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6 Attorneys for the People of the State of California

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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  
CALIFORNIA, by and through the  
11 CALIFORNIA CORPORATIONS  
COMMISSIONER

12 Plaintiff,

13 vs.

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

19 Defendants,

20 and

21 IMMCAPNMOTION, INC., a Delaware  
corporation; MISTNET MEDICAL  
22 DEVICES, INC., a Delaware corporation;  
MAGNETO INERTIAL SENSING  
23 TECHNOLOGY, INC., aka, MIST, a  
Nevada corporation; MIST NET, INC., an  
24 entity of unknown form; MIST, INC., an  
entity of unknown form; THORNTON  
25 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 DEFENDANT  
DONALD J. COURTNEY**

**IMAGED FILE**

Judge: Hon. William S. Dato

Date Action Filed: December 30, 2011

1 IT IS HEREBY AGREED AND STIPULATED by and between Plaintiff, the People of the  
2 State of California, by and through the California Commissioner of Business Oversight, formerly  
3 Commissioner of Corporations (“Plaintiff”), and Relief Defendant Donald J. Courtney (“Relief  
4 Defendant Courtney”), that:

5 WHEREAS, on or about May 2, 2012, Plaintiff filed a Second Amended Complaint in the  
6 San Diego Superior Court against Defendants RMC Capital Management, Inc., Burgess Hallums,  
7 Innovation Fund 2000, LLC, Segue Capital, Inc., Pacific Phoenix Communities, LLC, David Hoptar  
8 and Does 1 -10, in this case, for violating the Corporate Securities Law of 1968 (Corp. Code, § 25000  
9 et seq.) (“CSL”), and against Relief Defendant Courtney, among other relief defendants, for receiving  
10 ill-gotten gains from defendants’ unlawful activities. Attached hereto as **Exhibit 1** and incorporated  
11 herein by reference is a true and correct copy of the Second Amended Complaint, dated May 2, 2012.

12 WHEREAS, Defendant Courtney, without admitting or denying the allegations contained in  
13 the Second Amended Complaint, seeks to resolve Plaintiff’s concerns by entering into this Settlement  
14 Agreement and Stipulation to Dismiss without Prejudice Relief Defendant Donald J. Courtney  
15 (“Agreement”), and in case of default of this Agreement, the [proposed] Final Judgment Pursuant to  
16 Settlement Agreement (“Final Judgment”). Attached hereto as **Exhibit 2** and incorporated herein by  
17 reference is a true and correct copy of the Final Judgment.

18 NOW THEREFORE, the parties hereby agree and stipulate as follows:

19 A. Relief Defendant Courtney has read the Second Amended Complaint, this Agreement  
20 and the Final Judgment. Relief Defendant Courtney admits service of the Second Amended  
21 Summons and Second Amended Complaint filed in this matter.

22 B. Relief Defendant Courtney hereby acknowledges that a trial in relation to the Second  
23 Amended Complaint is presently set to commence in November 2013, which Relief Defendant  
24 Courtney has a right to defend. Relief Defendant Courtney hereby voluntarily waives his right to the  
25 trial in relation to the Second Amended Complaint for receiving ill-gotten gains, and waives any  
26 defense to this action.

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1 C. This Agreement shall be binding on Plaintiff and Plaintiff’s officers, employees,  
2 agents, representatives, successors, and attorneys and Relief Defendant Courtney. Plaintiff and  
3 Relief Defendant Courtney shall collectively be referred to as the “Parties.”

4 D. The Parties agree and stipulate that if any paragraph, clause, or provision of this  
5 Agreement entered thereto, or the application thereof, is held invalid or unenforceable, such decision  
6 shall affect only the paragraph, clause or provision so construed or interpreted, and the invalidity  
7 shall not affect the provisions or the application of this Agreement entered thereto, which can be  
8 given effect without the invalid provisions or application, and to this end, the provisions of the  
9 Agreement entered thereto, is declared by the Parties to be severable.

10 E. Relief Defendant Courtney agrees and stipulates that he enters into this Agreement  
11 without coercion, and acknowledges that no promises, threats or assurances have been made by the  
12 Plaintiff or any officer, or agent thereof, except for those expressly set forth in this Agreement, to  
13 induce Relief Defendant Courtney to enter into this Agreement.

14 F. Relief Defendant Courtney agrees and stipulates to pay the funds received from  
15 Defendants Innovation Fund 2000, LLC and Pacific Phoenix Communities, LLC (“Funds”), as  
16 identified in the Second Amended Complaint, totaling twenty-one thousand, four hundred fourteen  
17 dollars and ninety-three cents (\$21,414.93). Relief Defendant Courtney shall pay the Funds to the  
18 Receivership Estate for distribution to the investors of Defendants Innovation Fund 2000, LLC and  
19 Pacific Phoenix Communities, LLC on a pro rata basis by way of three monthly installment  
20 payments, as set forth below:

- 21 1. \$7,138.31 by October 1, 2013
- 22 2. \$7,138.31 by November 1, 2013
- 23 3. \$7,138.31 by December 1, 2013

24 In the event the installment payment due date falls on a weekend or public holiday, the installment  
25 payment shall be due the following business day. Relief Defendant Courtney further agrees to  
26 transmit the Funds to the Court-Appointed Receiver, Eric J. Benink, at 550 West C Street, Suite 530,  
27 San Diego, California 92101, for distribution of payments to the investors of Defendants Innovation  
28 Fund 2000, LLC and Pacific Phoenix Communities, LLC.

1 G. The Funds set forth in Paragraph F., above, shall be paid to the Receivership Estate, to  
2 the attention of the Court-Appointed Receiver, Eric J. Benink, for distribution to:

- 3 1. Investors of Defendant Innovation Fund 2000, LLC
- 4 2. Investors of Defendant Pacific Phoenix Communities, LLC.

5 H. Relief Defendant Courtney agrees and stipulates to provide Plaintiff, on a monthly  
6 basis, commencing on November 1, 2013, and continuing thereafter for the duration of the  
7 installment payment period, an accounting of the Funds paid to the Receivership Estate as described  
8 in Paragraphs F. and G., above (“Accounting”). The Accounting shall include: a schedule of  
9 payments made during the month, including, the amounts of payment, dates of payment, check  
10 numbers associated with the payments, the remaining amount of payment due, and copies of the  
11 cancelled payment checks, front and back. The Accounting shall be sent to the attention of Affi  
12 Eghbaldari, Corporations Counsel, Department of Business Oversight, 1350 Front Street, Suite 2034,  
13 San Diego, California 92101. If the Accounting’s due date falls on a weekend or public holiday, the  
14 Accounting shall be due the following business day.

15 I. In the event that Relief Defendant Courtney fails to timely make any installment  
16 payment or Accounting, Relief Defendant Courtney shall be in default of this Agreement. Upon  
17 default, the Plaintiff may enforce Paragraph J. of this Agreement and seek entry of a Final Judgment  
18 and/or may avail herself of any other rights Plaintiff has against Relief Defendant Courtney under the  
19 Agreement or under applicable law based upon Relief Defendant Courtney’s default, provided that  
20 the Plaintiff must first give Relief Defendant Courtney seven (7) business days written notice of the  
21 default. Such notice of default shall be mailed to Relief Defendant Courtney or his counsel, Stephen  
22 T. Cummings, Esq., at their last known addresses. However, if the late installment payment or  
23 Accounting is received before the seven-day notice of default period has completely run, that  
24 installment payment or Accounting shall be deemed timely under the Agreement.

25 J. If Relief Defendant Courtney is in default as set forth in Paragraph I., above,  
26 Paragraph F. shall be void and Relief Defendant Courtney shall be liable to the Plaintiff for a Final  
27 Judgment in the amount of twenty-one thousand, four hundred fourteen dollars and ninety-three cents  
28 (\$21,414.93), immediately due and payable, less any amounts paid, of which twenty-one thousand,

1 four hundred fourteen dollars and ninety-three cents (\$21,414.93) is to be paid in constructive trust.  
2 Interest shall accrue on the Final Judgment at the legal rate per annum pursuant to Code of Civil  
3 Procedure section 685.010, until said amount is paid in full. Relief Defendant Courtney further  
4 consents to the entry of the Final Judgment in the San Diego Superior Court. Plaintiff may seek to  
5 enforce the Final Judgment without any further notice to Relief Defendant Courtney. Relief  
6 Defendant Courtney agrees and stipulates to waive entry of Findings of Fact and Conclusions of Law  
7 under Code of Civil Procedure section 632 and all rights to appeal the entry of the Final Judgment.  
8 Relief Defendant Courtney further agrees and stipulates that entry of the Final Judgment pursuant to  
9 this Agreement may be made by a judge or by a commissioner of the Superior Court and may be  
10 made *ex parte* without notice to Relief Defendant Courtney.

11 K. Relief Defendant Courtney agrees and acknowledges that Plaintiff is only releasing  
12 claims as to Relief Defendant Courtney for the money, funds or assets he personally received from  
13 Defendants Innovation Fund 2000, LLC and Pacific Phoenix Communities, LLC. Relief Defendant  
14 Courtney further agrees and acknowledges that the release running in favor of Relief Defendant  
15 Courtney does not include the money, funds or asset received by the Relief Defendants  
16 Immcapnmotion, Inc., Mistnet Medical Devices, Inc., Magneto Inertial Sensing Technology, Inc.,  
17 Mist Net, Inc., and Mist, Inc. (collectively, "MIST ENTITIES") from defendants in this action.  
18 Relief Defendant Courtney further agrees and acknowledges that Plaintiff is not releasing any claims  
19 as to Relief Defendant Courtney for the money, funds or asset received by the MIST ENTITIES from  
20 defendants in this action.

21 L. The Parties agree that the Second Amended Complaint filed in this action shall be  
22 dismissed without prejudice as to Relief Defendant Courtney only, upon receipt of full payment of  
23 twenty-one thousand, four hundred fourteen dollars and ninety-three cents (\$21,414.93).

24 M. The Parties agree and stipulate that each party shall bear their own expenses and costs,  
25 including attorneys' fees, incurred in connection with the investigation and litigation of matters  
26 relating to the Second Amended Complaint in the above entitled matter and the preparation of the  
27 Second Amended Complaint, this Agreement and the Final Judgment.

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1 N. The Parties understand that the terms of this Agreement and Final Judgment are  
2 contractual and not mere recitals. They are executed and agreed upon without reliance on any oral  
3 representation of the Parties or their attorneys or any other person or entity not expressly set forth  
4 herein, or upon the failure of any party or any other person or entity to make any statement,  
5 representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to  
6 preclude any claim that any party was in any way fraudulently induced to execute this Agreement and  
7 Final Judgment; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement,  
8 or contradict the terms of this Agreement and Final Judgment.

9 O. The Parties hereby acknowledge and agree that the San Diego Superior Court shall  
10 retain jurisdiction of this action in order to implement and enforce the terms of this Agreement and  
11 the Final Judgment against Relief Defendant Courtney, and to entertain any suitable application or  
12 motion for additional relief or modification or any order made herein within the jurisdiction of the  
13 San Diego Superior Court, pursuant to Code of Civil Procedure section 664.6.

14 P. In that the Parties have had the opportunity to draft, review and edit the language of  
15 this Agreement and Final Judgment, no presumption for or against any party arising out of drafting  
16 all or any part of this Agreement or Final Judgment will be applied in any action relating to or arising  
17 out of this Agreement or Final Judgment. Accordingly, the Parties hereby waive the benefit of Civil  
18 Code section 1654 and any successor statute.

19 Q. Nothing in this Agreement or Final Judgment in this matter shall preclude any other  
20 federal, state or county agency from initiating any other prosecution based upon the allegations  
21 contained in the Second Amended Complaint, in the above entitled matter, or based upon any other  
22 acts by Relief Defendant Courtney which may violate federal or state law.

23 R. Nothing in this Agreement or Final Judgment in this matter shall preclude Plaintiff, or  
24 her agents or employees, to the extent authorized by law, from assisting or cooperating with any  
25 investigation and/or action brought by any other federal, state or county agency. Further, nothing in  
26 the Agreement or Final Judgment in this matter shall bind or otherwise prevent any other federal,  
27 state or county agency from the performance of their duties.

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1 S. A fax or e-mail scanned signature of this Agreement shall be as effective as an original  
2 ink signature.

3 T. Each signatory hereto covenants that he/she possesses the necessary capacity and  
4 authority to sign and enter into this Agreement and Final Judgment.

5 U. The Parties stipulate and agree that this Agreement may be executed in one or more  
6 separate counterparts, each of which when so executed, shall be deemed an original. Such  
7 counterparts shall together constitute and be one and the same instrument.

8 V. Whenever in this Agreement and Final Judgment the context may so require, the  
9 masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular  
10 refer to and include the plural, and vice versa.

11 PLAINTIFF, THE PEOPLE OF THE STATE OF  
12 CALIFORNIA

13 DATED: 9/3/13

By \_\_\_\_\_  
14 MARY ANN SMITH  
15 Deputy Commissioner  
16 Enforcement Division

17 RELIEF DEFENDANT DONALD J. COURTNEY

18 DATED: 8/26/13

By \_\_\_\_\_  
19 DONALD J. COURTNEY, individually

20  
21 APPROVED AS TO FORM:

22  
23 DATED: 9/4/13

By \_\_\_\_\_  
24 AFSANEH EGHBALDARI  
25 Corporations Counsel  
26 Enforcement Division

27 DATED: 8/26/13

By \_\_\_\_\_  
28 STEPHEN T. CUMMINGS  
Attorney for DONALD J. COURTNEY