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

12	In the Matter of:)	FIL APPLICATION NO: 16529
13	THE COMMISSIONER OF FINANCIAL)	STATEMENT IN SUPPORT OF:
14	PROTECTION AND INNOVATION,)	
15	Complainant,)	1) ORDER LEVYING ADMINISTRATIVE
16	v.)	PENALTIES PURSUANT TO
17	BAYSIERRA CAPITAL FUND, LLC,)	CORPORATIONS CODE SECTION
18	ROBERT RITTER, an individual,)	25252; AND
19	Respondents.)	2) CLAIM FOR ANCILLARY RELIEF
20)	AND COSTS PURSUANT TO
)	CORPORATIONS CODE SECTION
)	25254
)	
)	

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22 Clothilde V. Hewlett, the Commissioner of Financial Protection and Innovation
23 (Commissioner) alleges, and charges as follows:

24 **I.**

25 **INTRODUCTION**

26 1. The Commissioner brings this action pursuant to Corporations Code sections 25252,
27 and 25254 and the rules and regulations promulgated thereunder.

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1 2. The Commissioner is authorized to administer and enforce the provisions of the
2 Corporate Securities Law of 1968 (CSL) (Cal. Corp. Code § 25000 et seq.)¹

3 3. BaySierra Capital Fund, LLC (BCF) is, or was, a California limited liability company
4 with a registered place of business located at 1410 Neotomas Avenue, #106, Santa Rosa, California.
5 BCF purportedly originates or invests in loans secured by first-priority deeds of trust encumbering
6 primarily California real estate.

7 4. BaySierra Mortgage Fund, LLC (hereafter “Old Fund”) is, or was, a California limited
8 liability company with a registered place of business located at 1410 Neotomas Avenue, #106, Santa
9 Rosa, California. According to the California Secretary of State records, Old Fund is a private
10 placement mortgage fund which invests in loans secured by first and second deeds of trust on real
11 property.

12 5. BaySierra Financial Fund, Inc. (Manager) is, or was, a California corporation and a
13 mortgage investment management company with a registered place of business located at 1410
14 Neotomas Avenue, #106, Santa Rosa, California. BaySierra Financial Fund is, or was, the manager of
15 Old Fund and BCF.

16 6. Bobby Ritter (Ritter) is, or was, the chief executive officer, president, and director of
17 Manager. Ritter is also a “control” person of BCF as that term is defined by Corporations Code
18 section 160.

19 7. Stacey Robles (Robles) is, or was, the chief executive officer, director, and secretary
20 of Manager.

21 8. Ritter was the Fund Administrator for Old Fund. In June 2015, Ritter and Robles
22 purchased 100% outstanding shares of Old Fund from Old Fund’s former controlling shareholders,
23 J.G. and P.G. After the purchase, Ritter and Robles transferred their Old Fund shares to BCF and
24 shortly thereafter began the dissolution of Old Fund.

25 9. On or about September 29, 2011, BCF filed a limited offering exemption notice under
26 section 25102 (f), notice number 421746 for Old Fund and its initial member/investor.

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28 ¹ All further references are to the Corporations Code unless otherwise stated.

1 10. On or about December 8, 2019, the Commissioner issued a permit qualifying BCF to
2 offer, sell and issue securities in the form of membership interest in BCF pursuant to section 25113
3 (b)(1). The qualification was effective for 12 months from December 8, 2019.

4 11. The permit was issued under a limited offering qualification authorizing the offer and
5 sale of BCF's securities only to:

6 a. Investors with (i) a net worth (exclusive of home, furnishings, and
7 automobiles) of at least \$250,000 and an annual gross income of at least \$65,000; or (ii) a net worth
8 (exclusive of home, furnishings and automobiles) of at least \$500,000; and

9 b. The amount of each investor's investment must not exceed ten percent (10%)
10 of such an investor's net worth (exclusive of home, furnishings, and automobiles).

11 12. As part of the permit process, the BCF submitted an Offering Circular to the
12 Commissioner describing its proposed plan of business and issuance of securities and demonstrating
13 that the proposed plan of business was fair, just and equitable, or that BCF did not intend to transact
14 business unfairly or dishonestly, or that the securities proposed to be issued or the method to be used
15 in issuing them would not tend to work a fraud upon the purchaser in violation of section
16 25140(a)(1).

17 13. On March 23, 2020, the Commissioner commenced a regulatory examination of the
18 books and records of BCF (2020 Exam), which disclosed that BCF violated the provisions in their
19 Offering Circular and terms of the permit by:

20 a) Offering and selling unqualified nonexempt securities in the form of
21 stock in Old Fund by making untrue or misleading statements of material facts or omitting to state
22 material facts to investors, in violation of sections 25110 and 25401.

23 b) Engaging in misleading and prohibited practices, in violation of section
24 25166, including making misleading statements or untrue statements of material facts in the Offering
25 Circular, Operating Agreement, and electronic mails filed with the Commissioner.

26 c) Failing to comply with either the presumptive suitability standard or
27 suitability standard approved by the Commissioner, in violation of California Code of Regulations
28 260.140.01(a).

1 d) Failing to file a Post-Effective Amendment with the Commissioner, in
2 violation of section 25162.

3 e) Failing to qualify the transaction and instead erroneously filing a
4 LOEN, thereby offering and selling securities in violation of section 25110.

5 f) Erroneously Filing a Limited Offering Exemption, in violation of
6 section 25102(f).

7 g) Failing to file published advertisements with the Commissioner, in
8 violation of section 25300(a).

9 14. In or about May 2021 and September 2022, the parties attempted resolving this matter
10 informally, however, Respondents failed to provide the documents the Commissioner requested to
11 evaluate the possibility of resolving the matter.

12 15. The Commissioner seeks (i) an order levying administrative penalties against
13 Respondents pursuant to section 25252; and (ii) an order for ancillary relief, including restitution and
14 costs, pursuant to section 25254, in connection with the violations noted in the 2020 Examination.

15 **II.**

16 **STATEMENT OF FACTS**

17 Unlawful Offers and Sales of Unqualified, Nonexempt Securities in Violation of Section 25110

18 16. Section 25110 provides in pertinent part:

19 It is unlawful for any person to offer or sell in this state any security in
20 an issuer transaction (other than in a transaction subject to Section
21 25120), whether or not by or through underwriters, unless such sale
22 has been qualified under Section 25111 , 25112 or 25113 (and no order
23 under Section 25140 or subdivision (a) of Section 25143 is in effect
24 with respect to such qualification) or unless such security or transaction
25 is exempted or not subject to qualification under Chapter 1
26 (commencing with) of this part. The offer or sale of such a security in
27 a manner that varies or differs from, exceeds the scope of, or fails to
28 conform with either a material term or material condition of
qualification of the offering as set forth in the permit or qualification
order, or a material representation as to the manner of offering which is
set forth in the application for qualification, shall be an unqualified
offer or sale.

(Corp. Code, § 25110).

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17. Section 25017 (a) and (f) provide in pertinent part:

(a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Sale" or "sell" includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(f) The terms defined in this section do not include: (1) any bona fide secured transaction in or loan of outstanding securities; (2) any stock dividend payable with respect to common stock of a corporation solely (except for any cash or scrip paid for fractional shares) in shares of such common stock, if the corporation has no other class of voting stock outstanding; provided, that shares issued in any such dividend shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued; or (3) any act incident to a transaction or reorganization approved by a state or federal court in which securities are issued and exchanged for one or more outstanding securities, claims, or property interests, or partly in that exchange and partly for cash, and nothing in this division shall be construed to prohibit a court from applying the protections described in Section 25014.7 or 25140 and the regulations adopted thereunder when approving any transaction involving a rollup participant.

(Corp. Code, §§25017 (a) and (f)).

18. California Code of Regulations title 10, section 260.017 (b) provides in pertinent part:

(b) A stock dividend is not payable "solely in shares of such common stock" within the meaning of subdivision (f) of Section 25017 of the Code when the shareholders are given an option to accept either cash or the additional shares of common stock.

(Cal. Code Regs. tit. 10, § 260.017 (b))

19. The Commissioner finds that BCF offered and sold equity securities as membership interests through mortgage pool investors who had the option of receiving monthly distributions of income or allowing their proportionate share of income to be reinvested and compound in their accounts.

20. In June 2015, Ritter and Robles purchased 100% outstanding shares of Old Fund which they transferred to BCF to become the initial members and investors of BCF. After transferring their shares from Old Fund to BCF, Ritter and Robles commenced the dissolution of Old Fund.

1 21. Ritter and Robles through Old Fund, contributed \$175,000.00 in cash to BCF and
2 assigned nine loans valued at \$3,219,839.00 with a total amount of \$3,394,839.00 to BCF. In
3 exchange, BCF issued Old Fund a separate class of membership interest in BCF, along with a capital
4 account credit in the amount of the contribution. While membership interests in Old Fund transferred
5 to Ritter and Robles when they bought J G & G's Old Fund shares, BCF only credited to Old Fund
6 \$3,391,606.53 instead of the correct value of the assigned loans totaling \$3,394,839.00.

7 22. BCF claimed that the shortfall in the amount credited to Old Fund of \$3,233.40 was as
8 a result of a reduction of the principal balance from the time the application was submitted to the time
9 the actual assignment of the loans was made on November 1, 2010. BCF failed to file a Post-
10 Effective Amendment to correct the amount credited to Old Fund. The Commissioner finds that
11 Respondents made untrue statement of a material fact on the Facing Page for Qualification of
12 Nonissuer Transaction by Notification (Facing Page) filed with the Commissioner by failing to
13 correct the amount credited to Old Fund.

14 23. Section 25120(a)(3) prohibits the offer and sale of unqualified nonexempt securities
15 "in any exchange in connection with any merger or consolidation or purchase of assets in
16 consideration wholly or in part of the issuance of securities."

17 24. The Commissioner finds that the exchange transaction in connection with Ritter and
18 Robles' purchase of Old Fund's assets as described above is subject to section 25120(a)(3); therefore,
19 BCF erroneously claimed a limited exemption offering to purchase Old Fund formation shares for
20 \$3,394,839.00. BCF failed to provide documentation showing that BCF met the exemptions set forth
21 under provisions of the CSL.

22 25. A review of the permits that Old Fund filed with the Commissioner showed that BCF
23 offered and sold securities in the form of reinvested earnings over a period of eighty days from June
24 17, 2009 – August 12, 2009, when it did not have an active permit in place. At least 187 investors
25 reinvested their earnings at least 173 times for a total amount of \$168,493.38 from October 31, 2019,
26 to November 30, 2019, when BCF did not have an active permit in place. Of the \$168,493.38 that
27 BCF received from investors, 127 for \$118,447.76 derived from additional investments by investors
28 while 46 transactions in the amount of \$50,045.62 are attributable to earned interests that investors

1 reinvested in BCF. The Commissioner finds that investors' reinvested earnings constitute new sales
2 of securities pursuant to section 25017(a) and California Code of Regulations Title 10, Rule
3 260.017(b) which would require a permit. As such, the reinvested securities are unqualified offers and
4 sales of securities.

5 26. Further, BCF's Subscription Agreement expressly provides that an investor's election
6 to receive cash distributions may only be switched to an election to reinvest and compound investors'
7 earnings if there is in effect a permit issued by the Commissioner qualifying the offering. Thus, BCF
8 offered and sold securities by reinvesting investors' earnings into Old Fund without a permit contrary
9 to the terms of its Subscription Agreement.

10 Respondents offered or sold securities by omitting to state material facts or misrepresenting facts,
11 including failing to comply with suitability standards approved by the Commissioner or engaging in
12 misleading and prohibited practices.

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14 27. Section 25401 provides in pertinent part:

15 It is unlawful for any person to offer or sell a security in this state, or
16 to buy or offer to buy a security in this state, by means of any written
17 or oral communication that includes an untrue statement of a material
18 fact or omits to state a material fact necessary to make the statements
19 were made, not misleading.

20 (Corp. Code § 25401).

21 28. California Code of Regulations title 10, § 260.140.01(a) provides in pertinent part:

22 If a limited offering qualification is approved pursuant to a condition
23 imposed by the Commissioner, or a representation by the applicant,
24 confining the sale of securities under the qualification to persons
25 meeting specified standards of experience, financial responsibility, tax
26 status or other specification, any sale of such securities pursuant to the
27 qualification to persons not meeting such specified standards is a
28 violation of the terms and conditions of qualification.

(Cal. Code Regs. tit. 10, § 260.140.01(a)).

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29. Section 25166 provides in pertinent part:

It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice, or report filed with the commissioner under this part or pursuant to subdivision (b) of Section 25507, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein.

(Corp. Code, § 25166).

30. The Commissioner determined that Respondents made misleading statements or untrue statements of material facts, or willfully omitted to state facts in the Offering Circular, Operating Agreement, and electronic mails filed with the Commissioner, in violation of section 25166 by (1) failing to disclose members' distributive share of profits and management fees on the Member portfolios; (2) failing to exercise the distribution option members elected; (3) describing member's rollover subscriptions to BCF as disbursement of cash from payoff of loans or sales of real estate owned by Old Fund, when in fact, they were sold shares; (4) describing withdrawals of investment as "sold shares" on the member portfolios; (5) filing a Facing Page that contains inaccurate information; and (6) allowing withdrawals of investment by members within twelve months after the date of the initial purchase of membership interests.

31. BCF's Offering Circular set forth the requirements for investors' suitability standards as follows:

Each investor must have either (a) a net worth (exclusive of home, furnishings and automobiles) of at least \$250,000 and an annual gross income of at least \$65,000; or (b) a net worth (exclusive of home, furnishings and automobiles) of at least \$500,000; and

The amount of each investor's investment in Units offered hereby must not exceed 10% of such Investor's net worth (exclusive of home, furnishings and automobiles).

32. BCF's Operating Agreement, at page 2 and 3 states:

(a) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits and any items in the nature of income or gain (from unexpected adjustments, allocations or distributions) that are specially allocated to a Member and the amount of any Company

1 liabilities that are assumed by such Member or that are secured by
2 any Company property distributed to such Member.

3 (b) To each Member's Capital Account there shall be debited the
4 amount of cash, such Member's distributive share of Losses and any
5 items in the nature of expenses or losses that are specially allocated to
6 a Member and the amount of any liabilities of such Member that are
7 assumed by the Company or that are secured by any property
8 contributed by such Member to the Company.

9 33. During the 2020 Examination, the Commissioner sampled five investor files to
10 determine Respondents' compliance with the terms of the Offering Circular and Operating
11 Agreements submitted to the Commissioner for the following investors:

- 12 (i) Investor W. S., Trustee of the W. S Revocable Intervivos Trust
- 13 (ii) Investor D. H.
- 14 (iii) Investor M. C.
- 15 (iv) Investor M.M.
- 16 (v) P.T FBO M.M

17 Investor W.S.

18 34. W.S. was a member of Old Fund who authorized the rollover of 100% of each Old
19 Fund quarterly capital distribution to purchase BCF's securities. The 2020 Examination showed that
20 Respondents described W.S.'s funds which rolled over to BCF as "sold shares" in Old Fund's
21 member portfolio, with the exception of a purchase of BCF funds on July 15, 2011 for \$7,020.46 and
22 on April 15, 2014 for \$248.65, which were not termed "roll over" and were not reflected in Old
23 Fund's member portfolio. The Commissioner finds that Respondents made untrue statement of
24 material fact on the Offering Circular filed with the Commissioner by not exercising W.S.'s rollover
25 subscription election.

26 35. Respondents' subscription agreement also disclosed that W.S. elected to have income
27 distributed monthly; however, BCF reinvested the investor's profits of \$7.30 and \$7.33 in December
28 2010 and January 2011, respectively, contrary to the terms of the Offering Circular filed with the
Commissioner.

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1 Investor D.H.

2 36. A review of D. H's investor's file disclosed that D.H did not satisfy BCF's financial
3 suitability standards because D.H's investment exceeded 10% of the investor's net worth. The
4 Commissioner finds that Respondents made an untrue or misleading statement of material fact or
5 omitted to state a material fact on the subscription agreement filed with the Commissioner.
6 Respondents did not also comply with either the presumptive suitability standard or suitability
7 standard approved by the Commissioner.

8 37. Respondents' subscription agreement further showed that D.H. was a member of the
9 Old Fund who authorized the rollover of 100% of each Old Fund quarterly capital distributions to
10 purchase BCF's securities. It was noted that all funds rolled over to BCF were identified as "sold
11 shares" in Old Fund's member portfolio for D. H., when in fact they were rolled over shares.

12 38. According to D.H.'s subscription agreement, D.H. elected to have monthly income
13 distributed; however, BCF reinvested D.H.'s net profits from December 2010 to December 2019
14 except for four months, from February 2011 to May 2011, when the profits should have been
15 distributed in accordance with D.H.'s instructions. No written notice to change the distribution option
16 was found in the investor file.

17 39. On or about March 24, 2020, via email to the Commissioner, Ritter stated that D.H.
18 made a verbal request to compound the monthly income. Respondents' Offering Circular prohibits
19 switching from one method of distribution of investor earnings to another without a 90-day prior
20 written notice to the Manager. As such, the Commissioner finds Respondents willfully made untrue
21 statements of material fact or omitted to state a material fact on the Offering Circular filed with the
22 Commissioner by accepting verbal notice to the Manager to change an investor's distribution option.

23 Investor M.C.

24 40. A review of M.C.'s file showed that following the death of L. G., a trustee, an
25 assignment of membership interest to M.C., trustee of D.S, C. and M. C. Living Trust, Member
26 Number 0121, was made on November 1, 2018, for \$250,000.00. However, M.C. did not properly
27 receive Respondents' subscription agreement and the Operating Agreement and Respondents could
28 not demonstrate that M.C. satisfied BCF's financial suitability standards. In addition, while

1 Respondents' investor statements indicated that M.C. may have elected a monthly distribution of
2 earnings, there was no evidence showing that M.C. was given a distribution option agreement.

3 41. The Commissioner finds that BCF made an untrue or misleading statement of material
4 fact or omitted to state a material fact on the Offering Circular filed with the Commissioner by failing
5 to provide a subscription agreement or Operating Agreement and a distribution option agreement to
6 M.C. showing that M.C. met either the presumptive suitability standard or suitability standard
7 approved by the Commissioner.

8 Investor M.M.

9 42. M.H was not a member of the Old Fund and according to M.H.'s subscription
10 agreement, M.H. elected to have monthly income compounded. A review of M.H.'s investor
11 statements showed that the amounts related to reinvested earnings did not accurately reflect M.H.'s
12 distributive share of profits and were understated by the amount of management fees taken from
13 M.H.'s account. Therefore, the understated reinvested earnings were not allowed to compound in the
14 investor's capital account. The Commissioner finds that BCF made an untrue or misleading statement
15 of material fact or omitted to state a material fact to its investors by not allowing the full amount of
16 reinvested earnings to compound.

17 Investor P.T. FBO

18 43. A review of P.T. FBO's file disclosed P.T. FBO was not a member of the Old Fund.
19 The Subscription Agreement also revealed P.T. FBO elected to have monthly income distributed
20 monthly, and all monthly profits were distributed back to P.T. FBO. Respondents' investor statements
21 did not disclose the proper amounts of income investors earned or the proper amount of management
22 fees investors were charged as required in the Operating Agreement. Instead, the member payment
23 histories showed investors' income only as the amount net of management fees. The Commissioner
24 finds that Respondents willfully made untrue statement of material fact or omitted to state a material
25 fact on the Operating Agreement filed with the Commissioner by failing to report members'
26 distributive share of profits and management fees on the investor statements.

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1 Respondents understated the amount of reinvested earnings by the amount of management fees they
2 charged investors.

3 44. Respondents' Offering Circular promised investors who elected to have their
4 distributive share of profits compounded larger shares of earnings since the capital accounts were
5 anticipated to increase over time. As stated in Respondents' Offering Circular:

6 Income allocable to investors who elect to compound their
7 earnings will be retained by the Fund for investing in Loans or
8 other proper Fund purposes. The income from the Loans will be
9 allocated among all Fund Members; however, investors who
10 compound will be credited with a larger proportionate share of
11 such earnings than Members who receive monthly distributions
12 since the capital accounts of compounding Members will increase
13 over time.

14 45. In addition, Respondents' Operating Agreement at page 13, section 4.2, states:

15 Income allocable to Members who elect to compound their
16 earnings will be retained by the Company for purposes of making
17 or investing in Loans or for other proper Company purposes, and
18 the amount of such allocable income will be credited to their
19 Capital Accounts.

20 46. A review of Respondents' investor statements and member payment histories revealed
21 that the amount of profits investors earned and reinvested was reduced by the amount of management
22 fees investors were charged. Investors' reinvested earnings did not reflect the members' distributive
23 share of profits and are understated by the amount of management fees. As a result, the understated
24 reinvested earnings were not allowed to compound in the investors' capital accounts as promised in
25 Respondents' Offering Circular and Operating Agreement. In addition, the management fees are not
26 reflected on the investor statements.

27 47. The 2020 Examination revealed at least 4,312 transactions which Respondents
28 described as "REINVEST" transactions made by 100 investors understated reinvested earnings
totaling \$292,253.51. Respondents' Offering Circular and Operating Agreement did not disclose that
the reinvested earnings would be reduced by management fees. Therefore, the Commissioner finds
that Respondents made an untrue or misleading statement of material fact or omitted to state a
material fact to its investors by deducting management fees from investors earnings and preventing

1 the full amount of reinvested earnings to compound.

2 Respondents permitted early withdrawals of investments.

3 48. The 2020 Examination disclosed that Respondents engaged in misleading and
4 prohibited practices, in violation of section 25166 by permitting early withdrawals of investments
5 contrary to the provisions of the qualifications approved by the Commissioner. Respondents'
6 Offering Circular at pages 3, 28 and 42, states:

7 Members have no right to demand the withdrawal of all or a portion of
8 their investment for 12 months after the date of the purchase of Units.

9 Withdrawals of Members are subject to a one year Holding Period
10 and additional cash flow and other restrictions. Members have no
11 right to withdraw from the Fund or to obtain the return of all or any
12 portion of their invested capital (or reinvested earnings with
respect thereto) for at least 12 months after the date Units are
purchased (the "Holding Period").

13 49. Respondents' Operating Agreement at page 24, section 9.1, states:

14 No Member shall have the right to withdraw from the Company or
15 otherwise obtain the return of all or any portion of his, her or its
16 Invested Capital for a period of twelve (12) months after the date
17 of the initial purchase of Units by such Member or such Member's
predecessor in interest (the "Holding Period").

18 50. The Operating Agreement permitted early withdrawals only to (i) Individual
19 Retirement Accounts or other employee benefit plan subject to ERISA, and 2) ERISA plan investors
20 (in order to ensure that the Company remains exempt from the ERISA Plan Asset Regulations) based
21 on the death of a member or of the sole beneficiary of a corporate pension or profit-sharing plan.

22 51. Respondents' investor statements showed at least eight investors made 11 withdrawals
23 within twelve months after the initial purchase of membership interests for a total amount of
24 \$981,448.39. The Commissioner finds that Respondents made an untrue statement of material fact on
25 the Offering Circular and the Operating Agreement filed with the Commissioner by allowing
26 withdrawals of investment by members within twelve months after the date of the initial purchase of
27 membership interests.

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1 Failure to file a correct Facing Page.

2 52. Respondents further engaged in misleading and prohibited practices by failing to file a
3 correct Facing Page, along with the application for qualification. As explained in paragraph 21, in
4 June 2015, Ritter and Robles purchased 100% outstanding shares of Old Fund by contributing
5 \$175,000.00 in cash to BCF and assigning nine loans with a total amount of \$3,394,839.00 to BCF. In
6 exchange, BCF issued Old Fund a separate class of membership interest in BCF, along with a capital
7 account credit in the amount of the contribution. Ritter and Robles credited to Old Fund
8 \$3,391,606.53 instead of the correct value of the assigned loans in the amount of \$3,394,839.00. As
9 such, Respondents made untrue statement of a material fact on the Facing Page filed with the
10 Commissioner by failing to correctly state the amount credited to Old Fund.

11 Failure to submit published advertisement.

12 53. Section 5300 (a) provides that “No person shall publish any advertisement in this state
13 concerning any security sold or offered for sale in this state unless a true copy of the advertisement
14 has first been filed in the office of the commissioner at least three business days prior to the
15 publication or a shorter period as the commissioner may by rule or order allow.” A review of
16 Respondents’ website showed Respondents advertised BCF and the Manager’s offers and sales of
17 securities without first submitting true copies of the published website advertisements to the
18 Commissioner at least three business days prior to the publication, in violation of sections 5300 (a)
19 and 25166.

20 **II.**

21 **ORDER LEVYING ADMINISTRATIVE PENALTIES**

22 (For violations of Sections 25110, 25401)

23 54. Complainant re-alleges and reincorporates by reference paragraphs 1 – 53 of this
24 Statement in Support as though fully set forth herein.

25 55. Section 25252 authorizes the Commissioner to issue an order levying administrative
26 penalties against any person for willful violations of any provision of the CSL and any rules
27 promulgated thereunder. Section 25252 provides, in relevant part:
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1 The commissioner may, after appropriate notice and opportunity for hearing, by
2 orders, levy administrative penalties as follows:

3 (a) Any person subject to this division, other than a broker-dealer or investment
4 adviser, who willfully violates any provision of this division, or who willfully
5 violates any rule or order adopted or issued pursuant to this division, is liable for
6 administrative penalties of not more than one thousand dollars (\$1,000) for the
7 first violation, and not more than two thousand five hundred dollars (\$2,500) for
8 each subsequent violation.

9 56. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1 – 54,
10 Respondents willfully violated the following provisions:

11 a) Respondents violated the terms of their Offering Circular and section
12 25110 by offering and selling securities in the form of membership interests at least 173 times
13 through reinvesting profits earned by 87 investors into BCF during October 31, 2013, to November
14 30, 2019, when Respondents did not have a permit in effect. Pursuant to section 25252 (a), the total
15 penalties that may be assessed against Respondents for violations of section 25110 is \$431,000
16 (calculated at \$1,000 x 1 violation and \$2,500 x 172 violations).

17 b) Respondents offered and sold securities in violation of section 25401
18 by making untrue or misleading statements of material facts or omitting to state material facts to the
19 investors, including 1) failing to provide subscription and operating agreements and distribution
20 option agreements to investors; (2) failing to comply with either the presumptive suitability standard
21 or suitability standard approved by the Commissioner, in violation of California Code of Regulations
22 260.140.01(a); and 3) understating the amount of reinvested earnings in at least 4,314 transactions.
23 Pursuant to section 25252 (a), the total penalties that may be assessed against Respondents for
24 violations of section 25401 is \$10,785,000 (calculated at \$2,500 x 4,314 violations).

25 c) Respondents offered and sold securities in violation of section 25166 at
26 least 15 times by making untrue or misleading statements of material facts or omitting to state
27 material facts in its Offering Circular and operating documents filed with the Commissioner,
28 including; 1) stating the incorrect amount of Old Fund's contribution to BCF on the Facing Page; (2)
failing to disclose the proper amounts of income and management fees in investor statements; (3)
failing to exercise the elected distribution option, including accepting verbal authorization by an

1 investor to elect income to be reinvested; (4) not performing the rollover subscription election; and
2 (5) allowing members to withdraw all or a portion of their investments within 12 months of the date
3 of purchase of membership interest, at least 11 times. Pursuant to section 25252 (a), the total penalties
4 that may be assessed against Respondents for violations of section 25401 is \$37,500 (calculated at
5 \$2,500 x 15 violations).

6 d) Respondents failed to file a post-effective amendment to correct the
7 amount credited to Old Fund in violation of section 25162. Pursuant to section 25252(a), the total
8 penalties that may be assessed against Respondents for violations of section 25162 is \$2,500
9 (calculated at \$2,500 x 1 violation).

10 e) Respondents failed to submit true copies of the published
11 advertisements with the Commissioner at least three business days prior to the publication, in
12 violation of section 25300(a). Pursuant to section 25252(a), the total penalties that may be assessed
13 against Respondents for violations of section 25300(a) is \$2,500 (calculated at \$2,500 x 1 violation).

14 WHEREFORE, good cause showing, and pursuant to section 25252, (a) the Commissioner
15 prays for an order levying administrative penalties against Respondents, as follows:

16 An order levying administrative penalties of \$ 11,258,500 against Respondents for a
17 total of 4,504 violations of sections 25110, 25401, California Code of Regulations 260.140.01(a) and
18 California Code of Regulations 260.613(c), calculated at \$1,000 for the first violation, and \$2,500
19 for each subsequent violation, or according to proof.

20 **III.**

21 **CLAIM FOR ANCILLARY RELIEF**

22 (For violations of Corporations Code sections 25110, 25401)

23 57. Complainant re-alleges and reincorporates by reference paragraphs 1 – 56 of this
24 Statement in Support as though fully set forth herein.

25 58. Corporations Code section 25254 authorizes the Commissioner to seek ancillary relief
26 on behalf of any person injured by violations of any provision of the CSL and any rules promulgated
27 thereunder. Corporations Code section 25254 states:
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(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney’s fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Financial Protection and Innovation.

59. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1 – 57, Respondents offered and sold unqualified securities by misrepresenting facts or omitting to state material facts, in violations of Corporations Code sections 25110, 25401, California Code of Regulations 260.140.01(a); and California Code of Regulations 260.613(c).

60. WHEREFORE, good cause showing and the Commissioner’s determination that this action is in the public interest and necessary to effectuate the Department’s primary, legitimate, regulatory purpose based upon the Respondent’s violations of the CSL, the Commissioner hereby prays for an order of ancillary relief pursuant to section 25254 against Respondents as follows:

a) Recovery of attorney’s fees, investigative expenses, and costs in an amount of at least \$10,000, or according to proof.

Dated: November 27, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
UCHE L. ENENWALI
Senior Counsel
Enforcement Division