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

11 In the Matter of:

12 THE COMMISSIONER OF FINANCIAL
13 PROTECTION AND INNOVATION,

14 Complainant,

15 v.

16 ANDREW L. PENN, and DARCI PENN,

17 Respondents.

DESIST AND REFRAIN ORDER

AND

CLAIM FOR ANCILLARY RELIEF

(Cal. Corp. Code § 25532)

18
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 **INTRODUCTION**

23 1. The Commissioner brings this action pursuant to the provisions of the Corporate
24 Securities Law of 1968 (Cal. Corp. Code §§ 25000-25707) (CSL), and the accompanying regulations
25 in Title 10 of the California Code of Regulations §§ 260.000-260.617 (CCR), which covers the offer
26 and sale of securities.

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- 1 c. The investment had “Zero Risk; and
- 2 d. The client had sole discretion “to determine how the proceeds are allocated,” at
- 3 the end of the contracted term.

4 11. In fact, none of these statements were true. At least five of the investors never received
 5 any payments. One investor did receive a portion of the original deposit after asking for a refund, but
 6 received no profits. At least six investors have made multiple requests for a refund from the Penn’s
 7 but have been unsuccessful.

8 12. Pursuant to Corporations Code section 25403, any person who controls or induces
 9 another person to violate a provision of the Corporate Securities Law of 1968, or any person who
 10 provides substantial assistance to another person in violation of the Corporate Securities Law of
 11 1968, shall be liable for the violations.

12 **III.**

13 **DESIST AND REFRAIN ORDER**

14 **A. Corporations Code section 25110**

15 13. Based on the foregoing findings, the Commissioner is of the opinion that the
 16 securities, in the form of investment contracts, offered and sold by Respondents, are securities,
 17 subject to qualification under the California Corporate Securities Law of 1968 and are being or have
 18 been offered or sold without being qualified, in violation of Corporations Code section 25110.

19 14. Pursuant to Corporations Code section 25532, Andrew L. Penn and Darci Penn are
 20 hereby ordered to desist and refrain from the further offer or sale in the State of California of
 21 securities in the form of investment contracts, unless and until qualification has been made under said
 22 law or unless exempt. The sale of such securities is subject to qualification under said law and such
 23 securities are being or have been offered for sale without first being so qualified.

24 **B. Corporations Code section 25401**

25 15. Further, the Commissioner is of the opinion that the securities issued by Respondents,
 26 were offered and sold in this state by means of written or oral communications which included untrue
 27 statements of material fact or omitted to state material facts necessary in order to make the statements

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1 made, in the light of the circumstances under which they were made, not misleading, in violation of
2 Corporations Code section 25401.

3 16. Pursuant to Corporations Code section 25532 of the Corporate Securities Law of 1968,
4 Andrew L. Penn and Darci Penn are hereby ordered to desist and refrain from offering or selling or
5 buying or offering to buy any security in the State of California, including but not limited to
6 investment contracts, by means of any written or oral communication which includes an untrue
7 statement of a material fact or omits to state a material fact necessary in order to make the statements
8 made, in the light of the circumstances under which they were made, not misleading.

9 **IV.**

10 **CLAIM FOR ANCILLARY RELIEF IN THE FORM OF RESITUTION**

11 17. Complainant re-alleges and reincorporates by reference, as set forth fully above in
12 paragraphs 1 to 16.

13 18. Corporations Code section 25532 (e) authorizes the Commissioner to seek ancillary
14 relief on behalf of any person injured by violations of any provision of the Corporations Code and
15 any rules promulgated thereunder.

16 19. Based on the foregoing findings, the Commissioner finds that Respondents offered
17 and sold unqualified, nonexempt securities in California, in the amount of at least \$622,275.00, and
18 made numerous material misrepresentations and omissions of fact, to at least five investors, in
19 violation of Corporations Code sections 25110 and 25401.

20 WHEREFORE, IT IS PRAYED, for an order of ancillary relief pursuant to Corporation Code
21 section 25532, individually, jointly and severally against Andrew L. Penn and Darci Penn as follows:

22 A) Full Restitution, consisting of Investors' investment principal in the amount of
23 \$622,275.00, and interest accumulated on the investment principal or according to proof.

24 **V.**

25 **CONCLUSION**

26 Based upon the foregoing, the Commissioner finds that grounds exist, and that it is in the
27 public interest, to issue the following orders: (1) desist and refrain order against Andrew L. Penn and
28 Darci Penn; (2) claim for ancillary relief against Andrew L. Penn and Darci Penn, in the form of

1 restitution, totaling \$622,275.00. The Commissioner hereby notifies Andrew L. Penn and Darci Penn
2 of her intention to make such orders final.

3 These Orders are necessary, in the public interest, for the protection of investors, and
4 consistent with the purposes, policies, and provisions of the CSL.

5 DATED: June 11, 2024
6 Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



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8 By: _____
9 MARY ANN SMITH
10 Deputy Commissioner
11 Enforcement Division
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