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

12	In the Matter of:	)	FIL APPLICATION NO: 341221
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 MORTGAGE FUND, LLC,	)	CORPORATIONS CODE SECTION
18	ROBERT RITTER, an individual,	)	25252; AND
19	Respondents.	)	2) CLAIM FOR ANCILLARY RELIEF
		)	AND COSTS PURSUANT TO
		)	CORPORATIONS CODE SECTION
		)	25254.

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

22 I.
23 INTRODUCTION

24 1. The Commissioner brings this action pursuant to Corporations Code sections 25252,
25 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 Mortgage Fund, LLC is, or was, a California limited liability company with
4 a registered place of business located at 1410 Neotomas Avenue, #106, Santa Rosa California.
5 According to the California Secretary of State records, BaySierra Mortgage Fund, LLC is a private
6 placement mortgage fund that invests in loans secured by first and second deeds of trust on real
7 property.

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

12 5. In or about June 2015, BaySierra Mortgage Fund, LLC (hereafter “Old Fund”)
13 dissolved, and its shares transferred to BCF.

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

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

21 8. Stacey Robles (Robles) is, or was, the chief executive officer, director, and secretary
22 of Manager.

23 9. On or about October 15, 2002, the Commissioner issued a permit qualifying Old Fund
24 to offer, sell and issue securities in the form of membership interest in Old Fund pursuant to section
25 25113 (b)(1). In accordance with section 25114, every qualification is effective for 12 months from
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28 ¹ All further references are to the Corporations Code unless otherwise stated.

1 its effective date, unless the Commissioner by order or rule specifies a different period, or a stop
2 order revoking or suspending the permit issued pursuant to sections 25140 (a) and 25143 is in effect.

3 10. The permit was issued under a limited offering qualification authorizing the offer and
4 sale of Old Fund’s securities only to investors with (a) a net worth (exclusive of home, furnishings
5 and automobiles) of at least \$250,000 and an annual gross income of at least \$65,000; or (b) a net
6 worth (exclusive of home, furnishings and automobiles) of at least \$500,000; and the amount of each
7 investor’s investment in units must not exceed 10% of such investor’s net worth (exclusive of home,
8 furnishings and automobiles).

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

15 12. On or about December 8, 2019, the Commissioner issued a permit qualifying BCF to
16 offer, sell and issue securities in the form of membership interest in BCF pursuant to section 25113
17 (b)(1), under the same offering qualifications granted to BMF described herein in paragraph 10.

18 13. On March 23, 2020, the Commissioner commenced a regulatory examination of Old
19 Fund (2020 Examination), which revealed that Respondents violated the provisions in their Offering
20 Circular and terms of the permit by:

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

24 b) Respondents failed to comply with either the presumptive suitability
25 standard or suitability standard approved by the Commissioner, in violation of California Code of
26 Regulations, title 10, section 260.140.01(a).

27 c) Respondents made misleading statements or untrue statements of
28 material facts in the documents 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) recording members' 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; 3) recording withdrawals of investment as "sold shares" on member portfolios, and 4) entering impaired loan losses as "fees" in member portfolios and thereon, deducting excessive impaired loan losses from members' capital accounts; 5) failing to provide audited financial statements for the periods ending 2010, 2011 and 2019, in violation of California Code of Regulations, title 10, section 260.613(c).

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

II.

STATEMENT OF FACTS

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

15. 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 Section 25100) 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).

16. 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)).

17. 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.

18. The 2020 Examination disclosed that Respondents offered and sold equity securities as membership interests through mortgage pool investors who had the option, through subscriptions for shares, to receive monthly distributions of income, or allow their proportionate share of income to be reinvested and thereby compound in their accounts.

19. Old Fund's affiliate, BCF, also offered and sold equity securities as membership interests through mortgage pool investors and through rollover subscriptions of membership interests from liquidation distributions from Old Fund to BCF. Manager was responsible for offering and selling debt securities as fractional interests in mortgage loans secured by trust deeds.

20. John Graziano and Pamela Graziano (Grazianos) were the controlling shareholders, each with a 50% ownership of Old Fund. Ritter was the Fund Administrator for Old Fund. In June 2015, Old Fund dissolved after Ritter and Robles purchased 100% outstanding shares from the Grazianos.

1 21. On or about June 2015, Old Fund contributed cash of \$175,000 and assigned nine
2 loans with a value of \$3,219,839 to BCF after which Ritter and Robles became the initial members
3 and investors in BCF. In exchange, BCF issued Old Fund a separate class of membership interest in
4 BCF and a capital account credit in the amount of Old Fund’s contribution.

5 22. Further review of the permits Respondents filed with the Commissioner showed that
6 Respondents offered and sold securities in the form of reinvested earnings over a period of 57 days
7 from June 17, 2009 – August 12, 2009, when it did not have an active permit.

8 23. A review of Old Fund’s member portfolios showed that at least seventy-nine investors
9 reinvested their earnings at least 157 times for a total amount of \$28,660.30 from June 17, 2009, to
10 August 12, 2009, when Old Fund did not have an active permit. The Commissioner finds that the
11 reinvested earnings from investors constitute new sales of securities pursuant to section 25017(a) and
12 California Code of Regulations, title 10, section 260.017(b) which required a permit. As such, the
13 reinvested securities are unqualified offers and sales of securities.

14 24. Further, Old Fund’s Subscription Agreement expressly provides that an investor’s
15 election to receive cash distributions may only be switched to an election to reinvest and compound
16 investors’ earnings if there is in effect a permit issued by the Commissioner qualifying the offering.
17 Thus, Respondents offered and sold securities by reinvesting investors’ earnings into Old Fund
18 without a permit was contrary to the terms of its Subscription Agreement.

19 Respondents offered or sold securities by omitting to state material facts or failing to comply with the
20 suitability standards approved by the Commissioner.

21 25. Section 25401 provides in pertinent part:

22 It is unlawful for any person to offer or sell a security in this state, or
23 to buy or offer to buy a security in this state, by means of any written
24 or oral communication that includes an untrue statement of a material
25 fact or omits to state a material fact necessary to make the statements
 made, in the light of the circumstances under which the statements
 were made, not misleading.

26 (Corp. Code, § 25401)

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1 26. California Code of Regulations, title 10, section 260.140.01(a) provides in pertinent part:

2 If a limited offering qualification is approved pursuant to a condition
3 imposed by the Commissioner, or a representation by the applicant,
4 confining the sale of securities under the qualification to persons
5 meeting specified standards of experience, financial responsibility, tax
6 status or other specification, any sale of such securities pursuant to the
7 qualification to persons not meeting such specified standards is a
8 violation of the terms and conditions of qualification.

9 (Cal. Code Regs. Tit. 10, § 260.140.01(a))

10 27. Section 25166 provides in pertinent part:

11 It is unlawful for any person willfully to make any untrue statement
12 of a material fact in any application, notice, or report filed with the
13 commissioner under this part or pursuant to subdivision (b) of Section
14 25507, or willfully to omit to state in any such application, notice, or
15 report any material fact which is required to be stated therein.

16 (Corp. Code, § 25166.)

17 28. The Commissioner determined that Respondents made misleading statements or
18 untrue statements of material facts in its Offering Circular, Operating Agreement, and electronic
19 mails filed with the Commissioner by 1) failing to disclose members' distributive share of profits and
20 management fees in member portfolios, 2) disclosing that the member's rollover subscriptions to
21 BCF are disbursement of cash from payoff of loans or sales of real estate owned by the Mortgage
22 Fund, 3) recording withdrawals of investment as "Sold Shares" in member portfolios, and 4)
23 improperly describing impaired loan losses as "fees" in member portfolios.

24 29. Respondents' Offering Circular described the requirements for investors' suitability
25 standards as follows:

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

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

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30. Respondents' Operating Agreement states under Article 1, section 1.6:

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

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

31. During the 2020 Examination, the Commissioner sampled five investor files to determine whether Old Fund was in compliance with the CSL, and its Offering Circular that was submitted to the Commissioner in connection with the following investors:

- (i) Investor W. S.- Trustee of the W. S Revocable Intervivos Trust
- (ii) Investor M. R.
- (iii) Investor D. H.
- (iv) Investor M. H.
- (v) Investor C P.

32. Review of the five investors' files showed that the Subscription Agreements the investors received with dates ranging from April 16, 2003 -February 1, 2008, omitted to include the suitability standards described in Old Fund's Offering Circular, including failing to state that the amount of each investor's investment in membership interests must not exceed 10% of investor's net worth (exclusive of home, furnishings and automobiles). 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 failing to include the requirement for suitability standards in the Subscription Agreements provided to investors. In addition, Respondents failed to provide documentation demonstrating it complied with either the presumptive suitability standard or the suitability standard approved by the Commissioner.

1 33. Further, the Commissioner determined that all transactions which Respondents
2 described as “sold shares” in investor W.S.’ member portfolio dated on or after November 15, 2010,
3 were not “sold shares” but comprised subscriptions that were rolled over from W. S.’ Old Fund
4 account to W.S.’ BCF account (Member #0004). The Commissioner finds that Respondents made an
5 untrue statement of material fact to the Commissioner by describing W.S.’ rollover subscriptions to
6 BCF as disbursements of cash from payoff of loans or sales of real estate owned by the Old Fund,
7 when in fact they were not disbursements from sales of real estate.

8 34. D. H.’s file revealed that all transactions identified as “sold shares” in D.H.’s member
9 portfolio on or after November 15, 2010, were funds which were rolled over from D.H.’s Old Fund
10 account to D. H.’s BCF account (Member #0025). The Commissioner finds that Respondents made
11 an ununtrue statement of fact or omitted to state material fact by reporting D.H.’s rollover
12 subscriptions as disbursement of cash from payoff of loans or sales of real estate owned by the
13 Mortgage Fund.

14 Old Fund failed to disclose the amount of income received and management fees it charged investors.

15 35. The Commissioner determined that Respondents failed to disclose members'
16 distributive share of profits and management fees in member portfolios in accordance with Old
17 Fund’s Operating Agreement. Samples of the member portfolios the Commissioner reviewed showed
18 that the cash distribution for income and the management fees were reflected only on Old Fund’s
19 member payment histories, not in members’ portfolios as stipulated in Old Fund’s Offering Circular.
20 Thus, Respondents made an untrue statement of material fact in the Operating Agreement filed with
21 the Commissioner by not disclosing members’ distributive share of profits and management fees in
22 members’ portfolios.

23 36. Further Respondents’ Offering Circular represented that investors who elect to
24 reinvest their earned profits and have their distributive share of profits compounded to increase in
25 value would receive a larger share of earnings since the capital accounts will increase over time.
26 According to Old Fund’s Offering Circular:

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Income allocable to investors who elect to compound their earnings will be retained by the Fund for investing in further mortgage loans or other proper Fund purposes. The income from these further loans will be allocated among all investors; however, investors who compound will be credited with a larger proportionate share of such earnings than investors who receive monthly distributions since the capital accounts of investors who compound will increase over time.

37. Old Fund’s Operating Agreement, section 4.3, further states:

Income allocable to Members who elect to compound their earnings will be retained by the Company for purposes of making or investing in further mortgage loans or for other proper Company purposes, and the amount of such allocable income will be credited to their Capital Accounts.

38. Old Fund’s records showed that Old Fund reported investors’ earned profits in the members’ portfolios while allocating management fees to members. Old Fund’s Operating Agreement stated that investors’ earned income will be credited to their account and allowed to compound in value. In reality, the profits investors earned were reduced by an amount representing management fees allocated to investors. As such, the reinvested earnings did not reflect members’ distributive share of profits. Instead, the earnings were understated by the amount of management fees allocated to the member, and as a result, the total amount of members’ reinvested earnings did not compound in value in the investors’ capital accounts as expected. In addition, the management fees are not reflected in the member portfolios.

39. Neither the Offering Circular nor the Operating Agreement disclosed that the reinvested earnings will be reduced by an amount representing management fees. According to Old Fund’s records, a total of 145 investors made approximately 6,168 reinvested earnings which resulted in an understated total amount of \$125,367.85. The Commissioner finds that Respondents made an untrue or misleading statement of material fact or omitting to state a material fact to its investors by deducting management fees from investors’ profits and preventing the full returns on investors’ reinvestments in Old Fund to compound in value.

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1 Respondents' allowed investors to withdraw funds within twelve months of investing and
2 misrepresented the withdrawals as "sold shares."

3 40. Old Fund's Offering Circular at pages 3 and 56, prohibit the disbursal or withdrawal of
4 investors' investment within 12 years of investing by stating as follows:

5 Members have no right to demand withdrawal of all or a portion of their
6 investment for 12 months after investment. A Member has no right to
7 withdraw from the Fund or to obtain the return of all or any portion of sums
8 paid for the purchase of Units (or reinvested earnings with respect thereto)
9 for at least 12 months after the date such Units are purchased.

10 41. Operating Agreement, section 8.1, states:

11 No Member shall have the right to withdraw from the Company, receive
12 cash distributions or otherwise obtain the return of all or any portion of
13 his Capital Account balance for a period of twelve months after the date
14 of the initial purchase of Units and admission to the Company of such
15 Member or his or her predecessor in interest (the "Holding Period").

16 42. During the 2020 Examination, Respondents informed the Commissioner by electronic
17 mail that prior to November 15, 2010, withdrawals by account holders were disclosed as "sold
18 shares" in the member portfolios. The Commissioner finds that Respondents made an untrue
19 statement of material fact to the investors by reporting withdrawals of investment as "sold shares"
20 when in fact they were not sold shares.

21 43. Respondents' member portfolios revealed that twenty-one withdrawals totaling
22 \$618,333.43 were made by thirteen investors within 12 months of investing in Old Fund. Because the
23 withdrawals were made contrary to Old Fund's Offering Circular and Operating Agreement, the
24 Commissioner finds that Old Fund made an untrue statement of material fact in the Offering Circular
25 and the Operating Agreement filed with the Commissioner.

26 Respondents failed to disclose the annual debit fees they assessed investors.

27 44. The Commissioner determined that Respondents deducted "fees" annually from the
28 members' capital accounts, which were recorded as debit entries in member portfolios. Respondents
claimed that the "fees" represented each member's allocation of a write-down on the loan
portfolio. Respondents stated their certified accountant required Respondents to review each loan to
determine if any of the loans was impaired and to make an adjusting journal entry at the end of the year.

1 45. According to industry standards, a loan is impaired when, based on current
2 information and events, it is probable that an issuer will be unable to collect all amounts due (interest
3 as well as principal) according to the contractual terms of the loan agreement. The Financial
4 Accounting Standards Board issued a Statement of Financial Accounting Standards No. 114,
5 (Accounting by Creditors for Impairment of a Loan) indicating that issuers are required to provide
6 several disclosures either in the body of their financial statements or in the accompanying notes that
7 may be useful in understanding an issuer’s accounting for impaired loans.

8 46. Specifically, a creditor must disclose, as of its current balance sheet date, the recorded
9 investment in the loans for which impairment has been recognized and the total allowance for credit
10 losses related to those impaired loans.

11 47. Respondents denied deducting actual fees from investors’ capital accounts, stating that
12 the description “fees” was misleading and incorrectly used and was due to a software “glitch.”
13 Respondents further assert that the “fees” deducted from investors’ capital accounts to cover impaired
14 loans were purportedly, “a book entry to follow Generally Accepted Accounting Principles in order to
15 properly value the loan portfolio.”

16 48. The Commissioner finds that Respondents made an untrue statement of material fact
17 on the member portfolios by entering the impaired loan losses as “fees” in member portfolios.

18 49. The Commissioner’s examiner generated the schedule of impaired loan losses below
19 from Old Fund’s records to illustrate fees which Old Fund deducted from investors’ capital accounts
20 which were not reported in members’ portfolios for 2010. The Commissioner requested audited
21 financial statements (balance sheet and income statement) for 2010, 2011, and 2019 but Respondents
22 failed to provide the documents requested.

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1 Respondents failed to provide audited financial statements.

2 51. California Code of Regulations, title 10, section 260.613(c) states in pertinent part:

3 While the foregoing is established as a general guideline in the
4 preparation of financial statements, the Commissioner may in certain
5 cases require audited statements of an applicant in connection with a
6 limited offering qualification and may in certain cases waive audited
7 statements in connection with an open qualification.

8 52. Respondents failed to provide audited financial statements (balance sheets and
9 statements of income) for the years ending 2010, 2011 and 2019. Instead, Respondents provided
10 Statements of Liquidating Activities for 2010 and 2011, and financial statements that were part of a
11 submitted 2019 Limited Liability Company Returns.

12 **III.**

13 **ORDER LEVYING ADMINISTRATIVE PENALTIES**

14 (For violations of Sections 25110, 25401)

15 53. Complainant re-alleges and reincorporates by reference paragraphs 1 – 52 of this
16 Statement in Support as though fully set forth herein.

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

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

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

28 55. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1 – 52,
Respondents willfully violated the following provisions:

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1 a) Respondents violated the terms of their Offering Circular and section
2 25110 by offering and selling securities in the form of membership interest at least 157 times through
3 reinvesting profits earned by 79 investors into Old Fund from June 17, 2009, to August 12, 2009,
4 when Respondents did not have a permit in effect. Pursuant to section 25252 (a), the total penalties
5 that may be assessed against Respondents for violations of section 25110 is \$391,000 (calculated at
6 \$1,000 x 1 violation and \$2,500 x 156 violations).

7 b) Respondents offered and sold securities by means of fraud in at least
8 4,312 transactions, in violation of section 25401 by making untrue or misleading statements of
9 material facts or omitting to state material facts to the investors, including 1) omitting to disclose that
10 each investor's investment in membership interests must not exceed 10% of investor's net worth; 2)
11 understating the amount of investors' reinvested earnings; and 3) deducting excess impaired loan
12 losses from members' capital accounts. Pursuant to section 25252 (a), the total penalties that may be
13 assessed against Respondents for violations of section 25401 is \$10, 780,000 (calculated at \$2,500 x
14 4,312 violations).

15 c) Respondents failed to comply with either the presumptive suitability
16 standard or suitability standard approved by the Commissioner, in violation of California Code of
17 Regulations, title 10, section 260.140.01(a) in at one of five transactions sampled by the
18 Commissioner. Pursuant to section 25252 (a), the total penalties that may be assessed against
19 Respondents for violations of California Code of Regulations, title 10, section 260.140.01(a) is
20 \$2,500 (calculated at \$2,500 x 1 violation).

21 d) Respondents failed to provide audited financial statements for the
22 periods ending 2010, 2011 and 2019, in violation of California Code of Regulations 260.613(c).
23 Pursuant to section 25252 (a), the total penalties that may be assessed against Respondents for
24 violations of California Code of Regulations, title 10, section 260.613(c) is \$12,500 (calculated at
25 \$7,500 x 3 violations).

26 WHEREFORE, good cause showing, and pursuant to section 25252, (a) the Commissioner
27 prays for an order levying administrative penalties against Respondents, as follows:
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1 An order levying administrative penalties against Respondents for a total of 4,472
2 violations of sections 25110, 25401, California Code of Regulations, title 10, section 260.140.01(a);
3 and California Code of Regulations, title 10, section 260.613(c) and total penalties of \$11,178,500,
4 calculated at \$1,000 for the first violation, and \$2,500 for each subsequent violation, or according to
5 proof.

6 **IV.**

7 **CLAIM FOR ANCILLARY RELIEF**

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

9 56. Complainant re-alleges and reincorporates by reference paragraphs 1 – 55 of this
10 Statement in Support as though fully set forth herein.

11 57. Corporations Code section 25254 authorizes the Commissioner to seek ancillary relief
12 on behalf of any person injured by violations of any provision of the CSL and any rules promulgated
13 thereunder. Corporations Code section 25254 states:

14 (a) If the commissioner determines it is in the public interest, the
15 commissioner may include in any administrative action
16 brought under this part a claim for ancillary relief, including,
17 but not limited to, a claim for restitution or disgorgement or
18 damages on behalf of the persons injured by the act or practice
19 constituting the subject matter of the action, and the
20 administrative law judge shall have jurisdiction to award
21 additional relief.

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

29 58. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1 – 57,
30 Respondents offered and sold unqualified securities by misrepresenting facts or omitting to state
31 material facts, in violations of Corporations Code sections 25110, 25401, California Code of
32 Regulations, title 10, section 260.140.01(a); and California Code of Regulations, title 10, section
33 260.613(c).

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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 Respondents’ violations of the CSL, the Commissioner hereby prays for an order of ancillary relief pursuant to section 25254 against respondent, as follows:

a) Full restitution, consisting of the excess impaired loan losses deducted from investors’ capital accounts in an amount of at least \$2,556,570.01 and interest accumulated on the deducted amounts or according to proof.

b) 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
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