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8  
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:	)	CRD NO.: 137472
12 THE COMMISSIONER OF BUSINESS	)	ACCUSATION IN SUPPORT OF ORDERS:
13 OVERSIGHT,	)	
14 Complainant,	)	(1) REVOKING INVESTMENT
15 v.	)	ADVISOR CERTIFICATE OF KEVIN
16	)	VIRGIL LAGORIO PURSUANT TO
17	)	CORPORATIONS CODE SECTION
18 KEVIN VIRGIL LAGORIO,	)	25232
19 Respondent.	)	(2) BARRING KEVIN VIRGIL LAGORIO
20	)	FROM ANY POSITION OF
21	)	EMPLOYMENT, MANAGEMENT
	)	OR CONTROL OF ANY
	)	INVESTMENT ADVISER, BROKER-
	)	DEALER OR COMMODITY
	)	ADVISOR PURSUANT TO
	)	CORPPRATIONS CODE SECTION
	)	25232.1

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23  
24 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), alleges and  
25 charges as follows:

26 **I. INTRODUCTION**

27 1. The Commissioner brings this action pursuant to sections 25232 and 25232.1 of the  
28 Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.) and the rules and regulations

1 promulgated thereunder (Cal. Code Regs., tit. 10, § 260.000 et seq.).

2 2. This action is brought to: (1) revoke the investment adviser certificate issued to  
3 Kevin Virgil Lagorio (Lagorio) pursuant Corporations Code section 25232; and, (2) bar Lagorio  
4 from any position of employment, management or control of any investment adviser, broker-dealer  
5 or commodity advisor pursuant to Corporations Code section 25232.1.

6 3. The Commissioner is authorized to administer and enforce the provisions of the CSL  
7 and the regulations promulgated thereunder which include the licensing and regulation of  
8 investment advisers in California.

9 4. Lagorio currently holds an investment adviser certificate issued by the  
10 Commissioner pursuant to Corporations Code section 25230 (Central Registration Depository No.  
11 137472). Lagorio is organized as a sole proprietorship under the laws of the State of California.

12 **II. THE INVESTMENT ADVISER CERTIFICATE OF LAGORIO SHOULD BE**  
13 **REVOKED PURSUANT TO CORPORATIONS CODE SECTION 25232**

14 5. Corporations Code section 25232 provides, in pertinent part:

15 The commissioner may, after appropriate notice and opportunity for hearing, by order  
16 censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the  
17 certificate of, an investment adviser, if the commissioner finds that the censure, denial,  
18 suspension, or revocation is in the public interest and that the investment adviser, whether  
19 prior or subsequent to becoming such, or any partner, officer or director thereof or any  
20 person performing similar functions or any person directly or indirectly controlling the  
investment adviser, whether prior or subsequent to becoming such, or any employee of the

21 (h) Has violated any provision of this division or the rules thereunder or, in the case of an  
22 applicant only, any similar regulatory scheme of the State of California or a foreign  
jurisdiction.

23 6. In accordance with Corporations Code sections 25232, the Commissioner may revoke  
24 an investment adviser certificate if the Commissioner determines that the revocation is in the public  
25 interest and the investment adviser violated any provision of the CSL. Lagorio violated  
26 Corporations Code section 25238, including: (1) California Code of Regulations (CCR), title 10,  
27 section 260.238, subdivision (a), by recommending unsuitable investments for clients; (2) CCR, title  
28 10, section 260.238, subdivision (f), by borrowing money or securities from a client unless the client  
is a broker-dealer, an affiliate of the adviser or a financial institution engaged in the business of

1 loaning funds or if the client is an affiliate of the adviser; (3) Corporations Code section 25404,  
2 subsection (b), by making false statements to the Commissioner during the course of an examination  
3 and investigation, with the intent to impede, obstruct or influence the administration or enforcement  
4 of any provision of this action; and, (4) Corporations Code section 25241 and CCR, title 10, section  
5 260.241.3, by failing to maintain books and records.

6 **III. LAGORIO SHOULD BE BARRED FROM ANY POSITION OF**  
7 **EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT**  
8 **ADVISER, BROKER-DEALER OR COMMODITY ADVISOR PURSUANT**  
9 **TO CORPORATIONS CODE SECTION 25232.1.**

7. Corporations Code section 25232.1 provides, in pertinent part:

10 The commissioner may, after appropriate notice and opportunity for hearing, by order  
11 censure, or suspend for a period not exceeding 12 months, or bar from any position of  
12 employment, management or control of any investment adviser, broker-dealer or commodity  
13 adviser, any officer, director, partner, employee of, or person performing similar functions  
14 for, an investment adviser, or any other person, if he or she finds that the censure,  
15 suspension or bar is in the public interest and that the person has committed any act or  
16 omission enumerated in subdivision . . . (e) of Section 25232.

8. Corporations Code section 25232, subdivision (e), provides:

17 Has willfully violated any provision of the Securities Act of 1933, the Securities  
18 Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment  
19 Company Act of 1940, the Commodity Exchange Act, or Title 4 (commencing with  
20 Section 25000), including the Franchise Investment Law, Division 5 (commencing  
21 with Section 31000), or the California Commodity Law of 1990, Division 4.5  
22 (commencing with Section 29500), or of any rule or regulation under any of those  
23 statutes, or any order of the commissioner which is or has been necessary for the  
24 protection of any investor.

25 9. In accordance with Corporations Code section 25232.1, the Commissioner may bar  
26 any officer or employee of an investment adviser, based on violations of sections of the CSL or  
27 rules adopted thereunder if the bar is in the public interest. Lagorio violated Corporations Code  
28 section 25238, including: (1) CCR, title 10, section 260.238, subdivision (a), by recommending  
unsuitable investments for clients; (2) CCR, title 10, section 260.238, subdivision (f), by borrowing  
money or securities from a client unless the client is a broker-dealer, an affiliate of the adviser or a  
financial institution engaged in the business of loaning funds or if the client is an affiliate of the

1 adviser; (3) Corporations Code section 25404, subsection (b), by making false statements to the  
2 Commissioner during the course of an examination and investigation, with the intent to impede,  
3 obstruct or influence the administration or enforcement of any provision of this action; and, (4)  
4 Corporations Code section 25241 and CCR, title 10, section 260.241.3, by failing to maintain books  
5 and records.

6 10. Corporations Code section 25238 provides:

7 No investment adviser licensed under this chapter and no natural person associated  
8 with the investment adviser shall engage in investment advisory activities, or  
9 attempt to engage in investment advisory activities, in this state in contradiction of  
10 such rules as the commissioner may prescribe designed to promote fair, equitable  
and ethical principles.

11 11. CCR, title 10, section 260.238, subdivision (a), provides that the following activities  
12 do not promote fair, equitable and ethical principles:

13 Recommending to a client to whom investment supervisory, management or  
14 consulting services are provided the purchase, sale or exchange of any security  
15 without reasonable grounds to believe that the recommendation is suitable for the  
16 client on the basis of information furnished by the client after reasonable inquiry  
17 concerning the client's investment objectives, financial situation and needs, and any  
18 other information known or acquired by the adviser after reasonable examination of  
19 the client's records as may be provided to the adviser.

20 12. After obtaining his certificate from the Commissioner to act as an investment adviser  
21 on March 2, 2006, Lagorio managed client investment accounts through TD Ameritrade on a  
22 discretionary basis and clients authorized him to use his sole discretion in buying and selling  
23 investments on their behalf.

24 13. Lagorio did not have a reasonable basis for recommending the purchase and sale of  
25 investments and securities to his clients due to the unsuitable nature of these investments for the  
26 client's age and recommended investment goals.

27 **UEG Investments**

28 14. On February 2, 2007, Lagorio organized and formed Universal Energy Group, Inc  
(UEG). Lagorio represented that this company developed proprietary solar energy equipment

1 through “research and development” from capital raised by investors. Lagorio is the Chief  
2 Executive Officer, Secretary and Chief Financial Officer for UEG.

3 15. From August 21, 2006 through June 24, 2008, Lagorio issued promissory notes to 13  
4 individuals in California. These promissory notes were “convertible to preferred stock of the  
5 holder.” The promissory notes further stated: (1) the note would be paid in full if the principal or  
6 interest sum is converted to common or preferred stock and (2) interest and principal not paid when  
7 due would draw an interest rate of 6 percent per annum. Further, upon default in payment of any  
8 interest or installment of principal, the whole amount then unpaid would become immediately due  
9 and payable to the holder without notice.

10 16. The promissory notes issued by Lagorio are securities within the definition of  
11 Corporations Code section 25019. Lagorio failed to qualify or file an exemption notice related to the  
12 issuance of the promissory notes, in violation of Corporations Code section 25110.

13 17. Lagorio issued a total of 661 shares in UEG to outside investors until September 1,  
14 2010. During an examination that took place on May 8, 2017, Lagorio advised the Commissioner  
15 that the issuance of shares in UEG were not qualified or exempt.

16 18. On May 17, 2017, Lagorio advised the Commissioner that he filed a Limited  
17 Offering Exemption Notice (LOEN). The Commissioner determined there were several  
18 deficiencies with that LOEN notice, including: (1) Lagorio claimed the first sale of stock was on  
19 May 17, 2017, when records indicated that the first sale occurred on August 21, 2006, when a  
20 client, R.S., invested \$10,000; and (2) the LOEN asserted that the total amount raised was  
21 \$580,000, which differed from the Commissioner’s review of Lagorio’s records.

22 19. Lagorio acted in violation of Corporations Code section 25110 by offering for sale  
23 and selling securities that were neither qualified with the Commissioner nor exempt from  
24 registration.

25 20. Corporations Code section 25401 provides as follows:

26 It is unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a  
27 security in this state, by means of any written or oral communication that includes an untrue  
28 statement of a material fact or omits to state a material fact necessary to make the statements  
made, in the light of the circumstances under which the statements were made, not  
misleading.









1 Breeze. In 2003, Sproul was convicted of two counts of mail fraud in the United States District  
2 Court for the Eastern District of California.

3 38. Lagorio represented to investors in UEG that they would receive 50 percent of net  
4 and future earnings from Lagorio's outside endeavors with Bucket Breeze in the letter of January 2,  
5 2015. Lagorio attempted to dilute any potential earnings, interest and repayment of capital by  
6 establishing Bucket Breeze and CD Goods.

7 39. When communicating with investors in UEG regarding the offer to provide 50  
8 percent of net earnings from the other companies (Bucket Breeze and CD Goods), Lagorio failed to  
9 disclose the material fact of Sproul's conviction for mail fraud to the investors of UEG, in violation  
10 of Corporations Code section 25401.

11 40. Lagorio also misrepresented to investors of UEG that he would use his home as  
12 collateral to pay for any unsettled debts of UEG. Lagorio provided a Mechanics' Lien on his home  
13 located at 9135 Connie Road, Stockton, California 95209. The Mechanics' Lien was signed by a  
14 non-cash investor of UEG.

15 41. The Mechanics' Lien is invalid as: (1) it was filed incorrectly, (2) is not backed by  
16 the property, and (3) since Lagorio is the majority owner of UEG, this lien could be dropped by  
17 UEG and/or Lagorio with no forfeiture for failure to pay at any time. Lagorio failed to disclose this  
18 material fact to investors, in violation of Corporations Code section 25401.

### 19 **Unsuitable Investments for Advisory Clients**

20 42. Corporations Code section 25238 provides, in pertinent part:

21 No investment adviser licensed under this chapter and no natural person associated  
22 with the investment adviser shall engage in investment advisory activities, or  
23 attempt to engage in investment advisory activities, in this state in contradiction of  
24 such rules as the commissioner may prescribe designed to promote fair, equitable  
25 and ethical principles.

26 43. Furthermore, CCR, title 10, section 260.238, subdivision (f), provides in pertinent  
27 part:

28 The following activities do not promote 'fair, equitable or ethical principles,' as that  
phrase is used in Section 25238 of the Code:

1 (f) Borrowing money or securities from a client unless the client is a broker-dealer,  
2 an affiliate of the adviser, or a financial institution engaged in the business of  
3 loaning funds or securities.

4 44. An analysis of the brokerage statements of M.C. showed she held positions in  
5 unsuitable Exchange Traded Funds (“ETFs”) in an unsuitable manner. While the prospectus for the  
6 ETF shares noted that these investments were “designed to be utilized only by knowledgeable  
7 investors who understand the consequences of seeking daily leveraged results,”  
8  
9 M.C. maintained these positions for between two and ten months. The placement of such  
10 investments for M.C. was contrary to the recommendations in the prospectus, and there is no  
11 documentation that the recommendation of leveraged and/or riskier ETFs were ever disclosed by  
12 Lagorio to M.C.

13 45. Additionally, a review of the records of 11 randomly selected advisory clients  
14 established that Lagorio handled advisory accounts in an unsuitable manner. The review  
15 established that Lagorio purchased unsuitable leveraged ETFs for all 11 clients and that all accounts  
16 held the same leveraged ETFs for the entire four-month review period. The total portfolio holding  
17 percentage in the selected accounts ranged from 86 to 100 percent in leveraged ETFs. The ETFs  
18 are not designed for long term investments.  
19

20 46. Additionally, CCR, title 10, section 260.238, subdivision (i), provides that the  
21 following activities do not promote fair, equitable and ethical principles:

22 Providing a report or recommendation to any advisory client prepared by someone other  
23 than the adviser without disclosing the fact. This prohibition does not apply, however, to a  
24 situation where the adviser uses published research reports or statistical analyses to render  
advice or where an adviser orders such a report in the normal course of providing service.

25 47. Lagorio had an Agreement to Provide Services with Thomas Kennedy in which  
26 Kennedy would be entitled to a one-half fee on the recommended positions to clients. Kennedy is  
27 not registered and disclosed on FINRA’s IARD. Kennedy is the President and Chief Investment  
28 Officer for Trafalgar Partners, LLC, a hedge fund. There were no disclosures of the relationship

1 between Kennedy and Lagorio provided to investment clients, nor disclosure of the split of advisory  
2 fees paid to Kennedy.

3 **False Statements by Lagorio to the Commissioner**

4 48. Corporations Code Section 25404, subdivision (b), provides in pertinent part:

5 It is unlawful for any person to knowingly make an untrue statement to the  
6 commissioner during the course of licensing, investigation, or examination, with the  
7 intent to impede, obstruct, or influence the administration or enforcement of any  
provision of this division.

8 49. On May 8, 2017, Lagorio was interviewed by examiners and was asked a question  
9 concerning whether his firm or any of its representatives been involved in any regulatory  
10 investigation, action and/or litigation in the past five years and whether the firm or any  
11 representatives have been the subject of any civil complaint, arbitration or criminal proceeding in  
12 the past five years. In response, Lagorio denied that he or his firm had been involved in any such  
13 matters. Those statements were false.

14 50. In 2014, both Lagorio and his company were the subject of investigations by local  
15 law enforcement agencies as well as the Commissioner. Lagorio did not disclose these  
16 investigations to the examiners.

17 **IV. CONCLUSION**

18 Based upon the foregoing, the Commissioner finds that grounds exist, and that it is in the  
19 public interest, to enter orders: (1) revoking the investment adviser certificate of Kevin Virgil  
20 Lagorio pursuant to Corporations Code section 25212; and (2) barring Kevin Virgil Lagorio from  
21 any position of employment, management or control of any investment adviser, broker-dealer or  
22 commodity adviser pursuant to Corporations Code section 25212.1. The Commissioner hereby  
23 notifies Kevin Virgil Lagorio of her intention to make such orders final.

24 **V. PRAYER**

25 **WHEREFORE**, good cause showing, the Commissioner prays for relief, as follows:

26 1. For an order, pursuant to Corporations Code section 25232, revoking the investment  
27 adviser certificate of Kevin Virgil Lagorio and prohibiting Kevin Virgil Lagorio from accepting new  
28 investment adviser business or making any additional investment of client funds, but permitting him

1 to continue servicing existing client accounts in order to allow a winding down and liquidation of the  
2 accounts and to return the funds to each of the investors as soon as practically feasible; and,

3 2. For an order, pursuant to Corporations Code section 25232.1, barring Kevin Virgil  
4 Lagorio from any position of employment, management or control of any broker-dealer, investment  
5 adviser or commodity adviser.

6 Dated: April 6, 2018  
7 San Francisco, California

JAN LYNN OWEN  
Commissioner of Business Oversight

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10 By: \_\_\_\_\_  
11 WILLIAM HORSEY  
12 Senior Counsel  
13 Enforcement Division  
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