief

Breach of Fiduciary Duties

47. The Colorado Court of Appeals, *Spacek v. Taylor*, 381 P.3d 428, 431, citing *Graphic Directions, Inc. v. Bush*, 862 P.2d 1020 (Colo. Appl. 1993) stated:

“[i]n order to recover on a claim for breach of fiduciary duty, a plaintiff must prove: (1) that the defendant was *acting as a fiduciary of the plaintiff*; 2) that he *breached a fiduciary duty to the plaintiff*; 3) that the plaintiff incurred damages; and 4) that the defendant's breach of fiduciary duty was the cause of the plaintiff's damages.”

48. Petitioners hereby incorporate the factual allegations set forth above as though more fully set forth herein.

49. Respondent was acting as a fiduciary with respect to the Tember C. Eaton Trust and owed fiduciary duties to the Petitioners as qualified beneficiaries to the Trust and as the surviving remainder beneficiaries.

50. Respondent breached one, or more, fiduciary duties owed to the Petitioners.

51. The Petitioners have suffered damages and losses.

52. Respondent's breach of fiduciary duty is the cause of the Petitioners' damages and losses.

Second Claim for Relief

Failure to Account

53. C.R.S. § 15-10-502(1)(a) provides that an interested person may petition a court for review of a fiduciary's conduct.

54. C.R.P.P 31(a) states that "[a] fiduciary accounting or report must contain sufficient information to put interested persons on notice as to all significant transactions affecting administration during the accounting period."

55. C.R.P.P 31(b) requires, "[a]n accounting or report prepared by a ... trustee ... [to] show with reasonable detail: (1) the receipts and disbursements for the period covered by the accounting or report; (2) the assets remaining at the end of the period; and (3) all other transactions affecting administration during the accounting or report period."

56. C.R.P.P 31(d) states that: "[t]he court may require the fiduciary to produce supporting evidence for any and all transactions."

57. Petitioners hereby incorporate the factual allegations set forth above as though more fully set forth herein.

58. While Respondent did produce something resembling an accounting, it is incomplete, insufficient, incongruous, and presents far more questions than it answers.

59. Petitioners allege that the breach of a fiduciary duty to account owed to Petitioners by Respondent caused Petitioners to suffer damages and losses. Accordingly, Petitioners request that the Respondent be ordered to provide a full and complete accounting, including tax returns, detailed explanation for the \$919,876.26 in expenses, accounting for the

missing \$1,620,292.09 of Trust assets, and supporting evidence for each and every transaction on behalf of the Trust.

Third Claim for Relief

Surcharge

60. Pursuant to C.R.S. § 15-10-504(2)(a): “[i]f a court, after a hearing, determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, after applying the standards of care applicable to each fiduciary in a proceeding, the court may surcharge the fiduciary for any damage or loss to the estate, beneficiaries, or interested persons. Such damages may include compensatory damages, interest, and attorney fees and costs. When allocating any such damages among fiduciaries, the court shall consider the standards of care applicable to the fiduciaries in the proceeding.”

61. Petitioners hereby incorporate the factual allegations set forth above as though fully set forth herein.

62. Petitioners allege that the breach of fiduciary duties owed to Petitioners by the Respondent caused Petitioners to suffer damages and losses. Accordingly, Petitioners request that the Respondent be surcharged under C.R.S. § 15-10-504 at an amount to be determined at trial.

Fourth Claim for Relief

Breach of Trust

63. Pursuant to C.R.S. § 15-5-1001: “...a violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.”

64. Pursuant to C.R.S. § 15-5-1002:

“(1) In addition to other remedies provided by this article 5, a trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(b) The profit the trustee made, or the benefit the trustee received, other than reasonable compensation, by reason of the breach.”

65. Petitioners hereby incorporate the factual allegations set forth above as though more fully set forth herein.

66. Petitioners more specifically allege that Respondent breached the following duties owed to them as beneficiaries of the Tember C. Eaton Trust:

Duty of Record Keeping and Identification of Trust Property

67. Pursuant to C.R.S. § 15-5-810: “...a trustee shall keep adequate records of the administration of the trust and keep trust property separate from the trustee’s own property.”

68. The Respondent breached the duty to keep adequate records of the administration of the Tember C. Eaton Trust.

Duty of Control and Protection of Trust Property

69. Pursuant to C.R.S. § 15-5-809: “...a trustee shall take reasonable steps to take control of and protect the trust property.”

70. The Respondent breached the duty to take reasonable steps to take control and protect the property of the Tember C. Eaton Trust.

Duty of Loyalty

71. Pursuant to C.R.S. § 15-5-802(1): “...a trustee shall administer the trust solely in the interests of its beneficiaries.”

72. Further, pursuant to C.R.S. § 15-5-803(3):

“(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (a) The trustee’s spouse;
- (b) The trustee’s descendants, siblings, parents, or their spouses;
- (c) An agent or attorney of the trustee; or
- (d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee’s best judgment.

(4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.”

73. Petitioners allege that each and every one of the transactions that were unfair to the remainder beneficiaries of the Tember C. Eaton Trust must be voided.

Breach of Duty of Prudent Administration and Prudent Investment

74. Pursuant to C.R.S. § 15-5-804: “...a trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.”

75. Further, pursuant to C.R.S. § 15-1.1-101: “...a trustee who invest and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in Title 15, Article 1.1 the Uniform Prudent Investor Act (§§ 15-1.1-101 – 15-1.1-115).”

76. Petitioners allege that Respondent breached the duty to prudently administer the Tember C. Eaton Trust for the benefit of its beneficiaries and breached the specific duties of the Uniform Prudent Investor Act including, but not limited to, the standard of care and the duty of loyalty.

Fifth Claim for Relief

Remedies for Breach of Trust

77. C.R.S. § 15-5-1001(2) provides, in relevant part:

“(2) To remedy a breach of trust that has occurred or may occur, the court may:

- (a) Compel the trustee to perform the trustee’s duties;
- (b) Enjoin the trustee from committing a breach of trust;
- (c) Compel the trustee to redress a breach of trust by paying money, restoring property, being surcharged or sanctioned, or other means;
- (d) Order a trustee to account, provide a status or financial report, or provide an inventory;
- (e) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- (f) Restrain, restrict, or suspend the trustee;
- (g) Remove the trustee as provided in section 15-5-706;
- (h) Reduce or deny compensation to the trustee or require the trustee to disgorge compensation previously paid;
- (i) Subject to section 15-5-1012, void an act of the trustee, impose a lien or constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (j) Order other appropriate relief.”

78. Petitioners hereby incorporate the factual allegations set forth above as though fully set forth herein.

79. Accordingly, Petitioners seek the following specific remedies for Respondent’s breach of trust:

a. An order compelling Respondent to redress the breach of trust by paying money, restoring trust property, being surcharged or sanction, or other means;

b. An order compelling the former Trustee to provide supporting documentation for the financial transactions disclosed in the Summary Accounting and all years of administration of the Tember C. Eaton Trust;

c. An order voiding the acts of the Respondent as to improper payments to himself or other professionals with assets of the Tember C. Eaton Trust; and

d. An order imposing a lien or constructive trust on trust property and requiring the tracing of trust property wrongfully disposed of and the recovery of the property or its proceeds.

Sixth Claim for Relief

Civil Theft and Request for Award of Treble Damages

80. “A person commits civil theft when the person (1) knowingly obtained, retained, or exercised control over ‘anything of value of another without authorization or by threat or by deception’; and (2) acted intentionally or knowingly in ways that deprived the plaintiffs of the thing of value permanently.”

81. Pursuant to C.R.S. § 18-4-405,

“All property obtained by theft, robbery, or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. The owner may maintain an action not only against the taker thereof but also against any person in whose possession he finds the property. In any such action, the owner may recover two hundred dollars or three times the amount of the actual damages sustained by him, whichever is greater, and may also recover costs of the action and reasonable attorney fees; but monetary damages and attorney fees shall not be recoverable from a good-faith purchaser or good-faith holder of the property. [emphasis added]”

82. Petitioners hereby incorporate the factual allegations set forth above as though more fully set forth herein.

83. Petitioners allege that Respondent knowingly obtained and exercised control over the assets of the Tember C. Eaton Trust and acted intentionally or knowingly to deprive Petitioners of the value of their interest in the Tember C. Eaton Trust.

84. Petitioners assert that Respondent is liable for the repayment of three times the amount of actual damages incurred by Petitioners plus costs and reasonable attorney fees.

Seventh Claim for Relief

Unjust Enrichment and Imposition of Constructive Trust

85. Under Colorado law, to succeed on a claim of unjust enrichment, the moving party must establish that (1) the nonmoving party received a benefit (2) at the moving party's expense (3) under circumstances that would make it unjust for the nonmoving party to retain the benefit without commensurate compensation to the moving party.

86. Petitioners hereby incorporate the factual allegations set forth above as though fully set forth herein.

87. Here, Petitioners allege that Respondent received a benefit from the Tember C. Eaton Trust, at the expense of Petitioners under circumstances that make it unjust for Respondent to retain the benefit received without commensurate compensation.

88. Petitioners specifically seek the imposition of a constructive trust including, but not limited to, a constructive trust over the following personal assets of the Trustee:

- a. Real property commonly described as 6060 Buttermere Drive, Colorado Springs, Colorado 80906-8268, titled in the name of Rodney Ermel and Kaylin Ermel.

Eighth Claim for Relief

Removal of the Trustee

89. Pursuant to C.R.S. § 15-105-3(3)(c)(III), cause for removal of a fiduciary exists when the fiduciary has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

90. Further, pursuant to C.R.S. § 15-10-503(4), after a fiduciary receives notice of the filing of a petition for his removal, the fiduciary shall not act except to account, to correct maladministration, or to preserve the estate.

91. Additionally, pursuant to C.R.S. § 15-10-602(5), after a fiduciary receives notice of proceedings for his removal, the fiduciary shall not pay compensation or attorney fees and costs from the estate without an order of the court and a court shall order a person who receives excessive compensation or payment for inappropriate costs to make appropriate refunds.

92. Petitioners hereby incorporate the factual allegations set forth above as though fully set forth herein.

93. Petitioners seek the immediate suspension and subsequent removal of the Respondent as Trustee and upon disclosure of the persons who may have received excessive compensation or costs from the Trust, requests an order directing those person to make appropriate refunds to the Trust including, but not limited to, the Trustee, his legal counsel, and any other professionals benefiting in any unreasonable amount from the payment of at least \$919,876.26 in expenses over a period of only 5 ½ years.

WHEREFORE, Petitioners, remainder beneficiaries of the Tember C. Eaton Trust, respectfully requests that this Honorable Court find and order that:

- (A) Respondent BREACHED his fiduciary duties to the Petitioners;
- (B) Respondent is to be SURCHARGED for any damage or loss to the Tember C. Eaton Trust and its beneficiaries including, but not limited to, compensatory damages, interests, and attorney fees and costs;
- (C) Respondent VIOLATED the duties a trustee owes to a beneficiary and committed a breach of trust including, but not limited to, the duty of impartiality, the duty of record keeping

and identification of trust property, the duty to account to beneficiaries, the duty of control and protection of trust property, the duty of loyalty, and the duty of prudent administration and prudent investment.

(D) The following remedies for breach of trust are IMPOSED upon Respondent:

i. Respondent is COMPELLED to redress his breach of trust by paying money, restoring property, being surcharged or sanctioned, or other means;

ii. Respondent is COMPELLED to provide supporting documentation for each and every financial transaction disclosed in the Summary Accounting and all years of administration of the Tember C. Eaton Trust including, but not limited to, the disclosure of tax returns, bank statements, investment account statement, receipts, invoices, deposit slips, real property records and closing documents, credit card statements, negotiated checks, and wire transfer instructions;

iii. Certain acts by the Respondent as Trustee(s) are VOID;

iv. A lien or constructive trust is IMPOSED on trust property and trust property wrongfully disposed of is to be TRACED so that the property or its proceeds are RECOVERED including, but not limited to, a constructive trust over the following:

Real property commonly described as 6060 Buttermere Drive, Colorado Springs, Colorado 80906-8268, titled in the name of Rodney Ermel and Kaylin Ermel.

(E) Respondent committed CIVIL THEFT and awarding Petitioners damages equal to THREE TIMES THE AMOUNT of the actual damages sustained by them plus reasonable attorney fees.

(F) Respondent received a benefit from the Tember C. Eaton Trust, at the expense of the Petitioners under circumstances that make it UNJUST for Respondent to retain the benefit received without commensurate compensation and IMPOSING a constructive trust in an amount equal to amount benefitting the Respondent.

(G) IMMEDIATELY SUSPENDING the Respondent as Trustee of the Tember C. Eaton Trust, and subsequently ORDERING HIS REMOVAL as Trustee of the Tember C. Eaton Trust.

(H) Granting such other relief as the Court deems just, equitable and proper.

Respectfully submitted this 22nd day of April, 2024.

WADE ASH LLC

/s/ Letitia M. Maxfield

Letitia M. Maxfield, Esq. (#44108)

Exhibit “2”

From: Ken Bacon [REDACTED] >
Sent: Wednesday, January 18, 2017 3:52 PM EST
To: joecole@parfunding.com <joecole@parfunding.com>
Subject: RE: CBSG Note & Agreement
Attachment(s): "20170118132647.pdf", "Nashi W-9.pdf"

Joe,

Funds have been wired to the Republic Bank account. I have also attached Form W-9 for your records, and executed Note and Security docs for your signature and return.

Ken Bacon



Rod Ermel
Associates, Inc.
Certified Public Accountants

We validate parking in the City garage...
enter from Kiowa Street, between Nevada Ave & Tejon Street

2 N. Nevada Ave., Suite 1100
Colorado Springs, CO 80903
(719) 219-1040 Office
(719) 955-0787 Fax

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From: Joe Cole [mailto:joecole@parfunding.com]
Sent: Wednesday, January 18, 2017 10:51 AM
To: Ken Bacon [REDACTED]
Cc: Rod Ermel [REDACTED]
Subject: RE: CBSG Note & Agreement

Please see the revised documents attached.

Joe Cole

From: Ken Bacon [REDACTED]
Sent: Wednesday, January 18, 2017 11:06 AM
To: 'joecole@parfunding.com' <joecole@parfunding.com>
Cc: Rod Ermel [REDACTED]
Subject: RE: CBSG Note & Agreement

Joe,

We will wire the funds today to the Republic Bank... I was able to get some additional funds liquid from my investment account, so our (Rod and my) initial investment will be \$460,000 instead of the \$360,000. When you get a chance, please amend the Note and security Agreement to reflect \$460,000.

I am presently working on the docs we will use to secure our clients' funds (Notes) and intend to send funds to you at the end of January or mid-February for our second investment at 25%.

Ken Bacon



Rod Ermel
Associates, Inc.
Certified Public Accountants

We validate parking in the City garage...
enter from Kiowa Street, between Nevada Ave & Tejon Street

2 N. Nevada Ave., Suite 1100
Colorado Springs, CO 80903
(719) 219-1040 Office
(719) 955-0787 Fax

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From: Joe Cole [mailto:joecole@parfunding.com]
Sent: Wednesday, January 18, 2017 7:24 AM
To: Ken Bacon [REDACTED]
Subject: RE: CBSG Note & Agreement

Ken,

Can you wire funds using our Republic Bank instructions instead of the TD Bank ones if you haven't processed already?

I want to balance out the cash balances between the two banks.

Please see attached, thanks.

Joe Cole

From: Joe Cole [mailto:joecole@parfunding.com]
Sent: Tuesday, January 17, 2017 12:43 PM
To: 'Ken Bacon' [REDACTED]
Subject: RE: CBSG Note & Agreement

No big deal, just wanted to make sure you guys were good with it.

We still have \$6M of the \$8M from the Chehebars to deploy anyways, so it's not like were in a rush for cash. So today or tomorrow for the wire works, we're pretty flexible with the dates on our documents.

Thanks for confirming.

Joe Cole

From: Ken Bacon [REDACTED]
Sent: Tuesday, January 17, 2017 12:40 PM
To: 'joecole@parfunding.com' <joecole@parfunding.com>
Subject: RE: CBSG Note & Agreement

Hey Joe,

We are ok with the docs... thank you.

We had to get funds moved from other accounts to Nashi's account... we have \$200k transferred so far, and we are still waiting for \$160k wire today... I didn't take into consideration that yesterday was a bank holiday. We're expecting it today. As soon as the \$160 gets to Nashi's account, we'll send a wire your way. Sorry for the delay.

Ken Bacon



Rod Ermel
Associates, Inc.
Certified Public Accountants

We validate parking in the City garage...
enter from Kiowa Street, between Nevada Ave & Tejon Street

2 N. Nevada Ave., Suite 1100
Colorado Springs, CO 80903
(719) 219-1040 Office
(719) 955-0787 Fax

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From: Joe Cole [<mailto:joecole@parfunding.com>]
Sent: Tuesday, January 17, 2017 10:09 AM
To: Ken Bacon [REDACTED]
Subject: RE: CBSG Note & Agreement

Hi Ken,

I wanted to follow up on my email from Sunday and make sure you guys are okay with docs.

Let me know if you're still planning on doing wire to day and if you have any questions, thanks.

Joe Cole

From: Joe Cole [<mailto:joecole@parfunding.com>]
Sent: Sunday, January 15, 2017 12:11 PM
To: 'Ken Bacon' [REDACTED]
Subject: CBSG Note & Agreement

Ken,

Please see the attached note and agreement for your review.

I have also included our wire instructions if needed.

If you're good with the language, please execute and send back for me to countersign. We'll also need a W9 for Nashi on file.

Let me know if you have any questions, thanks.

Joe Cole



141 N 2nd St
Philadelphia, PA 19106
Office 1: 215.613.4126
Office 2: 215.922.2636 x106
Cell: 949.232.2463

Exhibit “3”

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a/ PAR FUNDING, et al.,**

Defendants.

**[PROPOSED] ORDER GRANTING RECEIVER’S UNOPPOSED MOTION
TO ALLOCATE, BUT NOT DISTRIBUTE, PROPOSED DISTRIBUTIONS
ATTRIBUTABLE TO CLAIMS INVOLVING RODNEY ERMEL**

THIS CAUSE comes before the Court upon Ryan K. Stumphauzer, Esq., Court-Appointed Receiver’s (“Receiver”) Motion to Allocate, But Not Distribute, Proposed Distributions Attributable to Claims Involving Rodney Ermel [ECF No. _____] (the “Motion”), filed on December 10, 2024. The Court has reviewed the Motion and the record in this matter, and is otherwise fully advised. The Receiver has made a sufficient and proper showing in support of the relief requested in the Motion. Accordingly, for the reasons stated in the Motion, it is hereby

ORDERED AND ADJUDGED that

1. The Motion is **GRANTED**.
2. The Receiver’s Motion to (1) Approve Proposed Plan of Distribution and (2) Authorize First Interim Distribution [ECF No. 2014] (the “Distribution Motion”) is currently pending before the Court.

3. In the Distribution Motion, the Receiver has recommended that the Court approve a distribution plan that includes proposed distributions on claims submitted on behalf of the Tember C. Eaton Trust (the “Trust”) (Claim No. 312) and Nashi, Inc. (Claim No. 311). Rodney Ermel submitted these claims on behalf of the Trust and Nashi, Inc.

4. Mr. Ermel is the subject of pending criminal charges in the United States District Court for the Eastern District of Pennsylvania related to tax and accounting services he and his business partner, Kenneth Bacon, provided to Joseph Laforte and Lisa McElhone, individually, as well as for Laforte and McElhone’s business entities. *See* Superseding Indictment, *United States of America v. LaForte, et al.*, Case No. 2:24-cr-00065-MAK (E.D. Pa. Mar. 21, 2024) [Doc. 15].

5. The Receiver has indicated that it is unclear whether any proposed distributions on these claims from the Trust and Nashi, Inc. will remain in the control of Mr. Ermel, or be distributed by Mr. Ermel to the beneficiaries of the Trust and clients of Mr. Ermel and Mr. Bacon who made investments through Nashi, Inc.

6. As a result of the foregoing, the Receiver has expressed concerns over issuing any distributions on these claims, pending further clarification on who will be the ultimate recipients of the distributions on these two claims. The Receiver has also indicated that Mr. Ermel, through his counsel, has agreed to the relief the Receiver is requesting through this motion, including providing the Receiver with the information the Receiver has requested.

7. Therefore, upon the entry of an Order on the Distribution Motion, any distributions to the Trust and Nashi, Inc. should be **ALLOCATED, BUT NOT DISTRIBUTED**, to those claimants pending further order of this Court.

8. Furthermore, Mr. Ermel is **ORDERED** to cooperate with the Receiver and respond fully to all reasonable requests for information from the Receiver to confirm (a) whether the full

amount of the allocated distributions to the Trust will be distributed to the beneficiaries of that Trust, and (b) whose funds comprise the Nashi, Inc. investment into CBSG and how Mr. Ermel / Nashi, Inc. would intend to allocate any proposed distributions it receives between and among those clients/investors.

9. Upon the Receiver's receipt from Mr. Ermel of the information described above, the Receiver should file a subsequent motion with his recommendations about whether any proposed distributions on the claims of the Trust and Nashi, Inc. should be distributed and, if so, the parameters and guidelines of any such proposed distributions.

DONE AND ORDERED in Miami, Florida, this ___ day of December, 2024.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record