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Andrew L. Penn.

1	CLOTHILDE V. HEWLETT		
2	Commissioner MARY ANN SMITH		
3	Deputy Commissioner		
	DANIEL P. O'DONNELL		
4	Assistant Chief Counsel		
5	RYAN M. CASSIDY (State Bar No. 340274)  Counsel		
6	Department of Financial Protection and Innovation		
	2101 Arena Boulevard		
7	Sacramento, CA 95834		
8	Telephone: (916) 764-8358 Attorneys for Complainant		
9			
10	BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION OF THE STATE OF CALIFORNIA		
11	In the Matter of:		
12	in the Watter Of.	STATEMENT IN SUPPORT OF ORDER	
	THE COMMISSIONER OF FINANCIAL	LEVYING ADMINISTRATIVE	
13	PROTECTION AND INNOVATION,	PENALTIES	
14	Complainant,	(Cal. Corp. Code § 25252)	
15	V.	(c.m. cc.p. cc.uc 3 20202)	
16	ANDREW L. PENN, and DARCI PENN,		
17	Respondents.		
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19	The Commissioner of Financial Protection and Innovation (Commissioner) is informed and		
20	believes, and based upon such information and believe, alleges and charges as follows:		
21	I.		
22	STATEMENT OF FACTS		
23	1. At all relevant times herein, Andre	w L. Penn, is and was a California resident, located	
24	at 26608 Sunflower Court, Calabasas, California 91302, conducting business by telephone at (818)		
25	427-5634 and by email at Andrewdarci@gmail.com.		
26	2. At all relevant times, Darci Penn, i	s and was a California resident, located at 26608	

Sunflower Court, Calabasas, California 91302. At all relevant times, Darci Penn was married to

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- 3. Andrew Lorin Penn and Darci Penn are collectively referred to as Respondents.
- 4. The Commissioner brings this action pursuant to the provisions of the Corporate Securities Law of 1968 (Cal. Corp. Code §§ 25000-25707) (CSL), and the accompanying regulations in Title 10 of the California Code of Regulations §§ 260.000-260.617 (CCR), which covers the offer and sale of securities.

## **Violations of Corporations Code Section 25110** (Unqualified, Non-Exempt Offer and Sale of Securities)

- 5. Beginning in or about November 2019, Andrew L. Penn offered and/or sold securities, in the form of Private Investment Agreements - investment contracts - in California through telephone calls and email correspondence.
- 6. Andrew L. Penn provided investors with a "Private Investment Agreement" that indicated that he would use the proceeds from the sales of these securities to acquire, hold, and sell artworks.
- 7. Darci Penn substantially assisted Andrew L. Penn by soliciting prospective investors through telephone calls and in-person conversations to invest in these securities.
- 8. Andrew L. Penn sold these securities to at least six investors, residing in California and elsewhere, in at least 12 separate transactions. raising at least \$622,275.00.
- 9. Corporations Code section 25110 prohibits the offer or sale of unqualified, nonexempt securities in issuer transactions in the State of California. The securities offered and sold by the Respondents are subject to qualification under the CSL. These securities were offered or sold in this state in issuer transactions. The Department has not issued a permit or other form of qualification authorizing any person to offer or sell these securities in this state. The offer or sale of these securities is not exempt.

## **Violations of Corporations Code Section 25401** (Misrepresentations and Omissions of Material Facts)

10. In connection with the offers and sales of these securities, Andrew L. Penn and Darci Penn made, or caused to be made, misrepresentations of material fact to investors and potential investors, including that:

but have been unsuccessful.

- a. The investment was "Fully Guaranteed" with a "guaranteed return" of "40% over a term of 19 months" or "guaranteed return of 22.8% term ending the end of February 2023;

  b. The investor would receive semi-annual payments;

  c. The investment had "Zero Risk; and

  d. The client had sole discretion "to determine how the proceeds are allocated," at the end of the contracted term.

  11. In fact, none of these statements were true. At least five of the investors never received any payments. One investor did receive a portion of the original deposit after asking for a refund, but received no profits. At least six investors have made multiple requests for a refund from the Penn's
- 12. Corporations Code section 25401 prohibits the offer or sale of securities in this state by means of written or oral communications that include untrue statements of material fact or omit materials facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The misrepresentations Respondents made were material, and they omitted to disclose material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, namely, that they couldn't make good on their promises.

II.

## **ORDER LEVYING ADMINISTRATIVE PENALTIES**

- 13. The Commissioner re-alleges and incorporates by reference paragraphs 1-14 of this Statement in Support, also contained in the Commissioner's Desist and Refrain Order, as though fully set forth herein.
- 14. Corporations Code section 25252 authorizes the Commissioner to issue an order levying administrative penalties against any person for willful violations of any provisions of the CSL and any rules promulgated thereunder.
- 15. Pursuant to Corporations Code section 25403, any person who controls or induces another person to violate a provision of the Corporate Securities Law of 1968, or any person who

provides substantial assistance to another person in violation of the Corporate Securities Law of 1968, shall be liable for the violations.

- 16. Based on the foregoing findings, the Commissioner finds that the Respondents offered and sold unqualified, nonexempt securities in an amount of at least \$622,275.00, and made untrue statements of material facts, to at least six investors, in violation of Corporations Code section 25110 and 25401.
- 17. Pursuant to Corporations Code section 25252(a), the Commissioner hereby provides notice of intent to levy administrative penalties against Andrew L. Penn and Darci Penn, for the statutory amount of not more than one thousand dollars (\$1,000) for the first violation, not more than two thousand five hundred dollars (\$2,500.00) for each subsequent violation, or according to proof, for Andrew L. Penn and Darci Penn's willful violations of the CSL.

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252(a), the Commissioner prays for an order levying administrative penalties, individually, jointly and severally, against Andrew L. Penn and Darci Penn, as follows:

- a. That pursuant to Corporations Code section 25252(a), the Commissioner levy administrative penalties of \$1,000.00 for the first violation of Corporations Code section 25110 and \$2,500.00 for each subsequent violation of Corporations Code section 25110, as listed low, for a total amount of \$28,500.00 or according to proof:
  - i. First violation: \$1,000.00 for the first sale of a security; and
  - ii. Additional violations: \$2,500.00 for the remaining 11 sales of securities.
- b. That pursuant to Corporations Code section 25252(a), the Commissioner levy administrative penalties of \$2,500.00 for each violation of Corporations Code section 25401, as listed low, for a total amount of \$120,000.00 or according to proof:
  - \$2,5000.00 for the misrepresentation in paragraph 12a, made in at least12 transactions;
  - \$2,5000.00 for the misrepresentation in paragraph 12b, made in at least12 transactions;

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	1	iii.	\$2,5000.00 for the misrepresentation in paragraph 12c, made in at least	
	2		12 transactions; and	
	3	iv.	\$2,5000.00 for the misrepresentation in paragraph 12d, made in at least	
	4		12 transactions.	
	5	The total amount of admir	nistrative penalties for violations of Corporations Code sections 25110 and	
	6	25401 is \$148,500.00, or according to proof.		
	7	DATED: June 11, 2024	CLOTHILDE V. HEWLETT	
	8	Sacramento, California	Commissioner Department of Financial Protection and Innovation	
	9		By	
	10		RYAN M. CASSIDY	
	11		Counsel Enforcement Division	
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		STATEMENT IN SUPPORT OF ORDER LEVYING ADMINISTRATIVE PENALTIES		