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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: 11520
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 FINANCIAL INC., an entity,	)	CORPORATIONS CODE SECTION
18	Respondent.	)	25252; AND
19		)	2) CLAIM FOR ANCILLARY RELIEF
20		)	AND COSTS PURSUANT TO
		)	CORPORATIONS CODE SECTION
		)	25254

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

23 **I.**

24 **INTRODUCTION**

25 1. The Commissioner brings this action pursuant to Corporations Code sections 25252,  
26 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.)<sup>1</sup>

3           3.       BaySierra Financial, Inc. (BFI) is, or was, a California limited liability company with a  
4 registered place of business located at 1410 Neotomas Avenue, #106, Santa Rosa California. BFI is  
5 licensed as a real estate broker, with the Department of Real Estate (DRE), DRE license # 01280711  
6 and is engaged in the business of advancing loans to third parties.

7           4.       Bobby Ritter (Ritter) is, or was, the chief executive officer, president, and director of  
8 BFI. Ritter is also a “control” person of BFI as that term is defined by Corporations Code section 160.

9           5.       Stacey Robles (Robles) is, or was, the chief executive officer, director, and secretary  
10 of BFI.

11          6.       On or about December 8, 2019, the Commissioner issued a permit qualifying BFI to  
12 offer, sell and issue securities in the form of membership interest in BFI pursuant to section  
13 25113 (b)(1).

14          7.       On February 11, 2020, the Commissioner commenced a regulatory examination of the  
15 books and records of BFI (2020 Examination). The 2020 Examination disclosed that BFI offered and  
16 sold securities when it did not have a permit in place, in violation of section 25110.

17          8.       The 2020 Examination also disclosed that BFI engaged in the business of making or  
18 servicing residential mortgage loans without a license, in violation of Financial Code section  
19 50002(a).

20          9.       The Commissioner seeks the following orders in connection with the violations noted  
21 in the 2020 Examination: (i) an order levying administrative penalties against BFI pursuant to section  
22 25252; (ii) an order for ancillary relief, including costs, pursuant to section 25254; and (iii) an order  
23 levying penalties against BFI for violations of Financial Code section 50002(a), pursuant to Financial  
24 Code section 50513(b).

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

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**II.**

**STATEMENT OF FACTS**

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

10. Section 25110 provides in pertinent part:

It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120 ), whether or not by or through underwriters, unless such sale has been qualified under Section 25111 , 25112 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with ) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to 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).

11. 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)).

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

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

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

6           13.     BFI is licensed as a real estate broker engaged in the business of making loans to third  
7     parties. The loans are evidenced by promissory notes that are secured by a deed of trust. BFI offers  
8     and sells undivided fractional interests of the loans to California residents. The investors that  
9     purchase these fractional interest securities earn interest payments from the borrowers of the  
10    secured loans. BFI generates income for itself by collecting a monthly loan servicing fee.

11          14.     As part of the 2020 Examination, the Commissioner’s examiner reviewed BFI’s books  
12    and records, including financial statements, bank reconciliations, loan documents, and suitability  
13    standard requirements. The examination disclosed that BFI offered or sold securities during periods  
14    when it did not have a permit to do so.

15          15.     The examination disclosed that BSF offered and sold securities in the form of  
16    fractionalized notes in 10 loans to California investors without a permit during the period from  
17    January 13, 2015, through February 18, 2015, and the period from February 19, 2017, through May 2,  
18    2017. BFI claimed that the loans were sold pursuant to exemptions provided by Business and  
19    Professions Code section 10238 (governing licensees of the DRE) and Corporations Code sections  
20    25102.5 and 25102(f).

21          16.     Although the CSL allows certain exemptions, section 25163 provides that the burden  
22    of proving an exemption is upon the person claiming it. Therefore, offering and/or selling securities  
23    without qualification is unlawful unless the seller sustains the burden of showing that all the elements  
24    of an exemption have been met. BFI has not met that burden.

25          17.     Under section 25100(e) certain securities that fall under the purview of the DRE, are  
26    exempt from sections 25110, 25120, and 25130, including “[a]ny security (other than an interest in all  
27    or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a  
28    real estate development), the issuance of which is subject to authorization by the Insurance

1 Commissioner, the Public Utilities Commissioner, or the Real Estate Commissioner of this state.”

2 The fractionalized interest issued by BFI does not fall within the exception in the cited section,  
3 namely the interest in all or portions of a parcel or parcels of real property which are subdivided land  
4 or a subdivision or in a real estate development. Therefore, BFI requires a license to offer or sell  
5 securities in this state.

6 18. Further, Business and Professions code section 10238(f)(1) prohibits a lender from  
7 selling fractionalized notes or interests to more than 10 persons. The Commissioner’s review of the  
8 BFI’s quarterly DRE Reports and DRE license information disclosed that BFI originated the  
9 following loans:

- 10 1. Loan# 1702100, 02/2017, Borrower- P. S. -5 Investors.
- 11 2. Loan# 1702101, 03/2017, Borrower- M. P- 3 Investors.
- 12 3. Loan# 1702102, 03/2017, Borrower- T. C – 4 Investors.
- 13 4. Loan# 1702103, 03/2017, Borrower- R. B. – Single Lender Whole note.
- 14 5. Loan# 1703104, 03/2017, Borrower- KDF – 6 Investors.
- 15 6. Loan# 1703105, 03/2017, Borrower- Sonlight – Single Lender Whole note.
- 16 7. Loan# 1703106, 03/2017, Borrower- W- 4 Investors.
- 17 8. Loan# 1703107, 05/2017, Borrower- J. R.- Single Lender Whole note.
- 18 9. Loan# 1703108, 04/2017, Borrower- F.N.S. - 11 Investors
- 19 10. Loan# 1704110, 04/2017, Borrower- F. S- Single Lender Whole note.

20 19. Further examination of the 10 loans showed that loan number 1703108 had 11  
21 investors, which exceeded the number of loans that BFI can originate pursuant to Business and  
22 Professions Code section 10238(f)(I).

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1 The review of loan #1703108 disclosed the following lenders:

- 2 Lender 1- O D. A
- 3 Lender 2- J & J M
- 4 Lender 3- IRA Services FBO P G
- 5 Lender 4- B. L.W.
- 6 Lender 5- D. A. B. Inc Pension & PSP
- 7 Lender 6- R. F.
- 8 Lender 7- R. C. F DMD P & PS
- 9 Lender 8- J. & D. K
- 10 Lender 9- D. A. H
- 11 Lender 10- L. I. C.
- 12 Lender 11- Equity Trust Co FBO J. E.

13 Based on the information provided, the Commissioner determined that BSI offered and sold  
14 unqualified nonexempt securities, in violation of section 25110.

15 **III.**

16 **UNLAWFUL ORIGINATION OR SERVICING OF RESIDENTIAL MORTGAGE LOANS**

17 Respondents made or serviced residential mortgage loans without a license.

18 20. Complainant re-alleges and reincorporates by reference paragraphs 1 – 19 of this  
19 Statement in Support as though fully set forth herein.

20 21. Financial Code section 50002 (a), provides:

21 No person shall engage in the business of making residential  
22 mortgage loans or servicing residential mortgage loans, in this  
23 state, without first obtaining a license from the commissioner in  
24 accordance with the requirements of Chapter 2 (commencing with  
25 Section 50120) or Chapter 3 (commencing with Section 50130),  
26 and any rules promulgated by the commissioner under this law,  
unless a person or transaction is excepted from a definition or  
exempt from licensure by a provision of this law or a rule of the  
commissioner.

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22. Financial Code section 50003(g), defines “Engage in the business” as:

[T]he dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television...or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. “Engage in the business” also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.

23. As alleged in paragraphs 11-19 herein, the 2020 Exam disclosed that during the period January 13, 2015, through February 18, 2015, and the period February 19, 2017, through May 2, 2017, BFI originated 11 loans to California investors without a permit. These loans were:

1. Loan# 1702100, 02/2017, Borrower- P. S. -5 Investors.
2. Loan# 1702101, 03/2017, Borrower- M. P- 3 Investors.
3. Loan# 1702102, 03/2017, Borrower- T. C - 4 Investors.
4. Loan# 1702103, 03/2017, Borrower- R. B. - Single Lender Whole note.
5. Loan# 1703104, 03/2017, Borrower- KDF - 6 Investors.
6. Loan# 1703105, 03/2017, Borrower- Sonlight - Single Lender Whole note.
7. Loan# 1703106, 03/2017, Borrower- W- 4 Investors.
8. Loan# 1703107, 05/2017, Borrower- J. R.- Single Lender Whole note.
9. Loan# 1703108, 04/2017, Borrower- F.N.S. - 11 Investors
10. Loan# 1704110, 04/2017, Borrower- F. S- Single Lender Whole note.

24. Further examination of the 10 loans identified in the above paragraph showed that loan number 1703108 had 11 investors, which exceeded the number of loans that BFI can originate pursuant to the Business and Professions Code section 10238(f)(I).

25. Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

- (4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

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(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

Based on the information provided, the Commissioner determined that BSI engaged in the business of making residential mortgage loans or servicing residential mortgage loans, totaling 11 in this state, without first obtaining a license from the Commissioner, in violation of Financial Code section 50002.

**IV.**

**ORDER LEVYING ADMINISTRATIVE PENALTIES**

(For violations of Section 25110)

26. Complainant re-alleges and reincorporates by reference paragraphs 1 – 25 of this Statement in Support as though fully set forth herein.

27. Section 25252 authorizes the Commissioner to issue an order levying administrative penalties against any person for willful violations of any provision of the CSL and any rules promulgated thereunder. Section 25252 provides, in relevant part:

The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

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





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**VII.**  
**PRAYER**

The Commissioner finds that, by reason of the foregoing, BFI has violated section 25110 by offering and selling securities in the form of membership interests in BFI at least 11 times to at least 11 investors when Respondents did not have a permit in effect. Further, BFI has violated Financial Code sections 50002(a) by engaging in the business of making residential mortgage loans or servicing residential mortgage loans, totaling 11 in this state, without first obtaining a license from the Commissioner.

For the following reasons, grounds exist to:

- a. Assess penalties against BFI pursuant to section 25252 (a), for 11 violations of offering and selling unqualified securities in violation of section 25110, in the amount of \$26,000, calculated at \$1,000 for the first violation, and \$2,500 for each subsequent violation, or according to proof.
- b. Pursuant to section 25254, issue an order of ancillary relief against BFI for the recovery of attorney’s fees, investigative expenses, and costs in an amount of at least \$10,000, or according to proof.
- c. Pursuant to Financial Code section 50513, subdivision (b), assess penalties against BaySierra Financial, Inc. for at least 11 violations of Financial Code section 50002, subdivision (a), for engaging in unlicensed loan origination activities, in an amount according to proof, but at least \$25,000.00 per violation for a total penalty of \$275,000.

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 Respondents’ violations of the California Securities Law (Corporations Code section 25110) and California Finance Law (Financial Code section 50002);

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IT IS PRAYED that:

- a. Pursuant to section 25252(a), penalties be assessed against BaySierra Financial, Inc. for 11 violations of offering and selling unqualified securities in violation of section 25110, in the amount of \$26,000, calculated at \$1,000 for the first violation, and \$2,500 for each subsequent violation, or according to proof.
- b. Pursuant to section 25254, an order of ancillary relief be issued against BaySierra Financial, Inc. for the recovery of attorney’s fees, investigative expenses, and costs in an amount of at least \$10,000, or according to proof.
- c. Pursuant to Financial Code section 50513(b), penalties be levied against BaySierra Financial, Inc. for at least 11 violations of Financial Code section 50002(a), for engaging in unlicensed loan origination activities, according to proof, but in an amount of at least \$25,000.00 per violation for a total penalty of \$275,000.

Dated: November 27, 2023

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By \_\_\_\_\_  
UCHE L. ENENWALI  
Senior Counsel  
Enforcement Division