

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MARY ANN SMITH
Deputy Commissioner
SEAN ROONEY
Assistant Chief Counsel
KELLY SUK (State Bar No. 301757)
Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013
Telephone: (213) 576-7571
Facsimile: (213) 576-7181

Attorneys for Complainant
Commissioner of the Department of Business Oversight

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRD NO.: 295662
)	
THE COMMISSIONER OF BUSINESS OVERSIGHT,)	
)	CONSENT ORDER
Complainant,)	
v.)	
)	
STEVEN MICHAEL GABRIEL; PEACHER, INC.,)	
)	
Respondents.)	

This Consent Order (Consent Order) is entered into between Complainant the Commissioner of Business Oversight (Commissioner) and Respondents Steven Michael Gabriel and Peacher, Inc. (Respondents) (collectively, the Parties).

I.
Recitals

A. The Commissioner, as head of the Department of Business Oversight (Department), is authorized to administer and enforce the provisions of the Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) (CSL) and the regulations promulgated under title 10 of the California Code of

1 Regulations (Cal. Code Regs., tit.10, § 260.000 et seq.).

2 B. Peacher, Inc. (CRD No. 295662) is a California company formed on November 26,
3 2003, with a principal place of business at 331 Emerald Bay, Laguna Beach, California 92651.
4 Peacher, Inc. (Peacher), has no prior registration as an investment adviser in California or any other
5 state.

6 C. Steven Michael Gabriel (CRD. No. 5181367) (Gabriel) is the owner and operator of
7 Peacher, Inc.

8 D. On December 18, 2018, Peacher submitted an application to the California
9 Department of Business Oversight for Investment Adviser Registration through FINRA’s Investment
10 Adviser Registration Depository (IARD). In the application, Gabriel disclosed the following:

- 11 a. Starting in 2003, Gabriel, through Peacher, Inc., began managing his own personal
12 household assets custodied with the online web platform Interactive Brokers, LLC
13 (CRD No. 36418) (Interactive Brokers).
- 14 b. In October of 2005, Gabriel was solicited by Interactive Brokers and enlisted in
15 the “Friends and Family Adviser” account program, through which he was able to
16 manage, trade and report on the accounts of anywhere between five to fifteen
17 family member and friend accounts through a single master account, for which he
18 charged fees and received compensation. Gabriel believed he was exempt from
19 registration as a California investment adviser through the “Friends and Family
20 Adviser” account program.
- 21 c. Gabriel continued to conduct business as an investment adviser for up to eight
22 California friend and family client accounts through the Interactive Brokers
23 “Friends and Family Adviser” account through April of 2018, for which Peacher
24 and Gabriel have received compensation of at least \$212,632.76.
- 25 d. In April of 2018, Gabriel was informed by Interactive Brokers that he was not
26 exempt from California’s investment adviser certification requirement and that he
27 was not permitted to charge fees on any friend or family accounts, at which time
28 Gabriel ceased investment adviser services and commenced the process of

1 3. Order Levying Administrative Penalty. Peacher agrees to pay an administrative
2 penalty, pursuant to Corporations Code section 25252, subdivision (b), in an amount of \$1,750.00
3 due and payable to the Department within 10 days of execution of his Consent Order. It shall be paid
4 by check made payable to the “Department of Business Oversight,” and mailed to the attention of:
5 Accounting, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California
6 9514. Notice of payment shall be made to Kelly Suk, Counsel, Department of Business Oversight,
7 320 West 4th Street, Suite 750, Sacramento, California 90013 or by email to Kelly.suk@dbo.ca.gov.

8 4. Waiver of Hearing Rights. Peacher and Gabriel acknowledge the Commissioner is
9 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
10 charges contained in this Consent Order. Peacher and Gabriel hereby waives the right to any
11 hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant
12 to the CSL, the California Administrative Procedure Act, the California Code of Civil Procedure, or
13 any other provision of law. Peacher and Gabriel further expressly waive any requirement for the
14 filing of an Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving
15 such rights, Peacher and Gabriel effectively consent to this Consent Order becoming final.

16 5. Full and Final Settlement. The Parties hereby acknowledge and agree that this
17 Consent Order is intended to constitute a full, final and complete resolution of the violations
18 described herein, and that no further proceedings or actions will be brought by the Commissioner in
19 connection with these matters except under the CSL or any other provision of law, excepting
20 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

21 6. Failure to Comply with Consent Order. Peacher and Gabriel agree that if they fail to
22 comply with the terms of this Consent Order, the Commissioner may, in addition to all other
23 available remedies it may invoke under the CSL, summarily suspend or revoke the investment
24 adviser certification of Peacher, Inc., until Peacher and Gabriel are in compliance. Peacher and
25 Gabriel waive any notice and hearing rights to contest such summary suspensions which may be
26 afforded under the CSL, the California Administrative Procedure Act, the California Code of Civil
27 Procedure, or any other provision of law in connection therewith.

28 7. Information Willfully Withheld or Misrepresented. This Consent Order may be

1 rescinded, and the Commissioner may pursue any and all remedies available under law against
2 Peacher and Gabriel if the Commissioner discovers that Peacher or Gabriel knowingly or willfully
3 withheld or misrepresented information used for and relied upon in this Consent Order.

4 8. Future Actions by Commissioner. If Peacher or Gabriel fail to comply with any term
5 of the Consent Order, the Commissioner may institute proceedings for any and all violations
6 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
7 future actions against Peacher or Gabriel, or any of its partners, owners, officers, shareholders,
8 directors, employees or successors for any and all unknown violations of the CSL.

9 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
10 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
11 administrative, civil or criminal brought by that agency against Peacher or Gabriel or any other
12 person based upon any of the activities alleged in this matter or otherwise.

13 10. Headings. The headings to the paragraphs of this Consent Order are inserted for
14 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
15 the provisions hereof.

16 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
17 interest.

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

27 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
28 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.

1 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
2 provision. No waiver by either party of any breach of, or of compliance with, any condition or
3 provision of this Consent Order by the other party will be considered a waiver of any other condition
4 or provision or of the same condition or provision at another time.

5 14. Full Integration. This Consent Order is the final written expression and the complete
6 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
7 between the parties with respect to the subject matter hereof, and supersedes all prior or
8 contemporaneous agreements, negotiations, representations, understandings, and discussions between
9 and among the parties, their respective representatives, and any other person or entity, with respect to
10 the subject matter covered hereby.

11 15. Governing Law. This Consent Order will be governed by and construed in accordance
12 with California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
13 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the
14 maintenance of such action or proceeding in such court.

15 16. Counterparts. This Consent Order may be executed in one or more separate
16 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
17 together constitute a single document.

18 17. Effect Upon Future Proceedings. If Peacher or Gabriel apply for any license, permit
19 or qualification under the Commissioner's current or future jurisdiction, or are the subject of any
20 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall
21 be admitted for the purpose of such application(s) or enforcement proceedings(s).

22 18. Voluntary Agreement. Peacher and Gabriel enter into this Consent Order voluntarily
23 and without coercion and acknowledges that no promises, threats or assurances have been made by
24 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
25 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily
26 and without any duress or undue influence of any kind from any source.

27 19. Signatures. A fax or electronic mail signature shall be deemed the same as an original
28 signature.

1 20. Public Record. Peacher and Gabriel hereby acknowledges that this Consent Order is
2 and will be a matter of public record.

3 21. Effective Date. This Consent Order shall become final and effective when signed by
4 all parties and delivered by the Commissioner's agent via e-mail to Steven M. Gabriel at
5 stevengabriel@me.com.

6 22. Authority to Sign. Each signatory hereto covenants that he possesses all necessary
7 capacity and authority to sign and enter into this Consent Order and undertake the obligations set
8 forth herein.

10 Dated: 8/29/19

MANUEL P. ALVAREZ
Commissioner of Business Oversight

13 By: _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

17 Dated: 8/28/19

STEVEN M. GABRIEL
PEACHER, INC.

20 By: _____

STEVEN M. GABRIEL
Respondent