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LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the California Corporations Commissioner,

Plaintiff,

v.

RECOVER METRICS, LLC, a Delaware Limited Liability Company;
THOMAS CREAL, an individual; MARK J. DOYLE, an individual and DOES 1 through 10, inclusive,

Defendants.

) CASE NO.: BC423184
)
) ~~[PROPOSED]~~ FINAL JUDGMENT
) PURSUANT TO SETTLEMENT
) AGREEMENT

) Judge: Hon. Mary Ann Murphy
) Dept.: 25

) Date Action Filed: October 5, 2009
) Trial Date: December 8, 2010

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1 A. PRESTON DuFAUCHARD, CORPORATIONS COMMISSIONER OF THE
2 STATE OF CALIFORNIA (“Commissioner”) has filed a Complaint on behalf of Plaintiff, THE
3 PEOPLE OF THE STATE OF CALIFORNIA (“Plaintiff”) seeking monetary and specific
4 performance against the following Defendants: RECOVER METRICS, LLC (“Recover Metrics”) and THOMAS CREAL (“Creal”) (collectively “Defendants”).

6 B. Defendants, and each of them, have admitted jurisdiction of this Court over them and
7 over the subject matter of this action. Defendants have entered general appearances in this action.
8 Defendants have acknowledged that entry of said general appearances is equivalent to personal
9 service of the summons on them pursuant to section 410.50 of the Code of Civil Procedure.

10 C. Defendants, and each of them, have read the Complaint, the Settlement Agreement
11 (“Agreement”), and the [Proposed] Final Judgment Pursuant to Settlement Agreement (“Final
12 Judgment”) in the form attached and incorporated herein as Exhibit 1 to the Agreement.

13 D. The Agreement and Final Judgment shall be binding on the Plaintiff and its officers,
14 employees, agents, representatives, successors, and attorneys and Defendants and their subsidiaries,
15 officers, employees, agents, representatives, successors, insurers, attorneys, affiliated and related
16 entities, principals, assignors, and assignees. The Commissioner, Recover Metrics, and Creal shall
17 collectively be referred to as the “Parties.”

18 E. Defendants, and each of them, have agreed and stipulated to waive entry of Findings
19 of Fact and Conclusions of Law under Code of Civil Procedure section 632 and all rights to appeal
20 the entry of the Final Judgment.

21 F. The Commissioner and Defendants have agreed and stipulated that if any paragraph,
22 clause, or provision of the Agreement or of the Final Judgment entered thereto, or the application
23 thereof, is held invalid or unenforceable, such decision shall affect only the paragraph, clause, or
24 provision so construed or interpreted, and the invalidity shall not affect the provisions or the
25 application of the Agreement, or of the Final Judgment entered thereto, which can be given effect
26 without the invalid provisions or application, and to this end, the provisions of the Agreement and
27 Final Judgment entered thereto, have been declared by the Commissioner and by the Defendants to
28 be severable.

1 G. The Commissioner and Defendants have agreed and stipulated that entry of the Final
2 Judgment pursuant to the Agreement may be made by a judge or commissioner of the Superior Court
3 and may be made *ex parte* without notice to any of the Defendants.

4 H. Defendants, and each of them, have agreed and stipulated that they have entered into
5 the Agreement and Final Judgment without coercion, and acknowledge that no promises, threats or
6 assurances have been made by Plaintiff or any officer, or agent thereof, except for those expressly
7 set forth in the Agreement and Final Judgment, to induce the Defendants, and each of them, to enter
8 into the Agreement and Final Judgment.

9 I. Defendants, and each of them, have agreed and stipulated to pay the Commissioner
10 funds recovered/collected/received on behalf of or received from the Commissioner (“Funds”),
11 totaling four hundred seventy-six thousand eight hundred thirty dollars and thirty-one cents
12 (\$476,830.31). Defendants shall pay the Funds by way of cashier’s checks in five (5) installments,
13 as follows:

- 14 1. \$50,000.00 by February 28, 2011
- 15 2. \$50,000.00 by May 30, 2011
- 16 3. \$100,000.00 by November 30, 2011
- 17 4. \$100,000.00 by May 30, 2012
- 18 5. \$176,830.31 by November 30, 2012

19 In the event the payment due date falls on a weekend or holiday, the payment shall be due the next
20 business day. Defendants shall mail the cashier’s checks to the attention of Marlou de Luna and
21 address of the Department of Corporations at 320 W. 4th Street, Suite 750, Los Angeles, California
22 90013.

23 J. In the event that Defendants fail to timely make any payment installment under the
24 Agreement, Defendants shall be in default of the Agreement. Upon default, Plaintiff may enforce
25 paragraph K. of the Agreement and/or may avail itself of any other rights it has against Defendants
26 under the Agreement or under applicable law based on Defendants’ default, provided that Plaintiff
27 must first give Defendants seven (7) business days written notice of the default. Such notice of
28 default shall be filed with the court and mailed to Defendants and their counsel, Asha Dhillon, at

1 their last known addresses. However, if the late payment is received before the seven-day notice of
2 default period has completely run, that payment shall be deemed timely.

3 K. If Defendants are in default as set forth in Paragraph J., above, Paragraph I. shall be
4 void and Recover Metrics and Creal shall be jointly and severally liable to Plaintiff for a judgment in
5 the amount of five hundred four thousand one hundred thirteen dollars and eighty cents
6 (\$504,113.80), immediately due and payable, less any amounts received in payment, together with
7 interest thereon at the legal rate per annum pursuant to Code of Civil Procedure section 685.010,
8 until said amounts are paid in full. The Commissioner may seek to enforce the Final Judgment
9 without any further notice to Defendants.

10 L. The Commissioner and Defendants have agreed and stipulated that each party shall
11 bear their own expenses and costs, including attorneys' fees, incurred in connection with the
12 investigation of matters relating to the Complaint in the above-entitled case and the preparation of
13 the Complaint, the Agreement, and the Final Judgment.

14 M. The Parties understand that the terms of the Agreement are contractual and not mere
15 recitals. It is executed without reliance upon any oral representation of the Parties or their attorneys,
16 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
17 other person or entity to make any statement, representation or disclosure of anything whatsoever.
18 The Parties have included this clause: (1) to preclude any claim that any party was in any way
19 fraudulently induced to execute the Agreement and Final Judgment; and (2) to preclude the
20 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of the
21 Agreement and Final Judgment.

22 N. In that the Parties have had the opportunity to draft, review and edit the language of
23 the Agreement and Final Judgment, no presumption for or against any party arising out of drafting
24 all or any part of the Agreement will be applied in any action relating to or arising out of the
25 Agreement or the Final Judgment. Accordingly, the parties have waived the benefit of Civil Code
26 section 1654 and any successor statute.

27 O. Nothing in the Agreement or the Final Judgment in this matter shall preclude any
28 other federal, state or county agency from initiating any other prosecution based upon the allegations

1 contained in the Complaint in the above-entitled case or based on any other acts by the Defendants
2 which may violate state or federal law.

3 P. Nothing in the Agreement or the Final Judgment in this matter shall preclude the
4 Commissioner, or his agents or employees, to the extent authorized by law from assisting or
5 cooperating with any investigation and/or action brought by any other federal, state or county
6 agency. Further, nothing in the Agreement or in the Final Judgment in this matter shall bind or
7 otherwise prevent any other federal, state or county agency from the performance of its duties.

8 Q. **Release by Commissioner:** Except for any and all rights and obligations created by
9 the Agreement and any documents provided for in the Agreement (including but not limited to the
10 Final Judgment), the Commissioner releases and discharges any and all complaints, suits, damages,
11 debts, causes of action, violations, breaches, penalties, fines, actions, proceedings, demands and all
12 other claims of any kind or nature whatsoever against Recover Metrics and Creal, their agents and
13 their employees. This release includes all claims of any kind or nature whatsoever, known or
14 unknown, existing or which could have existed, from the beginning of time to the date of the
15 Agreement.

16 R. **Release by Recover Metrics and Creal:** Except for any and all rights and
17 obligations created by the Agreement (including but not limited to the Final Judgment), Recover
18 Metrics and Creal release and discharge any and all complaints, suits, damages, debts, causes of
19 action, violations, breaches, penalties, fines, actions, proceedings, demands and all other claims of
20 any kind or nature whatsoever against the Commissioner, its agents and its employees. This release
21 includes all claims of any kind or nature whatsoever, known or unknown, existing or which could
22 have existed, from the beginning of time to the date of the Agreement.

23 S. **Waiver of Civil Code section 1542:** In agreeing to the releases and other terms set
24 forth in the Agreement, each party has been represented by and consulted with counsel and
25 performed such investigation and inquiry deemed necessary by such party. Moreover, each party to
26 the Agreement represents, warrants, and covenants that such party executed the Agreement without
27 any representation, express or implied, of any kind from any other party to the Agreement, except as
28 specifically expressed in the Agreement. It is understood that there is a risk that, subsequent to the

1 execution and delivery of the Agreement, losses, damages, violations or other matters might be
2 discovered or incurred which are unknown or unanticipated, for whatever reason, at the time of the
3 execution and delivery of the Agreement. It is nonetheless specifically agreed that the releases
4 contained in the Agreement are fully and completely effective regardless of any present lack of
5 knowledge on the part of any party. Each party to the Agreement voluntarily, intentionally and
6 expressly waives the benefits and provisions of section 1542 of the Civil Code, and any similar law
7 of any state or territory of the United State of America or other jurisdiction. Specifically, section
8 1542 of the Civil Code provides as follows:

9 “A general release does not extend to claims which the creditor does not know
10 or suspect to exist in his or her favor at the time of executing the release,
11 which if known by him or her must have materially affected his or her
 settlement with the debtor.”

12 T. The Commissioner and Defendants have agreed and stipulated that a fax signature or
13 e-mail scanned signature of the Agreement shall be as effective as an original ink signature.

14 U. The Commissioner and Defendants have agreed and stipulated that each covenants
15 that he/she possesses the necessary capacity and authority to sign and enter into the Agreement.

16 V. The Commissioner and Defendants have agreed and stipulated that the Agreement
17 may be executed in one or more separate counterparts, each of which when so executed, shall be
18 deemed an original. Such counterparts shall together constitute and be one and the same instrument.

19 W. The Commissioner and Defendants have agreed and stipulated that this Court shall
20 retain jurisdiction of this action in order to implement and enforce the terms of the Agreement and
21 Final Judgment and to entertain any suitable application or motion for additional relief or
22 modification of any order made herein within the jurisdiction of the Court.

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PURSUANT TO STIPULATION OF THE PARTIES AND GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

1. Final Judgment shall be entered in favor of Plaintiff against Defendants Recover Metrics, LLC and Thomas Creal in the amount of five hundred four thousand one hundred thirteen dollars and eighty cents (\$504,113.80), less any amounts received in payment.

DATED: NOV 05 2010

MARY ANN MURPHY
JUDGE OF THE SUPERIOR COURT