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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11	In the Matter of:	)	CRD NOs.: 143317 and 2387799
12	THE COMMISSIONER OF BUSINESS	)	ACCUSATION IN SUPPORT OF:
13	OVERSIGHT,)	
14	Complainant,	)	1. ORDER REVOKING THE
15	v.	)	INVESTMENT ADVISER
16	EGATE, LLC; and	)	CERTIFICATE OF EGATE, LLC
17	PAUL HORTON SMITH, SENIOR,	)	2. ORDER BARRING PAUL HORTON
18	Respondents.	)	SMITH, SENIOR FROM ANY
19		)	POSITION OF EMPLOYMENT,
20		)	MANAGEMENT, OR CONTROL OF
21		)	ANY INVESTMENT ADVISER,
22		)	BROKER-DEALER OR COMMODITY
23		)	ADVISER
		)	(Corp. Code, §§ 25232, 25232.1)

24 Manuel P. Alvarez, the Commissioner of Business Oversight of the State of California
25 (Commissioner), alleges and charges as follows:

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I.
Jurisdiction and Venue

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3 1. The Commissioner is authorized to administer and enforce the provisions of the
4 Corporate Securities Law (CSL) of 1968 (Corp. Code, § 25000 et seq.)¹ and the regulations
5 promulgated under California Codes of Regulations (CCR) (Cal. Code of Regs., tit. 10, § 260.000 et
6 seq.)

7 2. This action is brought to revoke the investment adviser certificate of Egate, LLC
8 (Egate) under CSL section 25232, subdivisions (a), (e), and (h); and to bar Paul Horton Smith,
9 Senior (Smith) from any position of employment, management, or control of any investment adviser,
10 broker-dealer, or commodity adviser under CSL section 25232.1.

II.
Statement of Facts

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13 3. An investment adviser owes a fiduciary duty to his or her clients. A licensed
14 investment adviser must comply with various statutes, rules, and regulations in order to maintain his
15 or her license. This fiduciary duty and the statutes, rules, and regulations are designed to protect an
16 investments adviser’s clients and the investing public.

17 4. At all relevant times, Egate was a California limited liability company and located at
18 3637 Arlington Avenue #A, Riverside, California 92506, and was an investment adviser, registered
19 through the Central Registration Depository² (CRD) with the assigned number 143317. On July 11,
20 2007, the Commissioner issued an investment adviser certificate to Egate.

21 5. At all relevant times, Smith was an investment adviser representative, with the
22 assigned CRD number 2387799, and was the managing member and 100-percent owner of Egate.
23 Smith was also licensed with the California Department of Insurance, license number 0B21397, and
24 sole owner of Planning Services, Inc. (Planning Services). Planning Services provided estate
25 planning services to the clients of Egate.

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27 ¹ Unless otherwise indicated, all further statutory references are to the Corporations Code.

28 ² Central Registration Depository (CRD) is a licensing and registration system for the U.S. securities industry and regulators. CRD system contains the registration records, qualification, employment, and disclosure histories of active registered individuals. CRD system facilitates the processing and payment of registration-related fees such as form filings, fingerprint submissions, qualification exams, and continuing education sessions.

1 commissioner which is or has been necessary for the protection of any
2 investor. (Footnotes omitted)

3 . . .
4 (h) Has violated any provision of this division [.]

5 12. CSL section 25232.1 provides, in relevant part:

6 The commissioner may, after appropriate notice and opportunity for
7 hearing, by order censure, or suspend for a period not exceeding 12
8 months, or bar from any position of employment, management or control
9 of any investment adviser, broker-dealer or commodity adviser, any
officer, . . . is in the public interest and that the person has committed
any act or omission enumerated in subdivision (a), (e), (f), or (g) of
Section 25232 [.]

10 **A. First Cause for Revocation and Bar: Egate and Smith Forged Client Signatures in**
11 **Violation of CSL Sections 25235, 25238, 25404, and CCR, title 10, section 260.238.**

12 13. Paragraphs 1-12 are hereby realleged and incorporated herein by reference as if set
13 forth in their entirety.

14 14. CSL section 25235, provides, in relevant part that:

15 It is unlawful for any investment adviser, directly or indirectly in this
16 state . . .

17 (b) To engage in any transaction, practice, or course of business which
operates or would operate as a fraud or deceit upon any client or
prospective client.

18 . . .
19 (d) To engage in any act, practice, or course of business which is
fraudulent, deceptive, or manipulative [.]

20 15. CSL section 25238 provides, in relevant part:

21 No investment adviser licensed under this chapter and no natural
22 person associated with the investment adviser shall engage in . . .
23 investment advisory activities, in this state in contradiction of such
24 rules as the commissioner may proscribe designed to promote fair,
equitable, and ethical principles.

25 16. CCR, title 10, section 260.238 provides, in relevant part:

26 The following activities do not promote “fair, equitable or ethical
27 principles,” as that phrase is used in Section 25238 of the Code:

28 . . .

1 (o) Making any untrue statement of a material fact or omitting a
2 statement of material fact necessary in order to make the statements
3 made, in light of the circumstances under which they are made, not
misleading in the solicitation of advisory clients.

4 (Cal. Code Regs., tit. 10, § 260.238, subd. (o))

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6 17. CSL section 25404, subdivision (b) provides, in relevant part:

7 (b) It is unlawful for any person to knowingly make an untrue
8 statement to the commissioner . . .

9 **Egate Client #1 – T.N.**

10 18. On or around December 10, 2019, the Department interviewed T.N., a former client
11 of Egate. T.N.’s advisory file was one of the sampled investment accounts retrieved by the
12 examiner. T.N. told the Department that he never received a copy of Egate’s Investment Advisory
13 Contract (I.A. contract) and that his signature was forged. Respondents knowingly made an untrue
14 statement to the Commissioner when they submitted T.N.’s “signed” I.A. contract dated September
15 14, 2017.

16 **Egate Client #2 – R.N.**

17 19. On or around December 10, 2019, the Department interviewed R.N., a former client
18 of Egate. R.N.’s advisory file was one of the sampled investment accounts retrieved by the
19 examiner. R.N. told the Department she never received a copy of Egate’s I.A. contract and that her
20 signature was forged. Respondents knowingly made an untrue statement to the Commissioner when
21 they submitted R.N.’s “signed” I.A. contract dated September 14, 2017.

22 **Egate Client #3 – L.D.**

23 20. On or around December 17, 2019, the Department interviewed L.D., a client of Egate.
24 L.D.’s advisory file was one of the sampled investment accounts retrieved by the examiner. L.D.
25 told the Department that his signature was forged in Egate’s I.A. contract. Respondents knowingly
26 made an untrue statement to the Commissioner when they submitted L.D.’s “signed” I.A. contract
27 dated September 16, 2017.

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1 **B. Second Cause for Revocation and Bar: Egate and Smith Breached Their Fiduciary**
2 **Duties Guaranteeing a Client a Specific Result and Failing to Follow Client Instructions**
3 **in Violation of CSL Sections 25235, 25238, and CCR, title 10, section 260.238.**

4 21. Paragraphs 1-20 are hereby realleged and incorporated herein by reference as if set
5 forth in their entirety.

6 22. CCR, title 10, section 260.238 provides, in relevant part:

7 The following activities do not promote “fair, equitable or ethical
8 principles,” as that phrase is used in Section 25238 of the Code:

9 . . .

10 (l) Guaranteeing a client that a specific result will be achieved (e.g., a
11 gain or no loss) as a result of the advice which will be rendered.

12 . . .

13 (o) Making any untrue statement of a material fact or omitting a
14 statement of material fact necessary in order to make the statements
15 made, in light of the circumstances under which they are made, not
16 misleading in the solicitation of advisory clients.

17 (Cal. Code Regs., tit. 10, § 260.238, subds. (l), (o))

18 23. From September 2018 through January 2020, Respondents failed to follow their
19 clients’ instructions. When clients inquired about their requests, Respondents misrepresented to
20 these clients that these requests were completed. But in reality – Respondents did not nothing.

21 24. On or around December 10, 2018, T.N. emailed Respondents regarding Smith’s
22 recommendation to transfer funds from Fidelity Investments (Fidelity) to Pacific Life Insurance
23 Company (Pacific Life). T.N. asked Smith if he thought his money would be “safe” with Pacific
24 Life. Respondents told T.N. and R.N. to transfer 50% of their income from Fidelity to Pacific Life
25 because their money was “guaranteed” to be safe.

26 25. On or around December 13, 2018, T.N. signed a fixed annuity with Pacific Life,
27 contract number FX18012306. On or around April 13, 2019, T.N. signed a withdrawal request for
28 Respondents to submit to Pacific Life on T.N.’s behalf.

29 26. On or around December 13, 2018, R.N. signed a fixed annuity with Pacific Life,
30 contract number FX18012326. On or around April 13, 2019, R.N. signed a withdrawal request for
31 Respondents to submit to Pacific Life on R.N.’s behalf.

1 27. On or around June 6, 2019, T.N. sent an email to Respondents that he and R.N. have
2 not received any monetary disbursement from Pacific Life and that R.N. did not receive her
3 disbursements from Fidelity.

4 28. On or around June 11, 2019, T.N. sent another email to Respondents that he and his
5 wife were not receiving their monthly income – more than a week had passed and T.N. still did not
6 hear from Respondents.

7 29. On or around June 19, 2019, T.N. sent an email to Respondents that he confirmed
8 with Pacific Life and Fidelity that no withdrawal requests have been filed on their accounts. Smith
9 said he thought these issues were taken care of.

10 30. On or around June 20, 2019, Smith sent T.N. an email that reassured T.N. that
11 Respondents would send T.N.’s and R.N.’s withdrawal requests immediately to Pacific Life.

12 31. On or around January 24, 2020, T.N. sent Respondents a letter informing them that
13 T.N. and R.N. ended their investment adviser-client relationship. T.N. confirmed with Pacific Life
14 that it never received any withdrawal requests from Respondents for T.N.’s and R.N.’s accounts.

15 **C. Third Cause for Revocation and Bar: Egate and Smith Failed to Maintain Books and**
16 **Records in Violation of CSL Section 25241 and CCR, title 10, section 260.241.3.**

17 32. Paragraphs 1-31 are hereby realleged and incorporated herein by reference as if set
18 forth in their entirety.

19 33. On or around August 5, 2014, through the Department’s examiners, the
20 Commissioner conducted a regulatory examination of Egate (2014 examination).

21 34. On or around September 26, 2014, the Department sent a ROE to Respondents that
22 highlighted the violations found in the 2014 examination. Specifically, Respondents did not
23 maintain accurate financial statements, client records, and general and auxiliary ledgers reflecting
24 asset, liability, reserve, capital, income and expense accounts.

25 35. As referenced in paragraphs 3-9, Respondents again failed to maintain accurate books
26 and records in its November 2018 examination. To date, Respondent has not submitted its bank
27 reconciliation, balance sheet, income statement and general ledger to the Commissioner.

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1 **D. Fourth Cause for Revocation and Bar: Egate and Smith Made False Statements to the**
2 **Commissioner in Violation of CSL Section 25404, subdivision (b).**

3 36. Paragraphs 1-35 are hereby realleged and incorporated herein by reference as if set
4 forth in their entirety.

5 37. The Department's investigation showed Smith failed to disclose an outstanding
6 judgement of \$5,903.04 filed on December 26, 2017, in the matter of *Thomas F. Merrick Trustee of*
7 *the Merrick Family Trust and Majorie S. Snell Trust 2A v. Planning Services, Inc., and Paul H.*
8 *Smith, Sr. (Merrick Trustee v. Smith, et al.)*, Case No. RIC1709387, Superior Court of California,
9 County of Riverside.

10 38. The outstanding judgment of \$5,903.04 from *Merrick Trustee v. Smith, et al.* was not
11 disclosed as required in the following reports filed on or around May 16, 2019: (1) Egate's Form
12 Adv; (2) Form ADV Part 2B – Smith's Individual Disclosure Brochure; and (3) Smith's Form U-4.

13 39. On or around November 5, 2008, an Abstract of Judgment was issued against Smith
14 in the amount of \$128,000.00 in the matter of *Larry J. O'Shea v. Paul H. Smith Sr. and Planning*
15 *Services, Inc. (O'Shea v. Smith, et al.)*, Case No. RIC465703, Superior Court of California, County
16 of Riverside.

17 40. Respondents disclosed in Egate's Form ADV filed on or around May 16, 2019 that an
18 outstanding judgment of \$78,000.00 remained in *O'Shea v. Smith*, but Smith misrepresented in his
19 Form ADV Part 2B and claimed an outstanding lien from April 2009 has been paid and dismissed.

20 41. Respondents also did not disclose the outstanding judgment of \$78,000.00 from
21 *O'Shea v. Smith* in Smith's Form U-4 filed on or around May 16, 2019.

22 **IV.**
23 **Prayer**

24 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
25 to revoke the investment adviser certificate of Egate, LLC pursuant to CSL sections 25232,
26 subdivisions (a), (e) and (h); and to bar Paul Horton Smith, Senior from any position of employment,
27 management, or control of any investment adviser, broker-dealer, or commodity
28 adviser pursuant to CSL section 25232.1.

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WHEREFORE, IT IS PRAYED that Egate, LLC’s investment adviser certificate be revoked under CSL section 25232, subdivisions (a), (e) and (h); and that Paul Horton Smith, Senior be barred from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to CSL section 25232.1 for acts committed as specified under CSL section 25232.

Dated February 18, 2020
San Diego, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
Vanessa T. Lu
Counsel
Enforcement Division