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4 DEPARTMENT OF BUSINESS OVERSIGHT
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8 Attorneys for Complainant

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

12 In the Matter of)
13)
14 DAVID LOUIS SIMPSON doing business as) SETTLEMENT AGREEMENT
15 SIMPSON CAPITAL MANAGEMENT, INC.)
_____)

16 This SETTLEMENT AGREEMENT ("Agreement") is entered into as of September 11,
17 2014, by and between the California Department of Business Oversight ("Department") through
18 the Commissioner of Business Oversight ("Commissioner"), on the one hand, and David Louis
19 Simpson doing business as Simpson Capital Management, Inc. ("Simpson Capital
20 Management") on the other hand (collectively, "Parties").

21 RECITALS

22 This Agreement is made with reference to the following facts:

23 A. Simpson Capital Management is a corporation in good standing, duly formed and
24 existing pursuant to the laws of the State of California, and is authorized to conduct business in
25 this State. Simpson Capital Management has its principal place of business located at 30872
26 Calle Barbosa, Laguna Niguel, California, 92677.

27 B. David Louis Simpson is the president, owner, and sole control person of Simpson
28 Capital Management and, as such, is authorized to enter into this Agreement on behalf of
Simpson Capital Management.

1 C. On July 12, 1999, Simpson Capital Management first became registered as a
2 California investment adviser under section 25230 of the California Corporate Securities
3 Law of 1968 (Corp. Code, § 25000 *et seq.*).

4 D. On August 22, 2011, the Commissioner issued an order summarily revoking Simpson
5 Capital Management’s investment adviser registration pursuant to Corporations Code section 25242,
6 subdivision (c)(2), for failure to file its annual updating amendment or brochure as required by section
7 260.241.4, subdivision (e), of Title 10 of the California Code of Regulations. This order was mailed
8 to Simpson Capital Management’s address of record via U.S. certified mail and returned as
9 “unclaimed.”

10 E. On January 29, 2014, Simpson Capital Management filed with the Department an
11 application for an investment adviser certificate. Review of Simpson Capital Management’s Form
12 ADV revealed that it continued to service 70 advisory accounts with assets under management of
13 \$13,235,777 since the time the license was revoked.

14 F. When the Department inquired about Simpson Capital Management’s post-revocation
15 investment adviser activities, Simpson Capital Management fully cooperated and provided
16 information showing it had collected fees in connection with up to 70 advisory accounts.

17 G. The Commissioner finds, based upon the information provided, that Simpson Capital
18 Management has engaged in unlicensed investment adviser activity from August 22, 2011 through the
19 date hereof, in violation of Corporations Code section 25230, subdivision (a).

20 H. Based on a review of the regulatory record of Simpson Capital Management showing
21 no consumer complaints, the Commissioner has determined that the public interest will not be served
22 by denying the request for registration submitted by Simpson Capital Management.

23 I. It is the intention and desire of the Parties to resolve this matter without the
24 necessity of a hearing and/or other litigation.

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

27 TERMS AND CONDITIONS

28 1. Purpose. The purpose of this Agreement is to settle and resolve the matters between
the Parties hereto, for judicial economy and expediency, and to avoid the expense of a hearing, and

1 possible further court proceedings.

2 2. Desist and Refrain Order: Simpson Capital Management stipulates to the
3 issuance of the Desist and Refrain Order, in the form attached hereto as Exhibit A, directing
4 Simpson Capital Management to desist and refrain from engaging in investment adviser
5 activities unless and until certification has been made under the California Corporate Securities
6 Law of 1968 or unless exempt. Simpson Capital Management agrees that the delivery by
7 certified mail of the executed Desist and Refrain Order issued by the Commissioner to the
8 address set forth in Paragraph A above shall constitute valid service of the Order.

9 3. Waiver of Hearing Rights. Simpson Capital Management acknowledges its right
10 to a hearing under the California Corporate Securities Law of 1968 in connection with the Desist and
11 Refrain Order attached as Exhibit A, and hereby waives such right to a hearing, and to any
12 reconsideration, appeal, or other right to review which may be afforded pursuant to the
13 California Corporate Securities Law of 1968, the California Administrative Procedure Act, the
14 California Code of Civil Procedure, or any other provision of law, and by waiving such rights,
15 consents to the Commissioner's order becoming final.

16 4. Certification. Simpson Capital Management stipulates to undertake all appropriate
17 steps designed to assure full compliance with the laws of California in connection with the licensing
18 of Simpson Capital Management's business as an investment adviser. Simpson Capital Management
19 acknowledges that failure to comply under this Agreement shall be a breach of this Agreement and
20 shall be cause for the Commissioner to immediately revoke any licenses held by, and/or deny any
21 pending application(s) of Simpson Capital Management, its successors and assigns, by whatever
22 names they might be known. Simpson Capital Management hereby waives any notice and hearing
23 rights to contest such revocations and/or denial(s) which may be afforded under the Corporate
24 Securities Law of 1968, the California Administrative Procedure Act, the California Code of Civil
25 Procedure, or any other provision of law in connection with this action.

26 5. Acknowledgement. Simpson Capital Management acknowledges that it did not
27 timely file its annual updating amendment or brochure with the Department as required by section
28 260.241.4, subdivision (e), of Title 10 of the California Code of Regulations. Although Simpson
Capital Management maintains the failure to file was neither willful nor intentional, Simpson

1 Capital Management acknowledges that such conduct was inconsistent with the provisions of
2 Corporations Code section 25230. The acknowledgment of Simpson Capital Management is
3 for the purposes of this and any other future proceedings that may be initiated by or brought
4 before the Department. The Parties agree that this Agreement and any acknowledgements
5 hereunder shall not be admissible or binding against Simpson Capital Management in any action(s)
6 brought against Simpson Capital Management by third parties who are not signatories to this
7 Agreement.

8 6. Administrative Penalty. Simpson Capital Management agrees to pay to the
9 Commissioner an administrative penalty in the amount of five thousand dollars (\$5,000) (“Penalty”)
10 pursuant to Corporations Code section 25532, subdivision (b), for conducting unlicensed investor
11 adviser activity in violation of Corporations Code section 25230, subdivision (a). Such Penalty shall
12 be paid by Simpson Capital Management within thirty (30) days of the execution of this
13 Agreement. The check shall be made payable to “The Department of Business Oversight,” and shall
14 be sent by Simpson Capital Management to the following address:

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16 Miranda LeKander
17 Senior Corporations Counsel
18 Department of Business Oversight
19 1515 K Street, Suite 200
20 Sacramento, CA 95814

21 In the event the payment due date falls on a weekend or holiday, the payment shall be due the
22 next business day. Simpson Capital Management acknowledges that failure to timely pay the
23 Penalty shall be a breach of this Agreement and shall be cause for the Commissioner to
24 immediately revoke any licenses held by, and/or deny any pending application(s) of Simpson
25 Capital Management, its successors and assigns, by whatever names they might be known.
26 Simpson Capital Management hereby waives any notice and hearing rights to contest such
27 revocations and/or denial(s) which may be afforded under the California Corporate Securities Law
28 of 1968, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
other provision of law in connection therewith.

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1 7. Future Actions by the Commissioner. The Commissioner reserves the right to
2 bring any future action(s) against Simpson Capital Management or any of the officers,
3 directors, shareholders, or employees of Simpson Capital Management for any and all unknown
4 or future violations of the California Corporate Securities Law of 1968. This Agreement shall not
5 serve to exculpate Simpson Capital Management or any of the officers, directors, shareholders, or
6 employees of Simpson Capital Management from liability for any and all unknown or future
7 violations of the California Corporate Securities Law of 1968.

8 8. Effective Date. This Agreement shall not become effective until signed and
9 delivered by all Parties.

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

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

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

28 12. Modifications and Qualified Integration. No amendment, change or
modification of this Agreement shall be valid or binding to any extent unless it is in writing

1 and signed by all of the parties affected by it.

2 13. Full Integration. This Agreement is the final written expression and the complete
3 and exclusive statement of all the agreements, conditions, promises, representations, and
4 covenants between the Parties with respect to the subject matter hereof, and supersedes all
5 discussions between and among the Parties, their respective representatives, and any other
6 person or entity, with respect to the subject matter covered hereby.

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

14 15. Counterparts. This Agreement may be executed in any number of counter-parts
15 by the Parties, and when each party has signed and delivered at least one such counterpart to the
16 other party, each counterpart shall be deemed an original and taken together shall constitute
17 one and the same Agreement.

18 16. Headings and Governing Law. The headings to the paragraphs of this Agreement
19 are inserted for convenience only and will not be deemed a part hereof or affect the
20 construction or interpretation of the provisions hereof. This Agreement shall be
21 construed and enforced in accordance with, and governed by, the laws of the State of
22 California.

23 17. Authority For Settlement. Each party warrants and represents that such party is
24 fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and
25 without limiting the generality of the foregoing, each party warrants and represents that it is
26 fully entitled to enter into the covenants, and undertake the obligations set forth herein.

27 18. Public Record. Simpson Capital Management hereby acknowledges that this
28 Agreement will be a matter of public record.

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

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

JAN LYNN OWEN
Commissioner of Business Oversight

Dated: 9/15/14 _____

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 9/11/14 _____

DAVID LOUIS SIMPSON doing business as SIMPSON
CAPITAL MANAGEMENT, INC.

By _____
David Louis Simpson
President