

I.

RECITALS

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3 A. On November 16, 2015, Plaintiff filed a civil complaint (Complaint) in Superior
4 Court of the State of California, Santa Cruz County, on behalf of the People of the State of
5 California against Defendants Eye Pocket Media, Inc. (Eye Pocket Media), Herred, and Ronald
6 Hopping (Hopping) (collectively, Defendants), requesting injunctive relief, civil penalties, ancillary
7 relief, and attorney's fees for violations of the Corporate Securities Law of 1968 (CSL) (Corp. Code,
8 § 25000 et seq.).

9 B. Plaintiff's Complaint alleged that from October 2008 to in or around August 2010,
10 Defendants offered and sold unqualified, non-exempt securities (Eye Pocket Media Securities),
11 raising at least \$350,500 from at least 24 investors. Plaintiff's Complaint further alleged that in
12 connection with the offer and sale of the Eye Pocket Media Securities, Defendants Hopping and
13 Herred made material misrepresentations and omissions that Eye Pocket Media: had exclusive
14 partnerships with large, well-known companies; would launch within two weeks to one month of
15 funding; and would earn over \$75 million within the first three years of launching.

16 C. Plaintiff's Complaint further alleged that Defendants failed to disclose the existence
17 of a National Association of Securities Dealers, Inc.¹ action (NASD Action) against Herred, as well
18 as a May 31, 2006 Desist and Refrain Order issued by the Commissioner against Herred for
19 violations of Corporations Code sections 25110 and 25401 the (2006 D&R Order).

20 D. Herred admits to the following facts:

21 a) Herred admits the existence of the NASD Action and the 2006 D&R Order
22 against Herred.

23 b) In or around 2008, Herred noticed that the use of smartphones was rising, and
24 saw a demand in the market for a custom mobile website builder. Herred retained Akmin
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26 ¹ The NASD and the member regulation, enforcement and arbitration operations of the New York
27 Stock Exchange merged on July 30, 2007 to form the Financial Industry Regulatory Authority
28 (FINRA), a non-governmental, self-regulatory organization for securities brokers and dealers doing
business in the United States.

1 Technologies to build a custom builder, which he called Eye Pocket.

2 c) In or around March 2008, Herred and his now deceased wife, Martha Herred,
3 formed Eye Pocket Media, a California corporation, with Martha Herred as President and Herred as
4 Secretary, product creator, and software developer to offer two products: (1) the Eye Pocket custom
5 mobile website builder; and (2) Zolowag, a proprietary digital marketing application aimed at teens
6 using America Online Instant Messenger buddy lists.

7 d) Eye Pocket Media conducted business from and maintained a principal place
8 of business in Santa Cruz County from March 2008 to at least May 2010.

9 e) On March 17, 2008, Eye Pocket Media issued 51,000 shares of its common
10 stock to Martha Herred. Herred signed the stock certificate in his capacity as Secretary.

11 f) In or around the fall of 2008, Hopping joined Eye Pocket as an officer to help
12 grow the business and offered to raise capital. Herred claims that Hopping wanted to change Eye
13 Pocket Media from a simple mobile website builder to a more complex multi-level marketing
14 application.

15 g) In or around the fall of 2008, Hopping began to solicit his wife's friends and
16 family members, and their acquaintances, to invest in Eye Pocket Media.

17 h) As part of the solicitation, Eye Pocket Media prepared a summary of the
18 offering document, subscription agreement and executive summary (Offering Materials) that were
19 provided to potential investors. Herred saw and reviewed the Eye Pocket Media Offering Materials
20 before they were provided to potential investors and believed that these documents contained the
21 following material misrepresentations or omissions: (1) that it had an exclusive relationship with
22 marketing company Clickbooth when it did not; (2) it did not provide adequate support for its
23 financial performance projections; and (3) the investment risks were not clearly disclosed. After Eye
24 Pocket accepted investors' funds, on or around August 22, 2009, Herred demanded that Hopping fix
25 the anti-dilution clause in the Subscription Agreement.

26 i) Eye Pocket misrepresented the financial performance projections in the
27 offering materials. For instance, Eye Pocket would generate \$1,480,050.00 in the first year of
28 business, \$42,684,642.00 in the second year, and \$75,304,944.00 in the third year, and Zolowag

1 would generate \$5,683,440.00 in the first year, \$37,562,802.00 in the second year, and
2 \$48,195,571.00 in the third year.

3 j) The offering circular stated that the financial projections were based on
4 obtaining 10,000 clicks per day from Eye Pocket Media's exclusive partner, Clickbooth. Defendants
5 did not provide prospective investors with any support for these projections, nor did they explain that
6 Eye Pocket Media did not have any affirmed, long-term contracts or partnerships—much less an
7 exclusive partnership—with Clickbooth at that time. Eye Pocket Media did not provide prospective
8 investors with the risks associated with reaching the projections.

9 k) Beginning in the fall of 2008 through 2009, Herred, Martha Herred, and
10 Hopping met with potential investors. During these meetings:

- 11 i. Eye Pocket Media provided potential investors with the Offering Materials.
12 Herred did not disclose that the Eye Pocket Media Offering Materials
13 contained material misrepresentations and/or omissions to any potential
14 investors, even though Herred believed that they did. Herred claims that he
15 was not obliged to make any such disclosures because his role at Eye Pocket
16 Media was limited to software development.
- 17 ii. Herred demonstrated the Eye Pocket Media mobile website builder to
18 potential investors, stating that the product was “ready to launch.” Herred
19 admits that the financial projections in the Eye Pocket Media Offering
20 Materials were based on projections relating to the not yet built Eye Pocket
21 Media multi-level marketing application. Herred admits that he did not
22 disclose this distinction to investors when he conducted the demo and stated
23 that the product was “ready to launch.” Herred claims that he was not obliged
24 to make any such disclosures because his role at Eye Pocket Media was
25 limited to software development.
- 26 iii. The topic of investing would come up during meetings with potential
27 investors.
- 28 iv. Herred did not disclose the existence of the NASD Action and D&R Order to

1 potential investors.

2 l) In or around the fall of 2008 to in or around August 2010, Eye Pocket offered
3 and sold Eye Pocket Media Securities—in the form of promissory notes and common stock—to
4 approximately 24 investors and raised at least \$350,500.00.

5 m) In or around October 2008 Martha Herred opened an Eye Pocket bank account
6 with Wells Fargo Bank N.A. (Wells Fargo Account) and deposited investor funds into the account.

7 n) A review of the Wells Fargo Account shows that some funds were used to pay
8 expenses incurred at department, grocery, home improvement, and pet stores from October 2008
9 through December 2009.

10 o) On or around March 31, 2010, an investor provided Herred with \$2,500 in
11 cash for Eye Pocket Media which was subsequently deposited into a JPMorgan Chase Bank, N.A.
12 account (Chase Account) in which Herred was a signatory and was listed as Eye Pocket’s manager.

13 p) A review of the Chase Account shows that some funds were used to pay
14 expenses incurred at department, grocery, home improvement, and pet stores from March 2010
15 through July 2010.

16 q) In or about June 2010, Herred contacted Eye Pocket Media investors
17 demanding more capital, claiming that Eye Pocket Media was on the brink of bankruptcy and that
18 shareholders would be personally liable for payment of his wages and taxes if more money was not
19 invested.

20 r) Eye Pocket Media never launched.

21 s) The majority of the investors received little to no return of their investment
22 principal.

23 WHEREAS, Plaintiff and Herred intend to resolve this matter without trial, hearing or further
24 litigation.

25 NOW THEREFORE, in consideration of the foregoing, and the terms and conditions set
26 forth herein, the parties to this agreement hereby agree and stipulate as follows:

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II.

TERMS AND CONDITIONS

1. Plaintiff and Herred enter into this Stipulation Between Plaintiff and Defendant William Norris Herred for Entry of Final Judgment of Permanent Injunction and Restitution (Stipulation) for purposes of judicial economy and efficiency, and to avoid the expense of a trial and possible further court proceedings between the parties hereto.

2. Herred admits jurisdiction of this Court over him and over the subject matter of this action. Herred admits that he was personally served with the Summons and Complaint, filed in this matter as an individual and on behalf of Eye Pocket Media, Inc., on December 16, 2015. Herred filed an answer on January 14, 2016 and has made a general appearance in this action. Herred acknowledges that entry of a general appearance corresponds to personal service of the Summons on him pursuant to Code of Civil Procedure section 410.50.

3. Herred agrees to the terms of this Stipulation and voluntarily consents to the entry of the Final Judgment of Permanent Injunction and Restitution as to Defendant William Norris Herred (Final Judgment), attached hereto as **Exhibit A**. Herred waives any defense to the Complaint. Herred agrees that this Court may enter judgment pursuant to the terms of this Stipulation as provided in Code of Civil Procedure section 664.6.

4. Herred voluntarily waives entry of findings of fact and conclusions of law under Code of Civil Procedure section 632 and all rights to appeal the entry of the Final Judgment.

5. Herred agrees, as part of this Stipulation, to cooperate in any ongoing investigation, litigation, or trial.

6. Herred agrees that any debt arising under this agreement is made to resolve the securities law violations asserted herein, that this debt is not dischargeable, and that this Stipulation satisfies the requirements of section 523(a)(19) of the Bankruptcy Code. (11 U.S.C. § 523(a)(19).) Herred waives his right to seek a discharge of the debt arising from this settlement agreement.

7. Herred hereby agrees to a permanent injunction enjoining him from directly or indirectly engaging in, committing, aiding and abetting, substantially assisting others or as a control person performing, by any means whatsoever, violations of:

1 a) Corporations Code section 25110, which prohibits offering to sell, selling,
2 arranging for the sale of, issuing, engaging in the business of selling, negotiating for the sale of, or
3 otherwise in any way dealing or participating in the offer or sale of, any security of any kind,
4 including but not limited to the securities described in the Complaint, unless such security or
5 transaction is qualified or exempted or not subject to qualification;

6 b) Corporations Code section 25401, which prohibits offering to sell or selling
7 any security of any kind, including but not limited to, the securities described in the Complaint, by
8 means of any written or oral communication which includes any untrue statement of material fact or
9 omits or fails to state any material fact necessary in order to make the statements made, in the light
10 of the circumstances under which they are made, not misleading, including but not limited to the
11 misrepresentations and omissions alleged in the Complaint; and

12 c) Violating the 2006 D&R Order.

13 8. Herred agrees to the Court's entry of a judgment of restitution against him in favor of
14 Plaintiff in the total amount of \$175,250.

15 9. The Court may enter the Final Judgment at any time without further notice to Herred
16 or a hearing.

17 10. The parties stipulate and agree that each party shall bear its own costs and attorney's
18 fees.

19 11. Plaintiff and Herred hereby waive any claims known and unknown to them against
20 each other (including the State of California), their agents, officers, or employees that are based on
21 the facts underlying the present action and waive any rights under Civil Code section 1542, which
22 provides: "A general release does not extend to claims which the creditor does not know or suspect
23 to exist in his or her favor at the time of executing the release, which if known by him or her must
24 have materially affected his or her settlement with the debtor."

25 12. The parties hereby acknowledge and agree that this Stipulation is intended to
26 constitute a full, final, and complete resolution of this matter between the parties for the claims made
27 in the Complaint relating to Herred.

28 13. The parties further acknowledge and agree that nothing contained in this Stipulation

1 shall operate to limit the Commissioner's ability to investigate and prosecute violations of the CSL
2 not addressed herein. Nothing shall prevent the Commissioner from assisting any other agency
3 (county, state, or federal) with any prosecution, administrative, civil or criminal, brought by any
4 such agency against Herred concerning violations alleged herein or otherwise. Notwithstanding, the
5 Stipulation remains a complete resolution as regards to the action initiated against Herred by the
6 Commissioner arising from the Complaint. Herred further acknowledges and agrees that nothing in
7 this Stipulation or in the Final Judgment shall bind or otherwise prevent any other federal, state or
8 county agency from the performance of its duties.

9 14. Each party represents, warrants, and agrees that it has received or has been advised to
10 seek independent advice from counsel, attorney(s), and/or representatives with respect to the
11 advisability of executing this Stipulation.

12 15. Each party represents, warrants, and agrees that in executing this Stipulation it has
13 relied solely on the statements set forth herein and the advice of its own counsel and/or
14 representative. Each party further represents, warrants, and agrees that in executing this Stipulation
15 it has not relied on any statement, representation, or promise of any other party, or any other person
16 or entity not expressly set forth herein, or upon the failure of any party or any other person or entity
17 to make any statement, representation or disclosure of anything whatsoever. The parties have
18 included this clause (1) to preclude any claim that any party was in any way fraudulently induced to
19 execute this Stipulation and (2) to preclude the introduction of parol evidence to vary, interpret,
20 supplement, or contradict the terms of this Stipulation.

21 16. In that the parties have had the opportunity to draft, review and edit the language of
22 this Stipulation, no presumption for or against any party arising out of drafting all or any part of this
23 Stipulation will be applied in any action relating to or arising out of this Stipulation. Accordingly,
24 the parties hereby waive the benefit of Civil Code section 1654 and any successor statute.

25 17. Herred enters into this Stipulation voluntarily and without coercion, and
26 acknowledges that no promises, threats or assurances were made by Plaintiff or any agents, officers,
27 or employees thereof to induce him to enter into this Stipulation.

28 18. Plaintiff and Herred stipulate and agree that if any paragraph, clause, or provision of

1 this Stipulation entered thereto, or the application thereof, is held invalid or unenforceable, such
2 decision shall affect only the paragraph, clause or provision so construed or interpreted, and the
3 invalidity shall not affect the provisions or the application of this Stipulation, or of the Final
4 Judgment entered thereto, which can be given effect without the invalid provisions or application.
5 To this end, the provisions of this Stipulation are declared by Plaintiff and by Herred to be severable.

6 19. The waiver of any provision of this Stipulation shall not operate to waive any other
7 provision set forth herein, and any waiver, amendment and/or change to the terms of this Stipulation
8 must be in writing signed by the parties hereto.

9 20. The parties stipulate and agree that this Court shall retain jurisdiction of this action in
10 order to implement and enforce the terms of this Stipulation and entry of Final Judgment pursuant
11 thereto, and to entertain any suitable application or motion for additional relief or modification or
12 any order made herein within the jurisdiction of this Court.

13 21. This Stipulation shall be governed by and construed in accordance with the laws of
14 the State of California, without regard to its conflict-of-laws rules. Any dispute concerning this
15 Stipulation shall be heard by the Court, and all parties waive any right to trial by jury with respect to
16 any such action or matter concerning this Stipulation.

17 22. This Stipulation is the final written expression and the complete and exclusive
18 statement of all the agreements, conditions, promises, representations, and covenants between the
19 parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous
20 agreements, negotiations, representations, understandings, and discussions between and among the
21 parties, their respective representatives, and any other person or entity, with respect to the subject
22 matter covered hereby.

23 23. Each signator hereto covenants that he/she possesses all necessary capacity and
24 authority to sign and enter into this Stipulation.

25 24. The parties may execute this Stipulation in one or more counterparts, each of which
26 shall be an original but all of which, together, shall constitute a single document.

27 25. The parties may execute this Stipulation by facsimile or scanned signature, and any
28 such facsimile or scanned signature by any party hereto shall be deemed an original signature and

1 shall be binding on such party to the same extent as if such facsimile or scanned signature were an
2 original signature.

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Dated: 3/22/17

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 3/21/17

By _____
WILLAM NORRIS HERRED, an Individual

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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the COMMISSIONER OF BUSINESS OVERSIGHT,

Plaintiff,

v.

EYE POCKET MEDIA, INC., a California corporation; WILLIAM NORRIS HERRED, as an individual; RONALD HOPPING and DOES 1 through 10, inclusive,

Defendants.

) Case No.: 15-cv-00298

) [PROPOSED] FINAL JUDGMENT OF PERMANENT INJUNCTION AND RESTITUTION AS TO DEFENDANT WILLIAM NORRIS HERRED

) Action Filed: November 16, 2015
) Trial Date: April 17, 2017

A. Plaintiff, the People of the State of California, by and through the Commissioner of Business Oversight (formerly the Commissioner of Corporations) (Plaintiff) filed a civil complaint (Complaint) in this Court on November 16, 2015 against Defendants Ronald Hopping (Hopping), William Norris Herred (Herred) and Eye Pocket Media, Inc. a California corporation (Eye Pocket Media) (collectively, Defendants) requesting injunctive relief, civil penalties, ancillary relief, and attorney’s fees for violations of the Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.).

1 B. Plaintiff's Complaint alleged that from October 2008 to in or around August 2010,
2 Defendants offered and sold unqualified, non-exempt securities (Eye Pocket Media Securities) in
3 violation of Corporations Code section 25110, raising at least \$350,500.00 from at least 24 investors.
4 Plaintiff's Complaint further alleged that in connection with the offer and sale of Eye Pocket Media
5 Securities, Defendants made material misrepresentations and omissions in violation of Corporations
6 Code section 25401, including misrepresentations and omissions that Eye Pocket: had exclusive
7 partnerships with large, well-known companies; would launch within two weeks to one month of
8 funding; and would earn over \$75 million within the first three years of launching.

9 C. Plaintiff's Complaint further alleged that Defendants failed to disclose the existence
10 of a National Association of Securities Dealers, Inc.² action (NASD action) against Herred, as well
11 as a May 31, 2006 Desist and Refrain Order issued by the Commissioner against Herred for
12 violations of Corporations Code sections 25110 and 25401 (2006 D&R Order).

13 D. Herred was personally served with the Summons and Complaint as an individual and
14 on behalf of Eye Pocket Media on December 16, 2015.

15 E. Herred stipulated to the jurisdiction of this Court over him and over the subject matter
16 of this action.

17 F. Herred read and reviewed the Complaint and the Stipulation Between Plaintiff and
18 Defendant William Norris Herred for Entry of Final Judgment of Permanent Injunction and
19 Restitution (Stipulation), which are hereby fully incorporated by reference.

20 G. Herred read and reviewed this proposed Final Judgment of Permanent Injunction and
21 Restitution as to Defendant William Norris Herred (Final Judgment).

22 H. Herred waived any claims known and unknown to him against the State of California,
23 its agents, officers, or employees based on the facts underlying the present action. Herred
24 specifically waived any rights under Civil Code section 1542, which provides: "A general release
25

26 ² The NASD and the member regulation, enforcement and arbitration operations of the New York
27 Stock Exchange merged on July 30, 2007 to form the Financial Industry Regulatory Authority
28 ("FINRA"), a non-governmental, self-regulatory organization for securities brokers and dealers
doing business in the United States.

1 does not extend to claims which the creditor does not know or suspect to exist in his or her favor at
2 the time of executing the release, which if known by him or her must have materially affected his or
3 her settlement with the debtor.”

4 I. Herred stipulated and agreed that he entered into the Stipulation voluntarily and
5 without coercion and acknowledged that no promises, threats or assurances were made by Plaintiff
6 or any officer, or agent thereof to induce him to enter into the Stipulation.

7 J. Herred waives any trial or adjudication of any fact or law herein or the taking of any
8 proof and all rights to appeal the entry of the Final Judgment.

9 PURSUANT TO THE STIPULATION OF THE PARTIES AND GOOD CAUSE
10 APPEARING THEREFOR, IT IS HEREBY ADJUDGED, ORDERED AND DECREED THAT
11 JUDGMENT BE ENTERED AS FOLLOWS:

12 26. The Court hereby enters a final judgment permanently enjoining Herred from directly
13 or indirectly engaging in, committing, aiding and abetting, substantially assisting others or as a
14 control person performing, by any means whatsoever, violations of:

15 d) Corporations Code section 25110, which prohibits offering to sell, selling,
16 arranging for the sale of, issuing, engaging in the business of selling, negotiating for the sale of, or
17 otherwise in any way dealing or participating in the offer or sale of, any security of any kind,
18 including but not limited to the securities described in the Complaint, unless such security or
19 transaction is qualified or exempted or not subject to qualification;

20 e) Corporations Code section 25401, which prohibits offering to sell or selling
21 any security of any kind, including but not limited to, the securities described in the Complaint, by
22 means of any written or oral communication which includes any untrue statement of material fact or
23 omits or fails to state any material fact necessary in order to make the statements made, in the light
24 of the circumstances under which they are made, not misleading, including but not limited to the
25 misrepresentations and omissions alleged in the Complaint; and

26 f) The 2006 D&R Order.
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27. The Court hereby enters a final judgment of restitution against Herred and in favor of Plaintiff in the total amount of \$175,250.

28. The Final Judgment may be entered by the Court at any time without further notice to Herred or a hearing.

29. This Court shall retain jurisdiction of this action in order to implement and enforce the terms of the Stipulation and entry of Final Judgment pursuant thereto, and to entertain any suitable application or motion for additional relief or modification or any order made herein within the jurisdiction of this Court.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT