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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA, by and through the
12 CALIFORNIA CORPORATIONS
COMMISSIONER

13 Plaintiff,

14 vs.

15 RMC CAPITAL MANAGEMENT, INC., a
California corporation; BURGESS
16 NATHANIEL HALLUMS, an individual;
INNOVATION FUND 2000, LLC, a
17 California limited liability company; SEGUE
CAPITAL, INC., a California corporation;
18 PACIFIC PHOENIX COMMUNITIES,
LLC, a California limited liability company;
19 DAVID W. HOPTAR, an individual; and
DOES 1-10, inclusive,

20 Defendants,

21 and

22 IMMCAPNMOTION, INC., a Delaware
corporation; MISTNET MEDICAL
DEVICES, INC., a Delaware corporation;
23 MAGNETO INERTIAL SENSING
TECHNOLOGY, INC., aka, MIST, a
24 Nevada corporation; MIST NET, INC., an
entity of unknown form; MIST, INC., an
25 entity of unknown form; THORNTON
CAPITAL ADVISORS, INC., a California
corporation; DONALD J. COURTNEY, an
26 individual; WALLACE BENWARD, an
individual; and RELIEF DOES 1-10,
27 inclusive,

28 Relief Defendants.

Case No.: 37-2011-00103198-CU-MC-CTL

**SETTLEMENT AGREEMENT AND
STIPULATION TO DISMISS WITHOUT
PREJUDICE RELIEF DEFENDANTS
WALLACE BENWARD AND TWIN
DEVELOPMENT, LLC.**

IMAGED FILE

Judge: Hon. William S. Dato
Date Action Filed: December 30, 2011

1 THE PEOPLE OF THE STATE OF CALIFORNIA, BY AND THROUGH THE
2 COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, AND RELIEF
3 DEFENDANTS WALLACE BENWARD AND TWIN DEVELOPMENT, LLC., HEREBY
4 AGREE AND STIPULATE AS FOLLOWS:

5 **RECITALS**

6 A. Relief Defendant Wallace Benward (“BENWARD”) is an individual, who resides
7 in San Diego County, California.

8 B. Relief Defendant Twin Development, LLC. (“TWIN”) is a California limited
9 liability company that maintains a principal place of business at 2324 La Costa Ave., Unit A,
10 Carlsbad, California 92009.

11 C. Relief Defendant BENWARD is a managing member of Relief Defendant TWIN.
12 Relief Defendant BENWARD is also a managing member of Defendant Pacific Phoenix
13 Communities, LLC (“PACIFIC PHOENIX”).

14 D. The People of the State of California, by and through the Commissioner of
15 Corporations of the State of California (“Plaintiff” or “Commissioner”), filed a civil action in San
16 Diego Superior Court against defendants, in this case, for violating the Corporate Securities Law
17 of 1968 (“CSL”), and against relief defendants for receiving ill-gotten gains from defendants’
18 unlawful activities.

19 E. Relief Defendants BENWARD and TWIN (collectively referred to as “RELIEF
20 DEFENDANTS”) did not file answers.

21 F. It is the intention and the desire of RELIEF DEFENDANTS and the Plaintiff
22 (collectively, “PARTIES”) to resolve this matter at this time without the need for a trial, hearing
23 or further litigation.

24 THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
25 herein, the PARTIES hereby agree and stipulate as follows.

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TERMS AND CONDITIONS

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2 1. RELIEF DEFENDANTS admit they received service of the amended summons,
3 First Amended Complaint and Second Amended Complaint filed in this matter (collectively,
4 “Complaints”).

5 2. RELIEF DEFENDANTS have read the Complaints and this Settlement Agreement
6 and Stipulation to Dismiss without Prejudice (“Stipulation”) between the PARTIES.

7 3. RELIEF DEFENDANTS admit the allegations in the Second Amended Complaint
8 and the facts contained in the Recital.

9 4. It is the intention and understanding of the PARTIES that the admissions of
10 RELIEF DEFENDANTS herein, shall not be binding or admissible against them in any private
11 action by third parties.

12 5. RELIEF DEFENDANTS consent to venue and admit jurisdiction of this Court
13 over them and over the subject matter of this action.

14 6. RELIEF DEFENDANTS hereby waive any claims known and unknown to them
15 against Plaintiff, its agents, officers, or employees based on the facts underlying the present
16 action. RELIEF DEFENDANTS specifically waive any rights provided by California Civil Code
17 section 1542, and any successor statute, which provides: “A general release does not extend to
18 claims which the Creditor does not know or suspect to exist in his or her favor at the time of
19 executing the release, which if known by him or her must have materially affected his or her
20 settlement with the Debtor.”

21 7. RELIEF DEFENDANTS hereby agree and stipulate to fully cooperate and assist
22 the Plaintiff in this present action, including, but not limited to, providing fact-based, truthful,
23 accurate and complete testimony at any hearing and/or trial, and producing evidence that would
24 assist in resolving this matter.

25 8. RELIEF DEFENDANTS hereby waive recovery of any costs or expenses arising
26 out of this action.

27 9. RELIEF DEFENDANTS hereby admit and represent that RELIEF
28 DEFENDANTS executed a promissory note in favor of Defendant Innovation Fund 2000, LLC

1 (“INNOVATION FUND”) in the amount of \$225,000, in 2004, as described in the First Amended
2 Complaint. RELIEF DEFENDANTS further represent that the full amount of \$225,000 was paid
3 back to Defendant INNOVATION FUND, in 2005.

4 10. RELIEF DEFENDANTS further admit and represent that RELIEF
5 DEFENDANTS had opened an escrow for the purchase of land, in which Defendant
6 INNOVATION FUND had paid \$25,000 and Defendant PACIFIC PHOENIX had paid \$170,000.
7 In February 2012, Relief Defendant BENWARD turned over a \$25,000 check to Eric Benink, the
8 Court-Appointed Receiver, for the benefit of Defendant INNOVATION FUND and turned over a
9 \$170,000 check to the Court-Appointed Receiver for the benefit of PACIFIC PHOENIX.

10 11. RELIEF DEFENDANTS hereby admit and represent that \$195,000 is the total
11 amount of remaining funds paid to RELIEF DEFENDANTS by Defendants INNOVATION
12 FUND and PACIFIC PHOENIX.

13 12. Relief Defendant BENWARD stipulates that he is authorized to release the
14 \$195,000, and waives any claims thereto and agrees to relinquish all custody and control over the
15 \$195,000 to the Court-Appointed Receiver.

16 13. RELIEF DEFENDANTS represent that they do not have any unpaid balance
17 remaining on any notes, contracts, securities or loans due to Defendants RMC Capital
18 Management, Inc. (“RMC”), INNOVATION FUND, PACIFIC PHOENIX, and Segue Capital,
19 Inc. (“SEGUE”). RELIEF DEFENDANTS further represent that they do not have any money,
20 securities, funds, properties or assets of Defendants RMC, INNOVATION FUND, PACIFIC
21 PHOENIX and SEGUE.

22 14. In the event Plaintiff discovers that RELIEF DEFENDANTS have custody of
23 investor funds or funds or assets that were derived from investor funds in this case, RELIEF
24 DEFENDANTS agree and stipulate to immediately turn over the funds or assets to Plaintiff upon
25 receiving notice from Plaintiff.

26 15. RELIEF DEFENDANTS agree that they have had the opportunity to review this
27 Stipulation and have entered into it voluntarily and without coercion, and acknowledge that no
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1 promises, threats or assurances have been made by Plaintiff or any agents, officers, or employees
2 thereof to induce them to enter into this Stipulation.

3 16. RELIEF DEFENDANTS agree and stipulate to waive all rights to any
4 reconsideration, appeal or other rights to review which may be afforded pursuant to the CSL, the
5 California Code of Civil Procedure, or any other provision of law.

6 17. The PARTIES hereby acknowledge and agree that this Court shall retain
7 jurisdiction of this action in order to implement and enforce the terms of this Stipulation, and to
8 entertain any suitable application or motion for additional relief or modification or any order
9 made herein within the jurisdiction of the Court.

10 18. The PARTIES hereby acknowledge and agree that this Stipulation constitutes the
11 entire Stipulation between the PARTIES with respect thereto. This Stipulation supersedes any
12 and all prior or contemporaneous agreements between the PARTIES hereto.

13 19. Notwithstanding any other provision contained herein, nothing in this Stipulation
14 shall operate to limit Plaintiff's ability to investigate and prosecute violations of the CSL not
15 addressed herein, or to assist any other agency (federal, state, or county) with any prosecution,
16 administrative, civil or criminal, brought by such agency against RELIEF DEFENDANTS
17 concerning any allegations herein or otherwise. RELIEF DEFENDANTS further agree and
18 acknowledges that nothing in this Stipulation or in this matter shall bind or otherwise prevent any
19 other federal, state or county agency from the performance of its duties.

20 20. For the purposes of interpretation of this Stipulation, no party shall be deemed to
21 have been the drafter of this Stipulation.

22 21. In that the PARTIES have had the opportunity to draft, review and edit the
23 language of this Stipulation, no presumption for or against any party arising out of drafting all or
24 any part of this Stipulation will be applied in any action relating to or arising out of this
25 Stipulation. Accordingly, the PARTIES hereby waive the benefit of California Civil Code section
26 1654 and any successor statute.

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1 22. The waiver of any provision of this Stipulation shall not operate to waive any other
2 provision set forth herein, and any waiver, amendment and/or change to the terms of this
3 Stipulation must be in writing signed by the PARTIES hereto.

4 23. Each signatory hereto represents and warrants that he or she possesses the
5 necessary capacity and authority to execute this Stipulation and bind the PARTIES hereto.

6 24. If any paragraph, clause, or provision of this Stipulation, or the application thereof,
7 is held invalid or unenforceable, such decision shall affect only the paragraph, clause or
8 provisions so construed or interpreted, and the invalidity shall not affect the provisions of the
9 application of this Stipulation, which can be given effect without the invalid provisions or
10 application, and to this end, the provisions of the Stipulation entered thereto, are declared by the
11 PARTIES to be severable.

12 25. RELIEF DEFENDANTS acknowledge and stipulate that their failure to satisfy or
13 carry out any term or condition of this Stipulation is a breach of this Stipulation.

14 26. The PARTIES agree that the remainder of the Complaints filed in this action shall
15 be dismissed without prejudice as to Relief Defendants Wallace Benward and Twin Development,
16 LLC only.

17 27. This Stipulation may be executed in one or more separate counterparts, each of
18 which when so executed, shall be deemed an original. Such counterparts shall together constitute
19 and be one and the same instrument. A fax signature shall be deemed the same as an original.

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JAN LYNN OWEN
Commissioner of Corporations of the State of
California

February 19, 2013

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

RELIEF DEFENDANTS WALLACE BENWARD
AND TWIN DEVELOPMENT, LLC.

February 14, 2013

By _____
WALLACE BENWARD, individually, and as the
managing member of Twin Development, LLC.