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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

MANAGEMENT SOLUTIONS, INC., a  
Texas Corporation; WENDELL A.  
JACOBSON; ALLEN R. JACOBSON,

Defendants.

**BRANDON AND APRIL  
JACOBSON'S OBJECTION TO  
THE RECEIVER'S MAY 14, 2015  
CLAIMS ANALYSIS REPORT**

Case No. 2:11-cv-01165

Judge Bruce S. Jenkins

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Brandon W. and April C. Jacobson (together "**Brandon**" for convenience to the reader), by and through the undersigned counsel, herein submits his Objection to the Receiver's May 14, 2015 Claims Analysis Report (the "**Report**"). For the reasons set forth herein, the Court should disregard the proposed Report, reclassify Brandon as a Class 5 participant, either pay Brandon the full amount of [his/her/its] Claim or order the Receiver to reserve sufficient funds to satisfy Brandon's claim entirely, or alternatively, rescind Brandon's previously stipulated withdrawal of his objection to the Receiver's proposed Plan of Distribution (the "**Plan**") and allow Brandon's objections to the Plan to be heard.

## **BACKGROUND**

### ***Brandon's Claim and the Receiver's Proposed Plan***

1. On approximately September 1, 2014, Brandon submitted his proposed claim to the Receiver (the "***Claim***"), setting forth the basis of his Claim and setting the amount at \$2,678,182.91. *See Claim*, a true and correct copy of which is attached hereto as **Exhibit A**.

2. On February 27, 2015, Gil A. Miller, the Court-appointed receiver in this matter (the "***Receiver***"), submitted his proposed Plan, [Docket No. 2311-2](#), together with a Motion for Approval of the Plan (the "***Plan Motion***"), [Docket No. 2311](#).

3. On March 30, 2015, Brandon, together with other claimants referred to as the "***BTJD Claimants***," objected to the Plan and the Plan Motion (the "***BTJD Objection***"), [Docket No. 2395](#).

4. Brandon, together with most of the BTJD Claimants, objected to the Plan generally and specifically to his classification as an "Insider" under the Plan and placed in "Class 9" of the Plan as a "Non-Participant" to the Plan. *Id.* at 6–7.

5. Brandon observed, among other things, that the term "Insider" and its application to Brandon was inappropriately based on an unfounded Ponzi presumption, that the Plan's proposed definition and application of "Insider" status was so baseless and so broad as to render it meaningless (or worse—capture within its ambit practically every individual and entity involved with Management Solutions, Inc. "***MSI***"), and that the Plan, by its very terms, offended Due Process. *Id.* at 6–12.

### ***The BTJD Claimants' Conditional Stipulation to the Plan and the Plan Hearing***

6. Following discussions with the Receiver, the Receiver and the BTJD Claimants arrived at a Stipulated Withdrawal of the BTJD Objection (the "***Withdrawal***"), [Docket No. 2452](#).

7. In exchange for the Withdrawal, the Receiver agreed to, among other terms,
  - a. “reclassify” the BTJD Claimants “as Class 5 Claimants under the Plan, subject to the Receiver’s claims process outlined in the Receiver’s [Plan Motion] and in Article V of the [Plan] (the ‘*Claims Process*’),” and
  - b. “reserve sufficient funds to pay any and all of the BTJD Claimants’ claims, on an equal footing and treatment as the Class 5 Claimants, in the event that any or all of the BTJD Claimants’ respective claims are deemed meritorious by the Receiver or by the Court.”

*Id.* at 2–3, ¶¶ 3, 8.

8. On April 13, 2015, the Court conducted a hearing on the Plan and the Plan Motion (the “*Plan Hearing*”). [Docket No. 2458](#).

9. At the Plan Hearing, the Court noted that contested matters existed and that objections to the Plan had been filed and asked the Receiver how much he had reserved “in the way of set-asides” for those contested matters, to which the Receiver’s counsel indicated the Receiver planned to “hold[ ] back” approximately \$30 million. *See* Transcript of Plan Hearing, 11:4–10.

10. This amount was again affirmed and reemphasized by the Receiver later in the Plan Hearing. *See id.* at 27:4–8.

11. At the close of the Plan Hearing, the Court again noted that the Receiver “set aside amounts or properties that currently enjoy an existing contest, and that makes sense because those that have a specific interest in either a specific property or a question as to classification or a question as to amount, the [R]eceiver has indicated that they have set aside about 30, \$31 million.” *Id.* at 36:9–16.

12. The Court ultimately approved the Plan, but in its ruling and order required the Receiver to “expressly point out that [the Receiver] ha[d] set aside and ha[d] left for future determinations those contests amongst those who have objected.” *Id.* at 38:25–39:5.

13. On April 14, 2015, the Court entered an Order Granting Motion for Approval of Plan of Distribution, [Docket No. 2459](#).

***The Claim Analysis Report and Motion to Approve First Distribution***

14. On May 14, 2015, the Receiver filed a Motion to Approve Claims Analysis Report and attached his Report as Exhibit A thereto. [Docket No. 2522](#).

15. In the Report, the Receiver once again, and without explanation or new information, reclassified Brandon as an Insider or Non-Participant to the Plan. [Docket No. 2522-1 at 22](#).

16. As such, the Receiver did not value Brandon’s Claim.

17. On that same day, May 14, 2015, the Receiver also filed a Motion to Approve First Distribution (the “***Distribution Motion***”). [Docket No. 2523](#).

18. In the Distribution Motion, the Receiver attached as Exhibit B a document titled “First Distribution – Reserved Amounts.” [Docket No. 2523-2](#).

19. Exhibit B purports to lay out all of the reserved amounts for current contested matters, and indicates that only \$22,104,485.72 has been set aside from those amounts. *Id.*

20. Notably, and contrary to the terms of the Withdrawal, Brandon’s claim amount has not been adequately reserved. *See id.*

21. Indeed, although Brandon’s Claim is for \$2,678,182.91, the Receiver has only reserved \$1,620,224.18.

## ARGUMENT

As demonstrated above, and for the reasons set forth below, the Receiver has failed to live up to his commitments in the Withdrawal, continues to utilize an inappropriate “Insider” classification without reasonable scope or objective justification, and has refused to provide a detailed claim analysis for Brandon, making it impossible for him to determine the merit of his classification as an insider or the Receiver’s position as to the amount of his Claim. Accordingly, the Court should enforce the terms of the Withdrawal, order the Receiver to reclassify Brandon as a Class 5 participant and further order the Receiver to either pay the full amount of Brandon’s Claim or reserve adequate funds from the receivership estate to fully satisfy Brandon’s Claim. In the alternative, the Court should rescind the Withdrawal, reopen the BTJD Objection and hear out Brandon’s original objection.

### **I. THE RECEIVER IMPROPERLY INDUCED THE WITHDRAWAL OF BRANDON’S OBJECTION TO THE PLAN OF DISTRIBUTION.**

The Withdrawal is a binding agreement between the BTJD Claimants (including Brandon) and the Receiver. The Tenth Circuit has long held that such stipulated agreements, even in the midst of litigation, must be honored. *See L.P.S. v. Lamm* 708 F.2d 537, 539 (10th Cir. 1983) (holding that courts “cannot overlook or disregard stipulations which are absolute and unequivocal,” (quotation marks omitted)). As such, traditional contract remedies may be employed to ensure that the Withdrawal is enforced. Among those remedies available to contracting parties when a breach of contract is at issue are strict performance of the terms of the agreement or rescission of the agreement altogether. *See, e.g., World Alliance Consulting, Inc. v. DocPlanet.com, Inc.*, 57 Fed.Appx. 390, 392 (10th Cir. 2003) (observing that plaintiff in breach of contract claim may seek specific performance of the agreement); *Rosenfield v. HSBC Bank, USA*, 681 F.3d 1172, 1183 (10th Cir. 2012) (noting that party may “void a contract in equity—

i.e., to make it such that the agreement [had] never been executed” (alteration in original) (internal quotation marks omitted)).

Here, the Withdrawal has already been breached by the Receiver. Indeed, even though the terms of the Withdrawal are clear and unambiguous and the Court itself emphasized those terms in its ruling on the Plan and the Plan Motion, the Receiver has failed to uphold his part of the bargain in the Withdrawal. As set forth below, the Receiver has failed to abide by the terms of the Withdrawal by (A) arbitrarily and without foundation reclassifying Brandon as an Insider and (B) failing to reserve funds adequate to satisfy the full amount of Brandon’s Claim. The Court should accordingly and strictly enforce the terms of the Withdrawal and order the Receiver to reclassify Brandon as a Class 5 participant and to reserve sufficient funds for Brandon’s Claim or, alternatively, rescind the Withdrawal altogether and allow Brandon’s objections to the Plan to be heard.

**A. Reclassifying Brandon as an Insider Without New Information or an Objectively Reasonable, Lawful Definition of the Term Breaches the Withdrawal**

As discussed above, the Receiver induced the withdrawal of the BTJD Objection by agreeing to “reclassify” the BTJD Claimants “as Class 5 Claimants under the Plan, subject to the Receiver’s claims process outlined in the Receiver’s [Plan Motion] and in Article V of the [Plan].” Now, only weeks after he first suggested that Brandon was an “Insider” under the Plan and without applying an objective definition or application of that term, and without providing any information or reason to Brandon, the Receiver has once again insisted that Brandon is an “Insider” and should not be a Plan participant. The Receiver’s unfounded and unbounded classification of Brandon as an Insider offends the terms of the Withdrawal, and should be set aside by the Court.

As discussed in the BTJD Objection, neither the term “Insider” nor its applicability in this matter generally and to Brandon specifically has ever been adequately supported or defined. The Receiver—and by extension the Plan—steadfastly ignores that there has been no actual finding that MSI was a Ponzi scheme or that there was any fraud at all in MSI’s business operations. In essence, the Plan and now the Report, reveal the Receiver’s intent to exclude Brandon as an Insider, based entirely on a presumption of Ponzi that this Court has already rejected.

Worse, the Plan’s irredeemable definition of Insider remains. It is still not based on any statutory or common law definition. It is still not defined by any objective metrics, scope, or reason. Instead, the Plan still defines Insiders as those “individuals or entities that were involved in MSI’s investment scheme, and the affiliates of such individuals or entities.” Plan, [Docket No. 2311-2](#), at 5 ¶ 2.a. Thus, under the Receiver’s definition, *any* Investor who holds an Investor Claim is an MSI Insider and is barred from receiving any distribution from the Plan as a Non-Participant, so long as that Investor was “involved in MSI’s investment scheme” (itself an undefined term) at some point and in some fashion, or was ever “affiliated” with “such individuals or entities.” Put simply, nothing but the Receiver’s gut has guided the Insider determination. For the reasons set forth in the BTJD Objection, that cannot be the meaning of an “Insider” (if there is reason to have an “Insider” class at all).

But that nebulous definition is all that Brandon has to guide him as he once again is placed on the Receiver’s “naughty list.” The Receiver has provided no objective reason or evidence supporting Brandon’s original classification (and subsequent reclassification) as an Insider. Instead, the Receiver simply made an illusory promise to secure the Withdrawal from

the BTJD Claimants, and within a matter of days—and without any new analysis or information—put Brandon right back in the “Insider” pool.

This Court has already determined that there is no place in this process for such baseless, generalized labels, when it concluded that

[b]urdensome as it may be, fairness demands *individual* examination. Due process does as well. Presumption is but a tool. It is not a shortcut or substitute for proof. In the finding of Ponzi schemes, it is applicable where appropriate and if not, *then proof of inappropriate activity on the part of a target, not the mere affixing of a label by the Receiver, is required.*

August 22, 2013 Memorandum Decision and Order (the “*Ponzi Order*”), [Docket No. 1215 at 42](#) (emphases added). But the Receiver has, once again, attempted to cast off his burden of *showing* that Brandon himself was actually and individually involved in some “inappropriate activity.” Instead, the Receiver has simply relabeled Brandon as an Insider for reasons he chooses not to disclose.

By placing Brandon back in the Insiders pool without any individual examination or demonstration of inappropriate activity on the part of Brandon, the Receiver has not only violated the Withdrawal, he has again ignored the Court’s directive against such groundless labels. Accordingly, the Court should specifically enforce the terms of the Withdrawal and compel the Receiver to reclassify Brandon as a Class 5 participant. Alternatively, the Receiver’s unfounded reclassification of Brandon as an Insider is grounds to rescind the Withdrawal altogether and allow Brandon to reassert his objections to the Plan generally.

**B. The Receiver’s Failure to Reserve Adequate Funds to Satisfy The Full Amount of Brandon’s Claim Violates the Terms of the Withdrawal**

In addition to agreeing in the Withdrawal to reclassify the BTJD Claimants as Class 5 participants, the Receiver also agreed to “reserve sufficient funds to pay any and all of the BTJD

Claimants' claims, on an equal footing and treatment as the Class 5 Claimants, in the event that any or all of the BTJD Claimants' respective claims are deemed meritorious by the Receiver or by the Court." Withdrawal at 3, ¶ 8. When pressed by the Court at the Plan Hearing, the Receiver insisted that he would reserve some \$30 million to cover the full amounts of contested claims. Background, *supra* ¶¶ 8–12.

The Receiver has utterly failed to comply with this obligation. In fact, in his Distribution Motion, the Receiver admits that he has only reserved \$22,104,485.72 to satisfy contested claims—nearly \$8 million less than the \$30 million he guaranteed to the Court would be set aside. [Docket No. 2523](#). Worse, and contrary to the terms of the Withdrawal, Brandon's claim amount has not been adequately reserved. *See id.*, Exhibit B, [Docket No. 2523-2](#). Indeed, although Brandon's claim amount had been \$2,678,182.91, the Receiver has only reserved \$1,620,224.18. *Id.*

The Receiver's failure to reserve stands as an outright breach of the Withdrawal. Despite assurances to the BTJD Claimants, including Brandon, that he would set aside funds to pay out their claims in full upon a successful appeal to the Receiver or to the Court, the Receiver has simply and conveniently valued Brandon's Claim at \$1,620,224.18 so that he can issue an interim distribution at \$100 million. Given the express terms of the Withdrawal and the Receiver's assurances in open court that he would adequately reserve funds to satisfy all contested claims, the Court should not allow this preferential payout to stand, and should accordingly compel the Receiver to reserve adequate funds to satisfy Brandon's Claim—a total of \$2,678,182.91. Alternatively, the Court should rescind the Withdrawal altogether and allow Brandon to object to the Plan and propose an alternative, more equitable plan of distribution.<sup>1</sup>

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<sup>1</sup> Given the Court's insistence that reserve funds be set aside to satisfy claims before approving the Plan, perhaps rescission of the Withdrawal and giving the chance to Brandon and other affected Claimants to object to and

**II. THE RECEIVER’S REFUSAL TO PROVIDE A DETAILED CLAIM ANALYSIS MAKES IT IMPOSSIBLE FOR BRANDON TO DETERMINE THE MERIT OF HIS CLASSIFICATION AS AN INSIDER OR THE MERIT OF THE RECIEVER’S POSITION AS TO THE AMOUNT OF HIS CLAIM.**

With regard to Brandon, the Receiver has not only reclassified him as an “Insider,” but he has further refused to provide any kind of detailed claim analysis for Brandon. Indeed, when counsel for Brandon requested a more detailed analysis for Brandon from the Receiver to help Brandon determine whether and to what extent his Claim was meritorious and numerically supportable, the Receiver unequivocally stated the he would “not be preparing” summaries for “the spouses of Wendell and Allan.” *See* April 30, 2015 Email between Receiver and Counsel for BTJD Claimants, relevant portions of which are attached hereto as **Exhibit B**. Apparently, Brandon is similarly situated in the Receiver’s estimation.

Brandon has therefore been further singled out from the BTJD Claimants as something of an “Insider’s Insider”—an individual to whom Receiver has *refused* to provide any kind of objective accounting analysis or rationale to support his notion that they participated in or committed fraud on an individualized basis. This is hardly the kind of equitable treatment that the Receiver has emphasized throughout the liquidation and distribution process. Accordingly, to comport with the Withdrawal, the Plan, this Court’s own rulings against presumptive and foundationless labels, and equity generally, the Court should compel the Receiver to provide Brandon with a detailed claim analysis that will allow Brandon to better assess his own Claim and the Receiver’s calculation of that Claim.

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propose a more adequate Plan is the best option.

**II. EVEN SETTING ASIDE THE RECEIVER'S BREACH OF THE WITHDRAWAL, BRANDON ALSO OBJECTS TO THE CLAIM ANALYSIS BECAUSE THE RECEIVER HAS CALCULATED THE WRONG AMOUNT FOR HIS CLAIM.**

In addition to objecting to the Receiver's actions with respect to Brandon's classification and the reservation amount, Brandon also objects to the amount of his Claim set forth in the Distribution Motion. Specifically, the Receiver has indicated, by how much he has reserved from the proposed First Distribution, that Brandon has claimed and can only claim \$1,620,224.18. Not only is this patently untrue, but the Receiver's own refusal to prepare a detailed claim analysis for Brandon prevents Brandon from determining how that amount was arrived at and upon what basis. Accordingly, and based on this discrepancy, Brandon objects to the amount of his Claim as determined and reserved by the Receiver and set forth in the Distribution Motion.

**CONCLUSION**

For the reasons set forth above, the Court should enforce the terms of the Withdrawal and order the Receiver to reclassify Brandon as a Class 5 participant and order the Receiver to either pay the full amount of Brandon's Claim or reserve adequate funds from the receivership estate to fully satisfy Brandon's Claim. In the alternative, the Court should rescind the Withdrawal, reopen the BTJD Objection, and hear out Brandon's original objection.

DATED this 28th day of May, 2015.

BENNETT TUELLER JOHNSON & DEERE

/s/ Eric B. Vogeler  
Barry N. Johnson  
Brigman L. Harman  
Eric Boyd Vogeler  
*Attorneys for Brandon*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of May, 2015, I electronically filed the foregoing **BRANDON AND APRIL JACOBSON'S OBJECTION TO THE RECEIVER'S MAY 14, 2015 CLAIMS ANALYSIS REPORT** via the Court's CM/ECF system, which in turn effected service on all counsel of record.

/s/ Kenzie Dunn

# EXHIBIT

# A

**EXHIBIT "A"**

To be Completed by Receiver upon Filing:  
Claimant Name: \_\_\_\_\_  
Claim No. \_\_\_\_\_  
Date Received: \_\_\_\_\_  
Approved: \_\_\_\_\_

**Claim Form and Instructions**

**Securities and Exchange Commission v.  
Management Solutions, Inc., et al.**

**United States District Court for the District of Utah  
Case No. 2:11-cv-01165**

**June 18, 2014**

On December 15, 2011, the United States District Court for the District of Utah (the "Court") placed Management Solutions, Inc., Wendell A. Jacobson, Allen R. Jacobson, 208 related companies, and 11 other individuals in receivership and appointed John A. Beckstead as receiver. On April 15, 2014, Gil A. Miller was appointed as the substitute receiver by the Court (the "Receiver"). Persons who are owed money by any of these companies or individuals are entitled to file a claim in the receivership and may be eligible to participate in distributions of available funds from the receivership. This document is the official claim form which must be filed to present your claim.

**Your claim must be completed and filed by September 2, 2014. Failure to timely file a complete and proper claim may result in denial of your claim.**

Please read this Claim Form and Instructions in it's entirety and provide all requested information.

## **Introduction**

After the Claim Forms have been received, a Plan of Distribution will be submitted by the Receiver outlining how cash will be distributed to pay allowed claims. Upon approval of the Plan of Distribution by the Court, the available cash from liquidation of assets will be distributed in accordance with the Plan.

A Court-approved process will be implemented to determine the allowed claims. This Claim Form and Instructions is the first step in that process. The purpose of the Claim Form is to gather information. It will be mailed and emailed to all known Claimants and availability of the Claim Form and Instructions will be advertised to solicit claims from those who do not receive the mailed notice. There is a deadline to file claims and claims not filed by that date will be considered late and may be denied. Upon receipt of a completed Claim Form, the Receiver will review the information in the Claim Form and supporting documents and compare it to records of the Receivership Entities and other records compiled by the Receiver. The Receiver will then take one of the following actions: (i) validate the claim, in which case, the Receiver will recommend approval and allowance of such claim; (ii) request additional information from the Claimant; or (iii) object to the claim should the Receiver and Claimant be unable to reach agreement on a validated claim. If the Receiver objects to the claim, notice of the objection will be given to the Claimant and filed with the court, after which the court will determine if the claim will be allowed.

At this time, it is not possible to determine when distributions to pay claims will be made and the amount that will be available for distribution.

The Receiver maintains a public website at [www.managementsolutionsreceivership.com](http://www.managementsolutionsreceivership.com) which contains more detailed information about the receivership and is updated regularly to report new developments. If needed information regarding the receivership is not on the website, the Receiver welcomes individual inquiries about the receivership or its status.

### **Instructions for Completing Claim Form**

Please read the below Definitions which define terms used in this Claim Form.

This Claim Form will help determine the amount, if any, you will be paid from the Receivership Estate. It is very important that you complete the entire form and provide the requested documents. If you are unable to locate documents or obtain them from another source, such as your accountant or bank, please state that documents are not available when completing the Claim Form. Your claim may not be validated if sufficient information is not provided. You are also required to sign the Claim Form under penalty of perjury.

Please do not submit any original documents with your Claim Form, but rather complete and fully legible copies. Keep a copy of your Claim Form. If you wish to receive acknowledgement of receipt of your Claim Form, please include a stamped self-addressed envelope with your Claim Form. A roster of claims received will be posted on the Receiver's website. A list of all validated claims will be filed with Court.

Please do not leave any spaces blank or unanswered, unless instructed to do so. Write "none", "not applicable", "not available", or a similar response if you do not have the requested information.

If additional space is needed, attach additional sheets to the Claim Form. State your name in the upper right hand corner of each sheet and identify by number the question(s) to which you are responding.

If the Receiver requests additional information concerning your claim, you must supply that information within 30 days of when the request is sent. Failure to timely provide that additional information will result in your claim not being validated.

If the investment in a Receivership Entity was made by a Company, the claim is to be made by the Company, not by the individual members, partners or shareholders of the Company. For example, if A, B and C formed a limited liability company called XYZ, L.L.C., and XYZ, L.L.C. then invested in a Property Company which is a Receivership Entity, the claim is to be filed only by XYZ, L.L.C. and claims should not to be filed by A, B or C. However, the Claimant will be asked to provide information about the individual owners of the Company. The Claim Form must be submitted and signed by an individual with authority to represent the Company. The Receiver may require proof of such authority.

If the claim is owing jointly to a married couple, the couple must file a single, joint Claim Form, listing both spouses' names.

## **Instructions for Filing Claim Form**

**THE DEADLINE TO FILE CLAIMS IS SEPTEMBER 2, 2014. CLAIMS NOT FILED BY THIS DATE MAY BE DENIED.** Claims will be deemed timely filed if received by the Receiver by 11:59 p.m. Mountain Time on the Bar Date or if sent by first class U.S. mail, postage prepaid, and postmarked by 11:59 p.m. on the Bar Date.

Intentionally filing a false claim is a criminal offense and may also be punishable as contempt of court.

**Do not file your claim with the Court. Claims are to be filed only with the Receiver.**

Claims may be filed by U.S. mail or by email. Mailed claims are to be sent to:

Management Solutions Receivership  
Attention: Claim Filing  
P.O. Box 1290  
Salt Lake City, Utah 84110-1290

E-mailed claims are to be sent to: [msicclaim@rockymountainadvisory.com](mailto:msicclaim@rockymountainadvisory.com).

If you determine that a claim you filed needs to be amended, you should resubmit the entire Claim Form with supporting documents, signed, and add the word "AMENDED" prominently on the first page of the Claim Form. Amended Claim Forms that are filed after the above Bar Date may be disallowed.

### **Definitions**

"Bar Date" means the deadline for filing of Claim Forms, which is September 2, 2014.

"Claimant" means a Person who claims to be owed money by a Receivership Entity. A married couple, who are owed money jointly, will be considered a single Claimant.

"Company" means any Person other than an individual.

"Investor Claimant" means any Claimant who is not a Priority Claimant, Secured Lender, TIC Claimant, Personal Injury Claimant, or Vendor.

"Investor Company" means a Company formed under the direction of Wendell Jacobson with the intention that the Investor Company become a member, partner, or shareholder of a Property Company.

"Person" means an individual, corporation, partnership, limited liability company, trust, association, retirement or pension plan, or other entity.

“Personal Injury Claimant” means a Claimant whose claim is based upon a tort (negligence or an intentional act) resulting in personal injury or death to a person or damage to tangible property committed by, or for, which a Receivership Entity is responsible.

“Principal” means: (i) For a limited liability company, all managers, managing members and members; (ii) for a general partnership, all partners; (iii) for a limited partnership, all general and limited partners; (iv) for a corporation, all officers, directors and shareholders; (v) for a trust, the trustee(s) and all beneficiaries; and (vi) for a pension or retirement plan, the administrator or trustee and the beneficiary.

“Priority Claimant” means (i) a governmental entity or agency making a claim based upon unpaid taxes or assessments.

“Property Company” means a Company formed under the direction of Wendell Jacobson with the intention that the Property Company own real estate and that an Investor Company or an Investor become a Principal of the Property Company.

“Receiver Appointment Date” means December 15, 2011.

“Receivership Entity” means the Companies and Persons listed on the Schedule of Receivership Entities attached hereto.

“Receivership Estate” means the assets of the Receivership Entities which will be liquidated by the Receiver.

“Recorded TIC Interest” means a TIC Interest for which the deed creating the TIC Interest was recorded in the office of the applicable county recorder or other governing office prior to the Receiver Appointment Date.

“Rollover Payment” means a payment owing to a Person arising from an investment in an Investor Company, Property Company or other Company which was not paid in cash but was instead paid by giving the Person an increased interest or a new interest in an Investor Company, Property Company or other Company.

“Secured Lender” means (i) an institutional Company, such as a bank, credit union, insurance company, or commercial mortgage backed securities trust, whose primary business includes the making of loans secured by real estate, or other secured lender, who has made a loan to a Receivership Entity secured by real estate, or purchasing and servicing loans secured by real estate which include secured loans made to a Receivership Entity; or (ii) a homeowners association or similar association making a claim for unpaid dues or assessments which are secured by a non-priority statutory lien on the property.

“TIC Claimant” means a Claimant whose claim is based upon a Recorded TIC Interest or an Unrecorded TIC Interest.

“TIC Interest” means an interest in real property created by a deed to the owner granting an undivided interest described in the deed as a tenant-in-common interest.

“Unrecorded TIC Interest” means a TIC Interest for which the deed creating the TIC Interest was not recorded in the office of the applicable county recorder or other governing office prior to the Receiver Appointment Date.

“Vendor” means a merchant, supplier, tradesman, or similar provider who provided goods or services to a Receivership Entity, whose primary business is providing such goods or services, with terms that payment would be made upon providing the services or delivering the goods or upon open account, such as payment to be made within 30 days.

## Claim Form

### Section I – Determine Your Claim Category

Using the above definitions, determine the correct category of your claim based upon the circumstances under which your claim arises. The available categories are Priority Claimant, Secured Lender, TIC Claimant, Investor Claimant, Personal Injury Claimant, or Vendor. The category of your claim may change if it is determined you have selected an incorrect category. Depending on your individual circumstances, you may have multiple categories of claims. If so, please complete each section of the Claim Form that may apply.

### Section II – General Information (To be completed by all Claimants)

1. Claimant Name (if Claimant is a married couple, list both names):

**Brandon W. Jacobson and/or April C. Jacobson**

2. Claimant address, phone number and email address (the Claimant has a continuing obligation to keep the Receiver informed of its current address)

**436 W. Bountiful Way  
Saratoga Springs, UT 84045  
8019959697  
Brandon.jacobson@jordandistrict.org**

3. If Claimant is a Company, please provide the Federal Employer Identification Number of Claimant, if applicable. Social Security numbers are not required at this time.

**NOT APPLICABLE**

4. If Claimant is represented by an attorney, provide the name, address, phone number, and email address of the attorney:

**NOT APPLICABLE**

5. A. If Claimant is or was at any time related by blood or marriage to Wendell A. Jacobson, Melba Jacobson, Allen R. Jacobson, Cami Jacobson, or any of the individuals identified as Receivership Entities, explain that relationship:

**Brandon is a son of Wendell and Melba Jacobson and a Brother to Allen Jacobson and a brother-in-law to Cami Jacobson  
April is a daughter-in-law to Wendell Jacobson and Melba Jacobson and a Sister-in-law to Allen Jacobson**

- B. If Claimant is currently or was at any time employed by Wendell A. Jacobson, Melba Jacobson, Allen R. Jacobson, Cami Jacobson, or any of the individuals or entities identified as Receivership Entities, explain that employment relationship:

**Brandon W. Jacobson was employed by Boulder Development. Brandon also did work for and was involved in different entities over the last 20+ years.**

**Section III – Priority Claimants (To be completed only by Priority Claimants)**

6. Identify the Receivership Entity or Receivership Entities against whom your Claim is made:

**NOT APPLICABLE**

7. Provide the street address and legal description of the property against which your Claim is asserted:

**NOT APPLICABLE**

8. Provide copies of all notices which have been sent, filed or recorded concerning your Claim.

**NOT APPLICABLE**

9. If not identified in the notices provided pursuant to #8, above, cite the statute or other authority granting a lien upon property to secure your Claim:

**NOT APPLICABLE**

10. State the amount owing to Claimant as of the Receiver Appointment Date, itemized by principal, interest, fees, penalties, costs and any other items. If attorneys fees and costs are claimed, provide references to the contract and/or statutory provisions purportedly entitling the Claimant to such attorney fees and costs and invoices from the attorneys with itemized billing information.

**NOT APPLICABLE**

11. State the amount owing to Claimant as of about the date of filing your Claim, itemized by principal, interest, fees, penalties, costs and any other items, and provide per diem or other information needed to calculate the amounts owing thereafter. If attorneys fees and costs are claimed, provide references to the contract and/or statutory provisions purportedly entitling the Claimant to such attorney fees and costs and invoices from the attorneys with itemized billing information.

**NOT APPLICABLE**

**Section IV – Secured Lender Claimants (To be completed only by Secured Lender Claimants)**

12. Identify all obligors on your loan:

**NOT APPLICABLE**

13. Identify the original lender and state the amount and date of the original loan:

**NOT APPLICABLE**

14. Identify and provide copies of all documents evidencing the loan and collateral for the loan, including any servicing agreements:

**NOT APPLICABLE**

15. If the loan has been transferred or assigned, state the date of each transfer or assignment, identify the transferee or assignee, and provide copies of all transfer or assignment documents:

**NOT APPLICABLE**

16. If there is a trustee or agent for the lender, identify the trustee or agent and provide copies of the documents appointing the trustee or agent:

**NOT APPLICABLE**

17. If you claim the loan was in default on or prior to the Receiver Appointment Date (other than a default based solely upon the appointment of the Receiver), describe such default and provide copies of all Notices of Default and similar communications notifying the obligors of the default:

**NOT APPLICABLE**

18. If you claim the loan was in default after the Receiver Appointment Date (other than a default based solely upon the appointment of the Receiver), describe such default and provide copies of all Notices of Default and similar communications notifying the Receiver of the default:

**NOT APPLICABLE**

19. If you claim the loan has been accelerated, state the grounds for acceleration, the date the acceleration was made, provide an itemization of the amount owing upon acceleration, and provide copies of all notices of acceleration that were given.

**NOT APPLICABLE**

20. State the amount owing to Claimant as of the Receiver Appointment Date, itemized by principal, interest, default interest, fees, penalties, costs and any other items. If attorneys' fees are claimed, provide invoices from the attorneys with itemized billing information.

**NOT APPLICABLE**

21. State the amount owing to Claimant as of about the date of filing your claim, itemized by principal, interest, default interest, fees, penalties, costs and any other items, and provide per diem or other information needed to calculate the amounts owing thereafter. If attorney's fees are claimed, provide invoices from the attorneys with itemized billing information.

**NOT APPLICABLE**

22. Do not make a claim for any anticipated deficiency if your collateral has not been liquidated. If the collateral for your loan has been abandoned by the Receiver, or you received a deed in lieu of foreclosure from the Receiver, and you claim a deficiency owing after liquidation of your collateral, provide the following:

a. Date and type of sale or other disposition of the collateral and the gross amount received:

**NOT APPLICABLE**

b. Itemization of all costs of sale claimed by you. If attorneys fees are claimed, provide invoices from the attorneys with itemized billing information:

**NOT APPLICABLE**

c. Amount of deficiency claimed with calculations showing how the deficiency was determined:

**NOT APPLICABLE**

**Section V – TIC Claimants (To be completed only by TIC Claimants)**

23. Identify each property in which you claim a TIC Interest as of the Receiver Appointment Date:

**NOT APPLICABLE**

24. Identify the date and amount of each and every payment (whether cash or property) made by you to a Receivership Entity. Do not include Rollover Payments in this response (see question 35 below). State the purpose of each payment, such as investment, loan, etc. Provide copies of checks or wire transfer records demonstrating each payment or, if not available, provide copies of other records demonstrating such payment.

**NOT APPLICABLE**

25. Identify the date and amount of each and every payment received by you from or on behalf of a Receivership Entity for any reason, including rent, lease payments, interest, principal, return of capital, profit from sale of a property, fees, reimbursement of expenses, or commissions. Provide copies of checks demonstrating each payment or, if checks are not available, provide copies of other records demonstrating such payment. Do not report Rollover Payments (see question 35 below). Report only transactions in which you received cash.

**NOT APPLICABLE**

26. For each payment identified in response #25, above, state the reason for the payment, such as a rent, lease payment, interest, principal, return of capital, profit from sale of property, fees, reimbursement of expenses, or commissions.

**NOT APPLICABLE**

27. Are you owed any money by any Receivership Entity with regard to your TIC Interest? If yes, identify the Receivership Entity which owes the money, explain the reason why it is owing, state the amount owing as of the Receivership Appointment Date, and show how the amount was calculated.

**NOT APPLICABLE**

28. Provide a copy of each deed you purport granted you TIC Interests. Indicate whether you possess original deed(s).

**NOT APPLICABLE**

29. If you claim a Recorded TIC Interest and the copy of the deed provided in response to #24, above, does not show the recording information, provide the name of the office where the deed was recorded, date of the recording, entry number, and, if applicable, the recording book and page:

**NOT APPLICABLE**

30. Provide copies of all documents associated with the acquisition of your TIC Interest, such as Purchase and Sale Agreement, Bill of Sale, Assignment, Closing or Settlement Statement, and 1031 Exchange documents.

**NOT APPLICABLE**

31. Did you enter into any agreement, written or oral, for another Person to manage or take care of the property in which you owned a TIC interest?

**NOT APPLICABLE**

32. If you answer to #31 is yes, and the agreement was written, provide a copy of the agreement.

**NOT APPLICABLE**

33. If you answer to #31 is yes, and the agreement was oral, identify all parties to the agreement, the date the agreement was made, and the terms of the agreement.

**NOT APPLICABLE**

34. Have you made payments to any Person concerning your TIC Interest or pursuant to any agreement identified in response #31, above, since acquiring your TIC Interest, excluding income tax payments based on income generated by your TIC Interest? Examples would include property taxes, homeowner's associate dues or assessments, repairs or improvements to the property, utilities, management fees, ect. If yes, identify the date and amount of each payment made by you, and the payee and the purpose of the payment. Provide copies of checks or wire transfer records demonstrating each payment or, if not available, provide copies of other records demonstrating such payment.

**NOT APPLICABLE**

35. Identify the date and amount of each and every Rollover Payment concerning your TIC Interest to a Receivership Entity. Provide copies of records evidencing each transfer.

**NOT APPLICABLE**

36. Provide the following information as to representations or promises made to you by any Person concerning your TIC Interest and any agreement identified in response to #31, above:

a. Identify who made the representations or promises to you:

**NOT APPLICABLE**

b. What would be done with your money paid for your TIC Interest (for example, what Investor LLC would receive your money and what property would be purchased with that money)?

**NOT APPLICABLE**

c. The ownership, value, liabilities, liens and financing of the property in which you acquired your TIC Interest:

**NOT APPLICABLE**

d. Promised returns to you:

**NOT APPLICABLE**

e. Safety and risk concerning your investment:

**NOT APPLICABLE**

f. Provide copies of all letters, emails, agreements, brochures and other documents evidencing these representations and promises.

**NOT APPLICABLE**

37. Provide copies of all statements or accountings you received concerning your TIC Interest.

**NOT APPLICABLE**

38. If the Claimant is a Company, not an individual:

a. Identify the type of organization and state in which the Company is organized:

**NOT APPLICABLE**

b. Identify all Principals of the Company and the percentage ownership of each Principal. If any Principal is a Company, identify the Principals of each Company down through each level until individuals are identified.

**NOT APPLICABLE**

c. If the TIC Interest was acquired on behalf of Persons other than Principals in the Company, identify those Persons.

**NOT APPLICABLE**

**Section VI – Investor Claimants (To be completed only by Investor Claimants)**

39. Identify the date and amount of each and every payment (whether cash or property) made by you to a Receivership Entity. Do not include Rollover Payments in this response (see question 42 below). State the purpose of each payment, such as investment, loan, etc. Provide copies of checks or wire transfer records demonstrating each payment or, if not available, provide copies of other records demonstrating such payment.

**SEE ATTACHED [Excel Spreadsheet](#)**

40. Identify the date and amount of each and every payment received by you from or on behalf of a Receivership Entity for any reason, including interest, principal, return of capital, profit from sale of a property, fees, reimbursement of expenses, or commissions. Provide copies of checks demonstrating each payment or, if checks are not available, provide copies of other records demonstrating such payment. Do not report Rollover Payments. (See question 42 below). Report only transactions in which you received cash.

**SEE ATTACHED [Excel Spreadsheet](#)**

41. For each payment identified in response to #40, above, state the reason for the payment, such as interest, principal, return of capital, profit from sale of a property, fees, reimbursement of expenses, or commissions.

**SEE ATTACHED Excel Spreadsheet**

42. Identify the date and amount of each and every Rollover Payment of your money to a Receivership Entity. Provide copies or records evidencing each transfer.

**SEE ATTACHED Excel Spreadsheet**

43. Are you owed any money by a Receivership Entity? If yes, identify the Receivership Entity that owes the money, explain the reason why it is owing, state the amount owing as of the Receivership Appointment Date, and show how the amount was calculated.

**YES SEE ATTACHED Excel Spreadsheet**

44. As to each investment identified in response #39 and #42, above, provide the following information as to representations or promises made to you:

a. Identify who made the representation or promises to you:

**Wendell Jacobson gave me the opportunity to invest with no guarantees.**

b. What would be done with your money (for example, what Investor LLC would receive your money and what property would be purchased with that money)?

**Invested into LLCs that would purchase Real Estate**

c. The ownership, value, liabilities, liens and financing of the property in which you would be investing:

**I was familiar that there were liens on some properties and that I would be part of a group of investment entities or individuals**

d. The financial condition of the Investor LLC and the corresponding Property LLC:

**I was aware of the conditions of the properties and the entities**

e. Promised returns on your investment:

**No promises were made to me.**

f. Safety and risk concerning your investment:

**Only my investment would be at risk.**

g. Provide copies of all letters, emails, agreements and other documents evidencing these representations and promises.

**No promises were made and no copies were given.**

45. Provide copies of all statements or accountings you received concerning your investment.

**I received K-1s. I had other records that were taken by the Receiver or SEC from the offices of Management Solutions where we (April or/and Brandon) kept our documents.**

46. If the Claimant is a Company, not an individual:

a. Identify the type of organization and state in which the Company is organized:

**NOT APPLICABLE**

b. Identify all Principals of the Company and the percentage ownership of each Principal. If any Principal is a Company, identify the Principals of each Company down through each level until individuals are identified.

**NOT APPLICABLE**

c. If investments were made in a Receivership Entity on behalf of Persons other than Principals in the Company, identify those Persons.

**NONE**

**Section VII – Vendor Claimants (To be completed only by Vendor Claimants)**

47. Provide copies of all outstanding invoices for goods delivered or services provided by you to any Receivership Entity on or before the Receiver Appointment Date. Your response should be based on the date the goods were delivered or the services provided, not the date of the invoice. If the invoice is dated after the Receiver Appointment Date, state the date(s) upon which the goods were delivered or the services provided. If the invoice covers goods delivered or services provided both before and after the Receiver Appointment Date, identify the amounts which are for goods or services on or prior to the Receiver Appointment Date:

**NOT APPLICABLE**

48. If not reflected in the invoices, explain the nature of the services provided or goods delivered:

**NOT APPLICABLE**

49. State the terms upon which payment was to be made:

**NOT APPLICABLE**

50. State the total amount of your claim: \$ \_\_\_\_\_

**NOT APPLICABLE**

**Section VIII – Personal Injury Claimants (To be completed only by Personal Injury Claimants)**

51. Provide the date, location and circumstances giving rise to your claim.

**NOT APPLICABLE**

52. Provide copies of any and all police reports, insurance reports, and witness statements concerning your claim.

**NOT APPLICABLE**

53. Provide an itemization of the amount of your claim and documentation demonstrating the amount of damages, such as medical bills and invoices for repairs.

**NOT APPLICABLE**

The undersigned declares under penalty of perjury pursuant to 28 United States Code § 1746 that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2014.

For Individuals:

Printed Name: Brandon W. Jacobson

\_\_\_\_\_

Printed Name: April C. Jacobson

\_\_\_\_\_

For Companies:

Company Name:

By: \_\_\_\_\_

Printed Name:

Title: \_\_\_\_\_

EIN:

51. Provide the date, location and circumstances giving rise to your claim.

**NOT APPLICABLE**

52. Provide copies of any and all police reports, insurance reports, and witness statements concerning your claim.

**NOT APPLICABLE**

53. Provide an itemization of the amount of your claim and documentation demonstrating the amount of damages, such as medical bills and invoices for repairs.

**NOT APPLICABLE**

The undersigned declares under penalty of perjury pursuant to 28 United States Code § 1746 that the foregoing is true and correct.

Executed on September 1, 2014.

For Individuals:

Printed Name: Brandon W. Jacobson

Brandon W. Jacobson

Printed Name: April C. Jacobson

April C. Jacobson

For Companies:

Company Name:

By: \_\_\_\_\_

Printed Name:

Title: \_\_\_\_\_

EIN:

# EXHIBIT B

## Eric Vogeler

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**From:** Gil Miller <gmiller@rockymountainadvisory.com>  
**Sent:** Thursday, April 30, 2015 3:11 PM  
**To:** Brigman Harman; Doyle Byers  
**Cc:** David Bateman; Barry Johnson; Eric Vogeler  
**Subject:** RE: BTJD Claimants' Spreadsheets and Claims Analysis Report

Brig

We have prepared the summaries you mention for all but the spouses of Wendell and Allan. As I explained in a previous email, we will not be preparing those.

We sent the summaries over to Doyle a few hours ago. I'm sure he will pass them along soon after he reviews them.

Thanks

**Gil A. Miller, CPA CFE CIRA**  
**Senior Managing Member**

Rocky Mountain Advisory, LLC  
215 South State Street, Suite 550  
Salt Lake City, UT 84111  
Direct Dial: 801.428.1602  
Direct Fax: 801.428.1610  
[www.rockymountainadvisory.com](http://www.rockymountainadvisory.com)

Rocky Mountain **RMA**  
ADVISORY

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**From:** Brigman Harman [mailto:bharman@btjd.com]  
**Sent:** Thursday, April 30, 2015 3:03 PM  
**To:** Doyle Byers  
**Cc:** Gil Miller; David Bateman; Barry Johnson; evogeler@btjd.com  
**Subject:** RE: BTJD Claimants' Spreadsheets and Claims Analysis Report  
**Importance:** High

Doyle,

Eric is out sick today and asked me to follow up on this. As he mentioned, our impression was that Gil was willing to provide the accounting (the detailed excel spreadsheet and the simplified one page summary) for each of our claimants. Your prior email only contained accounting for four of our claimants.