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8

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

<p>11 In the Matter of:</p> <p>12 THE COMMISSIONER OF THE 13 DEPARTMENT OF FINANCIAL 14 PROTECTION AND INNOVATION,</p> <p>15 Complainant,</p> <p>16 v.</p> <p>17 MARK RANDALL PETERS, an individual</p> <p>18 Respondent.</p>	<p>CRD NOS.: 149453 and 4182580</p> <p>ACCUSATION AND CLAIM FOR ANCILLARY RELIEF</p>
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19 Christopher S. Shultz, Acting Commissioner of the Department of Financial Protection and
20 Innovation (Department), acting to protect the public, alleges and charges as follows:

21 **I.**
22 **Jurisdiction**

- 23 1. The Commissioner brings this action pursuant to the provisions of the Corporate
24 Securities Law of 1968 (CSL) (Corporations Code section 25000 et seq.), sections 25232, 25232.1,
25 and 25254 and the rules and regulations promulgated thereunder (CCR) (Code of Regulations, title
26 10, section 250.9 et seq.).
- 27 2. The Commissioner administers and enforces the provisions of the CSL and the CCR.
- 28 3. Mark Randall Peters (Peters) (CRD Nos. 149453 and 4182580) holds a valid

1 investment adviser certificate issued by the Commissioner since 2009, pursuant to Corporations
2 Code section 25230. Peters maintains a business address in Benicia, California.

3 **II.**

4 **Statement of Facts**

5 **A. Respondent Peters Recommended Unsuitable Investments and Borrowed Client Money**

6 4. As an investment adviser, Peter provides various services to the public including
7 financial planning services.

8 5. In December 2018, Peters recommended that an advisory client invest in ENS
9 Commune, LLC. Based on Peters' recommendation, the client invested \$200,000.00 in ENS
10 Commune, LLC. Pursuant to the investment, the client was promised an annual interest rate of 8%
11 and that the client's principal investment would be return by December 1, 2019. If ENS Commune,
12 LLC and Peters were unsuccessful in managing the investment, the client would lose his principal
13 investment.

14 6. ENS Commune, LLC is a company controlled by Peters. ENS Commune, LLC,
15 formed in July 2014, had less than four years of operating history when Peters recommended that the
16 advisory client invest in December 2018. Further, ENS Commune, LLC has not generated any
17 business itself. Instead, ENS Commune, LLC was used by Peters as a passthrough entity for Peter's
18 personal compensation.

19 7. In August 2018, the advisory client completed a written investment risk assessment
20 indicating that the client's money should be managed conservatively or moderately.

21 8. To date, Peters has repaid approximately \$22,667.00 to the advisory clients on the
22 investment made in ENS Commune, LLC. However, as of June 1, 2021, the client is still owed
23 approximately \$217,334.00 in principal and interest on the investment.

24 9. The advisory client is not a licensed securities broker-dealer, an affiliate of Peters'
25 advisory business, or a financial institution.

26 **B. Respondent Peters Failed to Comply with Reporting and Recordkeeping Requirements**

27 10. Peters had two liens filed against him, in October 2014 a lien for \$6,316.00 and
28 March 2015 a lien for \$3,583.00. At all relevant times, those liens were unsatisfied and unpaid by

1 Peters.

2 11. From the time Peters was licensed as an investment adviser until August 2019, Peters
3 failed to disclose the two liens in an investment adviser licensing and disclosure document, called
4 Form ADV.

5 12. Also, Peters failed to timely file an annual updating amendment to Form ADV for
6 2018 within 90 days of his fiscal year end, in December 2018.

7 13. To be timely, Peters needed to file an annual updating amendment to Form ADV for
8 2018 by March 31, 2019. Peters did not file an annual updating amendment to Form ADV until
9 July 9, 2019.

10 14. Lastly, Peters failed to maintain books and records required as part of his investment
11 advisory business, including a general ledger, trial balance, balance sheet, and income statement.

12 15. During an examination, Department staff made multiple attempts to obtain these
13 books and records from Peters. To date, Peters has failed to maintain or provide records to the
14 Department.

15 **III.**

16 **Respondent Peters’ Investment Adviser Certificate Should be Revoked**

17 16. Peters’ investment adviser certificate should be revoked because Peters committed
18 numerous violations of the CSL and the CCR. The violations committed by Peters were “willful.”

19 17. CSL section 25232 provides, in part, that:

20 The commissioner may, after appropriate notice and opportunity for hearing, by order
21 . . . suspend for a period not exceeding 12 months or revoke the certificate of, an
22 investment adviser, if the commissioner finds that the . . . suspension, or revocation is
23 in the public interest and that the investment adviser, whether prior or subsequent to
24 becoming such, or any partner, officer or director thereof or any person performing
similar functions or any person directly or indirectly controlling the investment
adviser, whether prior or subsequent to becoming such, or any employee of the
investment adviser while so employed has done any of the following:

25 . . .
26 (e) Has willfully violated any provision of . . . Title 4 (commencing with Section 25000)
[CSL] . . . or of any rule or regulation [CCR] under any of those statutes.

27 . . .
28 (h) Has violated any provision of this division [commencing with CSL section 25000 et seq.]
or the rules thereunder or, in the case of an applicant only, any similar regulatory scheme of
the State of California or foreign jurisdiction.

1 (Corp. Code, § 25232.)

2 18. Peters willfully violated provisions of the CSL and CCR by: (a) recommending an
3 unsuitable investment to an advisory client; (b) borrowing money from a client; (c) failing to keep
4 Form ADV updated; (d) failing to timely file an annual updating amendment to Form ADV; (e)
5 failing to keep books and records that are required to be maintained; and (f) engaging in a fraud on a
6 client.

7 19. Alternatively, Peters’ investment adviser certificate should be revoked because Peters
8 committed non-willful violations of the CSL and CCR.

9 **A. Respondent Peters Willfully Recommended an Unsuitable Investment to a Client**

10 20. CSL section 25238 provides, in part, that:

11 No investment adviser licensed under this chapter and no natural
12 person associated with the investment adviser shall engage in
13 investment advisory activities, or attempt to engage in investment
14 advisory activities, in this state in contradiction of such rules as the
15 commissioner may prescribe designed to promote fair, equitable and
16 ethical principles.

15 (Corp. Code, § 25238.)

16 21. CCR section 260.238 provides, in part, that:

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

19 . . .

20 (a) Recommending to a client to whom investment supervisory,
21 management or consulting services are provided the purchase, sale
22 or exchange of any security without reasonable grounds to believe
23 that the recommendation is suitable for the client on the basis of
24 information furnished by the client after reasonable inquiry
25 concerning the client's investment objectives, financial situation and
26 needs, and any other information known or acquired by the adviser
27 after reasonable examination of such of the client's records as may
28 be provided to the adviser.

25 (Cal. Code Regs., tit. 10, § 260.238, subd. (a).)

26 22. Peters provides various services to the public including financial planning services.

27 23. Peters recommended that an advisory client purchase an investment in ENS
28 Commune, LLC.

1 24. The investment in ENS Commune, LLC is a security. By investing money with ENS
2 Commune, LLC, the advisory client expected to receive an annual interest rate of 8% on the
3 investment based on the efforts of ENS Commune, LLC and Peters. If ENS Commune, LLC and
4 Peters were unsuccessful in managing the investment, the client would lose his principal investment.

5 25. The investment in ENS Commune, LLC was not suitable for the advisory client. ENS
6 Commune, LLC had less than four years of operating history when Peters recommended that the
7 client invest. Further, ENS Commune, LLC has not generated any business itself. Instead, ENS
8 Commune, LLC was used by Peters as a passthrough entity.

9 26. Peters had no reasonable grounds to believe the investment in ENS Commune, LLC
10 was suitable for the advisory client. The client completed a written investment risk assessment
11 indicating that the client’s money should be managed conservatively or moderately.

12 27. Peters recommended the ENS Commune, LLC investment to his advisory client with
13 a purpose or willingness to commit the act, or make the omission referred to.

14 28. Therefore, Peters willfully violated CSL section 25238 and CCR section 260.238, by
15 recommending an unsuitable investment to an advisory client.

16 **B. Respondent Peters Willfully Borrowed Money from an Advisory Client**

17 29. As stated above, CSL section 25238 provides, in part, that no investment adviser and
18 no natural person associated with the investment adviser shall engage in investment advisory
19 activities, or attempt to engage in investment advisory activities, in contradiction of rules designed to
20 promote fair, equitable and ethical principles. (Corp. Code, § 25238.)

21 30. As stated above, CCR section 260.238 provides, in part, that:

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

24 . . .

25 (f) Borrowing money or securities from a client unless the client is a
26 broker-dealer, an affiliate of the adviser, or a financial institution
27 engaged in the business of loaning funds or securities.

28 (Cal. Code Regs., tit. 10, § 260.238, subd. (f).)

 31. Based on Peters’ recommendation, an advisory client invested \$200,000.00 in ENS
Commune, LLC and was promised an annual interest rate of 8% on this investment.

1 32. ENS Commune, LLC is a company controlled by Peters. ENS Commune, LLC was
2 used by Peters as a passthrough entity for Peter’s personal compensation.

3 33. As of June 1, 2021, the advisory client is owed approximately \$217,334.00 in
4 principal and interest by Peters.

5 34. The advisory client is not a licensed securities broker-dealer, an affiliate of Peters’
6 advisory business, or a financial institution.

7 35. Peters borrowed money from the advisory client with a purpose or willingness to
8 commit the act, or make the omission referred to.

9 36. Therefore, Peters willfully violated CSL section 25238 and CCR section 260.238, by
10 borrowing money from a client who was not a broker-dealer, an affiliate of Peters, or a financial
11 institution.

12 **C. Respondent Peters Willfully Failed to Keep Form ADV Updated**

13 37. CSL section 25241 provides, in part, that:

14 (a) Every . . . investment adviser licensed under Section 25230 shall
15 make and keep accounts, correspondence, memorandums, papers,
16 books, and other records and shall file financial and other reports as
 the commissioner by rule requires.

17 (Corp. Code, § 25241, subd. (a).)

18 38. CCR section 260.241.4 provides, in part, that:

19 (a) Each . . . licensed investment adviser shall, upon any change in the
20 information contained in its application for a certificate (other than
21 financial information contained therein) promptly file an amendment
 to such application setting forth the changed information.

22 . . .
23 (d) A licensed investment adviser shall file changed information
24 contained in its Form ADV with the Investment Adviser Registration
 Depository (“IARD”) in accordance with its procedures for
 transmission to the Commissioner.

25 (Cal. Code Regs., tit. 10, § 260.241.4, subds. (a) and (d).)

26 39. IARD guidance requires that investment advisers maintain updated information in
27 Form ADV. Any change to the information in Form ADV must be updated “promptly” by filing an
28 amendment to Form ADV. (General Instructions of Form ADV, pages 2 through 4.)

1 40. Peters had two liens filed against him, in October 2014 and March 2015. At all
2 relevant times, those liens were unsatisfied and unpaid by Peters.

3 41. From the time Peters was licensed as an investment adviser until August 2019, Peters
4 failed to disclose the two liens in Form ADV.

5 42. Peters' failure to disclose the two liens was done with a purpose or willingness to
6 commit the act, or make the omission referred to.

7 43. Therefore, Peters willfully violated CSL section 25241 and CCR section 260.241.4,
8 by failing to keep information in Form ADV updated.

9 **D. Respondent Peters Willfully Failed to Timely File an Annual Amendment to Form ADV**

10 44. As stated above, CSL section 25241 provides, in part, that an investment adviser shall
11 file reports as the Commissioner by regulation requires.

12 45. CCR section 260.241.4 provides, in part, that:

13 (e) A licensed investment adviser shall file an annual updating
14 amendment, in accordance with the instruction in Form ADV, with
15 IARD in accordance with its procedures for transmission to the
16 Commissioner within ninety (90) days of the end of the investment
17 adviser's fiscal year.

18 (Cal. Code Regs., tit. 10, § 260.241.4, subds. (e).)

19 46. The fiscal year end for Peters' investment adviser business is December.

20 47. Peters failed to timely file an annual updating amendment to Form ADV for 2018
21 within 90 days of his fiscal year end.

22 48. To be timely, Peters needed to file an annual updating amendment to Form ADV for
23 2018 by March 31, 2019. However, Peters did not file an annual updating amendment to Form ADV
24 until July 9, 2019.

25 49. Peters' failure to timely file an annual updating amendment to Form ADV was done
26 with a purpose or willingness to commit the act, or make the omission referred to.

27 50. Therefore, Peters willfully violated CSL section 25241 and CCR section 260.241.4,
28 by failing to timely file an annual updating amendment to Form ADV for 2018.

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1 **E. Respondent Peters Willfully Failed to Keep Books and Records**

2 51. As stated above, CSL section 25241 requires an investment adviser to make and keep
3 books and records related to their business.

4 52. CCR section 260.241.3 provides, in part, that:

5 (a) Every licensed investment adviser shall make and keep true,
6 accurate and current the following books and records relating to such
7 person's investment advisory business:

8 (1) A journal or journals, including cash receipts and disbursements
9 records, and any other records of original entry forming the basis of
10 entries in any ledger.

11 . . .

12 (6) All trial balances, financial statements, worksheets that contain
13 computations of minimum financial requirements required under
14 Section 260.237.2, of these rules, and internal audit working papers
15 relating to the business of such investment adviser.

16 (Cal. Code Regs., tit. 10, § 260.241.3, subds. (a)(1) and (a)(6).)

17 53. Based on the above sections of the CSL and CCR, Peters is required to make and
18 keep books and records, including the following: (a) balance sheets; (b) income statements; (c)
19 general ledger; and (d) trial balance.

20 54. During an examination, Department staff made multiple attempts to obtain these
21 books and records from Peters. To date, Peters has failed to maintain or provide required records to
22 the Department.

23 55. Peters' failure to keep these books and records was done with a purpose or
24 willingness to commit the act, or make the omission referred to.

25 56. Therefore, Peters willfully violated CSL section 25241 and CCR section 260.241.3 by
26 failing to keep books and records that are required to be maintained.

27 **F. Respondent Peters Willfully Engaged in a Fraud on a Client**

28 57. CSL section 25235 provides, in part, that:

It is unlawful for any investment adviser, directly or indirectly, in this
state:

(a) To employ any device, scheme, or artifice to defraud any client or
prospective client.

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(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.

(Corp. Code, § 25235, subs. (a) and (b).)

58. As stated above, Peters recommended that an advisory client invest money in an unsuitable investment, ENS Commune, LLC, which is controlled by Peters.

59. Pursuant to the terms of the investment, the client was promised 8% interest and return of the principal investment within a year.

60. Peters has made multiple promises and representations that he would repay the money owed to the advisory client.

61. As of June 1, 2021, Peters owes the advisory client approximately \$217,334.00 in principal and interest.

62. The above conduct was done with a purpose or willingness to commit the act, or make the omission referred to.

63. Based on this and other conduct, Peters willfully violated CSL section 25235, by engaging in a fraud on a client.

64. Based on the foregoing, Peters committed acts or omissions enumerated in CSL section 25232, subdivisions (e), because Peters “willfully” violated provisions of the CSL and CCR. As a result of these acts or omissions, Peters’ investment adviser certificate should be revoked.

G. Respondents Committed Non-Willful Violations of the CSL and CCR

65. Unlike subdivision (e) of CSL section 25232, which requires that violations are “willful” in order to revoke an investment adviser certificate, subdivision (h) of CSL section 25232 does not require that conduct be willful in order to revoke an investment adviser’s certificate.

66. As stated above, Peters violated various provisions of the CSL and CCR by: (a) recommending an unsuitable investment to an advisory client; (b) borrowing money from a client; (c) failing to keep Form ADV updated; (d) failing to timely file an annual updating amendment to Form ADV; (e) failing to keep books and records that are required to be maintained; and (f) engaging in a fraud on a client.

1 74. The Commissioner brings the instant action pursuant to CSL, Part 3, sections 25232
 2 and 25232.1, based on Peter's acts, omissions, and violations.

3 75. The advisory client who invested with Peters and ENS Commune, LLC is entitled to
 4 restitution of the money invested, plus interest thereon, in an amount of at least \$217,334.00, or
 5 according to proof, based on these acts, omissions, and violations.

6 **VI.**

7 **Public Interest**

8 76. Based on the foregoing, the Commissioner has deemed it in the public interest to
 9 revoke the investment adviser certificate of Peters, to bar Peters from the investment industry, and to
 10 include a claim for restitution to Peters' advisory client.

11 77. An investment adviser owes a fiduciary duty to clients. An investment adviser should
 12 continuously occupy an impartial and disinterested position and should scrupulously avoid any act
 13 that subjects his position to challenge in this respect. Peters violated this fiduciary duty to clients by
 14 committing acts, omissions, and violations of the CSL and CRR. Furthermore, Respondents profited
 15 from these acts, omissions, and violations of the CSL and CCR. For these reasons, it is therefore in
 16 the public interest to revoke the investment adviser certificate of Peters, to bar Peters from the
 17 investment industry, and require that Peters pay restitution to his advisory client.

18 **VII.**

19 **Relief Requested**

20 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
 21 to revoke the investment adviser certificate of Mark Randall Peters pursuant to CSL section 25232,
 22 to bar Mark Randall Peters from the investment industry pursuant to CSL section 25232.1, and to
 23 award restitution to his advisory client.

24 WHEREFORE, IT IS PRAYED that the investment adviser certificate of Mark Randall
 25 Peters be revoked pursuant to CSL section 23232.

26 WHEREFORE, IT IS FURTHER PRAYED that Mark Randall Peters be barred from any
 27 position of employment, management or control of any investment adviser, broker-dealer or
 28 commodity adviser pursuant to section 25232.1.

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WHEREFORE, IT IS FURTHER PRAYED that Mark Randall Peters be ordered to pay restitution to his advisory client in the amount of at least \$217,334.00, or according to proof.

Dated: August 26, 2021

CHRISTOPHER S. SHULTZ
Acting Commissioner
Department of Financial Protection and Innovation

By: _____
ALEXANDER M. CALERO
Senior Counsel
Enforcement Division