

MARY ANN SMITH
Deputy Commissioner
DANIEL P. O'DONNELL
Assistant Chief Counsel
RYAN M. CASSIDY (State Bar No. 340274)
Counsel
Department of Financial Protection and Innovation
651 Bannan St, Suite 300
Sacramento, CA 95811
Telephone: (916) 764-8358
Attorneys for Complainant

BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
OF THE STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF FINANCIAL
PROTECTION AND INNOVATION,

Complainant,

v.

MAGISTER CAPITAL MANAGEMENT LLC,
and CARLOS ZAPATA,

Respondents.

FINAL ORDER LEVYING
ADMINISTRATIVE PENALTIES

(Cal. Corp. Code § 25252)

The Commissioner of Financial Protection and Innovation (Commissioner) finds that:

I.

STATEMENT OF FACTS

1. The Commissioner brings this action pursuant to the provisions of the Corporate Securities Law of 1968 (CSL)¹, and the accompanying regulations thereunder², which includes the licensure, examination, and regulation of investment advisers and broker-dealers. Under Financial Code section 326(a), the Commissioner is authorized to administer and enforce the provisions of the CSL and the regulations promulgated thereunder.

¹ See Cal. Corp. Code §§ 25000-25707. Unless stated otherwise, all section references are to the Corporations Code.

² See Cal. Code Regs. tit. 10, §§ 260.000-260.617. All further references will employ the format of 10 C.C.R. [section #].

2. Magister is, or was, at all relevant times, an investment adviser licensed by the Commissioner since January 30, 2018 (Central Registration Depository No. 281819)³ pursuant to the CSL. Magister Capital Management LLC (Magister) is, or was, at all relevant times, a California limited liability company registered with the California Secretary of State on September 10, 2015. Magister's principal place of business is located at 111 Deerwood Rd., Suite 200, San Ramon, California 94583. According to the California Secretary of State's website, Magister's registration is suspended by the Franchise Tax Board as of November 2, 2020.

3. Carlos Zapata (Zapata) is, or was, at all relevant times, the sole owner, sole officer, and sole employee of Magister. Zapata has been licensed by the Commissioner since January 30, 2018, as an investment adviser representative (CRD No. 3052245).

4. Magister and Zapata are collectively referred to herein as Respondents.

5. In or about January 2019, the Commissioner commenced a regulatory examination of the books and records of Respondents (2019 Examination) at Respondents' principal place of business.

6. On or about April 30, 2019, the Commissioner mailed the Respondents a regulatory examination report (RER) listing the deficiencies and requested a response to each deficiency.

7. On or about May 14, 2019, Respondents responded to the Commissioner, but failed to address all deficiencies and failed to provide all records requested.

8. On or about December 3, 2020, the Commissioner emailed the Respondents a follow-up regulatory examination report listing the outstanding deficiencies and requesting a response to each deficiency.

9. On or about December 18, 2020, Respondents responded to the Commissioner, but failed to address all deficiencies and failed to provide all records requested.

10. On or about January 21, 2021, the Commissioner emailed the Respondents a final demand letter listing the outstanding deficiencies and requesting a response to each deficiency.

³ The Central Registration Depository (CRD) is a database maintained by the Financial Industry Regulatory Authority (FINRA) since 2007 for all firms and individuals involved in the U.S. securities industry. It is used to store and maintain information on registered securities and broker firms, as well as individuals who dispense investing and financial advice.

11. On or about February 17, 2021, Respondents responded to the Commissioner, but they again failed to address all deficiencies and they again failed to provide all records requested.

12. On March 18, 2025, the Commissioner issued a Notice of Intent to Issue Order Levying Administrative Penalties.

13. On April 1, 2025, Magister and Zapata were served with the Notice of Intent to Issue Order Levying Administrative Penalties, Statement to Respondents, a Notice of Defense, and Government Code sections 11507.5, 11507.6, and 11507.7, and Corporation Code sections 25252 and 25233.

14. The Commissioner has not received a request for hearing, and the statutory time period to request a hearing has expired.

II.

VIOLATIONS OF THE CSL

A. Respondents Willfully Failed to Comply with Custody Safeguarding Procedures

15. Section 25235 provides, in part, that it is unlawful for an investment adviser to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

16. 10 C.C.R. 260.237 provides in part, that it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 25235 of the Code for an investment adviser to have custody of client funds or securities unless the investment adviser adhere to pertinent safeguarding procedures.

17. Pursuant to 10 C.C.R. 260.237(b)(3), when an investment adviser directly deducts fees from client accounts, that adviser is considered to have custody of those client funds and securities. However, an investment adviser acting in this capacity will be eligible for a waiver of the heightened custody requirements of 10 C.C.R. 260.237(a)(6)-(7), 260.241.2, and 260.237.2 if the adviser adheres to pertinent safeguarding procedures.

18. During the period of January 1, 2018, through January 31, 2019, Respondents directly deducted fees from client accounts, however, Respondents failed to adhere to the requisite safeguarding procedures, which could have waived the heightened custody requirements of 10 C.C.R.

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260.237(a)(6)-(7), 260.241.2, and 260.237.2. Therefore, Respondents were required to comply with the heightened custody requirements of 10 C.C.R. 260.237(a)(6)-(7), 260.241.2, and 260.237.2.

19. Respondents did not adhere to the heightened safeguarding procedures for having custody of client funds and securities, which included having an annual unscheduled examination performed by an independent auditor, during fiscal years 2018 and 2019, in violation of section 25235(d) and 10 C.C.R. 260.237.

B. Respondents Willfully Failed to Meet the Minimum Net Worth Requirements

20. Section 25237 provides, in part, that licensed investment advisers who have custody of client securities or funds or discretionary authority (power of attorney to execute transactions) over client funds or securities, shall be subject to a minimum capital requirement

21. 10 C.C.R. 260.237.2 provides in part, that every investment adviser who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000. Furthermore, as a condition of the right to continue to transact business in this state, every investment adviser shall, by the close of business on the next business day following the discovery that the investment adviser's net worth is less than the minimum required, notify the Commissioner that the investment adviser's net worth is less than the minimum required.

22. During the 2019 Examination, Respondents had custody of client funds and securities and therefore it is required to always maintain a minimum net worth of \$35,000.00. However, due to the Magister's failure to maintain books and records and accounting records, Magister's minimum financial requirement could not be determined during the 2019 Examination. The Department's Examiner calculated the net worth with the information provided and determined that, during the period of January 1, 2018, through at least December 31, 2020, Magister's net worth failed to exceed \$2,889.85, in violation of 10 C.C.R. 260.237.2(a). In addition, pursuant to 10 C.C.R. 260.237.2(j), Magister is deemed to have discovered that its net worth is less than the minimum net worth requirement since at least, January 1, 2018. In addition, Magister failed to notify the Commissioner

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1 that its net worth was less than the minimum financial requirement, since at least January 1, 2018, in
2 violation of 10 C.C.R. 260.237.2(c).

3 23. On April 30, 2019, the Commissioner issued a RER, which provided the Respondents
4 with notice of the Respondents' failure to comply with section 25237 and 10 C.C.R. 260.237.2.

5 24. Respondents continued to fail to file to maintain a net worth, not less than the minimum
6 net worth requirement, from April 30, 2019 through February 28, 2025, in violation of section 25237
7 and 10 C.C.R. 260.237.2.

8 25. Furthermore, Respondents do not meet the conditions to transact business in this state,
9 based upon its continued failure to meet the minimum net worth conditions, pursuant to 10 C.C.R.
10 260.237.2(c).

11 **C. Respondents Willfully Failed to File Annual Report**

12 26. As stated above, section 25241 provides, in part, that an investment adviser shall file
13 reports as the Commissioner by regulation requires.

14 27. 10 C.C.R. 260.241.2 provides in part, that every licensed investment adviser subject to
15 the provisions of Section 260.237.2 of these rules, shall file an annual financial report, prepared in
16 accordance with generally accepted accounting principles and shall be audited by either an
17 independent certified public accountant however, the financial statements need not be audited if the
18 investment adviser only has discretionary authority over client funds or securities. The report shall be
19 filed not more than 90 days after the investment adviser or broker- dealer's fiscal year end.

20 28. Respondents are required to file an annual financial report no more than 90 days after
21 the investment adviser's fiscal year end. Further, because Magister has custody of client funds and
22 securities, Magister is required to file annual financial reports that are prepared in accordance with
23 GAAP and audited by an independent certified public accountant.

24 29. Respondents failed to file its annual financial reports for fiscal years 2016 and 2017, let
25 alone audited financial reports, in violation of section 25241 and 10 C.C.R. 260.241.2(a)(3)-(4).

26 30. Respondents provided the financial reports for fiscal year 2018. However, the report
27 was both inaccurate and was not audited financial reports, in violation of section 25241 and 10 C.C.R.
28 260.241.2(a)(3).

31. On April 30, 2019, the Commissioner issued a RER, which provided the Respondents with notice of the Respondents' failure to comply with section 25241 and 10 C.C.R. 260.241.2(a)(3)-(4).

32. Respondents provided the financial reports for fiscal years 2019. However, the reports were both inaccurate and were not audited financial reports, in violation of section 25241 and 10 C.C.R. 260.241.2(a)(3).

33. Respondents continued to fail to provide audited financial reports, for fiscal years 2018 through 2024, or even unaudited financial reports, prepared in accordance with generally accepted accounting principles, in violation of section 25241 and 10 C.C.R. 260.241.2(a)(3)-(4).

D. Respondents Willfully Entering into an Investment Advisory Contract, not in Writing

34. Section 25238 provides in part, that a licensed investment adviser is prohibited from engaging in investment advisory activities, in this state in contradiction of such rules, designed to promote fair, equitable and ethical principles.

35. 10 C.C.R. 260.238(n) provides in part, that entering into an investment advisory contract, not in writing does not promote fair, equitable or ethical principles, as that phrase is used in Section 25238 of the Code.

36. During the 2019 Examination, Respondents failed to enter into an asset management contract, in written form, for four of the ten sampled clients, in violation of section 25238 and 10 C.C.R. 260.238(n):

- a. A. A.
- b. Ab. A.
- c. G. H.
- d. J. N.

E. Respondents Willfully Charging Fees Not Disclosed in Agreement

37. As stated above, section 25238 provides in part, that a licensed investment adviser is prohibited from engaging in investment advisory activities, in this state in contradiction of such rules, designed to promote fair, equitable and ethical principles.

38. 10 C.C.R. 260.238(h) provides in part that misrepresenting the fees to be charged does not promote fair, equitable or ethical principles, as that phrase is used in Section 25238 of the Code.

39. During the 2019 Examination, Respondents disclosed in Magister's asset management agreement and its disclosure brochure, Form ADV, that fees are billed on a pro-rata basis monthly in advance based on the value of the accounts on the last day of the previous month. However, during the 2019 Examination, the value of the account used in the fee calculation is not based on the value of the account on the last day of the previous month, but rather charged two to four days before the end of the month. Respondents charged asset management fees inconsistent with its clients' executed asset management agreement and its disclosure brochure, Form ADV, in violation of section 25238 and 10 C.C.R. 260.238(h).

F. Respondents Willfully Failed to Maintain Books and Records

40. Section 25241 provides, in part, that an investment adviser make and maintain books and records, as the Commissioner by regulation requires.

41. 10 C.C.R. 260.241.3(a)-(b),(j). provides in part, that an investment adviser shall make and keep true, accurate and current the books and records relating to such person's investment advisory business, including, but not limited to cash receipts and disbursements journals, general ledgers, balance sheet, income statement, cash reconciliations, trial balances, worksheets that contain computations of minimum financial requirements, originals of all written communications between the client and investment adviser relating to any recommendation made or proposed to be made, and all written agreements entered into by the investment adviser with any client.

42. During the 2019 Examination, the Respondents:

- a. Failed to prepare and maintain cash receipts and disbursement journals;
- b. Failed to prepare and maintain a general ledger;
- c. Failure to prepare and maintain a true and accurate balance sheet;
- d. Failure to prepare and maintain a true and accurate income statement;
- e. Failure to prepare and maintain cash reconciliations;
- f. Failure to prepare and maintain trial balances; and
- g. Failed to prepare and maintain accurate monthly minimum financial requirement calculations.

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43. During the 2019 Examination, Respondents failed to maintain any communications or memoranda relating to any recommendation made or proposed to be made, with the following clients:

- a. R. T.
- b. H. D.

44. During the 2019 Examination, Respondents failed to maintain written agreements with the following clients:

- a. A. A.
- b. Ab. A
- c. G. H.
- d. J. N.

G. Respondents Willfully Failed to Timely File an Annual Amendment to Form ADV

45. As stated above, section 25241 provides, in part, that an investment adviser shall file reports as the Commissioner by regulation requires.

46. 10 C.C.R. 260.241.4(e) provides, in part, that an investment adviser shall file an annual updating amendment to its Form ADV, within ninety days of the end of the investment adviser's fiscal year.

47. The fiscal year end for Magister's investment adviser business is December 31.

48. To be timely, licensees are required to file an annual updating amendment, within 90 days of its fiscal year end.

49. Respondents failed to file an annual updating amendment to its Form ADV, by March 31 of each respective year, for fiscal year 2018, in violation of section 25241 and 10 C.C.R. 260.241.4(e).

50. On April 30, 2019, the Commissioner issued a RER, which provided the Respondents with notice of the Respondents' failure to comply with section 25241 and 10 C.C.R. 260.241.4(e).

51. Respondents continued to fail to file an annual updating amendment to its Form ADV, by March 31 of each respective year, for fiscal years 2020 through 2024, in violation of section 25241 and 10 C.C.R. 260.241.4(e).

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1 III.

2 **FINAL ORDER LEVYING ADMINISTRATIVE PENALTIES**

3 52. The Commissioner re-alleges and reincorporates by reference paragraphs 1-45 of this
4 Final Order Levying Administrative Penalties as fully set forth herein.

5 53. Section 25252 authorizes the Commissioner to issue an order levying administrative
6 penalties against any person for willful violations of any provision of the CSL and any rules
7 promulgated thereunder. Specifically, section 25252(b) provides, in relevant part:

8 Any broker-dealer or investment adviser that willfully violates any provision of this
9 division to which it is subject, or that willfully violates any rule or order adopted or
10 issued pursuant to this division and to which it is subject, is liable for administrative
11 penalties of not more than five thousand dollars (\$5,000) for the first violation, not
12 more than ten thousand dollars (\$10,000) for the second violation, and not more than
13 fifteen thousand dollars (\$15,000) for each subsequent violation.

14 54. Based on the foregoing findings, the Commissioner finds that Magister and Zapata
15 willfully violated sections 25235, 25237, 25238 and 25241 and the regulations promulgated in 10
16 C.C.R. 260.235.4, 10 C.C.R. 260.237, 10 C.C.R. 260.237.2, 10 C.C.R. 260.238, 10 C.C.R. 260.241.2,
17 10 C.C.R. 260.241.3, and 10 C.C.R. 260.241.4.

18 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252(b), the
19 Commissioner enters this final order levying administrative penalties, individually, jointly and
20 severally, against Magister Capital management LLC and Carlos Zapata, as follows:

21 a. That pursuant to section 25252(b), the Commissioner levy administrative
22 penalties of \$5,000.00 for the first violation of section 25235 and the regulations promulgated in
23 California Code of Regulations, Title 10, \$10,000.00 for the second violation, and \$15,000.00, for
24 each subsequent violation, as listed below, for a total amount of \$15,000.00 or according to proof:

- 25 i. First violation: \$5,000.00 for the first violation in paragraph 19 for fiscal
26 years 2018;
27 ii. Second violation: \$10,000.00 for the second violation in paragraph 19 for
28 fiscal years 2019;

29 b. That pursuant to section 25252(b), the Commissioner levy administrative
30 penalties of \$15,000.00 for each violation of section 25237 and the regulations promulgated in

1 California Code of Regulations, Title 10, as listed below, for a total amount of \$1,050,000.00, or
2 according to proof:

3 i. Additional violations:

4 A. \$15,000.00 each, for the violations in paragraph 24, for a period of 70
5 months;

6 c. That pursuant to section 25252(b), the Commissioner levy administrative
7 penalties of \$15,000.00 for each violation of section 25238, and the regulations promulgated in
8 California Code of Regulations, Title 10, as listed below, for a total amount of \$195,000.00, or
9 according to proof:

10 i. Additional violations:

11 A. \$15,000.00 each, for the violations in paragraph 36, with four California
12 clients; and

13 B. \$15,000.00 each, for the violations in paragraph 39, with nine California
14 clients.

15 d. That pursuant to section 25252, the Commissioner levy administrative penalties
16 of \$15,000.00 for each violation of section 25241, and the regulations promulgated in California Code
17 of Regulations, Title 10, as listed below, for a total amount of \$345,000.00, or according to proof:

18 i. Additional violations:

19 A. \$15,000.00 each, for the violations in paragraph 33, for fiscal years 2018
20 through 2024;

21 B. \$15,000 for the violation in paragraph 42a;

22 C. \$15,000 for the violation in paragraph 42b;

23 D. \$15,000 for the violation in paragraph 42c;

24 E. \$15,000 for the violation in paragraph 42d;

25 F. \$15,000 for the violation in paragraph 42e;

26 G. \$15,000 for the violation in paragraph 42f;

27 H. \$15,000 for the violation in paragraph 42g;

- 1 I. \$15,000.00 each, for the violations in paragraph 43, with two California
2 clients;
3 J. \$15,000.00 each, for the violations in paragraph 44, with four California
4 clients; and
5 K. \$15,000.00 each, for the violations in paragraph 51, for fiscal years 2020
6 through 2024.

7 The total amount of administrative penalties for violations of the CSL and the regulations promulgated
8 thereunder, is \$1,635,000.00, or according to proof.

9 NOW THEREFORE, GOOD CAUSE SHOWING, IT IS HEREBY ORDERED that Magister
10 Capital Management LLC and Carlos Zapata, jointly and severally pay administrative penalties,
11 pursuant to section 25252(b), in the amount of \$1,635,000.00, due and payable to the "Department of
12 Financial Protection and Innovation" within 30 days of service of this final order and sent to the
13 attention of: Accounting, Department of Financial Protection and Innovation, located at 651 Bannan
14 St, Suite 300, Sacramento, California 95811. Notice of the payment shall concurrently be sent to the
15 attention of: Ryan M. Cassidy, Counsel, Enforcement Division, 651 Bannan St, Suite 300,
16 Sacramento, California 95811.

17 This Final Order Levying Administrative Penalties is the final decision of the Commissioner,
18 pursuant section 25252. This order is effective immediately.

19 DATED: May 2, 2025
20 Sacramento, California

KHALIL MOHSENI
Commissioner of Financial Protection and Innovation



By:

MARY ANN SMITH
Deputy Commissioner
Enforcement Division