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

12 In the Matter of:

13 THE COMMISSIONER OF BUSINESS
14 OVERSIGHT,

15 Complainant,

16 v.

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

20 Respondents.
21

DESIST AND REFRAIN ORDER AND
ORDER FOR ANCILLARY RELIEF

VIOLETIONS OF CORPORATIONS CODE
SECTIONS 25110 AND 25401; AND

VIOLETION OF COMMISSOINER’S ORDER

22
23 The Commissioner of Business Oversight finds that:

24 **I.**

25 **Statement of Facts**

26 1. At all relevant times herein, Willow Creek Development Group LLC (“Willow
27 Creek”) is, or was, a Delaware limited liability company with a principal address located at 3717 S.
28 La Brea Avenue Suite 339, Los Angeles, CA 90016.

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

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

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

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

14 6. Beginning in or about August 2011 to at least August 2012, Respondents offered or
15 sold securities in the form of investment contracts described as “Limited Liability Net Working
16 Interest Purchase Agreement” (“Agreement”), offering investors interests in two oil wells purportedly
17 owned or operated by Willow Creek located in Monroe County, Ohio. Respondents offered or sold
18 these securities to at least nine investors for amounts ranging from approximately \$5,000.00 to
19 approximately \$157,000.00, raising at least \$260,925.00 as follows:

- 20 a) Investor J.W. \$157,950.00
- 21 b) Investor B.U. \$41,000.00
- 22 c) Investor G.G. \$18,000.00
- 23 d) Investor A.M. \$13,000.00
- 24 e) Investor J.S. \$6,500.00
- 25 f) Investor J.W. \$6,500.00
- 26 g) Investor R.K. \$6,500.00

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 h) Investor D.A. \$6,475.00

2 i) Investor K.W. \$5,000.00

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

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

15 9. The Agreements stated that the "net working interest" offered to investors shall include
16 "... all minerals the right to "all minerals produced from the WELL, to include, but not limited to, all
17 hydrocarbons and natural gas developed from all depths exploited." The Agreement further stated
18 that investors would receive their share of the wells' net revenues on a monthly basis and that such
19 payments would continue until the income ceased due to abandonment of the wells or "some other
20 cause for the WELL to permanently cease producing a positive income."

21 10. Despite the Respondents' representations, investors never received the promised
22 returns, or their principal back.

23 11. Corporations Code section 25110 prohibits the offer or sale of non-exempt securities
24 in this state that are subject to qualification. The securities in the form of investment contracts in
25 Willow Creek offered or sold by Respondents are securities subject to qualification under the
26 Corporate Securities Law of 1968 ("CSL"), (Corp. Code § 25100 et seq.)

27 12. These securities were offered or sold in the state in issuer transactions. The
28 Department of Business Oversight has not issued a permit or other form of qualification authorizing

1 any person to offer or sell these securities in this state. The offer or sale of these securities is not
2 exempt under the CSL.

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

7 a. Respondents failed to disclose the existence of the Commissioner's Order to
8 investors.

9 b. Respondents omitted to inform investors that Smith filed for bankruptcy on or
10 around December 27, 1999.

11 c. Respondents represented that the investors' funds would be used for the operation of
12 Willow Creek's oil wells when Smith actually used the funds for his personal
13 expenses, including paying the rent on his personal residence.

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

18 II.

19 Order for Ancillary Relief

20 Based on the foregoing findings of fact, Respondents have offered and sold securities in the
21 form of investment contracts in Willow Creek to at least 9 investors in an amount of at least
22 \$260,925.00 in violation of Corporations Code sections 25110 and 25401.

23 WHEREFORE, good cause showing, and the Commissioner of Business Oversight having
24 determined that this action is in the public interest, for the protection of investors and consistent with
25 the purposes, policies, and provisions of the Corporate Securities Law, based on Respondents'
26 violations, the Commissioner hereby orders ancillary relief pursuant to Corporations Code section
27 25532, subdivision (e), individually, jointly and severally against Respondents and in favor of the
28 Commissioner on behalf of the investors, as follows:

1
2 a) Restitution and/or disgorgement, consisting of the investors' investment principal in
3 an amount of \$260,925.00 as follows:

- | | | | |
|----|----|---------------|--------------|
| 4 | a) | Investor J.W. | \$157,950.00 |
| 5 | b) | Investor B.U. | \$41,000.00 |
| 6 | c) | Investor G.G. | \$18,000.00 |
| 7 | d) | Investor A.M. | \$13,000.00 |
| 8 | e) | Investor J.S. | \$6,500.00 |
| 9 | f) | Investor J.W. | \$6,500.00 |
| 10 | g) | Investor R.K. | \$6,500.00 |
| 11 | h) | Investor D.A. | \$6,475.00 |
| 12 | i) | Investor K.W. | \$5,000.00 |

13 b) The ancillary relief ordered in the amount of \$260,925.00 shall be due and payable to
14 the Department of Business Oversight within 30 days after this Order is deemed final pursuant to
15 Corporations Code section 25532 and sent to the attention of:

16 Uche L. Enenwali
17 Senior Counsel
18 Department of Business Oversight
19 320 W. 4th Street, Suite 750
20 Los Angeles, CA 90013

21 **III.**

22 **Desist and Refrain Order**

23 Based upon the foregoing findings, the Commissioner of Business Oversight is of the opinion
24 that the securities in the form of investment contracts in Willow Creek Respondents offered or sold
25 were subject to qualification under the California Corporate Securities Law of 1968 and are being or
26 have been offered or sold without being qualified in violation of Corporations Code section 25110.

27 Furthermore, the Commissioner of Business Oversight is of the opinion that the securities in
28 the form of investment contracts in Willow Creek offered and sold by Respondents were offered and
sold in this state by means of written or oral communications that included untrue statements of

1 material fact or omitted to state material facts necessary in order to make the statements made, in the
2 light of the circumstances under which they were made, not misleading, in violation of section 25401
3 of the Corporate Securities Law of 1968.

4 **IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY THAT:**

5 Pursuant to section 25532 of the Corporate Securities Law of 1968, Gary Lowery Smith, Gary
6 Mighell, and Willow Creek Development Group LLC are hereby ordered to desist and refrain from
7 the further offer or sale of securities in the State of California, including but not limited to,
8 investment contracts in Willow Creek Development Group LLC, described as “Limited Liability Net
9 Working Interest Purchase Agreement” unless and until qualification has been made under the law or
10 unless exempt.

11 Pursuant to section 25532 of the Corporate Securities Law of 1968, Gary Lowery Smith, Gary
12 Mighell, and Willow Creek Development Group LLC are hereby ordered to desist and refrain from
13 offering or selling or buying or offering to buy any security in the State of California, including but
14 not limited to, securities in the form of investment contracts in Willow Creek Development Group
15 LLC, described as “Limited Liability Net Working Interest Purchase Agreement,” by means of any
16 written or oral communication which includes an untrue statement of a material fact or omits to state
17 a material fact necessary in order to make the statements made, in the light of the circumstances
18 under which they were made, not misleading.

19 This Order is necessary, in the public interest, for the protection of investors and consistent
20 with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

21 Dated: February 4, 2016

JAN LYNN OWEN
Commissioner of Business Oversight

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23
24 By: _____
25 MARY ANN SMITH
26 Deputy Commissioner
27 Enforcement Division
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