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2 Deputy Commissioner
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14
15 Attorneys for Complainant

16 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND
17 INNOVATION
18 OF THE STATE OF CALIFORNIA

19 In the Matter of:) CRD NUMBER: 105705
20 THE COMMISSIONER OF)
21 FINANCIAL PROTECTION AND) CONSENT ORDER
22 INNOVATION,)
23 Complainant,)
24 v.)
25 VIRGINIA KING HIMMELSTEIB DBA)
26 V.H. KING ASSOCIATES,)
27 Respondent.)

28 The Commissioner of Financial Protection and Innovation (Commissioner) and Virginia King
Himmelsteib dba V.H. King Associates (King), (collectively, the Parties), enter into this Consent
Order with respect to the following facts:

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I.

RECITALS

A. The Commissioner 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 thereunder, which include the licensure, examination, and regulation of investment advisers and broker-dealers.

B. At all relevant times, Virginia King Himmelsteib dba V.H. King Associates (King), was organized in California and registered as a sole proprietorship who had its principal place of business at 2014 Los Angeles Ave, Berkeley, CA 94707.

C. At all relevant times, Virginia King Himmelsteib (King) was an Investment Adviser Representative (IAR), and 100% owner of King.

D. On July 26, 2016, the Commissioner issued an Investment Adviser certificate to King pursuant to CSL section 25230, Central Registration Depository (CRD) Number 105705.

E. On or about May 18, 2020, the Commissioner conducted a routine examination of King (Examination). During the Examination, the Commissioner found that King had discretionary authority over client funds and as a fiduciary, implemented a leveraged ETF strategy which resulted in significant losses to clients' portfolio accounts.

F. King admits to the jurisdiction of the Department of Financial Protection and Innovation (Department), and does not admit to or deny the Commissioner's findings. It is the intention of the Parties to resolve this matter without the necessity of a hearing and/or other litigation.

G. The Commissioner finds this action is appropriate, in the public interest, is necessary for the protection of investors, and is consistent with the purposes fairly intended by the policies and procedures of the CSL.

NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set forth herein, the Parties agree as follows:

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1 II.

2 TERMS

3 1. Purpose: This Consent Order resolves the issues before the Commissioner described
4 above in a manner that avoids the expense of a hearing and other possible court proceedings, protects
5 consumers, is in the public interest, and is consistent with the purposes and provisions of the CSL.

6 2. Order Revoking: Pursuant to Corporations Code section 25232, the Commissioner hereby
7 revokes the investment advisor certificate of Virginia King Himmelsteib d.b.a. V.H. King Associates.

8 3. Filings: King understands and agrees that the Commissioner will file a Form U6 on
9 Investment Adviser Registration Depository (IARD) that will describe the terms of this Consent
10 Order and identify it as a regulatory action.

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

19 5. Failure to Comply with Consent Order: King agrees that if they fail to meet any
20 requirement of this Consent Order, the Commissioner may, in addition to all other available remedies
21 invoke under the CSL, immediately bar King from any position as an investment adviser. King
22 hereby waives any notice and hearing rights to contest the immediate bar which may be afforded
23 under the CSL, the California Administrative Procedure Act, the California Code of Civil Procedure,
24 or any other provision of law in connection therewith.

25 6. Information Willfully Withheld or Misrepresented: This Consent Order may be revoked
26 and the Commissioner may pursue any and all remedies available under law against King, if the
27 Commissioner discovers that King knowingly or willfully withheld or misrepresented information
28 used for and relied upon in this Consent Order.

1 7. Future Actions by the Commissioner: If King fails to comply with any terms of this
2 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
3 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
4 against King, or any of its partners, owners, officers, shareholders, directors, affiliates, employees, or
5 successors for any and all unknown violations of the CSL.

6 8. Assisting Other Agencies: Nothing in this Consent Order limits the Commissioner’s
7 ability to assist any other government agency (whether city, county, state, or federal) with any
8 administrative, civil, or criminal action brought by that agency against King or any other person
9 based upon any of the activities alleged in this matter or otherwise.

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

13 10. Binding: This Consent Order is binding on all heirs, assigns, and/or successors in
14 interest.

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

24 12. Waiver, Amendments, and Modification: No waiver, amendment, or modification of this
25 Consent Order will be valid or binding unless it is in writing and signed by each of the Parties. The
26 waiver of any provision of this Consent Order will not be deemed a waiver of any other provision.
27 No waiver by either Party of any breach of, or of compliance with, any condition or provision of this
28 Consent Order by the other Party will be considered a waiver of any other condition or provision or

1 of the same condition or provision at another time.

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

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

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

15 16. Effect Upon Future Proceedings: If King applies for any license, permit or qualification
16 under the Commissioner's current or future jurisdiction, or is the subject of any future action by the
17 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the
18 purpose of such application(s) or enforcement proceedings(s).

19 17. Voluntary Agreement: King enters into this Consent Order voluntarily and without
20 coercion and acknowledges that no promises, threats, or assurances have been made by the
21 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
22 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and
23 without any duress or undue influence of any kind from any source.

24 18. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it has
25 received or been advised to seek independent legal advice from its attorneys with respect to the
26 advisability of executing this Consent Order.

27 19. No Presumption Against Drafting Party: Each Party acknowledges that it has had the
28 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the Parties

1 intend that no presumption for or against the drafting Party will apply in construing any part of this
2 Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or
3 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
4 language of a contract should be interpreted most strongly against the Party that caused the
5 uncertainty to exist.

6 20. Notice: Any notice required under this Consent Order shall be provided to each Party at
7 the following addresses:

8 To:

9 Paul L. Vorndran
10 Jones & Keller, P.C.
11 1675 Broadway, 26th Floor, Denver, Colorado 80202
pvorndran@joneskeller.com

12 To the Commissioner:

13 Colleen Heaney
14 Department of Financial Protection and Innovation
15 One Sansome Street, Suite 600, San Francisco, CA 94104
colleen.heaney@dfpi.ca.gov

16 21. Signatures: A fax or electronic mail signature shall be deemed the same as an original
17 signature.

18 22. Public Record: King hereby acknowledge that this Consent Order will be a matter of
19 public record.

20 23. Effective Date: This Consent Order shall become final and effective when signed by all
21 Parties and delivered by the Commissioner's counsel by email to King and her counsel at
22 pvorndran@joneskeller.com.

23 24. Authority to Sign: Each signator hereto covenants that he/she possesses all necessary
24 capacity and authority to sign and enter into this Consent Order and undertake the obligations set
25 forth herein.

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Dated: _____, 2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and Innovation

By _____
BALBIRO KAZLA
Deputy Commissioner
Broker-Dealer Investment Adviser

Dated: _____, 2021

By _____
VIRGINIA KING HIMMELSTEIB
V.H. King Associates

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2021

By _____



PAUL L. VORNDRAN
Jones & Keller, P.C.