

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**SECURITIES AND EXCHANGE COMMISSION**  
**Plaintiff,**

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**Civil Action No. 4:11-cv-655**

**v.**

**JAMES G. TEMME, and**  
**STEWARDSHIP FUND, LP,**  
**Defendants.**

**MOTION TO APPROVE ASSIGNMENT OF MEMBERSHIP INTEREST**

COMES NOW, Keith M. Aurzada, as receiver in the above-captioned matter (the "Receiver") and submits this Motion to Approve Assignment of Membership Interest (the "Motion"). In support of the Motion, the Receiver would respectfully show the Court as follows:

**I.**  
**BACKGROUND**

1. By this Motion the Receiver seeks Court approval of an assignment of membership interest in P38 Holdings, LLC (the "Membership Assignment") to the Receivership Estate from Charles A. Vose III ("Vose").

2. On October 14, 2011, the Commission instituted the above-captioned action, and the Receiver was appointed as receiver for the Receivership Entities through the Court's entry of the Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme (Dkt. No. 24); Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities (Dkt. No. 25); and Order Appointing Receiver Over James Temme (Dkt. No. 30) (together, the "Receiver Orders"). Pursuant to the Receiver Orders, the Receiver is to "immediately take and

have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate.” Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme ¶ 4 (Dkt. No. 24).

3. P38 Holdings, LLC (“P38”) was formed on or about August 7, 2009. The original ownership of P38 was held 10% by Wingspan Portfolio Advisors, LLC; 45% by Vose; and 45% by TREI II Holdings, LLC (“TREI II”). It is the Receiver’s belief that TREI II is an entity directly or indirectly controlled by Temme or Stewardship Fund, LP and, as such, is part of the Receivership Estate. *See* Receiver Orders.

4. On or about August 17, 2011, TREI II agreed to transfer its 45% interest in P38 to Vose (the “P38 Transfer”). In consideration for the P38 Transfer, TREI II received from Vose a 5% interest in Stewardship Management, LP which was held by another entity owned by Vose, Southwest Federation North Texas, LP.

5. Vose has told the Receiver that at the time the P38 Transfer was made, he believed that the P38 Transfer was for reasonably equivalent value. The Receiver does not believe that the P38 Transfer was for reasonably equivalent value and, therefore, believes that the P38 Transfer is an asset of the Receivership Estate.

6. In order to avoid the costs and expenses of resolving the Receiver’s claim to the P38 Interest, Vose and the Receiver have agreed to the Membership Assignment (attached hereto as Exhibit A), in which:

- Vose agrees to assign his interest in the P38 Transfer to the Receiver;
- Vose and Southwest Federation North Texas, LP agree to relinquish all interest in the 5% partnership interest in Stewardship Management, LP that was transferred to TREI II;
- Vose agrees to relinquish to the Receiver the \$5,264.71 in distributions from P38 he received from October 28, 2011 to March 20, 2012 attributable to the P38 Transfer; and

- Vose and the Receiver agree to mutual releases of all claims related to or arising from the P38 Transfer.

6. The Receiver believes that the cost to litigate ownership of the P38 Transfer would exceed or greatly diminish the value of any recovery for the Receivership Estate. The Receiver further believes that the Membership Assignment is fair and equitable and in the best interest of the Receivership Estate. Accordingly, the Receiver seeks authorization from the Court to enter into the Membership Assignment attached hereto as Exhibit A.

## II.

### ARGUMENT

7. A federally appointed receiver is permitted to enter into settlement agreements so long as he does so in good faith, within the terms of his appointment, and without misconduct, gross negligence, or criminal intent. *See, e.g., Securities and Exchange Com'n v. Funding Resource Group*, 2003 WL 21500431, at \* 1 (N.D. Tex. April 22, 2003); *Hawk v. Williams*, 2002 WL 31255096, at \*5 (N.D. Tex. Oct. 4, 2002); *Brewer v. Hill*, 453 F.Supp. 67, 69 (N.D. Tex. 1978).

8. Moreover, under the Receiver Orders the Receiver is entitled to “contract and negotiate with any claimants against the Receivership Estate (including, without limitation, creditors) for the purpose of compromising or settling any claim . . . Perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate [and] Enter into such agreements in connection with the administration of the Receivership Estate.” Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities ¶ 5(f)(h) (Dkt. No. 25).

9. The Receiver believes in good faith that the Membership Assignment is in the best interest of the Receivership Estate and that it will result in recovery of Receivership Estate assets that would otherwise be devalued or lost entirely.

10. Furthermore, the Receiver believes that the Membership Assignment presents the best opportunity for the Receivership Estate to realize value from the P38 Transfer. Accordingly, the Receiver seeks immediate Court approval of the Membership Assignment.

### **III.**

#### **RELIEF REQUESTED**

The Receiver seeks immediate approval of the Membership Assignment. The Receiver believes that the Membership Assignment maximizes value of the Receivership Estate.

For these reasons, the Receiver seeks immediate approval of the Motion and Membership Assignment.

Dated: March 27, 2012

#### **BRYAN CAVE LLP**

By: //s// Bradley J. Purcell

Keith Miles Aurzada  
State Bar No. 24009880

Jay L. Krystinik  
State Bar No. 24041279

Bradley J. Purcell  
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*Counsel for Keith Miles Aurzada, Receiver*

**CERTIFICATE OF CONFERENCE**

I have discussed the relief requested herein with David Reece of the Securities and Exchange Commission. The relief requested herein is not opposed by the Securities and Exchange Commission.

//s// Bradley J. Purcell

Bradley J. Purcell

**CERTIFICATE OF SERVICE**

I certify that on March 27, 2012, I served a true and correct copy of the foregoing pleading by United States First Class Mail, postage prepaid, to the following in accordance with the Federal Rules of Civil Procedure:

David Reece  
United States Securities and Exchange Commission  
Burnett Plaza, Suite 1900  
801 Cherry Street  
Fort Worth, Texas 76102

John Helms, Jr.  
Helms, Roberts & Diaz LLP  
6060 N. Central Expressway, Suite 560  
Dallas, Texas 75206  
COUNSEL FOR JAMES G. TEMME

Jim L. Flegle  
Loewinsohn Flegle Deary, L.L.P.  
12377 Merit Dr # 900  
Dallas, Texas 75251  
COUNSEL FOR CHARLES A. VOSE III

Moreover, the foregoing will be uploaded to [www.stewardshipfundreceivership.com](http://www.stewardshipfundreceivership.com)

//s// Bradley J. Purcell

Bradley J. Purcell

## ASSIGNMENT OF MEMBERSHIP INTEREST

This Assignment of Membership Interest (“Assignment”) is entered into effective as of the \_\_\_\_ day of March, 2012 (the “Effective Date”), by and between Charles A. Vose III (“Assignor” or “Vose”), and Keith M. Aurzada as Receiver for James G. Temme, Stewardship Fund, LP and all other entities directly or indirectly controlled by James G. Temme or Stewardship Fund, LP (“Assignee”).

### RECITALS

**WHEREAS**, on October 14, 2011, the Securities and Exchange Commission instituted Civil Action No. 4:11-cv-655, *Securities and Exchange Commission v. Temme and Stewardship Fund, LP*, in the United States District Court for the Eastern District of Texas, Sherman Division (“SEC Action”); and

**WHEREAS**, on October 28, 2011, the Assignee was appointed Receiver in the SEC Action pursuant to various Court Orders therein (including Doc. 24, 25, and 30) for the Receivership Estate (as defined in the Court Orders); and

**WHEREAS**, Receiver is tasked with taking exclusive custody and control of all assets and records of, or traceable to, Stewardship Fund, LP and all entities directly or indirectly controlled by James G. Temme or Stewardship Fund, LP, for the benefit of the Receivership Estate and ultimately the investors and creditors of Stewardship Fund, and to take such actions deemed prudent by Receiver to maximize the recoveries for the Receivership Estate; and

**WHEREAS**, Assignee, as Receiver, has determined that TREI II Holdings, LLC is an entity whose assets are subject to the Receivership Estate, to the extent such assets were previously owned or controlled by TREI II Holdings, LLC; and

**WHEREAS**, prior to August 17, 2011, TREI II Holdings, LLC was the owner of 450 Units (comprising a 45% Sharing Ratio) of P38 Holdings, LLC (“P38”); and

**WHEREAS**, on August 17, 2011, TREI II Holdings, LLC assigned its 45% membership interest (450 Units) in P38 to Vose (“P38 45% Interest”) in exchange for the assignment of a 5% partnership interest in Stewardship Management, LP, a Texas limited partnership, by Southwest Federated North Texas, LP (whose managing member was Vose) to James Temme (“P38/Stewardship Assignments”); and

**WHEREAS**, Vose reasonably believed on August 17, 2011, that the P38/Stewardship Assignments were for reasonably equivalent value; and

**WHEREAS**, Vose received \$5,264.71 in distributions related to the P38 45% Interest from October 28, 2011 to March 20, 2012; and

**WHEREAS**, the Receiver has advised Vose that the Receiver considers the P38 45% Interest to be an asset traceable to the Receivership Estate and Vose has advised the Receiver that he will not contest that determination by the Receiver; and

**WHEREAS**, no party to this Assignment acknowledges fault or liability in connection with the P38/Stewardship Assignments; and

**WHEREAS**, to avoid the costs and expenses of resolving the Receiver's claim to the P38 45% Interest, the Assignor and Assignee agree to the terms of this Assignment in full compromise and settlement of the Assignee's claims, for the benefit of the Receivership Estate, to the P38 45% Interest; and

**NOW THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

**Court Approval**

This Assignment is subject to Court approval in the SEC Action. The Receiver agrees to seek approval of this Assignment forthwith upon its execution.

**Membership Interest Assigned**

Assignor hereby assigns the P38 45% Interest to Assignee effective on the date of Court approval in the SEC Action.

Vose and Southwest Federated North Texas, LP relinquish all interest in and claims to the 5% partnership interest in Stewardship Management, LP transferred from Southwest Federated North Texas, LP to James Temme on August 17, 2011.

**Payments**

Assignor agrees to make, and Assignee agrees to accept, a one-time payment to Assignee of \$5,264.71 representing the income received by Assignor related to the P38 45% Interest between October 28, 2011 and March 20, 2012, effective on the date of Court approval in the SEC Action. Assignor agrees to make such payment within ten (10) business days of Court approval of this Agreement.

**Rights and Obligations Governed by P38 Company Agreement**

The rights and obligations of the Assignor and Assignee with regard to P38 Holdings, LLC are governed by the Amended and Restated Company Agreement of P38 Holdings, LLC dated January 28, 2010, and incorporated in this Assignment as if fully stated herein.

**Release of All Present and Future Claims**

Contingent upon the execution of this Assignment and Court approval, Assignee, on behalf of the Receivership Estate, hereby releases, acquits and forever discharges Assignor and his affiliates, relatives, partners, agents, co-members, insurers, and legal counsel (the “Released Parties”) from any and all actions, causes of action, claims or demands, liabilities, losses, damages, attorneys’ fees, court costs, or any other form of claim or compensation for known and unknown acts related to the P38 45% Interest and P38/Stewardship Assignments that occurred prior to the Effective Date, and covenants not to sue or threaten to sue any Released Party on account of any such claim.

**IN WITNESS WHEREOF**, each of the undersigned parties to this Assignment has caused this Assignment to be duly executed by a duly authorized representative.

ASSIGNEE

By: \_\_\_\_\_  
Keith Miles Aurzada  
As Receiver for the Receivership Estate in the SEC Action

ASSIGNOR:

\_\_\_\_\_  
Charles A. Vose III  
Individually and as Managing Member of Southwest Federated North Texas, LP



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**SECURITIES AND EXCHANGE COMMISSION**  
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**Civil Action No. 4:11-cv-655**

**v.**

**JAMES G. TEMME, and**  
**STEWARDSHIP FUND, LP,**  
**Defendants.**

**ORDER GRANTING RECEIVER’S MOTION TO APPROVE ASSIGNMENT OF  
MEMBERSHIP INTEREST**

Came for consideration the Receiver’s Motion to Approve Assignment of Membership Interest (the “Motion”) filed by Keith M. Aurzada as receiver (the “Receiver”) for James G. Temme, Stewardship Fund, LP, and all other entities directly or indirectly controlled by James G. Temme or Stewardship Fund, LP, including, but not limited to, Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP (collectively, the “Defendants”). Based upon a review of the Motion, and the pleadings on file, the Court finds and concludes that (a) the relief requested in the Motion is in the best interests of the Receiver and his receivership estates; (b) proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and (c) good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion. Therefore, it is hereby **ORDERED** that:

- i. The Motion is **GRANTED**.

ii. The Court hereby approves of the Membership Assignment attached as Exhibit A to the Motion.

iii. Within a reasonable time after this Order is entered, the Receiver shall post this Order on [www.stewardshipfundreceivership.com](http://www.stewardshipfundreceivership.com).

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2012.

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UNITED STATES MAGISTRATE JUDGE