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LEVY, SMALL & LALLAS  
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Attorneys for Plaintiff  
Partners for Growth II, L.P

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JAN 17 2012

ALAN CARLSON, Clerk of the Court  
*A. Rincon*  
BY A. RINCON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CENTRAL JUSTICE CENTER

30-2012

PARTNERS FOR GROWTH II, L.P., a  
Delaware limited partnership,

Plaintiff,

vs.

BENTON H. WILCOXON, an individual;  
DOMONIC J. CARNEY, an individual;  
STEWART RAMSAY, an individual;  
DENNIS C. CAREY, an individual;  
MICHAEL K. LEE, an individual;  
MICHAEL D. MCINTOSH, an individual;  
H. DEAN MCCORMICK, an individual;  
and DOES 1 through 20, inclusive,

Defendants.

Case No. 00537668

COMPLAINT FOR:

- 1) BREACH OF FIDUCIARY DUTY;
- 2) IMPAIRMENT OF COLLATERAL;
- 3) NEGLIGENCE; AND
- 4) CONVERSION

JUDGE FREDERICK P. HORN  
DEPT. 031  
**BY FAX**

Plaintiff alleges:

GENERAL ALLEGATIONS

A. The Parties

- 1. Plaintiff Partners for Growth II, L.P. ("PFG") is a limited partnership organized and existing under the laws of the State of Delaware, with its principal place of business in the County of San Francisco, State of California.
- 2. PFG is informed and believes, and based thereon alleges, that defendant Benton H. Wilcoxon ("Wilcoxon") is an individual residing in the County of Orange, State of California.

1 Wilcoxon formerly was the Chairman of the Board of Directors of Composite Technology  
2 Corporation ("CTC"), a Nevada corporation with its principal place of business in the County of  
3 Orange, State of California, and also served as Chief Executive Officer of CTC and its  
4 subsidiaries, CTC Cable Corporation ("CTC Cable") and Stribog, Inc. ("Stribog").

5 3. PFG is informed and believes, and based thereon alleges, that defendant Domonic  
6 J. Carney ("Carney") is an individual residing in the County of San Diego, State of California.  
7 Carney formerly served as the Chief Financial Officer of CTC and CTC Cable.

8 ~~4. PFG is informed and believes, and based thereon alleges, that defendant Stewart~~  
9 Ramsay ("Ramsay") is an individual residing in the County of Contra Costa, State of California.  
10 Ramsay formerly served as CTC Cable's president.

11 5. PFG is informed and believes, and based thereon alleges, that defendant Dennis  
12 C. Carey ("Carey") is an individual residing in the State of Arizona. Carey formerly served as a  
13 director of CTC.

14 6. PFG is informed and believes, and based thereon alleges, that defendant Michael  
15 K. Lee ("Lee") is an individual residing in the County of San Diego, State of California. Lee  
16 formerly served as a director of CTC.

17 7. PFG is informed and believes, and based thereon alleges, that defendant Michael  
18 D. McIntosh ("McIntosh") is an individual residing in the State of Colorado. McIntosh formerly  
19 served as a director of CTC.

20 8. PFG is informed and believes, and based thereon alleges, that defendant D. Dean  
21 McCormick, III ("McCormick") is an individual residing in the State of California, County of  
22 Orange. McCormick formerly served, and may be continuing to serve, as a director of CTC.

23 9. The true names and capacities, whether individual, corporate, associate or  
24 otherwise, of defendants Does 1 through 20, inclusive, are unknown to PFG, who therefore sues  
25 said defendants by such fictitious names. PFG will amend this Complaint to show their true  
26 names and capacities when the same have been ascertained.

27 10. PFG is informed and believes, and based thereon alleges, that each defendant was  
28 the agent, servant and/or employee of each of the other defendants, and in doing and suffering

1 the acts hereinafter alleged, each was acting in such capacity and within the relative scope of his  
2 or her authority.

3 **B. The Escrow Agreement**

4 11. PFG is informed and believes, and based thereon alleges, that on or about August  
5 10, 2009, CTC, Daewoo Shipbuilding & Marine Engineering Co., Ltd. ("DSME"), and Stribog  
6 (then known as DeWind, Inc.) entered into an Asset Purchase Agreement (the "Purchase  
7 Agreement") pursuant to which, among other things, Stribog agreed to sell substantially all of its  
8 ~~assets to DSME for \$46,500,000, subject to adjustment in accordance with the terms and~~  
9 conditions of the Purchase Agreement, and DSME's assumption of certain of Stribog's  
10 liabilities. At closing, a portion of the cash consideration was to be paid to Stribog, with the  
11 remainder to be deposited into an escrow account.

12 12. PFG is informed and believes, and based thereon alleges, that on or about  
13 September 4, 2009, DeWind Turbine Co. ("DeWind Turbine"), an affiliate of DSME and  
14 assignee of DSME's rights under the Purchase Agreement, Stribog (then known as DeWind,  
15 Inc.), and US Bank, N.A. ("US Bank"), entered into an Escrow and Security Agreement (the  
16 "Escrow Agreement") pursuant to which DeWind Turbine deposited \$17,175,000 into an escrow  
17 account (the "Escrow Account") established with US Bank in accordance with the Purchase  
18 Agreement. The Escrow Agreement provides, among other things, as follows:

19 a. Stribog's interest in the funds in the Escrow Account was a contingent  
20 right to payment of such funds;

21 b. US Bank was holding the funds in the Escrow Account for the benefit of  
22 Stribog and DeWind Turbine; and

23 c. The funds in the Escrow Account were to be released to DeWind Turbine  
24 and/or Stribog under terms and conditions specified in the Purchase Agreement and the Escrow  
25 Agreement.

26 **C. The Loan and Security Agreement and the Guaranty**

27 13. On or about April 12, 2010, PFG, on the one hand, and CTC, CTC Cable, and  
28 another CTC subsidiary, CTC Renewables Corporation (collectively, the "CTC Borrowers"), on

1 the other hand, entered into a written Loan and Security Agreement pursuant to which, among  
2 other things, PFG agreed to loan the CTC Borrowers the sum of \$10 million in accordance with  
3 the terms and conditions thereof.

4 14. Pursuant to Section 2.1 of the Loan and Security Agreement, the CTC Borrowers  
5 granted PFG a first-priority security interest in all of their right, title and interest in and to all of  
6 the following, whether then owned or thereafter arising or acquired and wherever located: all  
7 Accounts; all Inventory; all Equipment; all Deposit Accounts; all General Intangibles (including  
8 without limitation all Intellectual Property); all Investment Property; all Other Property; and any  
9 and all claims, rights and interests in any of the foregoing, and all guaranties and security for any  
10 of the foregoing, and all substitutions and replacements for, additions, accessions, attachments,  
11 accessories, and improvements to, and proceeds (including proceeds of any insurance policies,  
12 proceeds of proceeds and claims against third parties) of, any and all of the foregoing, and all the  
13 CTC Borrowers' books relating to any and all of the foregoing (collectively, the "Borrower  
14 Collateral"). Capitalized terms in the foregoing description have the meanings accorded them in  
15 the Loan and Security Agreement and by the California Uniform Commercial Code.

16 15. Pursuant to Section 4.2 of the Loan and Security Agreement, the CTC Borrowers  
17 specifically acknowledged that the proceeds of the sale of assets to De Wind Turbine constituted  
18 part of the Borrower Collateral for all purposes under such agreement. PFG's security interest in  
19 Stribog's right to payment from the Escrow Account accordingly attached at the time the Loan  
20 and Security Agreement was executed and PFG advanced funds thereunder shortly thereafter.

21 16. PFG perfected its security interest in the Borrower Collateral by filing a UCC-1  
22 Financing Statement with the Nevada Secretary of State on April 6, 2010 as Document  
23 No. 2010008490-8.

24 17. On or about April 12, 2010, Stribog executed and delivered to PFG a written  
25 Cross-Corporate Continuing Guaranty and Security Agreement (the "Guaranty"). Pursuant to the  
26 Guaranty, Stribog, among other things, unconditionally guaranteed and promised to pay PFG,  
27 and perform for PFG's benefit, all of the CTC Borrowers' present and future indebtedness to  
28

1 PFG, including without limitation all obligations under the Loan Agreement and any  
2 amendments, modifications, renewals or extensions thereof.

3 18. Pursuant to Section 14 of the Guaranty, Stribog granted PFG a first-priority  
4 security interest in all of Stribog's right, title and interest in and to all of the following, whether  
5 then owned or thereafter arising or acquired and wherever located: all Accounts; all Inventory;  
6 all Equipment; all Deposit Accounts; all General Intangibles (including without limitation all  
7 Intellectual Property); all Investment Property; all Other Property; and any and all claims, rights  
8 ~~and interests in any of the foregoing, and all guaranties and security for any of the foregoing, and~~  
9 all substitutions and replacements for, additions, accessions, attachments, accessories, and  
10 improvements to, and proceeds (including proceeds of any insurance policies, proceeds of  
11 proceeds and claims against third parties) of, any and all of the foregoing, and all of Guarantor's  
12 books relating to any and all of the foregoing (collectively, the "Guarantor Collateral").  
13 Capitalized terms in the foregoing description have the meanings accorded them in the Loan  
14 Agreement and by the California Uniform Commercial Code.

15 19. PFG perfected its security interest in the Guarantor Collateral by filing a UCC-1  
16 Financing Statement with the Nevada Secretary of State on April 9, 2010 as Document No.  
17 2010008938-8.

18 20. On or about October 18, 2010, PFG and the CTC Borrowers entered into a  
19 Conditional Waiver and Modification to Loan and Security Agreement (the "Original  
20 Modification").

21 21. On or about December 13, 2010, PFG and the CTC Borrowers entered into a  
22 Conditional Waiver and Modification No. 2 to Loan and Security Agreement (the "Second  
23 Modification") pursuant to which, among other things, the CTC Borrowers agreed to cause to be  
24 paid over to PFG all monies received under the Escrow Agreement within one business day of  
25 receipt. The Loan and Security Agreement, as modified by the Original Modification and the  
26 Second Modification, is hereinafter referred to as the "Loan Agreement."  
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1 of the CTC Borrowers and Stribog to PFG, and that CTC was required under the Second  
2 Modification to transfer the Escrow Proceeds to PFG within one business day of receipt.

3 28. PFG is informed and believes, and based thereon alleges, that defendants  
4 breached their fiduciary duty to PFG by diverting and dissipating corporate assets through self-  
5 dealing and the preferential treatment of favored creditors by, among other things, the following:

6 a. Rather than pay the Escrow Proceeds to PFG as CTC was contractually  
7 required to do under the Second Modification, or at a minimum deposit the funds in an account  
8 ~~over which PFG had a control agreement as required by the Loan and Security Agreement,~~

9 defendants caused CTC to transfer the Escrow Proceeds to CTC's attorneys to put such funds  
10 beyond PFG's reach;

11 b. Defendants directed CTC's attorneys to pay a portion of the Escrow  
12 Proceeds, which constituted proceeds of Stribog's contingent right to payment from the Escrow  
13 Account in which PFG had a prior security interest, to or for the benefit of defendants Ramsay,  
14 Carney, Carey, Lee, and McIntosh (collectively, the "Defendant Insiders") in purported  
15 repayment of expenses and/or loans on which they received not only the principal balance  
16 allegedly due, but also interest that equaled an annualized rate of approximately 72%; and

17 c. Defendants directed CTC's attorneys to pay other favored creditors in  
18 preference to PFG with the Escrow Proceeds in which PFG had a prior security interest as  
19 proceeds of Stribog's contingent right to payment from the Escrow Account, and failed and  
20 refused to pay outstanding obligations due to PFG.

21 29. PFG is informed and believes, and based thereon alleges, that in determining to  
22 utilize the Escrow Proceeds instead of turning them over to PFG, and by deciding to pay the  
23 Insider Defendants and other favored creditors, such as The McIntosh Group of which McIntosh  
24 was the principal, with the Escrow Proceeds, defendants did not act in good faith and had  
25 conflicting interests.

26 30. As a direct and proximate result of defendants' breach of fiduciary duty, PFG has  
27 been damaged through the loss of the Escrow Proceeds in a sum as yet unascertained, but in no  
28 event less than the jurisdictional minimum of this Court. PFG will seek leave to amend this

1 complaint to set forth the true nature and full extent of its damages when ascertained or at the  
2 time of trial.

3 31. The injury suffered by PFG as the result of defendants' breach of fiduciary duty  
4 arises from PFG's security interest in the Escrow Proceeds and is therefore a direct injury that is  
5 unique to PFG and is not an injury suffered by CTC's other creditors.

6 **SECOND CAUSE OF ACTION**

7 **(Against All Defendants**

8 **For Impairment of Collateral)**

9 32. PFG incorporates by this reference the allegations of paragraphs 1 through 24,  
10 inclusive, of the General Allegations.

11 33. PFG is informed and believes, and based thereon alleges, that defendants knew  
12 that pursuant to the Loan and Security Agreement, PFG had a security interest in Stribog's  
13 contingent right to payment from the Escrow Account to secure performance of the obligations  
14 of the CTC Borrowers and Stribog to PFG, and that CTC was required under the Second  
15 Modification to transfer the Escrow Proceeds to PFG with one business day of receipt.

16 34. Defendants owed a duty to PFG not to impair the value of the collateral securing  
17 the indebtedness of the CTC Borrowers and Stribog to PFG, including without limitation  
18 Stribog's right to payment from the Escrow Account, and not to engage in any conduct that  
19 would impair the value of such right to payment or other collateral.

20 35. Defendants breached the foregoing duty by directing CTC's attorneys to utilize  
21 large portions of the Escrow Proceeds, which constituted proceeds of Stribog's right to payment  
22 from the Escrow Account and were therefore subject to PFG's security interest, to pay other  
23 creditors, including without limitation Defendant Insiders and other affiliates of CTC.

24 36. As a direct and proximate result of defendants' improper utilization of the Escrow  
25 Proceeds, PFG's security interest in the collateral has been impaired since the proceeds of such  
26 collateral are no longer available to satisfy CTC's indebtedness, and CTC has filed bankruptcy  
27 and is unable to satisfy PFG's claim in full. Such impairment of collateral was the reasonably  
28 foreseeable consequence of defendants' actions.





1 **FOURTH CAUSE OF ACTION**

2 **(Against All Defendants for Conversion)**

3 42. PFG incorporates by this reference the allegations of paragraphs 1 through 24,  
4 inclusive, of the General Allegations.

5 43. Pursuant to, among other things, the Loan Agreement, the UCC-1 financing  
6 statements, and related documents, PFG was at all times material hereto entitled to immediate  
7 and exclusive possession of, and had a first-priority security interest in, Stribog's right to  
8 payment from the Escrow Account and the proceeds thereof.

9 44. PFG is informed and believes, and based thereon alleges, that defendants knew  
10 that pursuant to the Loan and Security Agreement, PFG had a security interest in Stribog's  
11 contingent right to payment from the Escrow Account to secure performance of the obligations  
12 of the CTC Borrowers and Stribog to PFG, and that CTC was required under the Second  
13 Modification to transfer the Escrow Proceeds to PFG within one business day of receipt.

14 45. PFG is informed and believes, and based thereon alleges, that from and after  
15 March 30, 2011, defendants intentionally and wrongfully converted the Escrow Proceeds to their  
16 own use and benefit by (a) exercising dominion and control over the Escrow Proceeds, (b) failing  
17 to remit the Escrow Proceeds to PFG within one business day of receipt, and (c) diverting the  
18 Escrow Proceeds to themselves, third parties, or other uses or purposes not authorized by PFG.

19 46. Notwithstanding PFG's demand, defendants have failed and refused, and continue  
20 to fail and to refuse, to turn over the Escrow Proceeds to PFG, including without limitation the  
21 portions of the Escrow Proceeds that certain defendants personally received and retained.

22 47. By collecting, diverting, and retaining the Escrow Proceeds, defendants have  
23 wrongfully acted to deprive PFG of its interest in, and right to possession of, the Escrow  
24 Proceeds, which constitutes proceeds of Stribog's right to payment from the Escrow Account and  
25 therefore are subject to PFG's security interest.

26 48. As a direct and proximate result of defendants' conversion of the Escrow  
27 Proceeds, PFG is entitled to possession of such proceeds, or, alternatively, damages in an amount  
28 according to proof.

1           49. Pursuant to Civil Code Section 3336, PFG is entitled to fair compensation for  
2 time and money expended in pursuit of the converted Escrow Proceeds.

3           WHEREFORE, PFG prays for judgment against defendants as follows:

4           1. On the First Cause of Action for Breach of Fiduciary Duty against all defendants:

5           a. For damages in such sum as shall be determined at trial; and

6           b. For prejudgment interest thereon.

7           2. On the Second Cause of Action for Impairment of Collateral against all  
8 defendants:

9           a. For damages in such sum as shall be determined at trial; and

10           b. For prejudgment interest thereon.

11           3. On the Third Cause of Action for Negligence against all defendants:

12           a. For damages in such sum as shall be determined at trial; and

13           b. For prejudgment interest thereon

14           4. On the Fourth Cause of Action for Conversion against all defendants:

15           a. For damages in such sum as shall be determined at trial;

16           b. For prejudgment interest thereon; and

17           c. For fair compensation for time and money expended in pursuant of the  
18 Escrow Proceeds.

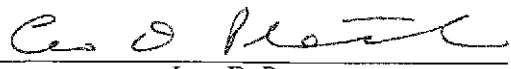
19           5. On all causes of action:

20           a. For costs of suit incurred herein; and

21           b. For such other and further relief as the Court may deem just and proper.

22 DATED: January 13, 2012

23 LEO D. PLOTKIN  
24 LEVY, SMALL & LALLAS  
A Partnership Including Professional Corporations

25 By:   
26 LEO D. PLOTKIN  
27 Attorneys for Plaintiff  
28 Partners for Growth II, L.P.