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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12 THE PEOPLE OF THE STATE OF)
13 CALIFORNIA, by and through the California)
Corporations Commissioner,)
14)

15 Plaintiff,

16 v.

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

21 Defendants.
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23)
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) CASE NO.
)
) COMPLAINT FOR DAMAGES, SPECIFIC
) PERFORMANCE, AND OTHER EQUITABLE
) RELIEF
)
) CALIFORNIA CIVIL CODE SECTION 3300
) **(BREACH OF CONTRACT)**
)
) CALIFORNIA CIVIL CODE SECTION 3384
) **(SPECIFIC PERFORMANCE OF**
) **CONTRACT)**
)
) CALIFORNIA CIVIL CODE SECTION 3333
) **(BREACH OF FIDUCIARY DUTY)**

1 Preston DuFauchard, California Corporations Commissioner (“Commissioner”), brings this
2 action in the public interest in the name of the People of the State of California. The People of the
3 State of California allege:

4 **JURISDICTION AND VENUE**

5 1. The Commissioner brings this action seeking damages caused by Defendants’ breach
6 of contract and fiduciary duty and to request necessary equitable and ancillary relief.

7 2. Under California Government Code section 19130(b)(3), the California Department
8 of Corporations (“Department”) is authorized to contract for personal services with parties outside of
9 the civil service system when “[t]he services contracted are not available within civil service, cannot
10 be performed satisfactorily by civil service employees, or are of such a highly specialized or
11 technical nature that the necessary expert knowledge, experience, and ability are not available
12 through the civil service system.”

13 3. Defendants entered into a valid contract with the Department for debt recovery
14 services and have transacted business within Los Angeles County and other counties in California.
15 Defendants’ performance of personal services under the contract was contemplated by the parties to
16 occur and have occurred in California. A true and correct copy of said contract is marked as
17 Attachment 1 and attached to this complaint and incorporated by reference.

18 **DEFENDANTS**

19 4. Defendant Recover Metrics, LLC (“Recover Metrics”) is a Delaware limited liability
20 company that contracts with federal and state governments and agencies to provide debt recovery
21 services. Recover Metrics’ last known business address is in the County of Cook at 16900 Lathrop
22 Avenue, Main Campus, Harvey, IL 60426.

23 5. Defendant Thomas Creal (“Creal”) is an individual and is a managing member and
24 agent of Recover Metrics. Creal’s last known address is 2928 Birch Rd., Homewood, IL 60430.

25 6. Defendant Mark J. Doyle (“Doyle”) is an individual and is a managing member and
26 agent of Recover Metrics. Doyle’s last known business address is 16900 Lathrop Avenue, Main
27 Campus, Harvey, IL 60426.

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7. Recover Metrics, Creal, and Doyle (collectively “Defendants”) entered into a valid contract with the Department as an independent contractor recovering delinquent receivables from individuals and entities subject to the Department’s actions. Defendants conducted their business in the County of Orange at the Law Offices of Lenore Albert, located at 15061 Springdale Street, Suite No. 110, Huntington Beach, CA 92649.

8. Plaintiff alleges that, at all relevant times, the Law Offices of Lenore Albert, located in the County of Orange, was used as an office for Defendants’ forensic personnel. It was a central depository for all case files relating to Defendants’ contract with the Department and the place for holding meetings and transmitting other important information relating to their debt recovery services.

9. As an independent contractor performing debt recovery services for the Department, Defendants established the requisite minimum contacts within the State of California and purposefully availed himself to the jurisdiction and laws of this State.

10. Defendants Does 1 through 10, inclusive, are persons, corporations, or other entities that have done or will do acts otherwise alleged in this Complaint. Plaintiff is informed and believes, and on such information and belief alleges, that Defendants Does 1 through 10 inclusive, at all times mentioned herein have acted and are continuing to act in concert with the Defendants named herein, and that each of them has participated in the acts and transactions which are the subject of this Complaint. The true names and capacities of Does 1 through 10, whether individual, corporate, or otherwise, are unknown to Plaintiff, who therefore sues such Defendants under such fictitious names, pursuant to the provisions of section 474 of the California Code of Civil Procedure. Plaintiff asks leave of the court to amend the complaint to allege the true names and capacities of such Defendants at such time as the same have been ascertained.

11. Whenever any allegation is made in this complaint to “Defendants” doing any act, the allegation shall mean the act of Recover Metrics, Creal and Doyle, including the officers, directors, agents or employees of Recover Metrics, acting individually, jointly and severally, and conspiring to so act in the capacities set forth below.

STATEMENT OF FACTS

12. At all relevant times, Recover Metrics is a Delaware limited liability company, formed on September 19, 2001. Its last known principal place of business is located in the County of Cook at 16900 Lathrop Avenue, Main Campus, Harvey, IL 60426. Creal and Doyle are and were managing members of Recover Metrics.

13. Defendants’ business activities, which constitute the basis of this action, were performed throughout the State of California and were based in the County of Orange at the Law Offices of Lenore Albert, located at 15061 Springdale Street, Suite No. 110, Huntington Beach, CA 92649.

14. On September 29, 2004, Defendants entered into a written agreement (“Agreement”) with the Department, whereby Defendants agreed to provide recovery/debt collection service for the Department. Doyle as Managing Member of Recover Metrics executed the Agreement.

15. EXHIBIT A of the Agreement, detailing the Scope of Work to be performed by Defendants, stated in relevant part:

- a) Defendants “will provide all labor, materials, tools and equipment and will perform all work necessary to identify and/or recover assets . . . [including] real estate, personal property, business office equipment, furniture . . . [and those] transferred through sham corporations, through interrelated shell companies, or to offshore accounts . . .
- b) “[Defendants] shall be an independent contractor as defined by the Internal Revenue Service . . .
- c) “[Defendants] shall be prepared to travel wherever and whenever necessary in order to maximize recovery of Corporations’ collectible judgments.
- d) “[Defendants] may be required to testify at court proceedings in conjunction with debt recovery efforts, or on behalf of certain legislation related to receivable recoveries.”

See Exhibit A of Attachment 1.

1 16. Defendants’ services to be performed under this Agreement consisted of two phases.
2 Phase I included, but was not limited to, the following:

- 3 a) “Preparing a report discussing the results of alternative techniques employed and the
4 established track record of forensic recovery, including any opinion as to the expected
5 success of future collection of the judgment(s), including disgorgement, restitution
6 and civil penalties, if any.
- 7 b) “Meeting with individuals from Corporations’ office and other state agencies, as
8 requested, to gather information on past efforts, condition of files, current status of
9 judgment(s) and/or recovery efforts . . .
- 10 c) “Assemble the information in a case write-up format and consult when appropriate
11 with Corporations’ personnel and/or legal counsel.”

12 *See Exhibit A of Attachment 1.*

13 17. Phase II included, but was not limited to, the following:

- 14 a) “[Defendants] shall maintain separate and apart from all other funds, the monies
15 received as a result of debt recovery activities pursuant to this contract.
- 16 b) “[Defendants] shall maintain a history and record of collection efforts and
17 produce customized reports summarizing those efforts and the status of collection
18 to Corporations at least every 90 days.”
- 19 c) Defendants shall be paid “on a percentage basis and only from the receipt of
20 recovered monies by Corporations” for judgments and/or debts identified and
21 selected by Corporations and accepted by Defendants. However, any funds
22 recovered may be determined by Corporations to go first to fully satisfy
23 judgments for victims before fines and penalties are collected.

24 *See Exhibit A of Attachment 1.*

25 18. EXHIBIT B of the Agreement, detailing the Budget and Payment Provisions, stated
26 in relevant part: [A]ll funds collected on behalf of Corporations would be remitted to Corporations
27 and [Defendant] would then be paid “in arrears” for its services.

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- a) “The monies remitted to Corporations would be deposited in a trust account. A warrant will then be processed for payment due the Defendants for their services. Any amounts remaining due Corporations would be transferred to the State Corporations Fund, and remaining amounts collected for investors would be held in the trust account or distributed as directed by the court that entered the judgment for the investors.”
- b) “All work would be performed under a performance based compensation method at a rate of 30% for restitution, and at a rate of 50% for penalties and interest amounts.”
- c) “[Defendant] must convert collections to a company check or money order made payable to the Department of Corporations . . .
- d) “[Defendant] will reimburse Corporations for all misapplied collections resulting from the [defendant’s] error within 30 days.”

See Exhibit B of Attachment 1.

19. EXHIBIT E of the Agreement provided, in relevant part:

- a) “[Defendant] shall maintain records on each case or file referred or assigned by Corporations. These records must contain the collection actions taken on each case or file and any other pertinent information as specified by Corporations. These records will remain the property of Corporations, but will be maintained by the [Defendant] for the life of this contract. Upon termination or expiration of the contract, these records will be turned over to Corporations within thirty (30) calendar days of the contract ending date, if requested by Corporations . . .
- b) “[Defendant] agrees that all information obtained from Corporations and used when collecting on Corporations judgments or settlements is the property of Corporations and will not be used for any other purpose by the [Defendant] . . .
- c) “[Defendant] will deliver status reports to Corporations in formats, which provide detail and summary information . . . including: . . .
 - a. “The number of assigned Corporations cases or files that have been closed by the [Defendant] and the reason for closure;

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- b. “The total amount of money collected by the [Defendant];
- c. “The total fees to be charged to Corporations by the [Defendant] . . .
See Exhibit E of Attachment 1.

20. “If service on this contract is terminated for any reason, . . . all materials and records must be returned immediately upon notice from the Department.” *See Exhibit E of Attachment 1.*

21. The term of the Agreement was from July 1, 2004 through June 30, 2006.

22. On June 13, 2006, the parties executed an amended agreement extending the term of the Agreement through June 30, 2007, while all other terms and conditions remained the same. Creal as Managing Member of Recover Metrics executed the Agreement.

23. During the term of the Agreement, Defendants collected at least \$700,000 in delinquent receivables from individuals and entities subject to the Department’s actions.

24. On or about July 7, 2006, the Department transferred \$300,380.78 to Defendants in connection with a Department matter titled *People v. First California Diversified Fund, LLC* (“FCDF”). Pursuant to an agreement between the Department and Defendants, Defendants were to disburse the funds to investors after providing appropriate notice and the issuance of claim forms. In return, Defendants were to take 5% of the distribution amount to cover various expenses including administrative expenses, locating investors and actual distribution. The Department provided Defendants with a list of investors.

25. On or about August 30, 2006, the Department requested, via e-mail, that Defendants provide a status report on the disbursement of the \$300,380.78. Creal responded that “notice in the Wall Street Journal will be run in September for two weeks, after the Labor Day Week, and then I will mail all claim forms out to responding parties and from the list of names.”

26. Between August, 2006 and June, 2007, the Department and Defendants exchanged numerous e-mails concerning the status of the disbursement of funds on the FCDF matter.

27. On or about April 27, 2007, the Department demanded that Defendants send to the Department a report concerning the disbursement of funds on the FCDF matter, including a list of investors with amounts disbursed, dates of disbursement, amounts remaining in the account, and fees

1 charged against the account by May 4, 2007. Defendants failed to provide the requested report by
2 May 4, 2007, and has yet to provide it to the Department.

3 28. On or about May 23, 2007, the Department transferred and Defendants accepted
4 \$20,000.00 of additional funds in trust to be disbursed to investors in the FCDF matter. Creal stated,
5 via e-mail, that he would put the monies in an escrow account, and would provide the Department
6 with a list of investors to whom the monies should be disbursed.

7 29. By June 15, 2007, despite repeated requests by the Department, Defendants still had
8 not provided the Department with a report on the disbursement of funds to investors in the FCDF
9 matter.

10 30. On or about July 2, 2007, two days following the termination of the Agreement, the
11 Department requested, pursuant to EXHIBIT E of the Agreement set forth in paragraph 19(a) above,
12 that Defendants transfer to the Sacramento office of the Department all outstanding files, accounting,
13 asset information, and Defendant’s bill, or final invoice, no later than Monday, July 23, 2007.

14 31. On or about July 31, 2007, eight days following the due date for all the outstanding
15 files, accounting, asset information, and final invoice, Creal informed Sharon A. Lueras (“Lueras”),
16 Lead Corporations Counsel in the Enforcement Division of the Department, through e-mail, that he
17 had just “begun the final wind down” of the cases assigned to him. Creal stated that he would
18 continue his assembly of the records for all the cases and ship them to her.

19 32. Thereafter, the Department’s Sacramento office received banker boxes from
20 Defendants purporting to contain Defendants’ work relating to three collections cases, including
21 Defendants’ report based on the information gathered, the action steps along the way, and the
22 supporting documents. However, these boxes of case files did not contain the crucial reports on the
23 information gathered, steps along the way, accounting, asset information (collectively, “Reports”) or
24 final invoice.

25 33. On August 21, 2007, Lueras requested, in writing, that Creal send the Reports at his
26 “earliest possible convenience.”

27 34. On September 18, 2007, or 57 days following the due date for the Reports under the
28 Agreement, the Department still had not received any Reports. Consequently, Lueras, in writing,

1 addressed to Creal, demanded that he promptly send the Reports and any remaining files Defendants
2 have on the collection efforts conducted on behalf of the Department.

3 35. By December, 2007, or 11 months after the Department directed Defendants to
4 disburse funds or advise as to why they could not be disbursed in the FCDF matter, Defendants still
5 have not disbursed the funds.

6 36. On April 10, 2008, Defendants were still withholding the final invoice for all the
7 matters that Defendants have worked on as well as a report regarding the disbursement of funds in
8 the FCDF matter. Creal stated in an e-mail that he was in Liberia for a “UN project” and would
9 finish the final invoice upon his return in May, 2008.

10 37. In May and June 2008, the Department again inquired, through e-mails, as to the status
11 of the final invoice and disbursement of funds in the FCDF matter. Creal responded that he was or
12 had been in Liberia.

13 38. On July 29, 2008, or one year and 29 days after the termination of the Agreement,
14 Creal sent an e-mail to the Department mentioning some “personal issues,” but assuring the
15 Department that he was now back in the office to finish the final invoice and wind down of the
16 Agreement.

17 39. On March 24, 2009, the Department sent a demand letter to Defendants directing
18 Defendants to submit the final accounting and/or invoice on all cases that Defendants handled on
19 behalf of the Department within 14 days from the date of the letter. In addition, it also directed
20 Defendants to return all funds and interest gained while in their care, including those held in
21 connection with Scantech, Treasure Hunt, Leedha, Inc., and FCDF within 30 days from the date of
22 the letter.

23 40. On April 5, 2009, the Department received an e-mail from Defendant Creal stating
24 that he received the demand letter dated March 24, 2009. Creal also wrote on the e-mail that he
25 knew he had “fallen down on this wrap up.” In addition, Creal wrote that he was back “in Liberia
26 for the UN, until May 1st, then home to write the final report due June 1st. I will not be able to get
27 everything done by the end of April, but will give you an update by then and hopefully finish in mid-
28 May. Not that far after your target date.”

1 41. On May 15, 2009, the Department received another e-mail from Creal wherein he
2 wrote, "I have not forgotten. Still in Liberia for two more weeks."

3 42. To date, the Department has not received the final accounting and/or invoice relating
4 to all the matters that Defendants have performed under the personal services Agreement and the
5 final accounting and/or invoice relating to the FCDF matter. Defendants continue to withhold at
6 least \$1,020,380.78 on behalf of the Department. This total amount consists of \$700,000 from its
7 collection efforts on behalf of the Department and the \$320,380.78 transferred to Defendants in the
8 FCDF matter. Defendants have provided no reason, as required of them, for their failure to disburse
9 the monies by January 30, 2007.

10 **FIRST CAUSE OF ACTION**
11 **BREACH OF CONTRACT**
12 **CIVIL CODE SECTION 3300**
13 **(Against All Defendants)**

14 43. The Commissioner incorporates by reference paragraphs 1 through 42 of this
15 complaint as though fully set forth herein.

16 44. California Civil Code Section 1550 provides that "[i]t is essential to the existence of a
17 contract that there should be: 1) Parties capable of contracting; 2) Their consent; 3) A lawful object;
18 and, 4) A sufficient cause or consideration."

19 45. California Government Code section 19130(b)(3) states that personal services
20 contracting with parties outside of the civil system by a state agency is permitted when "[t]he
21 services contracted are not available within civil service, cannot be performed satisfactorily by civil
22 service employees, or are of such a highly specialized or technical nature that the necessary expert
23 knowledge, experience, and ability are not available through the civil service system."

24 46. As described in paragraph 14 above, on September 29, 2004, the Department and
25 Defendants entered into an Agreement whereby Defendants would provide recovery/debt collection
26 services. The Agreement is authorized under Government Code section 19130(b)(3) and constitutes
27 a valid enforceable contract under California Civil Code section 1550, as all the elements of a valid
28 contract are present and there are no defenses to its enforcement.

47. Defendants breached this Agreement by failing to perform the following acts:

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- a. Defendants failed to maintain a history and record of collection efforts and produce customized reports summarizing those efforts and the status of collection regarding cases to the Department at least every 90 days, pursuant to EXHIBIT A of the Agreement;
- b. Defendants failed to remit all funds collected on behalf of Corporations, pursuant to EXHIBIT B of the Agreement;
- c. Defendants failed to turn over to the Department all records containing the “collection actions taken on each case or file and any other pertinent information as specified by Corporations,” by July 23, 2007, which was the due date set by the Department following the termination of the Agreement pursuant to EXHIBIT E of the Agreement;
- d. Defendants failed to deliver to the Department the status reports providing detail and summary information, including the total amount of money collected by Defendants and the total fees to be charged to the Department by Defendants, *i.e.* a final invoice, pursuant to EXHIBIT E of the Agreement;
- e. Defendants wrongfully withheld and continue to withhold the Department’s property in the form of records on each case or file referred or assigned to Defendants by the Department, pursuant to EXHIBIT E of the Agreement; and
- f. Defendants failed to provide an accounting and Report for all of the funds collected on behalf of the Department and the funds transferred by the Department to Defendants in the matter regarding FCDF.

48. Plaintiff performed all of its obligations under the Agreement and patiently endured Defendants’ ongoing delinquency and evasiveness.

49. California Civil Code section 3300 provides that “[f]or the breach of an obligation arising from contract, the measure of damages, . . . is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.”

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WHEREFORE, Plaintiff demands judgment against Defendants as set forth below.

THIRD CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
CALIFORNIA CIVIL CODE SECTION 3333
(Against All Defendants and DOES 1-10)

57. Plaintiff incorporates by reference paragraphs 1 through 56 of this complaint as though fully set forth herein.

58. California Civil Code section 3333 provides that “[f]or the breach of an obligation not arising from contract, the measure of damages, . . . is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”

59. Defendants breached their fiduciary duty to Plaintiff by unlawfully retaining the funds they agreed to collect on behalf of Plaintiff and California investors. The Agreement implied an agency-type relationship in that Defendants were to act on behalf of the Department when dealing with third party debtors to further the Department’s goal of collecting debts for California investors. Defendants implicitly agreed to act in good faith when Defendants received from debtors the funds that rightfully belonged to the Department to be distributed to wronged investors. Defendants’ repeated failure to timely respond to the Department’s repeated requests for Reports, funds, and other materials under the Agreement and rightfully the property of the Department constitutes a breach of fiduciary duty.

60. Defendants’ breach of fiduciary duty caused damages to Plaintiff in that Plaintiff has been prevented from making further debt collections on cases mishandled by Defendants. Defendants’ breach caused Plaintiff to be delayed for one year in transferring its debt collections efforts to a new independent contractor when Defendants’ contract terminated. Furthermore, Defendants’ breach caused harm to numerous California investors in that they could not receive the funds they were owed under judgments rendered by this and other California courts. The damages amounted to a sum of at least \$1,020,380.78.

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3. For such other and further relief as this Court deems necessary and proper.

Dated: September 30, 2009
Los Angeles, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
MARLOU de LUNA
Sr. Corporations Counsel
Attorney for Plaintiff