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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BUSINESS RECOVERY SERVICES, LLC
a limited liability company, and

BRIAN HESSLER,
Individually and as owner, officer, or
manager of Business Recovery
Services, LLC,

Defendants.

No. CV 11-0390-PHX-JAT

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF BETWEEN
PLAINTIFF AND DEFENDANT
HESSLER**

WHEREAS, Plaintiff, the United States of America, has filed a Complaint for Injunctive and Other Equitable Relief (“Complaint”) against Business Recovery Services, LLC, and Brian Hessler in connection with the offering for sale and sale of recovery

1 goods and services. The Plaintiff and Defendant Brian Hessler¹ (“Defendant Hessler”)
2 have agreed to settlement of this action upon the following terms and conditions,² without
3 adjudication of any issue of fact or law;
4

5 THEREFORE, on the joint motion of Plaintiff and Defendant Hessler, **IT IS**
6 **THEREFORE STIPULATED, AGREED, AND ORDERED** as follows:

- 7 1. This Court has jurisdiction over the subject matter of this case and jurisdiction
8 over all parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15
9 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.;
- 10 2. Venue in the District of Arizona is proper under 28 U.S.C. §§ 1391(b)-(c) and
11 1395(a), and 15 U.S.C. § 53(b);
- 12 3. The acts and practices of Defendants were and are in or affecting commerce, as
13 defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
- 14 4. The Complaint states a claim upon which relief can be granted under Sections
15 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act
16 (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and Section
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21 ¹ Defendant Business Recovery Services is not represented by counsel at this time.

22 ² On March 8, 2010, the Court granted the Government’s Motion for Attorneys’ Fees
23 (see Doc. #155), and ordered Defendants Brian Hessler and Business Recovery Services
24 to pay \$33,064.87, which represented the expenses incurred by the Government as a
25 result of Defendants’ contempt. That award is not impacted by this Consent Decree, and
26 must be satisfied by Defendants.

1 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the
2 “Telemarketing Act”), 15 U.S.C. § 6105, and the Federal Trade Commission’s
3 Telemarketing Sales Rule (the “TSR” or the “Rule”), 16 C.F.R. Part 310, as
4 amended, and the Plaintiff has the authority to seek the relief it has requested;
5

6 5. Defendant Hessler has entered into this Order freely and without coercion, and
7 Defendant Hessler acknowledges that he has read the provisions of this Order and
8 is prepared to abide by them;
9

10 6. Plaintiff and Defendant Hessler stipulate and agree that the entry of this Order
11 shall constitute a full, complete, and final settlement of this action;
12

13 7. Defendant Hessler waives all rights to seek judicial review or otherwise challenge
14 or contest the validity of this Order;
15

16 8. Defendant Hessler has agreed that this Order does not entitle Defendant Hessler to
17 seek or to obtain attorneys’ fees as a prevailing party under the Equal Access to
18 Justice Act, 28 U.S.C. § 2412, and Defendant Hessler further waives any rights to
19 attorneys’ fees that may arise under said provision of law;
20

21 9. This Order is remedial in nature and shall not be deemed or construed as a fine,
22 damages, penalty, or punitive assessment; and
23

24 10. Entry of this Order is in the public interest.
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ORDER

For purposes of this Order, the following definitions shall apply:

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- 4 A. **“And”** and **“or”** shall be understood to have both conjunctive and disjunctive
- 5 meanings.
- 6 B. **“Asset”** means any legal or equitable interest in, right to, or claim to, any real,
- 7 personal, or intellectual property including, but not limited to, chattel, goods,
- 8 instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts,
- 9 mail or other deliveries, shares or stock, securities, inventory, checks, notes,
- 10 accounts, credits, receivables (as those items are defined in the Uniform
- 11 Commercial Code), lists of consumer names, accounts, credits, premises, cash,
- 12 trusts, including but not limited to asset protection trusts, and reserve funds or
- 13 other accounts associated with any payments processed on behalf of any
- 14 Defendant, including but not limited to reserve funds held by a payment processor,
- 15 credit card processor, or bank.
- 16
- 17 C. **“Assisting others”** includes but is not limited to: (a) performing customer service
- 18 functions, including but not limited to receiving or responding to consumer
- 19 complaints; (b) developing or providing or arranging for the development or
- 20 provision of sales scripts and other marketing materials; (c) providing names of, or
- 21 arranging for the provision of names, of potential customers; (d) performing
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1 marketing services of any kind; or (e) providing any other service to a third party
2 that could result in payment such as a salary, fee, or commission, whether or not
3 there is an employment relationship between Defendant Hessler and third parties.
4

5 D. **“Corporate Defendant”** means Business Recovery Services, LLC, also doing
6 business as Home Based Business Consulting Services, and their successors and
7 assigns.
8

9 E. **“Defendants”** means the Defendant Hessler and the Corporate Defendant,
10 individually, collectively, or in any combination.
11

12 F. **“Defendant Hessler”** means Brian Hessler.

13 G. **“Material”** means likely to affect a person’s choice of, or conduct regarding,
14 goods or services.
15

16 H. **“Person”** means any individual, group, unincorporated association, limited or
17 general partnership, corporation, or other business entity.

18 I. **“Recovery Goods and Services”** means any business activity represented to
19 recover or otherwise assist in the return of money or any other item of value paid
20 for by, or promised to, a person in a previous transaction.
21

22 J. **“Telemarketing”** means a plan, program, or campaign which is conducted to
23 induce the purchase of goods or services or a charitable contribution, by use of one
24 or more telephones and which involves more than one interstate telephone call.
25

1 **PERMANENT BAN ON THE SALE OF RECOVERY GOODS AND SERVICES**

2 I. IT IS THEREFORE ORDERED that Defendant Hessler, whether acting directly
3 or through any person, business entity, trust, corporation, partnership, limited liability
4 company, subsidiary, division, website, or other device, is hereby permanently restrained
5 and enjoined from selling recovery goods and services, or assisting others engaged in the
6 sale of recovery goods and services.
7
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9 **PROHIBITION AGAINST MAKING MISREPRESENTATIONS**
10 **RELATING TO ANY GOOD OR SERVICE**

11
12 II. IT IS FURTHER ORDERED that Defendant Hessler and his agents, servants,
13 employees, attorneys, and all other persons or entities in active concert or participation
14 with him who receive actual notice of this Order by personal service or otherwise,
15 whether acting directly or indirectly, in connection with the advertising, promoting,
16 marketing, offering for sale, selling, or distributing of any good or service are hereby
17 permanently restrained and enjoined from misrepresenting, or assisting others in
18 misrepresenting, expressly or by implication, any material fact, including but not limited
19 to:
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22 A. Any material aspect of the performance, efficacy, nature, or central characteristics
23 of the good or service;
24
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- 1 B. Any material aspect of the nature or terms of any refund, cancellation, exchange,
2 or repurchase policy for the goods and services;
3
4 C. That Defendants or any other person is affiliated with, endorsed or approved by, or
5 otherwise connected to any other person; government entity; public; non-profit, or
6 other non-commercial program; or any other program;
7
8 D. The total cost to purchase, receive, or use the goods or services;
9
10 E. Falsely representing, in any manner, directly or by implication, any fact material
11 to a consumer's decision (1) to purchase any item, product, good, service, or
12 interest of any kind; (2) to donate to charity; or (3) to enter a contest for a prize;
13 and
14 F. Making a false or misleading statement to induce any person to pay for goods or
15 services.
16

17 **CUSTOMER INFORMATION**

18
19 III. IT IS FURTHER ORDERED that Defendant Hessler and his agents, servants,
20 employees, attorneys, and all other persons or entities in active concert or participation
21 with him who receive actual notice of this Order by personal service or otherwise, are
22 permanently restrained and enjoined from directly or indirectly:
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1 A. Failing to provide sufficient customer information to enable the Commission to
2 efficiently administer consumer redress. If a representative of the Commission requests
3 in writing any information related to redress, Defendant Hessler must provide it, in the
4 form prescribed by the Commission, within 14 days.

6 B. Disclosing, using, or benefitting from customer information, including the name,
7 address, telephone number, email address, social security number, other identifying
8 information, or any data that enables access to a customer's account (including a credit
9 card, bank account, or other financial account), that either Defendant Hessler or the
10 Corporate Defendant obtained prior to entry of this Order; and

13 C. Failing to dispose of such customer information in all forms in their possession,
14 custody, or control upon receipt of written direction to do so from a representative of the
15 Commission. Disposal must be by means that protect against unauthorized access to the
16 customer information, such as by burning, pulverizing, or shredding any papers, and by
17 erasing or destroying any electronic media, to ensure that the customer information
18 cannot practicably be read or reconstructed.

21 Provided, however, that customer information need not be disposed of, and may
22 be disclosed, to the extent requested by a government agency or required by law,
23 regulation, or court order.

MONETARY JUDGMENT AND PARTIAL SUSPENSION

1
2 IV. IT IS FURTHER ORDERED that:

3
4 A. Judgment is hereby entered in favor of Plaintiff and against Defendant Hessler, for
5 equitable monetary relief, pursuant to Sections 13(b) and 19 of the FTC Act, 15
6 U.S.C. §§ 53(b) and 57b, in the amount of five million, two hundred and eighty
7 three thousand, six hundred and fifty eight dollars (\$5,283,658). The payment of
8 these sums shall be suspended except for ninety thousand dollars, (\$90,000),
9 subject to the provisions of the Section of this Order entitled “RIGHT TO
10 REOPEN.”
11

12
13 B. Prior to or concurrently with Defendant Hessler’s execution of this Order,
14 Defendant Hessler shall turn over the sum of ninety thousand dollars (\$90,000); in
15 the form of a wire transfer in accordance with directions provided by counsel for
16 Plaintiff. The funds shall be held in a non-interest-bearing account pending
17 approval of the settlement by the Federal Trade Commission and the entry of the
18 consent decree by the U.S. District Court, before being disbursed in accordance
19 with procedures specified by the Consumer Protection Branch, Civil Division,
20 U.S. Department of Justice, Washington, D.C. 20530.
21

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24 C. Defendant Hessler relinquishes all dominion, control, and title to the assets
25 surrendered or paid to the fullest extent permitted by law. Defendant Hessler shall
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1 make no claim to or demand for return of these assets, directly or indirectly,
2 through counsel or otherwise.

3
4 D. The facts alleged in the Complaint filed in this action shall be taken as true,
5 without further proof, in any subsequent bankruptcy case or civil litigation by or
6 on behalf of the Commission, including in a proceeding to enforce its rights to any
7 payment or monetary judgment pursuant to this Order, such as, including but not
8 limited to, a nondischargeability complaint in any bankruptcy case.

9
10 E. The facts alleged in the Complaint establish all elements necessary to sustain an
11 action by the Plaintiff pursuant to Section 523(a)(2)(A) of the Bankruptcy Code,
12 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for
13 such purposes.

14
15 F. Defendant Hessler acknowledges that the Taxpayer Identification Numbers (Social
16 Security Numbers or Employer Identification Numbers) previously submitted to
17 Plaintiff may be used for collecting and reporting on any delinquent amount
18 arising out of this Order, in accordance with 31 U.S.C. §7701.

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20
21 G. All money paid pursuant to this Order may deposited into a fund administered by
22 the Commission or its designee to be used for equitable relief, including consumer
23 redress and any attendant expenses for the administration of any redress fund. If a
24 representative of the Commission decides that direct redress to consumers is
25

1 wholly or partially impracticable or money remains after redress is completed, the
2 Commission may apply any remaining money for such other equitable relief
3 (including consumer information remedies) as it determines to be reasonably
4 related to Defendants' practices alleged in the Complaint. Any money not used
5 for such equitable relief is to be deposited to the U.S. Treasury as disgorgement.
6 Defendant Hessler has no right to challenge any actions the Commission or its
7 representatives may take pursuant to this Subsection.
8

9
10 H. If Defendant Hessler fails to pay fully the amount due at the time specified,
11 Defendant Hessler must cooperate fully with the Commission and their
12 representatives in all attempts to collect the judgment. In such an event,
13 Defendant Hessler agrees to provide federal and state tax returns for the preceding
14 two (2) years, and to complete new financial disclosure forms fully and accurately
15 within ten (10) business days of receiving a request from the Federal Trade
16 Commission or Plaintiff. Defendant Hessler further authorizes Plaintiff and the
17 Federal Trade Commission to verify all information provided on the financial
18 disclosure forms with all appropriate third parties, including financial institutions.
19

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21
22 I. Defendant Hessler agrees that if Defendants receive a credit or refund of any
23 federal or state taxes or penalties paid for the tax years 2007-2012, then Defendant
24 Hessler shall promptly pay the Plaintiff the amount of such credit or refund,
25

1 together with any interest Defendants have earned in connection with any such
2 credit or refund.
3

4 **RIGHT TO REOPEN**

5 V. IT IS FURTHER ORDERED that:
6

7 A. Plaintiff's agreement to this Order is expressly premised upon the truthfulness,
8 accuracy, and completeness of Defendants' sworn financial statements and related
9 documents (collectively, "financial representations") submitted to Plaintiff,
10 namely:
11

- 12 1. The Financial Statement of Debtor Brian Hessler, signed on November 6,
13 2012, including the attachments;
- 14 2. The Financial Statement of Corporate Debtor Business Recovery Services,
15 signed by Brian Hessler on November 7, 2012, including the attachments;
16
- 17 3. The additional documentation Defendant Hessler submitted to Plaintiff by
18 email and facsimile between October 3, 2012 and November 8, 2012,
19 attaching bank statements, trust documents, tax records, and additional
20 supporting documents; and
21
- 22 4. The email Defendant Hessler sent to Plaintiff on May 9, 2013, responding
23 to questions from the Federal Trade Commission.
24
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1 B. The suspension of the judgment will be lifted if, upon motion by Plaintiff, the
2 Court finds that Defendant Hessler failed to disclose any material asset, materially
3 misstated the value of any asset, or made any other material misstatement or
4 omission in the financial representations identified above.
5

6 C. If the suspension of the judgment is lifted, the judgment becomes immediately due
7 in the amount specified above (which the parties stipulate only for purposes of this
8 Section represents the consumer injury, less any payment previously made
9 pursuant to this Section, plus interest computed from the date of entry of this
10 Order).
11
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13 **ORDER ACKNOWLEDGMENTS**
14

15 VI. IT IS FURTHER ORDERED that Defendant Hessler obtain acknowledgments of
16 receipt of this Order:

17 A. Defendant Hessler, within seven (7) days of the entry of this Order, must submit to
18 the Federal Trade Commission an acknowledgment of receipt of this Order sworn
19 under penalty of perjury.
20

21 B. For 5 years after entry of this Order, Defendant Hessler, for any business that
22 Defendant Hessler is the majority owner or directly or indirectly controls, must
23 deliver a copy of this Order to: (1) all principals, officers, directors, managers,
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1 and members; (2) all employees, agents, and representatives who participate in
2 marketing or advertising any product or service on websites or through
3 telemarketing; and (3) any business entity resulting from any change in structure
4 as set forth in the Section titled Compliance Reporting. Delivery must occur
5 within seven (7) days of entry of this Order for current personnel. To all others,
6 delivery must occur before they assume their responsibilities.
7
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9 C. For any business where Defendant Hessler is not a controlling person of a business
10 but where the business engages in telemarketing or the sale of recovery goods and
11 services, Defendant Hessler shall deliver a copy of this Order to all principals and
12 managers of such business before engaging in such conduct.
13

14 D. From each individual or entity to which Defendant Hessler delivers a copy of this
15 Order, Defendant Hessler must obtain, within 30 days, a signed and dated
16 acknowledgment of receipt of this Order, and shall maintain those statements in
17 accordance with the Section of this Order entitled "Recordkeeping."
18
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20 COMPLIANCE REPORTING

21 VII. IT IS FURTHER ORDERED that Defendant Hessler make timely submissions to
22 the Federal Trade Commission:
23
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1 A. 180 days after entry of this Order, Defendant Hessler must submit a compliance
2 report, sworn under penalty of perjury.

3
4 1. Defendant Hessler must: (a) designate at least one telephone number
5 and an email, physical, and postal address as points of contact, which
6 representatives of Plaintiff and the Federal Trade Commission may use
7 to communicate with Defendant Hessler; (b) identify all of Defendant
8 Hessler's businesses by all of their names, telephone numbers, and
9 physical, postal, email, and Internet addresses; (c) describe the activities
10 of each business, including the products and services offered, the means
11 of advertising, marketing, and sales, and the involvement of any other
12 Defendant (which Defendant Hessler must describe if he knows or
13 should know due to his own involvement); (d) describe in detail
14 whether and how Defendant Hessler is in compliance with each Section
15 of this Order; and (e) provide a copy of each Order Acknowledgment
16 obtained pursuant to this Order, unless previously submitted to the
17 Federal Trade Commission;

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22 2. Additionally, Defendant Hessler must: (a) identify all telephone
23 numbers and all email, Internet, physical, and postal addresses,
24 including all residences; (b) identify all titles and roles in all business
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activities, including any business for which Defendant Hessler performs services whether as an employee or otherwise and any entity in which Defendant Hessler has any ownership interest; and (c) describe in detail Defendant Hessler’s involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 15 years following entry of this Order, Defendant Hessler must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Defendant Hessler must report any change in: (a) any designated point of contact; and (b) the structure of the Corporate Defendant or any entity that Defendant Hessler has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
2. Additionally, Defendant Hessler must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which

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Defendant Hessler performs services whether as an employee or otherwise and any entity in which Defendant Hessler has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Defendant Hessler must submit to the Federal Trade Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Federal Trade Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supply the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Federal Trade Commission representative in writing, all submissions to the Federal Trade Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission

1 E. All records necessary to demonstrate full compliance with each provision of this
2 Order, including all submissions to the Federal Trade Commission.
3

4 **COMPLIANCE MONITORING**

5 IX. IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant
6 Hessler's compliance with this Order, including the financial representations upon which
7 the judgment was suspended:
8

9 A. Within fourteen (14) days of receipt of a written request from a representative of
10 Plaintiff or the Federal Trade Commission, Defendant Hessler must: submit
11 additional compliance reports or other requested information, which must be
12 sworn under penalty of perjury; appear for depositions; and produce documents,
13 for inspection and copying. The Federal Trade Commission and Plaintiff are also
14 authorized to obtain discovery, without further leave of court, using any of the
15 procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including
16 telephonic depositions), 31, 33, 34, 36, 45, and 69.
17

18 B. For matters concerning this Order, Plaintiff and the Federal Trade Commission are
19 authorized to communicate directly with Defendant Hessler. Defendant Hessler
20 must permit representatives of the Plaintiff and the Federal Trade Commission to
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1 interview any employee or other person affiliated with any Defendant who has
2 agreed to such an interview. The person interviewed may have counsel present.
3
4 C. Plaintiff and the Federal Trade Commission may use all other lawful means,
5 including posing, through its representatives, as consumers, suppliers, or other
6 individuals or entities, to Defendants or any individual or entity affiliated with
7 Defendants, without the necessity of identification or prior notice. Nothing in this
8 Order limits the Plaintiff and the Federal Trade Commission's lawful use of
9 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§
10 49, 57b-1.
11
12

13 **CONCLUSION**

14
15 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter
16 for purposes of construction, modification, and enforcement of this Order.

17
18 **IT IS FURTHER ORDERED** that as a result of this judgment, the motion for
19 summary judgment (Doc. 207) is denied as moot.

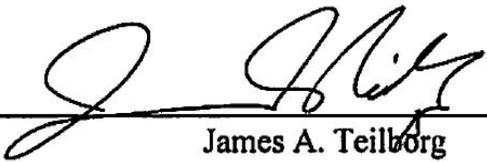
20 **IT IS FURTHER ORDERED** that the joint motion for stipulated final judgment
21 (Doc. 223) is granted.
22

23 ///

24 ///

1 **IT IS FINALLY ORDERED** that because this Judgment resolves all remaining
2 claims against all remaining defendants, the Clerk of the Court shall close this case.
3

4 Dated this 27th day of September, 2013.
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9 _____
10 James A. Teilborg
11 Senior United States District Judge
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BUSINESS RECOVERY SERVICES, LLC
a limited liability company, and,

BRIAN HESSLER,
Individually, and as owner, officer, or
manager of Business Recovery
Services, LLC,

Defendants.

No. CV 11-0390-PHX-JAT

**ACKNOWLEDGMENT BY
AFFIDAVIT OF RECEIPT
OF ORDER BY
DEFENDANT BRIAN HESSLER**

1. My name is Brian Hessler. I am a U.S. citizen over the age of eighteen, and I have personal knowledge of the facts set forth in this Acknowledgment.
2. I was a Defendant in *United States v. Business Recovery Services, LLC and Brian Hessler*, which is the court case listed near the top of this page.
3. On _____, 2013, the Honorable District Court Judge James A. Teilborg signed the Stipulated Final Judgment and Order for Permanent

1 Injunction and Other Equitable Relief. I received a copy of the Stipulated Final
2 Judgment and Order for Permanent Injunction and Other Equitable Relief on
3 _____, 2013, and a true and correct copy of the Order that I
4 received is attached to this Acknowledgment.
5

6 I declare under penalty of perjury under the laws of the United States of America
7 that the foregoing is true and correct.
8

9 Date: _____
10 _____
11 Brian Hessler

12
13
14 State of _____, City of _____
15

16 Subscribed and sworn to before me
17 this ____ day of _____, 2013.
18

19 _____
20 Notary Public

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22 My commission expires:
23 _____
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BUSINESS RECOVERY SERVICES, LLC
a limited liability company, and,

BRIAN HESSLER,
Individually, and as owner, officer, or
manager of Business Recovery
Services, LLC,

Defendants.

No. CV 11-0390-PHX-JAT

**ACKNOWLEDGMENT BY
AFFIDAVIT OF RECEIPT
OF ORDER**

I, _____, received a copy of the Stipulated
Final Judgment and Order for Permanent Injunction and Other Equitable Relief, in
United States v. Business Recovery Services, LLC and Brian Hessler, on
_____, _____, 20_____.

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I was not a Defendant in that court case. My title or relationship with Defendant
Brian Hessler is _____.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Date: _____

[Signature]

[Print Name]