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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FLETCHER CARSON,
Plaintiff,

No. C 11-03766 DMR

**ORDER RE SETTLEMENT
AGREEMENT DRAFTING DISPUTES**

v.

VERISMART SOFTWARE, *et al.*,
Defendants.

On June 1, 2012, this court convened a settlement conference that resulted in the full resolution of this case. The parties agreed to the material terms of a confidential settlement, and placed those terms on the record. Although the parties expressed their intent to reduce the terms of the settlement to writing, all parties understood that the settlement agreement was fully enforceable as of June 1, 2012 on the material terms that were announced and agreed to on the record.

The parties subsequently reassigned the case to the undersigned for all purposes. They agreed to vest full authority in this court to decide all disputes regarding the drafting of the settlement agreement, with such disputes to be submitted through a joint letter, without oral argument, for a definitive and binding decision without right of appeal.

1 On January 14, 2013, the parties submitted a joint letter requesting that the court resolve
2 certain drafting disputes between Defendant Carl Raff on the one hand, and Plaintiff Fletcher
3 Carson, Defendants Verismart Software Inc., Phillip Thoren, James Garvey, Andy Thoren, and Joe
4 Dawson, and additional contractual parties Omsphere LLC and Thomas McKelvey, on the other.
5 Having reviewed the submissions, the court makes the following final, binding and non-appealable
6 decisions.

7 The court will address the disputes regarding the specific paragraphs of the settlement
8 agreement that are identified in the headings in the joint letter.¹ Except where specifically noted, the
9 paragraphs in the joint letter, as well as in this opinion, refer to the numbering in Raff’s proposed
10 agreement.

11 Paragraph 3.2(d): Raff seeks to eliminate the words “assist” and “incite” from the provision
12 as agreed to by the other parties. The words “assist” and “incite” shall remain in the agreement.
13 They are consistent with the material terms of the agreement.

14 Paragraphs 3.2(e), 3.2(f), and 3.2(i): Raff’s proposed paragraphs 3.2(e) and 3.2(f) are
15 rejected as exceeding the material terms of the agreement.

16 Paragraph 3.2(h): Raff’s proposed paragraph 3.2(h) combines two paragraphs, (¶¶ 3.2(e) and
17 (g)), in the proposal made by the other parties. Raff’s proposed paragraph 3.2(h) is rejected. It does
18 not materially differ from the provisions agreed upon by all other parties. Raff makes no attempt to
19 explain why his proposed wording is superior to the language accepted by all other parties.

20 Paragraph 3.2(j): Although this provision is identified in a heading in the joint letter, the
21 submissions indicate that the parties are in full agreement regarding the language of this paragraph.
22 Raff’s proposed ¶ 3.2(j) is identical to the other parties’ proposed ¶ 3.2(i). Therefore, no decision is
23 necessary.

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27 ¹ In reviewing the parties’ submissions, it appears that Raff’s proposed agreement contains some
28 language that differs from the agreement proposed by the other parties, but is not raised as a dispute in
the joint letter. The court will decide only those disputes that were specifically raised in the joint letter.

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Paragraph 8.3.2: Although this provision is identified in a heading in the joint letter, the submissions indicate that the parties are in full agreement regarding the language of this paragraph. Therefore, no decision is necessary.

Paragraph 8.4: Raff’s proposal is rejected as exceeding the scope of the material terms of the agreement. It also appears to be superfluous.

IT IS SO ORDERED.

Dated: February 5, 2013

