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

12	In the Matter of	)	FILE NO. 9320
13)	
14	THE COMMISSIONER OF THE)	
15	DEPARTMENT OF BUSINESS OVERSIGHT	)	1) STATEMENT IN SUPPORT OF
16	OF THE STATE OF CALIFORNIA,	)	ORDER LEVYING ADMINISTRATIVE
17		)	PENALTIES PURSUANT TO
18	Complainant,	)	CORPORATIONS CODE
19	v.	)	SECTION 25252;
20)	
21		)	2) CLAIM FOR ANCILLARY RELIEF
22	Pentultimate Associates, LLC,	)	PURSUANT TO CORPORATIONS
23		)	CODE SECTION 25254; and
24	Family Values Financial Services,)	
25	aka Family Values Investments,	)	3) DESIST AND REFRAIN ORDER.
26)	
27	and)	
28)	
	David J. Ribeiro,)	
	aka Dave Matthews,)	
	aka J. D. Matthews,)	
)	
	Respondents)	

26 Jan Lynn Owen, the Commissioner of Business Oversight ("Commissioner") of the
27 Department of Business Oversight ("Department"), collectively ("Complainant"), alleges and
28 charges as follows:

I.

STATEMENT OF FACTS

1. At all relevant times herein, Pentultimate Associates, LLC (“Pentultimate”) was doing business at 9630 Bruceville Road, Suite 106-111, Elk Grove, California 95757.
2. At all relevant times herein, Family Values Financial Services, also known as Family Values Investments, (“Family”) was doing business at 8250 Calvine Road, Suite C-347, Sacramento, California 95828.
3. At all relevant times, David J. Ribeiro, also known as “Dave Matthews” or “J. D. Matthews”, (“Ribeiro”), was the principal of both Pentultimate and Family.
4. Ribeiro, Family and Pentultimate are herein collectively referred to as “Respondents”.
5. Whenever reference is made in this Statement in Support to “Respondents” doing any act, the allegation shall mean the act of each respondent acting individually, jointly and severally.

VIOLATIONS OF CORPORATIONS CODE SECTION 25110

(UNQUALIFIED OFFERS AND SALES OF SECURITIES)

6. Beginning on or about November 19, 2009, Respondents, by way of issuer transactions, offered and sold to investors M.S., R.C., S.C., E.D., and G.D. (“Investors”), who were each California residents, securities in the form of interests in Respondents’ “Principal Protection Program” (“Program”). The offerings were made via Craigslist postings online, phone calls and emails from the email address: FVFS.Dave.Matthews@gmail.com.
7. The Investors entered into Principal Protection Program Enrollment Agreements with Respondents (“Agreements”). The Agreements stated that by entering the Program with a six thousand dollar (\$6,000) investment (which included a one-time “enrollment and initiation fee”), Investors would receive “earnings” payments of one thousand dollars (\$1,000) per month. Respondents represented in the Agreements that after the six month term of their Agreements ended, each Investor’s account would retain a balance of six thousand dollars (\$6,000). This balance would be returned to the Investors if they chose not to continue in the Program.
8. Investors R.C. and S.C. together entered the Program with an investment of six thousand dollars (\$6,000) on or about November 19, 2009, and then made an additional investment of one

1 thousand dollars (\$1,000) in the Program on or about May 17, 2010. Investor M.S. entered the
2 Program with an investment of six thousand dollars (\$6,000) on or about June 2, 2010. Investors
3 E.D. and G.D. together entered the Program with an investment of six thousand dollars (\$6,000) in
4 or about August 3, 2010.

5 9. The interests in the “Principal Protection Program” offered and sold by Respondents are
6 securities subject to qualification under the Corporations Code. Respondents did not have a
7 qualification permit for these securities, nor did they claim an exemption for the securities with the
8 Commissioner.

9 10. Corporations Code section 25110 prohibits the offer and/or sale of non-exempt securities in
10 this state.

11 **VIOLATIONS OF CORPORATIONS CODE SECTION 25401**
12 **(MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS)**

13 11. In connection with the offer and sale of these securities, Respondents, made, or caused to be
14 made, misrepresentations of material facts, or omitted to state material facts necessary in order to
15 make the statements made, in the light of the circumstances under which they were made, not
16 misleading. These misrepresentations and omissions were the following:

17 a) Respondents omitted to inform Investors that the Commissioner issued a desist and
18 refrain order against Pentultimate Associates, LLC dba Pentultimate Associates Financial Services,
19 Gold Ribbon Financial Services, and the principal of both entities, David J. Ribeiro, on September 2,
20 2009 (“2009 Order”). The 2009 Order prohibited Respondents from offering or selling securities in
21 the State of California unless and until qualification had been made under this law or unless exempt.

22 b) Respondents agreed to return all of Investors’ initial investment at the end of the term
23 of their Agreements, or at their request if Respondents did not fulfill their obligations under the
24 agreement. However, Respondents did not return the Investors’ money as promised.

25 12. Corporations Code section 25401 prohibits the offer and/or sale of securities in this state by
26 means of written or oral communications that include untrue statements of material facts, or omits
27 material facts necessary in order to make the statements made, in the light of the circumstances
28 under which they were made, not misleading.

**VIOLATION OF DESIST AND REFRAIN ORDER ISSUED BY
THE COMMISSIONER AGAINST RESPONDENTS**

13. On September 2, 2009, the Commissioner issued the 2009 Order against Respondents Ribeiro and Pentultimate as a result of the offer of unqualified, nonexempt securities in the form of foreign currency investments via a “Credit Union Co-Op Account”, with a return of up to two-hundred and seventy six percent (276%) per year, in violation of Corporations Code section 25110.

14. The 2009 Order prohibits Ribeiro and Pentultimate from further offering or selling securities in the State of California unless and until qualification has been made under this law or unless exempt.

15. The 2009 Order was personally served on Ribeiro on September 16, 2009.

16. Respondents violated the 2009 Order in the following ways:

a) Beginning on or around November 19, 2009 (less than two months after the 2009 Order was served on Respondent Ribeiro), Respondents offered and sold securities to the Investors. Respondents did not have a qualification permit for these securities, nor did they claim an exemption for the securities with the Commissioner.

b) Following the issuance and service of the 2009 Order, Respondents failed to disclose to Investors that the State of California had found that they violated the California securities laws and had ordered them not to offer or sell securities to California residents.

II.

ORDER LEVYING ADMINISTRATIVE PENALTIES

(For violations of Corporations Code sections 25110, 25401, and the Commissioner’s Order)

17. Complainant re-alleges and reincorporates by reference paragraphs 1-16 of this Statement in Support as though fully set forth herein.

18. Corporations Code section 25252 authorizes the Commissioner to issue an order levying administrative penalties against any person for willful violations of any provision of the Corporations Code, and any rules promulgated thereunder or orders issued thereunder. Specifically, Corporations Code section 25252 provides, in relevant part:

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1 The commissioner may, after appropriate notice and opportunity for
2 hearing, by orders, levy administrative penalties as follows:

3 (a) Any person subject to this division, other than a broker-dealer or
4 investment adviser, who willfully violates any provision of this
5 division, or who willfully violates any rule or order adopted or
6 issued pursuant to this division, is liable for administrative penalties
7 of not more than one thousand dollars (\$1,000) for the first violation,
8 and not more than two thousand five hundred dollars (\$2,500) for
9 each subsequent violation.

10 19. Based on the foregoing findings of fact, as set forth above in paragraphs 1-16, Respondents
11 willfully violated the following:

12 a) Corporations Code section 25110 by offering and selling securities that are not
13 qualified by the Department or exempt to the following Investors:

- 14 i) M.S.
- 15 ii) R.C. and S.C.
- 16 iii) E.D. and G.D.

17 b) Corporations Code section 25401 by misrepresenting and omitting material
18 information in association with the offers and sales of securities to the following Investors:

- 19 i) M.S.
- 20 ii) R.C. and S.C.
- 21 iii) E.D. and G.D.

22 c) the 2009 Order issued by the Commissioner as a result of the offers and sales of
23 securities that are not qualified by the Department or exempt to the following Investors:

- 24 i) M.S.
- 25 ii) R.C. and S.C.
- 26 iii) E.D. and G.D.

27 **WHEREFORE**, good cause showing, and pursuant to Corporations Code section 25252,
28 the Commissioner prays for an order levying administrative penalties against Respondents,
jointly and severally, as follows:

A) That pursuant to Corporations Code section 25252, the Commissioner levy

1 administrative penalties of one thousand dollars (\$1,000) for the first violation of Corporations Code
2 section 25110 and two thousand five hundred dollars (\$2,500) for each subsequent violation, as
3 listed below, for a total amount of six thousand dollars (\$6,000).

- 4 1) M.S. - \$1,000
- 5 2) R.C. and S.C. - \$2,500
- 6 3) E.D. and G.D. - \$2,500

7 B) That pursuant to Corporations Code section 25252, the Commissioner levy
8 administrative penalties of one thousand dollars (\$1,000) for the first violation of Corporations
9 Code section 25401 and two thousand five hundred dollars (\$2,500) for each subsequent violation,
10 as listed below, for a total amount of six thousand dollars (\$6,000).

- 11 1) M.S. - \$1,000
- 12 2) R.C. and S.C. - \$2,500
- 13 3) E.D. and G.D. - \$2,500

14 C) That pursuant to Corporations Code section 25252, the Commissioner levy
15 administrative penalties of one thousand dollars (\$1,000) for the first violation of the 2009 Order
16 and two thousand five hundred dollars (\$2,500) for each subsequent violation, as listed below, for
17 a total amount of six thousand dollars (\$6,000).

- 18 1) M.S. - \$1,000
- 19 2) R.C. and S.C. - \$2,500
- 20 3) E.D. and G.D. - \$2,500

21 D) The total amount of administrative penalties for violations of Corporations Code
22 sections 25110, 25401, and the 2009 Order by Respondents is eighteen thousand dollars (\$18,000).

23 **III.**

24 **CLAIM FOR ANCILLARY RELIEF**

25 **(For violations of Corporations Code sections 25110, 25401, and the Commissioner's Order)**

26 20. Complainant re-alleges and reincorporates by reference paragraphs 1-16 of this Statement
27 in Support as though fully set forth herein.

28 21. Corporations Code section 25254 authorizes the Commissioner to seek ancillary relief on

1 behalf of any person injured by violations of any provision of the Corporations Code and any
2 rules promulgated thereunder. Corporations Code section 25254 states:

3 (a) If the commissioner determines it is in the public interest, the
4 commissioner may include in any administrative action brought under
5 this part a claim for ancillary relief, including, but not limited to, a
6 claim for restitution or disgorgement or damages on behalf of the
7 persons injured by the act or practice constituting the subject matter of
8 the action, and the administrative law judge shall have jurisdiction to
9 award additional relief.

10 (b) In an administrative action brought under this part, the
11 commissioner is entitled to recover costs, which in the discretion of the
12 administrative law judge may include an amount representing
13 reasonable attorney's fees and investigative expenses for the services
14 rendered, for deposit into the State Corporations Fund for the use of
15 the Department of Corporations.

16 22. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1-16,
17 Respondents sold unqualified, nonexempt securities, in violation of Corporations Code sections
18 25110, 25401, and the Commissioner's 2009 Order, in the total amount of nineteen thousand dollars
19 (\$19,000) to five California Investors, as follows:

- 20 1) Investor M.S. - \$6,000;
- 21 2) Investors R.C. and S.C. - \$7,000; and
- 22 3) Investors E.D. and G.D. - \$6,000.

23 **WHEREFORE**, good cause showing and the Commissioner's determination that this
24 action is in the public interest and necessary to effectuate the Department's primary, legitimate,
25 regulatory purpose based upon the Respondents' violations of the Corporations Code, the
26 Commissioner hereby prays for an order of ancillary relief pursuant to Corporation Code section
27 25254, individually, jointly and severally against Respondents as follows:

- 28 A) full restitution, consisting of Investors' investment principal, as set forth above, in
the total amount of nineteen thousand dollars (\$19,000); and
- B) interest accumulated on the investment principal or according to proof.

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IV.

DESIST AND REFRAIN ORDER

23. Complainant re-alleges and reincorporates by reference paragraphs 1-16 of this Statement in Support as though fully set forth herein.

24. Corporations Code section 25532, in pertinent part, states:

(a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law ...

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

25. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1-16, the Commissioner is of the opinion that the securities in the form of interests in the “Principal Protection Program,” offered and sold by Respondents, are securities subject to qualification under the Corporations Code and are being or have been offered without being qualified, in violation of section 25110 of the Corporations Code.

26. Further, the Commissioner is of the opinion that the securities offered and sold by Respondents were offered and sold in this state by means of written or oral communications that included untrue statements of material facts, or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of section 25401 of the Corporations Code.

IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY THAT:

A) Pursuant to Section 25532 of the Corporations Code, Respondents desist and refrain from the further offer or sale in the State of California of securities, including but not limited to, interests in the “Principal Protection Program,” unless and until qualification has been made under this law or unless exempt.

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B) Pursuant to Section 25532 of the Corporations Code, Respondents desist and refrain from offering or selling any security in the State of California, including but not limited to, interests in the “Principal Protection Program,” by means of any written or oral communication which includes an untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies, and provisions of the Corporations Code.

Dated: August 28, 2013

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner