**FEATHERSTONE DESISTO LLC**
Attorneys

Facsimile
303 626-7101

E-mail:
bfeatherstone@featherstonelaw.com

**1430 Wynkoop Street, Suite 201**
**Denver, Colorado 80202**

**303 626-7100**

Bruce A. Featherstone
Direct Line
303 626-7125

May 13, 2014

Barry Farah
Cascade Financial, LLC
1880 Office Club Point
Colorado Springs, Colorado 80920

Re: Historical summary of proceedings:
*Professional Staff Leasing Corporation v.*
*The Personnel Department, Inc.*
Civil Action No. 00-cv-1282-JLK (D. Colo.) (and related matters)

Dear Barry:

This letter provides a brief historical summary of the legal proceedings in your dispute and litigation with Professional Staff Leasing Corporation ("Prolease") of Maryland.

The events described herein are well documented in the public records of the court proceedings. Those records can be easily accessed to confirm all material details.

**The Dispute.** The litigation arose out of a failed negotiation to sell your company, The Personnel Department, Inc. ("TPD") of Colorado Springs, to Prolease. Both entities are professional staffing organizations. In 1999 you and the principal of Prolease, Bala Ramamoorthy, negotiated the basic terms for the sale of TPD to Prolease. The lawyers for Prolease summarized the terms in a preliminary, non-binding letter of intent, which you and Ramamoorthy executed. The letter of intent, as prepared by Prolease, expressly stated that the terms were subject to the buyer's due diligence investigation and further negotiation; final terms were to be confirmed in a comprehensive, written contract for sale and purchase. Importantly, the Prolease letter stated the preliminary terms, and the letter itself would be null and void if Prolease failed to make a deposit payment into escrow by a stated date or if no final contract were negotiated and executed by the parties. The letter committed the parties to further negotiations in good faith, but did not bind them to a transaction.

As can often happen in proposed acquisitions, further negotiations to a contract for sale revealed a number of disagreements about the details of the transaction's terms. The parties

were never able to agree on or execute a final contract. Prolease also never made the deposit payment required by the letter of intent. For these reasons, TPD ultimately terminated the letter of intent and ended negotiations for a proposed transaction. Prolease objected to the termination and, despite the plain language of the letter of intent to the contrary, threatened to sue for breach of contract if TPD did not close the transaction per the letter's terms. Prolease threatened its lawsuit would tie up TPD in court if it tried to sell itself to another purchaser.

Several months after the termination of negotiations with Prolease, TPD opened negotiations with a Denver purchaser. The evidence showed that these new negotiations did not commence until well after TPD terminated any proposed transaction with Prolease and that the proposed new transaction had nothing whatsoever to do with the failure of a transaction with Prolease. TPD negotiated a new non-binding letter of intent to sell to the Denver purchaser on favorable terms. As it had threatened to do, Prolease filed a lawsuit against TPD in the United States District Court for Maryland seeking damages and a court order requiring TPD to sell itself to Prolease on the terms of the non-binding letter of intent ("Maryland Lawsuit"). During the Denver purchaser's due diligence, you expressed confidence that TPD would defeat the Prolease claim and you disclosed to the Denver purchaser the Maryland Lawsuit. The Maryland Lawsuit, unfortunately, was not resolved by the point in time at which TPD and the Denver purchaser were to sign a formal contract for sale. The evidence showed that no reasonable purchaser would close a transaction to buy TPD while Prolease had a lawsuit pending for a court order requiring TPD to sell itself to Prolease. Consequently, the Denver purchaser terminated the proposed transaction to buy TPD because of the uncertainty created by the pending Maryland Lawsuit. In a letter terminating the proposed sale, the Denver purchaser stated that it was prepared to close the acquisition for TPD but for the pending Maryland Lawsuit. That letter was very important in the subsequent litigation.

The Maryland lawsuit was not resolved until April 2000. By that time the Denver purchaser was no longer interested in an acquisition, and the market for professional employment staffing companies had declined. You ultimately sold TPD to a third party from Indianapolis, pursuant to less favorable terms, including transaction notes for most of the purchase price. The Indianapolis purchaser later defaulted on the notes and declared bankruptcy without paying most of the sales price.

**The Litigation.** As stated, Prolease commenced the Maryland Lawsuit in the late spring of 1999 in federal court. Prolease claimed that TPD breached a contract for sale allegedly formed by the letter of intent by failing to sell to Prolease on its terms. Prolease also claimed that TPD breached its obligation to negotiate in good faith to a final contract and therefore waived that requirement. Prolease sought a court order of specific performance to close the transaction and a judgment for damages. TPD hired Maryland lawyers to respond to the complaint and denied the Prolease claims, asserting that Prolease never made the required deposit and that the letter of intent, drafted by Prolease, specifically provided that no binding

transaction was possible until a formal contract was signed. TPD moved for summary judgment to dismiss the Prolease claims. That motion was fully briefed by the parties in proceedings that lasted into 2000 (thereby frustrating the proposed sale to the Denver purchaser). In April 2000, the Maryland court granted the motion for summary judgment, rejecting Prolease's claims, as a matter of law. The court found that the letter of intent was not an enforceable contract for the sale of TPD, according to its plain terms, and TPD had the right to terminate the prospective transaction. Prolease was not entitled to specific performance, damages, or any other remedy for TPD's decision to terminate. The Maryland court also rejected the claim that TPD had failed to negotiate in good faith.

In response to Prolease's Maryland Lawsuit, TPD filed a counterclaim against Prolease and Ramamoorthy for tortious interference with TPD's right to sell itself, which caused TPD to be unable to finish a sale to the Denver purchaser. The claim was that, by filing a baseless lawsuit for alleged breach of an unenforceable letter of intent, Prolease scared off other potential purchasers. The Maryland court did not resolve that claim, but instead transferred it to the federal court in Colorado for decision.

The counterclaim was assigned for trial to The Honorable John Kane of the United States District Court for Colorado. At this point you retained me to represent TPD on the counterclaim and any appeal. The counterclaim was subject to extensive discovery and pretrial proceedings. The claim was finally tried to a jury before Judge Kane in August 2005. The jury found in favor of TPD, rendering a verdict that Prolease/Ramamoorthy improperly and tortiously interfered with TPD's right to sell itself to the Denver purchaser and awarding compensatory damages of approximately $2.59 million. The jury also awarded punitive damages against Prolease/Ramamoorthy of $1.8 million, finding their improper interference malicious. Judge Kane rejected the efforts of Prolease/Ramamoorthy to set aside the verdict, and entered judgment on the verdict in favor of TPD, awarding pre-judgment and post-judgment interest as well.

Prolease/Ramamoorthy appealed the judgments of both the Maryland and Denver courts to the United States Court of Appeals for the Tenth Circuit in Denver. For the appeal, Prolease/Ramamoorthy retained appellate lawyers from the Washington, D.C. office of Hogan Lovells, the law partnership of John Roberts, now Chief Justice of the United States Supreme Court. After briefing and oral argument, the Tenth Circuit rejected the Prolease/Ramamoorthy appeal in its entirety and affirmed the judgments of the Maryland court (rejecting the Prolease claims) and the Colorado court (entering a substantial money judgment for TPD on its counterclaim).

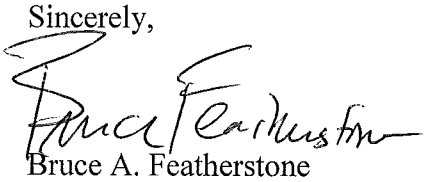
The Tenth Circuit's affirmance ended proceedings. TPD was able to collect its judgment in full, with interest.

* * *

The claims between Prolease and TPD were the subject of proceedings before three courts. TPD won in each court. In the end, TPD was judged to have acted properly in terminating negotiations when and as it did. Prolease/Ramamoorthy were judged to have made baseless claims to interfere with TPD's right to sell itself to a purchaser of its choosing for the improper purpose of trying to force TPD to sell itself on terms Prolease wanted but could not gain through negotiations.

Thank you for the opportunity to represent TPD and to help secure these outcomes. Best regards to you.

Sincerely,



Bruce A. Featherstone