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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

WILLOW CREEK DEVELOPMENT GROUP
LLC, a Delaware Limited Liability Company;
GARY LOWERY SMITH, an individual; and
GARY MIGHELL, an individual.

Respondents.

STATEMENT IN SUPPORT OF ORDER
LEVYING ADMINISTRATIVE PENALTIES
PURSUANT TO CORPORATIONS CODE
SECTION 25252

Jan Lynn Owen, the Commissioner of Business Oversight ("Commissioner"), brings this
action in the public interest and alleges and charges as follows:

I.
Statement of Facts

1. At all relevant times herein, Willow Creek Development Group LLC ("Willow

1 Creek”) is, or was, a Delaware limited liability company with a principal address located at 3717 S.
2 La Brea Avenue Suite 339, Los Angeles, CA 90016.

3 2. At all relevant times herein, Gary Lowery Smith (“Smith”) was the founder and
4 president of Willow Creek.

5 3. At all relevant times, Gary Mighell (“Mighell”) represented and held himself out to
6 potential investors as an agent for Willow Creek.

7 4. Whenever reference is made in this Statement in Support to “Respondents” doing any
8 act, the allegation shall mean the act of each respondent acting individually, jointly, and severally.

9 **II.**

10 **VIOLATION OF CORPORATIONS CODE SECTION 25110**
11 **(UNQUALIFIED OFFER AND SALE OF SECURITIES)**

12 5. On June 2, 1999, pursuant to Corporations Code section 25532, the Commissioner of
13 the Department of Corporations¹ issued a Desist and Refrain Order (“Commissioner’s Order ”)
14 directing Smith to desist and refrain from the further offer or sale in the State of California of
15 securities, including, but not limited to investment contracts in the form of “sponsorships” in
16 “Journey Into the Sleep” offered and sold by Alliance Media, Clement Ireo Ejedawe and/or Gary
17 Lowery Smith, or any other security listed in Corporations Code § 25019, unless and until
18 qualification has been made under said law or unless exempt.

19 6. Beginning in or about August 2011 to at least August 2012, Respondents offered or
20 sold securities in the form of investment contracts described as “Limited Liability Net Working
21 Interest Purchase Agreement” (“Agreement”), offering investors interests in two oil wells purportedly
22 owned or operated by Willow Creek located in Monroe County, Ohio. Respondents offered or sold
23 these securities to at least nine investors for amounts ranging from approximately \$5,000 to
24 approximately \$157,000, raising at least \$260,925.00 as follows:

- 25 a) Investor J.W. \$157,950.00
- 26 b) Investor B.U. \$41,000.00

27 _____
28 ¹ Effective July 1, 2013, the Department of Corporations became the Department of Business Oversight and
the Commissioner of the Department of Corporations is now the Commissioner of Business Oversight.

- 1 c) Investor G.G. \$18,000.00
- 2 d) Investor A.M. \$13,000.00
- 3 e) Investor J.S. \$6,500.00
- 4 f) Investor J.W. \$6,500.00
- 5 g) Investor R.K. \$6,500.00
- 6 h) Investor D.A. \$6,475.00
- 7 i) Investor K.W. \$5,000.00

8 7. Respondents told potential investors that their investments would be used to mine and
 9 further develop Willow Creek’s oil wells so as to generate income for investors. Investors were told
 10 that their investments would be safe and, to at least one investor, Mighell stated “imagine getting a
 11 check every month for the next 10 to 15 years.”

12 8. Starting about August 2011, Respondents executed the Agreements with the investors.
 13 The Agreements contained identical terms, providing in pertinent part that in return for a minimum
 14 investment of \$6,500.00, each investor would receive “all rights to one percent (1%) of the net
 15 working interest rights currently owned by WCDG in the WCDG #1 Well (hereafter, the “WELL”),
 16 which will be operated by Willow Creek Development Group....” The Agreement further stated that
 17 each one percent (1%) net working interest in the oil wells carried along, the right to a 0.7400375%
 18 share of the oil wells’ revenues. In addition, investors were told they would receive an additional
 19 17.5% return on their capital investment.

20 9. The Agreements stated that the “net working interest” offered to investors shall
 21 include “all minerals produced from the WELL, to include, but not limited to, all hydrocarbons and
 22 natural gas developed from all depths exploited.” The Agreement stated that investors would receive
 23 their share of the wells’ net revenues on a monthly basis and that such payments would continue until
 24 the income ceased due to abandonment of the wells or “some other cause for the WELL to
 25 permanently cease producing a positive income.”

26 10. Despite the Respondents’ representations, investors never received the promised
 27 returns, or their principal back.

28 11. Corporations Code section 25110 prohibits the offer or sale of non-exempt securities

1 in this state that are subject to qualification. The securities in the form of investment contracts in
2 Willow Creek offered or sold by Respondents are securities subject to qualification under the
3 Corporate Securities Law of 1968 (“CSL”), (Corp. Code § 25100 et seq.)

4 12. These securities were offered or sold in the state in issuer transactions. The
5 Department of Business Oversight has not issued a permit or other form of qualification authorizing
6 any person to offer or sell these securities in this state. The offer or sale of these securities is not
7 exempt under the CSL.

8 **III.**
9 **VIOLATION OF CORPORATIONS CODE SECTION 25401**
10 **(MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS)**

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

- 15 a. Respondents failed to disclose the existence of the Commissioner’s Order to investors.
- 16 b. Respondents omitted to inform investors that Smith filed for bankruptcy on or around
17 December 27, 1999.
- 18 c. Respondents represented that the investors’ funds would be used for the operation of
19 Willow Creek’s oil wells when Smith actually used the funds for his personal
20 expenses, including paying the rent on his personal residence.

21 14. Corporations Code section 25401 prohibits the offer and/or sale of securities in this
22 state by means of written or oral communications that include untrue statements of material fact or
23 omits material facts necessary in order to make the statements made, in the light of the circumstances
24 under which they were made, not misleading.

25 **IV.**
26 **ORDER LEVYING ADMINISTRATIVE PENALTIES**
27 **(For violations of Corporations Code sections 25110, 25401)**

28 15. Complainant re-alleges and reincorporates by reference paragraphs 1 to 14 of this

1 Statement in Support as though fully set forth herein.

2 16. Corporations Code section 25252 authorizes the Commissioner to issue an order
3 levying administrative penalties against any person for willful violations of any provision of the CSL
4 and any rules promulgated thereunder. Specifically, Corporations Code section 25252 provides, in
5 relevant part:

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

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

14 Based on the foregoing findings of fact, as set forth fully above in paragraphs 1 to 15,
15 Respondents willfully violated Corporations Code sections 25110 by offering and selling securities in
16 the form of investment contracts to at least nine investors. Further, Respondents willfully violated
17 Corporations Code section 25401 by making untrue statements or omission in association with the
18 offer and sale of securities in the form of investment contracts to the nine investors referenced herein.

19 **WHEREFORE**, good cause showing, and pursuant to Corporations Code section 25252, the
20 Commissioner prays for an order levying administrative penalties against Respondents Gary Lowery
21 Smith, Gary Mighell, and Willow Creek Development Group LLC, jointly and severally, as follows:

22 A) That pursuant to Corporations Code section 25252, the Commissioner levy
23 administrative penalties of one thousand dollars (\$1,000.00) for the first violation of Corporations
24 Code section 25110 and two thousand five hundred dollars (\$2,500.00) for each subsequent violation,
25 as listed below:

- 26 1) First violation — \$1,000.00;
27 2) Subsequent violations — \$2,500.00 for each of the 8 transactions in which
28 Respondents offered and sold unqualified, non-exempt securities.

The total amount of administrative penalties for Respondents' violations of Corporations
Code section 25110 is \$20,000.00.

1 B) That pursuant to Corporations Code section 25252, the Commissioner levy
2 administrative penalties of one thousand dollars (\$1,000.00) for the first violation of Corporations
3 Code section 25401 and two thousand five hundred dollars (\$2,500.00) for each subsequent violation,
4 as listed below:

- 5 1) First violation — \$1,000.00;
- 6 2) Subsequent violations — \$2,500.00 for each of the 8 transactions in which
- 7 Respondents made untrue statements or omitted to state material fact in
- 8 association with the offer and sale of securities as set forth in paragraph 12.

9 The total amount of administrative penalties for Respondents’ violations of Corporations
10 Code section 25401 is \$20,000.00.

11 The total amount of administrative penalties for Respondents’ violations of Corporations
12 Code sections 25110 and 25401 is \$40,000.00.

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|----------------------------|------------------------------------|
| 13 Dated: February 4, 2016 | JAN LYNN OWEN |
| 14 Los Angeles, California | Commissioner of Business Oversight |

16 By: _____

17 UCHE L. ENENWALI

18 Senior Counsel

19 Enforcement Division