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7 Attorneys for Complainant

8  
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:	) OAH CASE NO. 2020070068
12 THE COMMISSIONER OF FINANCIAL	) AGENCY CASE NO. CRD NO. 284406
13 PROTECTION AND INNOVATION,	) SETTLEMENT AGREEMENT
14 Complainant,	)
15 v.	) DATE: December 14-15, 2020
16 JEFFREY C. BORNEMAN, an individual; And	) TIME: 9:00 a.m.
17 RAMPART PORTFOLIO PARTNERS, LLC,	) LOCATION: VIDEO OR TELEPHONE
18 an entity,	) CONFERENCE
19 Respondents.	)

20  
21 The Commissioner of Financial Protection and Innovation (Commissioner) and Respondents,  
22 Jeffrey C. Borneman (Borneman), and Rampart Portfolio Partners, LLC, (RPP) (collectively,  
23 Respondents) enter into this Settlement Agreement (Settlement Agreement) with respect to the  
24 following facts:

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**I.**

**Recitals**

A. RPP is an investment adviser licensed by the Commissioner (Central Registration Depository (CRD) No. 284406) pursuant to the Corporate Securities Law of 1968 (CSL) as set forth in Corporations Code section 25000 et seq.,<sup>1</sup> and accompanying regulations in California Code of Regulations, title 10, section 260.000 et seq.

B. RPP is a Wyoming limited liability company incorporated on February 7, 2014, with its principal place of business located at 5669 Saturn Street, Los Angeles, California 90019.

C. Borneman is, and was, at all times herein, the owner and chief executive officer of RPP. Borneman has been licensed by the Commissioner since August 18, 2016, as an investment adviser representative (CRD No. 1519729).

D. The Commissioner is authorized to administer and enforce the provisions of the CSL, and rules adopted thereunder.

E. On or about June 7, 2019, the Commissioner’s examiner commenced a routine regulatory desk examination of the books and records of Respondents maintained by the Commissioner, including a “Form ADV — Uniform Application Investment Adviser Registration and Report by Exempt Reporting Advisers,” that Respondents filed with the Financial Industry Regulatory Authority, Inc. (FINRA) on or about March 3, 2017 (ADV). Respondents’ March 3, 2017 ADV disclosed Respondents had no clients or assets under their management.

F. On June 13, 2019, the Commissioner’s examiner contacted Borneman by telephone at his telephone number on record with the Commissioner, to schedule an appointment for a regulatory field examination of Respondents’ books and records at Respondents’ principal place of business located at 5669 Saturn Street, Los Angeles, California 90019.

G. During the Commissioner’s examiner’s telephone conversation with Borneman on June 13, 2019, Borneman represented that Respondents engage in investment advisory activities that include the following:

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<sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

- 1           i. Respondents have two clients with a current estimate of \$500,000.00 discretionary
- 2           asset under their management;
- 3           ii. Clients are billed monthly in arrears for advisory services;
- 4           iii. Respondents do not participate or manage any private or hedge fund; and
- 5           iv. Respondents use an interactive broker as their custodian.

6           H. During the period July 14, 2019 to at least August 7, 2019, the Commissioner’s  
7 examiner made several attempts through verbal and written communications, to schedule a field  
8 regulatory examination of Respondents’ books and records pursuant to section 25241, subdivisions  
9 (a) and (c). The Commissioner’s examiner sent at least three written notices to Respondents  
10 confirming mutually agreed dates and times the Commissioner and Respondents scheduled for a  
11 field regulatory examination of Respondents’ books and records. Respondents failed to keep to the  
12 appointments or produce all the documents demanded by the Commissioner’s examiner for the  
13 regulatory examination. On at least two occasions, the Commissioner’s examiner granted  
14 Respondents extensions of time to reply to the Commissioner’s demand to conduct a regulatory field  
15 examination of Respondents. Despite the extensions, Respondents failed to submit to a regulatory  
16 field examination.

17           I. On May 7, 2020, the Commissioner issued an Order to Discontinue Violations of the  
18 Corporate Securities Law of 1968 and Assess Penalties Pursuant to Corporations Code Sections  
19 25249 And 25252. (Collectively Enforcement Action)

20           J. Respondents timely filed their Notice of Defense with the Commissioner on August  
21 7, 2020 and this matter is currently set for a two-day hearing on December 14-15, 2020, at 9:00 a.m.,  
22 before the Office of Administrative Hearings, Los Angeles.

23           NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set  
24 forth herein, the parties agree as follows:

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**II.**

**Terms and Conditions**

1. Purpose. The Settlement Agreement resolves the Enforcement Action before the Commissioner described above in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes and provisions of the CSL.

2. Acknowledgment. Respondents acknowledge that the Commissioner issued and served Respondents with the Enforcement Action in which the Commissioner alleged that Respondents (i) failed to properly maintain books and records or submit to a reasonable examination by the Commissioner, in violation of Corporations Code section 25241 subdivisions (a) and (c), and California Code of Regulations, title 10, section 260.241.3, subdivision (a); and (ii) failed to file an annual updating amendment to information contained in Respondents’ application for a certificate, in violation of California Code of Regulations, title 10, section 260.241.4, subdivisions (a), (d), and (e).

3. Order to Discontinue Violations. Respondents hereby agree that in accordance with Corporations Code section 25249, they will immediately discontinue the violations set forth below:

- a) Corporations Code section 25241 subdivisions (a) and (c), and California Code of Regulations, title 10, section 260.241.3, subdivision (a) by failing to properly maintain books and records or submit to a reasonable examination by the Commissioner.
- b) California Code of Regulations, title 10, section 260.241.4, subdivisions (a), (d), and (e) by failing to file an annual updating amendment to information contained in Respondents’ application for a certificate.

4. Production of Books and Records. Respondents shall submit to the Commissioner within 60 days from the effective date of this Settlement Agreement, as such date is defined in Paragraph 24, books and records of Respondents requested in the Commissioner’s demand letter dated July 1, 2019, including the following:

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Financial Books and Records.

- Balance Sheet as of May 31, 2019;
- Income Statement (Profit & Loss) for the period January 1, 2019 to May 31, 2019;
- General Ledger for the period January 1, 2019 to May 31, 2019;
- Monthly bank statements and reconciliations of all business accounts for the month of May 31, 2019;
- Monthly brokerage statements and reconciliations of all business accounts for the month of May 31, 2019; and
- Minimum Financial Requirement computations for the month of May 31, 2019.

Advisory Agreements

- A copy of the most current client agreement for asset management services;
- A copy of the most current client agreement for financial planning services; and
- Copies of all other contract types used for any services not addressed in the first two bullet points, including sub-advisory, third party, solicitor agreements).

Client and Agent Lists

- Managed account clients, including client name, account number, custodian, account type, date of inception, client address including state, phone number and current account balance as of May 31, 2019; and
- Financial planning clients: name of all clients that have received financial planning services over the last twelve-month period, date of engagement, date plan was completed, and client address information.

Other Advisory Services

- A list of advisory clients for all additional advisory services not reflected in the previous two bullet points; and

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- Firm and personal brokerage accounts: List of all brokerage accounts held in the name of the firm, the firm's personnel, and immediate family members (spouse, children), including account number, custodian, account type and account balance as of: May 31, 2019.

Administration

- Articles of Incorporation/ Articles of Organization / Certificate of Limited Partnership.

LLC Operating Agreement I LP Partnership Agreement

- Most current minutes of the last board meeting;
- Advertising file, including all forms of current advertising used by the firm;
- Correspondence file;
- Complaint file; and
- Business Continuity Plan.

Personnel

- A form listing all of the firm's personnel along with job descriptions including all advisory duties;
- All officers, directors, owners, members and partners and their ownership percentage;
- All associated persons (any person involved in providing investment advice);
- All solicitors used by the firm;
- All other personnel; and
- All personnel terminated in last 12 months and the reason for termination.

5. Failure to Produce Books and Records: Respondents agree that if they fail to meet the deadline for complying with the Commissioner's demand for books and records set forth in Paragraph 4, Borneman's license CRD No. 1519729 and RPP's license CRD No. 284406 shall be revoked. Respondents hereby waive any notice and hearing right to contest the revocation resulting from the failure to comply with Paragraph 4 above which may be afforded under the Corporate

1 Securities Laws, the Administrative Procedure Act, the Code of Civil Procedure, or any other legal  
2 provisions.

3         6.       Administrative Penalty. Respondents shall pay an administrative penalty to the  
4 Commissioner in the amount of \$2,000.00, which shall be due and payable on the effective date of  
5 this Settlement Agreement. The administrative penalty must be made payable in the form of a  
6 cashier’s check or Automated Clearing House deposit to the Department of Financial Protection and  
7 Innovation and transmitted to the attention of Accounting – Litigation, at the Department of  
8 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2306.  
9 Notice of the payment must be concurrently sent to Uche Enenwali, Senior Counsel, Department of  
10 Financial Protection and Innovation, 320 W. Fourth Street, Suite 750, Los Angeles, California  
11 90013.

12         7.       Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is  
13 ready, willing and able to proceed with the administrative enforcement action described above in  
14 Paragraphs A-J, and Respondents hereby waive the right to a hearing, and to any reconsideration,  
15 appeal, or other right to review which may be afforded pursuant to the CSL; the California  
16 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law;  
17 and by waiving such rights, Respondents effectively consent to this Agreement becoming final.

18         8.       Failure to Comply with Settlement Agreement. Respondents acknowledge and agree  
19 that if they fail to comply with the terms of this Settlement Agreement, the Commissioner may, in  
20 addition to all other available remedies he may invoke under the CSL, summarily suspend/revoke  
21 Borneman’s license CRD No. 1519729, and RPP’s license CRD No. 284406 until Borneman and  
22 Respondents are in compliance. Respondents waive any notice and hearing rights to contest such  
23 summary suspensions which may be afforded under the CSL, the California Administrative  
24 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection  
25 therewith.

26         9.       Information Willfully Withheld or Misrepresented. The Settlement Agreement may  
27 be revoked, and the Commissioner may pursue any and all remedies under the CSL against  
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1 Respondents if the Commissioner discovers that Respondents knowingly or willfully withheld  
2 information use for and relied upon in the Settlement Agreement.

3 10. Future Actions by Commissioner. If Respondents fail to comply with any terms of the  
4 Settlement Agreement, the Commissioner may institute proceedings for any and all violations  
5 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring  
6 any future actions against Respondents, or any of their partners, owners, officers, shareholders,  
7 directors, employees or successors for any and all unknown violations of the CSL.

8 11. Assisting Other Agencies. The parties further acknowledge and agree that nothing in  
9 the Settlement Agreement shall limit the Commissioner’s ability to assist any other agency (city,  
10 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such  
11 agency against Respondents or any other person based upon any of the activities alleged in this  
12 matter or otherwise.

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

16 13. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or  
17 successors in interest.

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

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



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

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

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

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

22 20. Voluntary Agreement. Respondents enter into this Settlement Agreement 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 Settlement Agreement. The parties  
25 each represent and acknowledge that he, she or it is executing this Agreement completely voluntarily  
26 and without any duress or undue influence of any kind from any source.

27 21. Notice. Any notices required under the Settlement Agreement shall be provided to  
28 each party at the following addresses:



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

Dated: December 14, 2020

MANUEL P. ALVAREZ  
Commissioner of Financial Protection and Innovation

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: December 14, 2020

By \_\_\_\_\_  
JEFFREY C. BORNEMAN, CEO  
Rampart Portfolio Partners, LLC, Respondents.

