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9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of:) CRD NOS.: 136082, 2956667
13)
14 THE COMMISSIONER OF BUSINESS) FINAL ORDER LEVYING
OVERSIGHT,) ADMINISTRATIVE PENALTIES PURSUANT
15) TO CORPORATIONS CODE SECTION 25252
16 Complainant,)
17 v.)
18 JOSEPH FRANCIS DIEZ, doing business as)
ALII CONSULTING,)
19 Respondent.)

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21 TO: Joseph F. Diez
22 Alii Consulting
23 182 Howard Street #254
San Francisco, CA 94105

- 24 1. On February 7, 2017, the Commissioner of the Department of Business Oversight
25 (Department) brought an action to issue an order levying administrative penalties pursuant to
26 Corporations Code section 25252 to Respondent Joseph Francis Diez (Diez), doing business as Alii
27 Consulting (Alii).
28 2. Diez and Alii are herein collectively referred to as "Respondents."

1 3. Whenever reference is made in this Final Order to “Respondents” doing any act, the
2 allegation shall mean the act of each respondent acting individually, jointly and severally.

3 4. From at least September 15, 2005 to the present, Diez, doing business as Alii (CRD No.
4 136082), was and is a registered investment adviser. Diez is, and at all relevant times was, the owner
5 and Senior Adviser of Alii. Diez has an investment adviser certificate (CRD No. 2956667) issued by
6 the Department pursuant to Corporations Code section 25230.

7 5. On or about May 17, 2010 and October 28, 2013, the Department commenced regulatory
8 examinations of Diez and Alii. The examinations revealed that Diez and Alii violated the Corporate
9 Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.) and the rules and regulations
10 promulgated thereunder.

11 6. Corporations Code section 25238 provides, in relevant part:

12 No investment adviser licensed under this chapter . . . shall engage in
13 investment advisory activities, or attempt to engage in investment
14 advisory activities, in this state in contradiction of such rules as the
15 commissioner may prescribe designed to promote fair, equitable and
16 ethical principles.

17 7. California Code of Regulations, title 10, section 260.238, subdivisions (h) and (o), provide,
18 in relevant part, that the following do not promote “fair, equitable or ethical principles” pursuant to
19 Corporations Code section 25238:

20 (h) Misrepresenting to any advisory client . . . the nature of the
21 advisory services being offered

22 . . .

23 (o) Making any untrue statement of a material fact or omitting a
24 statement of material fact necessary in order to make the statements
25 made, in light of the circumstances under which they are made, not
26 misleading in the solicitation of advisory clients.

27 8. Corporations Code section 25241 provides, in relevant part:

28 Every . . . investment adviser licensed under Section 25230 shall make
and keep accounts, correspondence, memorandums, papers, books, and
other records and shall file financial and other reports as the
commissioner by rule requires, subject to the limitations of . . . Section
222 of the Investment Advisers Act of 1940.

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1 9. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(10), provides:

2 (a) Every licensed investment adviser shall make and keep true,
3 accurate and current the following books and records relating to such
4 person's investment advisory business:

5 . . .
6 (10) All written agreements (or copies thereof) entered into by the
investment adviser with any client or otherwise relating to the business
of such investment adviser as such.

7 10. California Code of Regulations, title 10, section 260.241.4, subdivisions (a) and (e), provide
8 in relevant part:

9 (a) Each . . . licensed investment adviser shall, upon any change in the
10 information contained in its application for a certificate (other than
11 financial information contained therein) promptly file an amendment
to such application setting forth the changed information.

12 . . .
13 (e) A licensed investment adviser shall file an annual updating
14 amendment, in accordance with the instruction in Form ADV, with
15 IARD in accordance with its procedures for transmission to the
Commissioner within ninety (90) days of the end of the investment
adviser's fiscal year.

16 11. The advisory agreements used by Diez and Alii violated Corporations Code section 25238
17 and California Code of Regulations, title 10, section 260.238, subdivisions (h) and (o), as they did
18 not reflect the services being provided to certain clients. Specifically, the agreements did not reflect
19 that Diez and Alii would be managing client assets on a non-discretionary basis through a securities
20 brokerage, and the agreements claimed that Diez and Alii would provide a financial plan to certain
21 clients, which Diez and Alii failed to do.

22 12. Diez and Alii violated Corporations Code section 25241 and California Code of Regulations,
23 title 10, section 260.241.3, subdivision (a)(10), by failing to make and keep true, accurate, and
24 current written agreements with all clients.

25 13. Diez and Alii violated Corporations Code section 25241 and California Code of Regulations,
26 title 10, section 260.241.4, subdivisions (a) and (e), by repeatedly failing to file annual amendments
27 to update Part 2 of Form ADV for the years 2009 through 2013. Further, Diez and Alii failed to
28 implement the new Part 2 brochure format after the new format became required. Even after being

1 advised by the Department in writing that Diez and Alii needed to implement the new Part 2
2 brochure format, Diez and Alii failed to update it and continued to use the outdated Part 2 brochure
3 format.

4 14. On or about February 10, 2017, the Commissioner served Respondents with copies of the
5 following documents: (1) Notice of Intention to Issue Order Levying Administrative Penalties
6 Pursuant to Corporations Code Section 25252; (2) Statement in Support of Order Levying
7 Administrative Penalties Pursuant to Corporations Code Section 25252; (3) Statement to
8 Respondent; (4) Notice of Defense; and (5) Government Code sections 11507.5, 11507.6 and
9 11507.7.

10 15. After appropriate notice and opportunity to be heard, Respondents have not requested a
11 hearing on this matter.

12 16. Corporations Code section 25252 authorizes the Commissioner to issue an order levying
13 administrative penalties against any person for willful violations of any provision of the Corporations
14 Code and any rules promulgated thereunder.

15 17. Based on the foregoing findings of fact, Respondents willfully violated the following
16 provisions:

17 (a) Corporations Code section 25238 and California Code of Regulations, title 10,
18 section 260.238, subdivisions (h) and (o), by not reflecting the services being provided to certain
19 clients;

20 (b) Corporations Code section 25241 and California Code of Regulations, title 10,
21 section 260.241.3, subdivision (a)(10), by failing to make and keep true, accurate, and current
22 written agreements with all clients; and,

23 (c) Corporations Code section 25241 and California Code of Regulations, title 10,
24 section 260.241.4, subdivisions (a) and (e), by repeatedly failing to file annual amendments to
25 update Part 2 of Form ADV for the years 2009 through 2013.

26 18. The Commissioner finds that each of the above enumerated matters provide an
27 independent basis under Corporations Code section 25252, justifying the issuance of an

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1 Order levying administrative penalties in the amount of \$15,000 jointly and severally against
2 Respondents due and payable 30 days from the date of this order.

3 WHEREFORE, GOOD CAUSE SHOWING, IT IS HEREBY ORDERED that Joseph F.
4 Diez, doing business as Alii Consulting, pay administrative penalties pursuant to Corporations Code
5 section 25252 in the amount of \$15,000, due and payable to the “Commissioner of Business
6 Oversight” 30 days from the date of this Order. Payment should be mailed to the Department of
7 Business Oversight, Attn: Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, California
8 95814.

9 This order is effective immediately.

10 Dated: April 27, 2017
11 Sacramento, California

12 JAN LYNN OWEN
13 Commissioner of Business Oversight

14 By: _____
15 MARY ANN SMITH
16 Deputy Commissioner
17 Enforcement
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