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*Attorneys for Steven Max Pottorff*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re:

STEVEN MAX POTTORFF,

Debtor.

Case No. 17-41005-JMM

Chapter 7

LINAN INC., an Idaho corporation dba  
DURA-BILT TRANSMISSIONS,  
DURA-BILT TRANSMISSION  
EXCHANGE, INC, an Idaho corporation,  
and A&D INVESTMENTS LLC, an  
Idaho limited liability company,

Plaintiffs,

STEVEN POTTORFF,

Defendant.

Adversary Case No. 18-08007-JMM

**SETTLEMENT STIPULATION**

COME NOW Plaintiffs LINAN INC. dba Dura-Bilt Transmissions, DURA-BILT TRANSMISSION EXCHANGE, INC. and A&D INVESTMENTS LLC (the "Plaintiffs"), by and through one of their attorneys of record, Jeffrey D. Brunson, Esq. of Beard St. Clair Gaffney PA, and Defendant STEVEN M. POTTORFF (the "Defendant"), by and through his attorney of record, Robert J. Maynes of Maynes Taggart PLLC, and stipulate and agree as follows:

### **RECITALS**

WHEREAS the Defendant filed his chapter 7 bankruptcy petition on November 15, 2017.

*See Case No. 17-41005-JMM.*

WHEREAS, Plaintiffs filed the above captioned adversary proceeding suit against Defendant on February 14, 2018.

WHEREAS, Plaintiffs allege that Defendant is liable for his ex-wife, Charlotte Pottorff's embezzlement from Plaintiffs in an amount according to proof, but not less than \$2,325,504.89 and that such sums are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6) and (a)(7).

WHEREAS, Defendant acknowledges that Charlotte Pottorff, as Plaintiffs' former bookkeeper, embezzled substantial sums from Plaintiffs; however, Defendant denies all other allegations.

WHEREAS, Defendant acknowledges that he was lawfully married to Charlotte Pottorff during the time that she committed unlawful acts against Plaintiffs.

WHEREAS, Defendant adamantly maintains that he was unaware of Charlotte Pottorff's embezzlement and that Charlotte Pottorff proactively hid such embezzlement from Defendant.

WHEREAS, the Plaintiffs and Defendant have determined it to be in their mutual best interest to settle the issues existing between them.

### **THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE:**

1. The Defendant shall pay to the Plaintiffs, TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) (the "Settlement Payment"), which sum shall be due upon execution of this Settlement Stipulation.

2. In exchange for the Settlement Payment and within five (5) business days after the receipt of the same, Plaintiffs shall cause their counsel to submit to the Court a proposed order of dismissal of Adv. Proc., 18-08007-JMM with prejudice as to Counts II (nondischargeability) and III (agency) of the First Amended Complaint, but without prejudice as to Count I (establishment of debt) of the First Amended Complaint for allowance of Proof of Claim No. 2 in the bankruptcy case, with all parties bearing their own attorneys' fees and costs.

3. In exchange for the dismissal and release provided herein, Defendant further stipulates and agrees that he shall not object to Plaintiffs' Proof of Claim No. 2 filed in Defendant's Bankruptcy Case 17-41005-JMM or Plaintiffs' Proof of Claim No. 2 filed in Charlotte Pottorff's Bankruptcy Case 17-41006-JMM.

4. **MUTUAL RELEASE.** In exchange for the Settlement Payment the Parties, except as reserved below, do hereby release, remise, and forever discharge each other, their attorneys, accountants, and any other agents of either party from any and all claims, demands, rights, or causes or action of whatsoever kind or nature which any party hereto has ever had or may now have, from the beginning of time until the execution of this agreement. Notwithstanding this mutual release, Plaintiffs shall have the reserved right to pursue and obtain such recovery on their Proof of Claim 2 as is allowed in Defendant's bankruptcy estate, and Plaintiff's Proof of Claim 2 in Charlotte Pottorff's bankruptcy estate, without objection from Defendant.

5. **ATTORNEY FEES.** In the event it shall become necessary to enforce the provisions of this Settlement Stipulation, the prevailing party shall be entitled to attorney's fees and all costs incurred in enforcing the terms of this Settlement Stipulation.

6. CONTROLLING LAW AND VENUE. This Settlement Stipulation shall be construed and interpreted in accordance with the laws of the State of Idaho. Any legal action on this agreement may only be heard by the United States Bankruptcy Court for the District of Idaho, Pocatello Division.

7. INTEGRATION. This Settlement Stipulation constitutes the entire agreement between the parties. This Settlement Stipulation may only be amended or modified by signed written agreement between the parties.

8. ACKNOWLEDGEMENTS. Plaintiffs and Defendant acknowledge and represent as follows:

- a. The Parties hereto represent that they have not relied on any statement of any other party or any expert, agent or attorney of any other party in electing to make this compromise and settlement. Both parties have been represented by counsel of their choice and have had ample opportunity to read, study and make inquiry about the terms contained herein and the legal effect of the said terms of this Settlement Stipulation and are, therefore, relying on their own respective informed judgment about the advisability of entering into this Settlement Stipulation;
- b. The settlement and release made effective hereby is the compromise settlement and release of each party by and with each other party, and neither this release nor any payments made pursuant thereto shall be construed as an admission of liability of any party, the same being hereby denied, unless expressly provided herein;
- c. All Parties declare that no promises, inducements nor agreements not herein expressed have been made to any other party, and that this agreement contains the entire agreement between the Parties hereto and the terms of this release agreement are contractual and not a mere recital;
- d. This agreement is the result of extensive negotiations between sophisticated business entities and/or individuals. As such, the Parties agree that this agreement shall not be construed against either Party on the basis of draftsmanship;
- e. The person(s) signing this Settlement Stipulation for Plaintiffs has the full and unqualified authority to execute this Settlement Stipulation and bind the Plaintiffs and its/their members, managers, employees, officers, administrators, successors and assigns; and

f. Neither party is relying on any statement of the other party except to the extent either party has made a statement or representation that is contained in this Settlement Stipulation.

9. Time is of the essence in the performance of each and every term and provision in this agreement by the Parties.

SO STIPULATED this 2<sup>nd</sup> day of January 2019.

LINAN, INC.  
dba Dura-Bilt Transmissions

By: Vall E. Erickson  
Its: VICE PRESIDENT

STEVEN M. POTTORFF

By: Steven M. Pottorff  
STEVEN M. POTTORFF

DURA-BILT TRANSMISSION  
EXCHANGE, INC.

By: Vall E. Erickson  
Its: PRESIDENT

A&D INVESTMENTS LLC

By: Dyle Erickson  
Its: VICE PRESIDENT

APPROVED AS TO FORM:

DATED: January 2, 2019

BEARD ST. CLAIR GAFFNEY PA

Jeffrey D. Brunson  
Jeffrey D. Brunson, Esq  
Counsel for Plaintiffs

DATED: January 2, 2019

MAYNES TAGGART PLLC

Robert J. Maynes  
Robert J. Maynes, Esq.  
Counsel for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the January 4, 2019, I filed the above referenced pleading with the Court via CM/ECF and the following parties are reflected as receiving the Notice of Electronic Filing as CM/ECF Registered Participants:

Jeffrey D Brunson on behalf of Plaintiff A & D Investments LLC  
jeff@beardstclair.com, herickson@beardstclair.com

Jeffrey D Brunson on behalf of Plaintiff Dura-Bilt Transmission Exchange, Inc.  
jeff@beardstclair.com, herickson@beardstclair.com

Jeffrey D Brunson on behalf of Plaintiff Linan Inc.  
jeff@beardstclair.com, herickson@beardstclair.com

Elisa Sue Magnuson on behalf of Petitioning Creditor Idaho State Tax Commission  
elisa.magnuson@tax.idaho.gov, becky.ihli@tax.idaho.gov

Jed W Manwaring on behalf of Plaintiff A & D Investments LLC  
jmanwaring@evanskeane.com, valerie@evanskeane.com

Jed W Manwaring on behalf of Plaintiff Dura-Bilt Transmission Exchange, Inc.  
jmanwaring@evanskeane.com, valerie@evanskeane.com

Jed W Manwaring on behalf of Plaintiff Linan Inc.  
jmanwaring@evanskeane.com, valerie@evanskeane.com

/s/ Robert J. Maynes  
ROBERT J. MAYNES