

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-03258-PAB-KMT

KATHY WORNICKI; and  
EDWARD LAINE, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BROKERPRICEOPINION.COM, INC.;  
WALTER COATS;  
FIRST VALUATION, LLC;  
FIRST VALUATION SERVICES, LLC;  
FIRST VALUATION TECHNOLOGY, LLC;  
VALUTECH, INC.; and  
CARTEL ASSET MANAGEMENT, LLC.

Defendants.

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**STATUS REPORT REGARDING SETTLEMENT DEFAULT**

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Plaintiffs respectfully submit this status report to inform the Court that (1) Defendants have defaulted on the Settlement Agreement; (2) Plaintiffs' claims against Walter Coats have been discharged in bankruptcy; (3) the remaining Defendants have dissolved or lack assets; (4) the bankruptcy court has indicated that no assets remain to collect. Plaintiffs will post this report on the settlement website.

## BACKGROUND

### A. The litigation and settlement.

Plaintiffs filed this action on December 2, 2013, on behalf of themselves and a proposed Class of persons who were not paid for their services in accordance with Defendants' terms of payment. *See generally* Dkt. No. 1. On October 15, 2015, Plaintiffs filed their motion for class certification. Dkt. Nos. 79. After the motion was fully briefed, Plaintiffs were granted leave to file a Third Amended Complaint and conduct limited additional discovery. Dkt. No. 97. The Court then ordered the parties to file supplemental briefs regarding certification. Dkt. No. 119. On September 20, 2016, the Court granted in part and denied in part Plaintiffs' motion for class certification. Dkt. No. 133. The parties submitted a proposed notice plan, Dkt. No. 137, which the Court approved on November 3, 2016, Dkt. No. 138.

Before notice was sent to the Class, the parties requested and received, a stay of proceedings to allow them to mediate and conduct settlement negotiations. Dkt. Nos. 141, 145, 147. After several months of negotiations, the parties executed a Class Action Settlement Agreement and Release. Dkt. No. 149-3. On March 10, 2017, Plaintiff filed an unopposed motion for preliminary approval of the Settlement, Dkt. No. 149, which the Court granted on August 2, 2017, Dkt. No. 155. The Court granted final approval of the Settlement on September 21, 2018, Dkt. No. 171, and entered final judgment on September 28, Dkt. No. 172.

Due to Defendants' financial insolvency, the Settlement Agreement required Defendants to execute a promissory note for \$1,567,000, to be paid in forty-nine installments, and grant Plaintiffs and the Settlement Class a security interest in all of Defendants' tangible and intangible

personal property, including intellectual property. Dkt. No. 149-3 at 9 § 38.a. In the event of default, Defendants would have thirty-days to cure. *Id.* at 9 § 38.b.

**B. Defendants' default.**

Defendants complied with the Settlement Agreement's payment schedule through December 2018, paying a total of \$174,955 into the Settlement Fund. In January of 2019, however, Defendants began missing payments due. *See* Dkt. No. 173. Plaintiffs notified Defendants of the default and despite repeated efforts to bring them into compliance, Defendants failed to cure. *See id.* Plaintiffs, Class Counsel, and the Settlement Class (collectively the "Settlement Parties") retained outside counsel, Mr. Paul Urtz, to assist with enforcement of the Settlement Agreement. Declaration of Paul G. Urtz ("Urtz Decl.") ¶ 2. On November 18, 2019, the Settlement Parties filed an action in Adams County District Court, captioned *Wornicki et al. v. Coats et al.*, No. 2019-CV-31826 ("Adams County Action"), to enforce the promissory note executed in connection with the Settlement. Urtz Decl. ¶ 3, Ex. 1; Dkt. No. 173-1. The Entity Defendants did not appear. Urtz Decl. ¶ 3. The Adams County Clerk entered default against the Entity Defendants on February 4, 2020, and on April 17, 2020 the Court entered default judgment in the amount of \$1,527,121.68. Urtz Decl. ¶ 5, Ex. 2.

**C. The Coats' bankruptcy.**

While the Adams County Action was pending, Class Counsel learned that the Entity Defendants had ceased operations and that Defendant Walter Coats filed for Chapter 7 bankruptcy, *In Re Walter Edwin Coats*, 1:19-BK-20986-EEB (D. Colo. Filed Dec. 30, 2019). Urtz Decl. ¶ 6, Ex. 3; Dkt. 173-2. Class Counsel requested that Mr. Urtz participate in the initial meeting of creditors, which was held on February 4, 2020. Urtz Decl. ¶ 7; Dkt. No. 173. On

April 13, 2020, the Honorable Elizabeth E. Brown entered an order of discharge under 11 U.S.C. § 727, discharging Mr. Coat's obligations under the promissory note securing the debt to Plaintiffs and the Class. Urtz Decl. ¶ 8, Ex. 5.

### **NO ASSETS REMAIN TO FUND THE SETTLEMENT**

Through Mr. Coats's bankruptcy, Class Counsel learned that the Entity Defendants had no assets of value from which any payments due under the Settlement Agreement could be recovered. At the time of Mr. Coats's bankruptcy, the Entity Defendants' two remaining assets were owned by BPO: ten or twelve used servers—aging technology of little value—and the suite of software BPO developed to interface with real estate brokers and aggregate information about the work the brokers performed. Urtz Decl. Ex. 4 (Meeting of Creditors Transcript) at 35:19–36:12; 37:4–16. ValuTech, Inc. is the corporate parent of each entity and operated exclusively as a holding company, with no other assets. *Id.* at 58:4–59:2. Cartel Asset Management, LLC is BPO's predecessor and is no longer conducting business; its operations have been “taken over” by BPO. *Id.* at 57:22–58:3. First Valuation, LLC ceased operation in 2012 and now serves as a trade name for BPO. *Id.* at 18:7–13; 30:9–31:4. And First Valuation Services, LLC and First Valuation Technology, LLC are “shell compan[ies]” that never conducted any business at all. *Id.* at 18:20–19:5; 57:14–19.

As BPO wound down its operations in 2019, a few companies expressed interest in acquiring BPO's software, but only one made an offer: US Real Estate Services, Inc. (“USRES”), who wanted to purchase BPO's software as part of an upgrade to the systems used by its subsidiary, RES.NET Corporation. *Id.* at 34:16–35:8; 55:3–13. Unfortunately, after several months of negotiations, the parties were unable to reach an agreement on key terms. In

particular, USRES insisted that the purchase price be profit based, calculated by subtracting operating expenses and cost of goods sold from total revenue over a ten-year term. If USRES did not realize a profit from the purchase, however, it would have no obligation to make any payments and Settlement Class Members would receive nothing. The parties likewise could not agree on language defining the costs and expenses that could be included in the calculation of profits, despite several proposals by Class Counsel. As a result, the sale was never completed, and there has been no further interest in purchasing the software. *See generally, id.* at 31:5–35:8; 39:25–41:12.

On September 30, 2020, the bankruptcy trustee filed a report of no distribution. Urtz Decl. ¶ 9. In the report, the trustee avers that he “made a diligent inquiry into the financial affairs of [Mr. Coats] and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law.” Urtz Decl., Ex. 6 at 4. In total, \$2,414,888.00 in debts, including the debt Mr. Coats owed to Plaintiffs and the Class, were discharged as part of his bankruptcy.

Because Mr. Coat’s obligations to Plaintiffs and the Class have been discharged, and because the Entity Defendants no longer have any assets of value, there is no pathway for Plaintiffs’ counsel to secure additional funds to satisfy even a part of Defendants’ obligations under the Settlement Agreement. The money Defendants did pay into the Settlement Fund has already been distributed and there is nothing left to make additional payments to the Class.

Plaintiffs’ counsel will post this Status Report on the Settlement Website, along with any order(s) this Court may issue in response.

RESPECTFULLY SUBMITTED AND DATED this 2nd day of October, 2020.

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CERTIFICATE OF SERVICE

I, Jennifer Rust Murray, hereby certify that on October 2, 2020, I caused the foregoing document to be electronically filed with the Clerk of the Court via the CM/ECF system, which will send notification of such filing to the following e-mail addresses denoted on the Court's

Electronic Mail Notice List:

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DATED at Seattle, Washington, this 2nd day of October, 2020.

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