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DEEODE THE DEDADTME	NT OF DUGINIESS OVEDSIGUT
	NT OF BUSINESS OVERSIGHT
OF THE STATE	E OF CALIFORNIA
In the Matter of:	) CRD NO.: 137472
THE COMMISSIONER OF BUSINESS OVERSIGHT,	) ACCUSATION IN SUPPORT OF ORDERS:
Complainant,	<ul> <li>(1) REVOKING INVESTMENT</li> <li>ADVISOR CERTIFICATE OF KEVI</li> <li>VIRGIL LAGORIO PURSUANT TO</li> </ul>
V.	) CORPORATIONS CODE SECTION ) 25232
v.	) (2) BARRING KEVIN VIRGIL LAGOR
	) FROM ANY POSITION OF
KEVIN VIRGIL LAGORIO,	) EMPLOYMENT, MANAGEMENT ) OR CONTROL OF ANY INVESTMENT ADVISED, PROVEN
Respondent.	) INVESTMENT ADVISER, BROKE ) DEALER OR COMMODITY
	<ul> <li>ADVISOR PURSUANT TO</li> <li>CORPPRATIONS CODE SECTION</li> </ul>
	) 25232.1
	_)
Jan Lynn Owen, the Commissioner of B	susiness Oversight (Commissioner), alleges and
charges as follows:	
I. INTRODUCTION	
1. The Commissioner brings this ac	ction pursuant to sections 25232 and 25232.1 of the
Corporate Securities Law of 1968 (CSL) (Corp.	. Code, § 25000 et seq.) and the rules and regulation
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promulgated thereunder (Cal. Code Regs., tit. 10, § 260.000 et seq.).

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

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

4. Lagorio currently holds an investment adviser certificate issued by the

Commissioner pursuant to Corporations Code section 25230 (Central Registration Depository No.

137472). Lagorio is organized as a sole proprietorship under the laws of the State of California.

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

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

The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser, if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or any partner, officer or director thereof or any 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 investment adviser while so employed has done any of the following:

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

6. In accordance with Corporations Code sections 25232, the Commissioner may revoke

an investment adviser certificate if the Commissioner determines that the revocation is in the public

interest and the investment adviser violated any provision of the CSL. Lagorio violated

Corporations Code section 25238, including: (1) California Code of Regulations (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 adviser; (3) Corporations Code section 25404,
subsection (b), by making false statements to the Commissioner during the course of an examination
and investigation, with the intent to impede, obstruct or influence the administration or enforcement
of any provision of this action; and, (4) Corporations Code section 25241 and CCR, title 10, section
260.241.3, by failing to maintain books and records.

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

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

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

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

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

9. In accordance with Corporations Code section 25232.1, the Commissioner may bar any officer or employee of an investment adviser, based on violations of sections of the CSL or rules adopted thereunder if the bar is in the public interest. Lagorio violated Corporations Code 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

adviser; (3) Corporations Code section 25404, subsection (b), by making false statements to the 1 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 with the investment adviser shall engage in investment advisory activities, or 8 attempt to engage in investment advisory activities, in this state in contradiction of 9 such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles. 10 CCR, title 10, section 260.238, subdivision (a), provides that the following activities 11. 11 do not promote fair, equitable and ethical principles: 12 Recommending to a client to whom investment supervisory, management or 13 consulting services are provided the purchase, sale or exchange of any security 14 without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry 15 concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the adviser after reasonable examination of 16 the client's records as may be provided to the adviser. 17 12. After obtaining his certificate from the Commissioner to act as an investment adviser 18 on March 2, 2006, Lagorio managed client investment accounts through TD Ameritrade on a 19 discretionary basis and clients authorized him to use his sole discretion in buying and selling 20 investments on their behalf. 21 13. Lagorio did not have a reasonable basis for recommending the purchase and sale of 22 investments and securities to his clients due to the unsuitable nature of these investments for the 23 client's age and recommended investment goals. 24 25 **UEG Investments** 26 14. On February 2, 2007, Lagorio organized and formed Universal Energy Group, Inc 27 (UEG). Lagorio represented that this company developed proprietary solar energy equipment 28 4

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

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

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

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

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

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

20. Corporations Code section 25401 provides as follows:

It is unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue 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.

21. Lagorio also acted in violation of Corporations Code section 25401 by means of any written or oral communication which included untrue statements of material fact and which failed to state material facts that were necessary for a potential investor.

22. Additionally, CCC, title 10, section 260.238 sets forth that borrowing money or securities from a client does not promote fair, equitable or ethical principles as defined by Corporations Code section 25238 unless the client is a broker-dealer, an affiliate of the adviser, or a financial institution engaged in the business of loaning funds or the client is an affiliate of the adviser.

23. During the period of August 21, 2006 through June 24, 2008, Lagorio solicited funds from advisory clients to help capitalize UEG. Based on an analysis of the client list obtained from TD Ameritrade and the investors in UEG, the Commissioner determined that 20 of Lagorio's advisory clients invested in UEG. Moreover, analysis of the TD Ameritrade client list revealed that Lagorio issued promissory notes to 10 advisory clients.

24. Lagorio used his position as an investment advisor to solicit and capitalize the startup business of UEG. Lagorio solicited and raised \$427,000 for the capitalization of UEG from advisory clients in violation of Corporations Code section 25238 and CCR, title 10, section 260.238, subdivision (f).

### **Investment Advisory Client M.C.**

25. Moreover, with regard to advisory client M.C., Lagorio had a Limited Power of Attorney dated August 6, 2006, an Investment Management Agreement (undated), and an IRA Application dated September 14, 2001.

26. Review of the brokerage statements for M.C. revealed serial checks written from the client's brokerage account to UEG and Lagorio. These checks show that \$47,230 was deducted from M.C.'s brokerage account for the benefit of either UEG or Lagorio.

27. Lagorio was also in possession of confidential client login information for M.C.,
including a single piece of paper identified as "TD Ameritrade Online Access." This piece of paper
disclosed the username, password, and security questions and accompanying answers for the client.

1	28. The Commissioner's examination also disclosed that Lagorio filed for bankruptcy on	
2	May 20, 2010. The bankruptcy documents revealed that M.C. was a secured creditor due to Lagorio	
3	borrowing \$14,500 for the purchase of a 2000 Toyota Avalon and a 2004 Chevrolet Suburban.	
4	Lagorio admitted that he borrowed the money from M.C. to purchase the two vehicles and provided	
5	a copy of a promissory note dated March 18, 2010. Although Lagorio provided evidence this note	
6	was paid, it was not clear that the 9 percent interest was paid.	
7	Promissory Notes Concerning Original Investments	
8	29. Corporations Code section 25235 provides as follows:	
9	It is unlawful for any investment adviser, directly or indirectly, in this state:	
10	(a) To employ any device, scheme, or artifice to defraud any client or prospective client.	
11 12	(b) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client.	
13	(c) Acting as principal for his own account, knowingly to sell any security to or purchase	
14	any security from a client for whom he is acting as investment adviser, or, acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of the transaction the capacity in which he is acting and obtaining the written	
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16	consent of the client to such transaction.	
17 18	(d) To engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The commissioner shall, for the purpose of this subdivision, by rule define and prescribe means reasonably designed to prevent such acts, practices, and courses of	
19	<ul> <li>(e) To represent that he is an investment counsel or to use the name "investment counsel" a descriptive of his business unless his principal business consists of acting as investment</li> </ul>	
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21	adviser and a substantial part of his business consists of rendering investment advisory services on the basis of the individual needs of his clients.	
22	services on the basis of the individual needs of his chefts.	
23	30. Lagorio defaulted on the promissory notes that were issued to clients to capitalize	
24	UEG by virtue of the following provision: "Stock note will be paid in full if the principal and	
25	interest sum is converted to stock." The notes were converted into shares of UEG which were	
26	issued to investors in September 2010.	
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31. On January 2, 2015, Lagorio sent an "Agreement to Pay Earnings and Royalties Letter" (Agreement) to investors in UEG. According to the letter, net current and future profits from Lagorio's new business endeavors would be paid to investors of UEG. Lagorio agreed to pay 50 percent of net current and future earnings and royalties related to the development of new energy efficient products that were being developed by Lagorio along with independent third parties. Lagorio identified that the products under development included the Bucket Breeze AC system.

#### **Misrepresentations Regarding the Investments**

32. Lagorio misrepresented that UEG developed a solar water and space heating system. UEG did not develop this system and was only a distributor for solar equipment in violation of section 25401.

33. Lagorio promised to repay investors from the future earnings of the new business endeavor. Lagorio never disclosed to investors the amount of losses sustained by UEG. Lagorio never advised investors that UEG never obtained a net profit of earnings.

34. Lagorio further represented to the Commissioner during the exam that the majority of the UEG capital went into "research and development." However, investigation revealed funds for "research and development" were used to install solar panels on Lagorio's home and purchase solar equipment at trade shows.

35. UEG's tax returns reported \$207,080 in research and development costs incurred between 2007 and 2010, but there was apparently no research and development and Lagorio failed to provide any documentation of such research and development when requested by the Commissioner's examiners.

36. Moreover, UEG's tax returns disclosed the purchase of \$66,260 for the purchase of solar equipment in 2007. Additional expenses such as freight costs, computer upgrades and credit card payments were listed under a depreciation schedule. Tax returns do not show that any raised capital ever went into research and development.

37. Lagorio is involved in additional business endeavors including Bucket Breeze, Inc., and CD Goods, Inc. (CD Goods). Lagorio is the Chief Financial Officer and is a shareholder in CD Goods. David Chatfield Sproul is disclosed as the incorporator. Sproul is also a director of Bucket Breeze. In 2003, Sproul was convicted of two counts of mail fraud in the United States District Court for the Eastern District of California.

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

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

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

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

## **Unsuitable Investments for Advisory Clients**

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

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

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

part:

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

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(f) 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 securities.

44. An analysis of the brokerage statements of M.C. showed she held positions in unsuitable Exchange Traded Funds ("ETFs") in an unsuitable manner. While the prospectus for the ETF shares noted that these investments were "designed to be utilized only by knowledgeable investors who understand the consequences of seeking daily leveraged results,"

M.C. maintained these positions for between two and ten months. The placement of such investments for M.C. was contrary to the recommendations in the prospectus, and there is no documentation that the recommendation of leveraged and/or riskier ETFs were ever disclosed by Lagorio to M.C.

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

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

Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing the fact. This prohibition does not apply, however, to a 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.

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

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

#### False Statements by Lagorio to the Commissioner

48. Corporations Code Section 25404, subdivision (b), provides in pertinent part: It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

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

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

### IV. CONCLUSION

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

#### V. PRAYER

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

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

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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, CaliforniaJAN LYNN OWENCommissioner of Business Oversight
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10	By: WILLIAM HORSEY
11	Senior Counsel Enforcement Division
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