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9 **BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT**
10 **OF THE STATE OF CALIFORNIA**
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12 In the Matter of the Investment Adviser Application of: 13 14 BIRD ROCK MANAGEMENT, LLC	CRD No.: 174293 STIPULATION
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16 This STIPULATION is entered into by and between the California Department of
17 Business Oversight (Department) through the Commissioner of Business Oversight
18 (Commissioner), on the one hand, and Bird Rock Management, LLC, Bird Rock Ventures, LLC,
19 Daniel Deans Niednagel, Stephen Paul Niednagel, Skizzim.com, Inc. doing business as Skizzim
20 Financial (Skizzim Financial), and Three Arch Capital, Inc. (collectively, Respondents) on the
21 other hand (hereafter, the Parties).

22 RECITALS

23 A. Bird Rock Management, LLC (CRD No. 174293) is a California limited liability
24 company formed on November 6, 2014 that maintains a business address at 1590 South Coast
25 Highway, Suite 16, Laguna Beach, California 92651, and has its agent for service of process
26 located at 30100 Town Center Drive, Suite O-133, Laguna Niguel, California 92677.

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1 B. At all relevant times, Bird Rock Ventures, LLC was a California limited liability
2 company formed on August 7, 2003, with its agent for service of process located at 30100 Town
3 Center Drive, Suite O-133, Laguna Niguel, California 92677.

4 C. Daniel Deans Niednagel (CRD No. 5613211) is the president and sole owner of
5 Skizzim Financial (CRD No. 150206), a California corporation formed in April 2001 that
6 maintains a business address at 24 Calle Boveda, San Clemente, California 92651. At all relevant
7 times, Skizzim Financial was a general partner, manager, and 50% owner of Bird Rock Ventures,
8 LLC and Bird Rock Management, LLC.

9 D. Stephen Paul Niednagel (CRD No. 2412047) is the president and sole owner of
10 Three Arch Capital, Inc. (CRD No. 150210), a California corporation formed in August 2003 that
11 maintains a business address at 30100 Town Center Drive, Suite O-133, Laguna Niguel,
12 California 92677. At all relevant times, Three Arch Capital, Inc. was a general partner, manager,
13 and 50% owner of Bird Rock Ventures, LLC and Bird Rock Management, LLC.

14 E. Beginning in or about August 2003 and continuing through the date hereof, Bird
15 Rock Ventures, LLC provided investment advice to Pacific West Home Mortgage, LLC,
16 Southland Home Mortgage, LLC, and Southland Home Mortgage II, LLC (collectively, “the
17 Private Funds”).

18 F. In May 2009, Skizzim Financial and Three Arch Capital, Inc. each filed with the
19 Commissioner an initial Form ADV, applying for an investment adviser certificate. In or about
20 April 2010, both applications were deemed abandoned when timely responses to the
21 Commissioner’s deficiency letters were not received.

22 G. On August 27, 2012, the Commissioner by emergency regulation repealed the prior
23 language and enacted the new language of California Code of Regulations, title 10, section
24 260.204.9, creating an exemption to the investment adviser certification requirement of
25 Corporations Code section 25230, subdivision (a), for investment advisers who provide advice
26 solely to one or more qualifying private funds (hereafter, “exemption for private fund advisers”).

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1 H. On January 27, 2015, Bird Rock Management, LLC filed with the Commissioner
2 an initial Form ADV, applying for an investment adviser certificate. In response to the
3 Commissioner’s inquiry about possible unlicensed investment adviser activities, Respondents
4 cooperated and provided additional information.

5 I. The Commissioner’s review of the information provided by Respondents revealed
6 that beginning on October 27, 2012, Respondents did not comply with the following exemption
7 requirements for private fund advisers:

8 i. Filing with the Commissioner the reports and amendments thereto as
9 specified in Rule 204-4, adopted by the Securities and Exchange Commission under the
10 Investment Advisers Act of 1940;

11 ii. Paying the initial filing fee required by Corporations Code section 25608,
12 subdivision (q), and renewal fees due by January 1 for each successive year that Respondents
13 relied upon the exemption; and,

14 iii. Obtaining, on an annual basis, financial statements of each retail buyer fund
15 advised, audited by a certified public accountant (CPA) that is registered with the Public Company
16 Accounting Oversight Board (PCAOB), and delivering a copy of such audited financial statements
17 to each beneficial owner of the Private Funds within 120 days after the end of each fiscal year.

18 J. As a result of Respondents’ failure to comply with the exemption requirements for
19 private fund advisers, Respondents have conducted business as an investment adviser in this state
20 from October 27, 2012 through the date hereof, without first applying for and securing from the
21 Commissioner a certificate, then in effect, authorizing them to do so, in violation of Corporations
22 Code section 25230, subdivision (a).

23 K. The Commissioner has determined that the public interest will not be served by
24 denying the request for registration submitted by Bird Rock Management, LLC, and it is the
25 intention and desire of the Parties to resolve this matter without the necessity of a hearing and/or
26 other litigation.

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1 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions
2 set forth herein, the Parties agree as follows:

3 TERMS AND CONDITIONS

4 1. Purpose. The purpose of this Stipulation is to settle and resolve the matters
5 between the Parties hereto, for judicial economy and expediency, and to avoid the expense of a
6 hearing, and possible further court proceedings.

7 2. Desist and Refrain Order: Respondents stipulate to the issuance of the Desist and
8 Refrain Order pursuant to Corporations Code section 25532, in the form attached hereto as
9 Exhibit A, directing Respondents to desist and refrain from engaging in investment adviser
10 activities unless and until certification has been made under the California Corporate Securities
11 Law of 1968 or unless exempt. Respondents agree to accept service of the executed Desist and
12 Refrain Order by the Commissioner’s agent sending a copy to their counsel at
13 chad.ensz@dentons.com.

14 3. Waiver of Hearing Rights. Respondents acknowledge their right to a hearing under
15 the California Corporate Securities Law of 1968 in connection with the Desist and Refrain Order
16 attached as Exhibit A, and hereby waive such rights to a hearing, and to any reconsideration,
17 appeal, or other right to review which may be afforded pursuant to the California Corporate
18 Securities Law of 1968, the California Administrative Procedure Act, the California Code of Civil
19 Procedure, or any other provision of law, and by waiving such rights, consent to the
20 Commissioner’s Desist and Refrain Order becoming final.

21 4. Certification. Respondents stipulate to undertake all appropriate steps designed to
22 assure full compliance with the laws of California in connection with the licensing of
23 Respondents’ business as an investment adviser. Respondents acknowledge that failure to comply
24 with any term of this Stipulation shall be a breach of this Stipulation and shall be cause for the
25 Commissioner to immediately revoke any licenses held by, and/or deny any pending application(s)
26 of Respondents, their successors and assigns, by whatever names they might be known.
27 Respondents hereby waive any notice and hearing rights to contest such revocations and/or
28 denial(s) which may be afforded under the Corporate Securities Law of 1968, the California

1 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of
2 law in connection with this action.

3 5. Acknowledgement. Respondents acknowledge that they did not timely obtain an
4 investor advisor certificate from the Department, or otherwise qualify for a lawful exemption, as
5 required by Corporations Code section 25230. Although Respondents maintain such failure was
6 neither willful nor intentional, Respondents acknowledge that such conduct was inconsistent with
7 the provisions of the California Corporate Securities Law of 1968. The acknowledgment of
8 Respondents is for the purposes of this and any other future proceedings that may be initiated by
9 or brought before the Department. The Parties agree that this Stipulation and any
10 acknowledgements hereunder shall not be admissible or binding against Respondents in any
11 action(s) brought against Respondents by third parties who are not signatories to this Stipulation.

12 6. Administrative Penalty. Respondents agree to pay to the Commissioner an
13 administrative penalty in the amount of \$45,000.00 (Administrative Penalty) pursuant to
14 Corporations Code section 25532, subdivision (b), for conducting unlicensed investor adviser
15 activity in violation of Corporations Code section 25230, subdivision (a). Such Administrative
16 Penalty shall be paid by Respondents within 30 days of the Effective Date of this Stipulation. The
17 cashier’s check shall be made payable to “The Department of Business Oversight,” and shall be
18 sent to the attention of Miranda LeKander, Senior Counsel, Department of Business Oversight,
19 1515 K Street, Suite 200, Sacramento, California 95814. In the event the payment due date falls
20 on a weekend or holiday, the payment shall be due the next business day.

21 7. Failure to Timely Pay Administrative Penalty. Respondents acknowledge that
22 failure to timely pay the Administrative Penalty shall be a breach of this Stipulation and shall be
23 cause for the Commissioner to immediately revoke any licenses held by, and/or deny any pending
24 application(s) of Respondents, their successors and assigns, by whatever names they might be
25 known. Respondents hereby waive any notice and hearing rights to contest such revocations
26 and/or denial(s) which may be afforded under the California Corporate Securities Law of 1968,
27 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
28 provision of law in connection therewith. Respondents further agree that this Stipulation shall

1 constitute a final decision for the purpose of the Commissioner applying ex parte to the superior
2 court, without further notice to Respondents, for a civil judgment in the amount of the
3 Administrative Penalty stipulated herein and procuring an order pursuant to Corporations Code
4 section 25252, subdivision (e).

5 8. Exempt Adviser Reporting Requirements. With regard to each of the Private Funds
6 specified in Paragraph E, Respondents shall do the following:

7 a. File with the Commissioner within 30 days of the Effective Date of this Stipulation
8 all required reports and amendments thereto, as required by title 10 of the California Code of
9 Regulations, section 260.204.9, subdivision (b)(2), for the period of January 1, 2013 through
10 December 31, 2015;

11 b. Pay to the Commissioner within 30 days of the Effective Date of this Stipulation
12 the fees required by Corporations Code section 25608, subdivision (q), for the years 2012, 2013,
13 2014, 2015, and 2016 in the sum of \$625.00;

14 c. Obtain annual financial statements of each Private Fund, audited by a CPA that is
15 registered with the PCAOB, for the period of January 1, 2013 through December 31, 2015, and
16 deliver a copy of such audited financial statements to the Commissioner and each beneficial owner
17 of the Private Funds no later than December 31, 2016; and,

18 d. Deliver to each beneficial owner of the Private Funds no later than 30 days from
19 the Effective Date of this Stipulation a copy of this Stipulation and attached Desist and Refrain
20 Order.

21 9. Investor Adviser Certificate Application. No later than 30 days after the
22 Commissioner, in her sole discretion, has certified pursuant to Paragraph 4 that Bird Rock
23 Management, LLC has met all conditions to conduct business as an investment adviser, and
24 provided that Respondents have strictly complied with the terms specified in Paragraphs 6 and
25 8(a), (b), and (d), the Commissioner will issue to Bird Rock Management, LLC an investment
26 adviser certificate pursuant to Corporations Code section 25230.

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1 10. Future Actions by the Commissioner. The Commissioner reserves the right to
2 bring any future action(s) against Respondents or any of the managers, officers, directors,
3 shareholders, or employees of Respondents for any and all unknown or future violations of the
4 California Corporate Securities Law of 1968. This Stipulation shall not serve to exculpate
5 Respondents or any of the managers, officers, directors, shareholders, or employees of
6 Respondents from liability for any and all unknown or future violations of the California
7 Corporate Securities Law of 1968. Respondents further agree and acknowledge that nothing in
8 this Stipulation shall preclude the Commissioner or her agents, officers, or employees, to the
9 extent authorized by law, from referring any evidence or information regarding this matter to any
10 other state or federal law enforcement official, or from assisting or cooperating with regard to any
11 investigation and/or action.

12 11. Settlement Agreement Coverage. The Parties hereby acknowledge and agree that
13 this Stipulation is intended to constitute a full, final, and complete resolution of this matter. The
14 Parties further acknowledge and agree that nothing contained in this Stipulation shall operate to
15 limit the Commissioner's ability to assist any other agency, county, state or federal, with any
16 prosecution, administrative, civil or criminal, brought by any such agency against Respondents
17 based upon any of the activities alleged in this matter or otherwise.

18 12. Independent Legal Advice. Each of the Parties represents, warrants, and agrees
19 that it has received or been advised to seek independent legal advice from its attorneys with
20 respect to the advisability of executing this Stipulation.

21 13. No Other Representation. Each of the Parties represents, warrants, and agrees that
22 in executing this Stipulation, it has relied solely on the statements set forth herein and the advice
23 of its own counsel. Each of the Parties further represents, warrants, and agrees that in executing
24 this Stipulation, it has placed no reliance on any statement, representation, or promise of any other
25 party, or any other person or entity not expressly set forth herein, or upon the failure of any party
26 or any other person or entity to make any statement, representation or disclosure of anything
27 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in
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1 any way fraudulently induced to execute this Stipulation; and (2) to preclude the introduction of
2 parol evidence to vary, interpret, supplement, or contradict the terms of this Stipulation.

3 14. Modifications and Qualified Integration. No amendment, change or modification
4 of this Stipulation shall be valid or binding to any extent unless it is in writing and signed by all of
5 the parties affected by it.

6 15. Full Integration. This Stipulation is the final written expression and the complete
7 and exclusive statement of all the agreements, conditions, promises, representations, and
8 covenants between the Parties with respect to the subject matter hereof, and supersedes all
9 discussions between and among the Parties, their respective representatives, and any other person
10 or entity, with respect to the subject matter covered hereby.

11 16. No Presumption From Drafting. In that the Parties have had the opportunity to
12 draft, review and edit the language of this Stipulation, no presumption for or against any party
13 arising out of drafting all or any part of this Stipulation will be applied in any action relating to,
14 connected to, or involving this Stipulation. Accordingly, the Parties waive the benefit of Civil
15 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
16 language of a contract should be interpreted most strongly against the party who caused the
17 uncertainty to exist.

18 17. Counterparts. This Stipulation may be executed in any number of counter-parts by
19 the Parties, and when each party has signed and delivered at least one such counterpart to the other
20 party, each counterpart shall be deemed an original and taken together shall constitute one and the
21 same Stipulation. A fax signature shall be deemed the same as an original signature.

22 18. Terms, Headings and Governing Law. All terms used, but not defined herein, shall
23 have the meaning assigned to them by the Corporate Securities Law of 1968. The headings to the
24 paragraphs of this Stipulation are inserted for convenience only and will not be deemed a part
25 hereof or affect the construction or interpretation of the provisions hereof. This Stipulation shall
26 be construed and enforced in accordance with, and governed by, the laws of the State of
27 California.

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1 19. Authority For Settlement. Each party warrants and represents that such party is
2 fully entitled and duly authorized to enter into and deliver this Stipulation. In particular, and
3 without limiting the generality of the foregoing, each party warrants and represents that it is fully
4 entitled to enter into the covenants, and undertake the obligations set forth herein.

5 20. Public Record. Respondents hereby acknowledge that this Stipulation and the
6 exhibits attached hereto will be a matter of public record. Respondents further understand and
7 agree to not make any statement or representation that is inconsistent with this Stipulation.

8 21. Voluntary Agreement. The Parties each represent and acknowledge that he, she or
9 it is executing this Stipulation completely voluntarily and without any duress or undue influence
10 of any kind from any source.

11 22. Effective Date. This Stipulation and the attached Desist and Refrain Order shall
12 become effective when executed by the Commissioner or her designee and transmitted by
13 electronic mail to Respondents’ counsel at chad.ensz@dentons.com.

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1 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Stipulation
2 on the dates set forth opposite their respective signatures.

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4 Dated: 4/27/16

JAN LYNN OWEN
Commissioner of Business Oversight

6
7 By: _____
8 MARY ANN SMITH
9 Deputy Commissioner

10 Dated: 4/25/16

11 _____
12 DANIEL DEANS NIEDNAGEL, individually
13 and on behalf of Skizzim.com, Inc. doing
14 business as Skizzim Financial, Bird Rock
15 Ventures, LLC, and Bird Rock Management,
16 LLC

17 Dated: 4/25/16

18 _____
19 STEPHEN PAUL NIEDNAGEL, individually
20 and on behalf of Three Arch Capital, Inc., Bird
21 Rock Ventures, LLC, and Bird Rock
22 Management, LLC

23
24
25 Approved as to Form and Content

26 Dated:

27 By _____
28 CHAD ENSZ, ESQ.
Dentons US, LLP
Attorneys on behalf of Daniel Deans Niednagel, Skizzim.com, Inc. doing business as Skizzim
Financial, Stephen Paul Niednagel, Three Arch Capital, Inc., Bird Rock Ventures, LLC,
and Bird Rock Management, LLC