BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Against: STEVEN M. BEREZ, and MONARCH PRODUCTIONS, L.L.C., Respondents.	OAH No.: 2008100191

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated March 9, 2009, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter, with the following change. In accordance with Government code Section 11517(c)(2)(C), in paragraph 8 of the Factual Findings on page 5 of the Proposed Decision, in the second sentence, the word “he” is revised to “the”.

This Decision shall become effective on June 16, 2009.

IT IS SO ORDERED this 15th day of June 2009.

CALIFORNIA CORPORATIONS COMMISSIONER

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Preston DuFauchard

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PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on January 12, 2009, at Los Angeles. Marisa I. Urteaga-Watkins, Corporations Counsel, represented complainant Corporations Commissioner. John H. Baker, Attorney at Law, represented respondents Steven M. Berez, who was present, and Monarch Productions, L.L.C.

At the conclusion of the hearing, the request of respondent's request to file written argument was granted. On January 26, 2009, the parties filed opening briefs, which were marked as Exhibits 18 and B, respectively. On February 2, 2009, respondent filed a Reply brief, which was marked as Exhibit C. On February 9, 2009, complainant filed a Reply brief, which was marked as Exhibit 19.

Oral and documentary evidence and written argument having been received and considered, the Administrative Law Judge submitted this matter for decision on February 9, 2009, and finds as follows:

FACTUAL FINDINGS

1. On March 25, 2008, Alan S. Weinger in his official capacity as Lead Corporations Counsel, Enforcement Division, and on behalf of Preston DuFauchard, California Corporations Commissioner (hereinafter Commissioner), made and issued the subject Desist and Refrain Order for violations of Corporations Code section 25110 to the following persons: Luciano Development Partnership, L.P.; Luciano Screen Partners, L.L.C.; Monarch Productions, L.L.C.; Full Force, L.L.C.; The Story of Charlie "Lucky"

Luciano; William Costello; and Steven M. Berez, pursuant to the provisions of Corporations Code[1] section 25532.

2. (A) On March 28, 2008, the Department of Corporations served Luciano Development Partnership, L.P.; Luciano Screen Partners, L.L.C.; and The Story of Charlie "Lucky" Luciano with the Desist and Refrain Order by personal service upon a person purportedly authorized to accept service of process at 5700 Canoga Avenue, Suite 300, Woodland Hills.

(B) On or about April 1, 2008, the Department also mailed the Desist and Refrain Order by certified mail with return receipt requested to the persons or entities listed hereinabove. However, all of the certified mailings were returned to the Department undelivered or unclaimed.

(C) On five occasions in April 2008, the Department attempted to personally serve William Costello with the Desist and Refrain Order and was not successful.

(D) On August 28, 2008, the Department served the Desist and Refrain Order upon respondent Steven M. Berez by certified mail. On or about September 15, 2008, respondent Steven M. Berez, President of Monarch Productions, L.L.C., requested on behalf of himself and respondent Monarch Productions a hearing to object to the Desist and Refrain Order in accordance with section 25532. Respondent Berez also waived his and Monarch Productions' right under section 25532, subdivision (d), to have a hearing within 15 days.

(E) On October 21, 2008, counsel for respondents Berez and Monarch Productions filed a notice of appearance or representation with the Department. On October 21, 2008, respondents Berez and Monarch Productions were properly served with the Notice of Hearing. This matter ensued.

(F) It was not established that the Department served the Desist and Refrain Order upon Luciano Development Partnership, L.P.; Luciano Screen Partners, L.L.C.; Full Force, L.L.C.; The Story of Charlie "Lucky" Luciano; or William Costello. Nor was it established that any of these persons or entities requested a hearing to object to the order under section 25532. The issue presented by this matter is the propriety of the issuance of the Desist and Refrain Order with respect to only respondents Berez and Monarch Productions.

3. As of March 26, 2008, the records of the Department do not show any filing by or for respondents Berez and/or Monarch Productions under the California Corporate Securities Law for any form of qualification authorizing the offer and sale of securities in this state (Exh. 9.)

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[1] All further statutory references are to the Corporations Code, unless stated otherwise.

4. (A) At all times relevant herein, respondent Monarch Productions has been a California limited liability company with its principal place of business at 15335 Morrison Street, Number 210, Sherman Oaks. Monarch Production is engaged in the business of developing and producing films in the entertainment industry in this state.

(B) At all times relevant herein, respondent Berez was the president, chief executive officer, and principal stock holder or owner of Monarch Productions. Berez is an executive producer of films and movie soundtracks. He has been the executive producer for six films in the past six years.

5. (A) In or about September 2007, respondent Berez entered into a contract with Full Force Films, L.L.C. (Full Force), to be one of two executive producers for a film in development, "Charlie 'Lucky' Luciano." As established by the testimony of respondent Berez, Full Force, which is engaged the business of film production, owns the rights to make and to distribute this motion picture. Full Force is owned by Dan Michaels, who was to be the other executive producer of the Luciano film.

(B) As executive producer of the Luciano film, respondent Berez was hired to obtain private capital and investors to fund the development budget for the film. The preliminary development budget for the film was $9 million whereas the preliminary production budget was approximately $50 million. The investment vehicle for raising funds for the development budget was or is the Luciano Development Partnership, L.P.

(C) Luciano Development Partnership, L.P., was or is a limited partnership organized under the laws of the State of California (Partnership) with a principal place of business at 5700 Canoga Avenue, Suite 300, Woodland Hills. The general partner was or is Luciano Screen Partners, L.L.C., a California limited liability company. Beginning on October 1, 2007, and continuing for 60 days, the Partnership began offering to sell 75 Class A limited partnership units at a price of $120,000 per unit (75 units x $120,000 = $9,000,000) to investors in a Confidential Development Offering Memorandum (Exh. 16). The proceeds under the offering were to be used to fund the development budget for the Luciano film.

(D) The Confidential Development Offering Memorandum stated that an investment in the partnership units involved a high degree of risk and was suitable only for investors of substantial mean who had no need for liquidity and could afford to lose their entire investment. The memorandum indicated that the offering was being made only to suitable investors who were "accredited" under Rule 501 of Regulation D of the Securities and Exchange Commission or were otherwise permitted by law to participate in the offering. Under a Subscription Booklet and Agreement (Exh. 15), each purchaser was to make certain representations concerning, among other things, his or her financial resources and investment experience. The memorandum further described the partnership units as securities which were not registered under the Securities Act, were being offered pursuant to an exemption from registration under section 4(2) of the Securities Act, and had not been approved or

disapproved by the United States Securities and Exchange Commission or by the securities commission of any state.

6. As executive producer for development of the Luciano film, respondent Berez understood that he could raise funds for the development budget by contacting only those prospective investors with whom he or other producers for the film had pre-existing investor relationships or who were referrals from other producers. Berez testified that it is a common practice in the film industry for producers to refer investors to each other and he knew not to call or talk to investors with whom there was no prior investor relationship. Berez testified that he strictly followed the legal guidelines to produce and raise investment capital for films. He did not prepare the Confidential Development Offering Memorandum or Subscription Agreement but contacted prospective investors about their purchasing of partnership units.

7. (A) On or about October 24, 2007, William Costello, a production assistant for Full Force, called Jaime Hunter, a private tutor and real estate investor in Mesquite, Texas, for the purpose of soliciting his purchase of a partnership unit in the Luciano Development Partnership.[2] It was Costello's job to call potential investors for the development of the Luciano film who had pre-existing investor relationships with the film's producers or had been referred by those or other producers. He was supposed to confirm that the potential investors were accredited or had pre-existing investor relationships, assess their financial resources and investment experience, and obtain commitments from them to purchase partnership units. If they were interested in making an investment, Costello then made appointments for potential investors to review on-line articles and information about the film, including the Full Force [3]website, using internet website passwords. Potential investors expressing an interest or commitment to purchase partnership units were then sent the Confidential Development Offering Memorandum and Subscription Booklet and Agreement. For each interested investor, Costello completed an information form for Full Force, which, in turn, had a producer call the investor again. As an executive project, respondent Berez called a limited number of potential investors during the two-month subscription period to review the offering memorandum and subscription agreement with them.

(B) On or about October 24, 2007, Costello advised Hunter that he had an investment opportunity in a film that was in pre-production or development. Costello indicated that 75 partnership units were available for purchase at $120,000 each and that Hunter could realize a 20 percent return on his investment within 90 days plus royalties upon release of the film and related merchandise. Costello stated that he could guarantee such

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[2] When he checked the caller identification number, Hunter found that the call from Costello came from United Financial on a telephone number in a southern California area code. Respondent Berez testified that United Financial is a mortgage company owned by the co-executive producer of the Luciano film, Dan Michaels.

[3] Prior to receiving the telephone call from Costello, Hunter did not know Costello or respondents Berez and Monarch Productions and had not previously invested in any enterprise or partnership for the production of films.

return and place the guarantee in writing. Costello asked Hunter about his net worth and investment portfolio. When Hunter stated that he did not have $120,000, Costello replied that he could buy 50 or 25 percent of a partnership unit and suggested that he consider investing any retirement funds. Hunter expressed an interest in purchasing a portion of a partnership unit and agreed to speak to a producer about the investment opportunity.

8. On or about October 27, 2007, respondent Berez called Hunter and identified himself as the executive producer of the Luciano film. Berez provided more details on the production of the Luciano film and told Hunter that there was no risk involved in purchasing a partnership unit because he film would be a success. Berez indicated that the purchase of a partnership unit was an excellent investment opportunity and asked Hunter to make a purchase of a partnership unit. While speaking to Hunter, respondent Berez directed him to a website about the film, gave him an access password, and guided him through the website. Hunter told Berez that he was interested in investing in the Luciano Development Partnership, agreed to review an offering memorandum and subscription agreement, and return the subscription agreement with a check if the documents met his approval.

9. On or about October 25, 2007, Hunter received a package sent by respondent Berez and delivered by Federal Express that contained the following documents: a flyer on the film, "Charlie 'Lucky' Luciano" that stated the film was to be presented by Full Force and Monarch Productions and that the executive producer was respondent Berez; respondent Berez's business card indicating he was the chief executive officer and executive producer for Monarch Productions; the Confidential Development Offering Memorandum of the Luciano Development Partnership; Subscription Booklet and Agreement; and a prepaid Federal Express return envelope that was pre-addressed to respondent Berez at Full Force.

10. After receiving the packet, Hunter received telephone calls from respondent Berez but did not answer or return those calls. Instead, on October 30, 2007, Hunter mailed the documents that he received from respondent Berez, including the offering memorandum and subscription agreement, to the Department and made a complaint. The Department assigned the matter to a Corporations Investigator, who reviewed the documents, checked the Department's database, accessed the website of the Secretary of State, and interviewed witnesses, for the purpose of investigating whether there had been an unlawful offer or sale of unqualified securities in violation of section 25110.

11. (A) Respondent Berez was a contract executive producer for the development of the Luciano film from on or about September 22, 2007, until October 25, 2007. His contract was with Full Force and Dan Michaels and was terminated on October 26, 2007. Thereafter, Berez has remained as executive producer for the film, but he is now affiliated with the film through a working relationship with Raging Bull Enterprises and producer Joseph Isgro.

(B) Respondent Berez admits that he called a number of potential investors for the Luciano Development Partnership but does not recall speaking with Hunter. He believes that the partnership had an exemption under federal securities law to solicit investors or to

make offers to sell partnership units in the partnership but he is not at all sure about that claim. He himself did not file any application for exemption or qualification. He asserts that he and the partnership did not sell partnership units or securities to California residents or by use of advertisements, media broadcasts, or seminars. Berez's claims were not borne out by the evidence in this matter.

12. (A) Based on Findings 3 – 11 above, the limited partnership units in the Luciano Development Partnership constituted securities within the meaning of sections 25019 and 25110. (See *People v. Simon*, 9 Cal.4th 493 (1995); *Securities and Exchange Commission v. W.J. Howey Co.*, 328 U.S. 293 (1946).)

(B) Based on Findings 3 – 11 above, respondent Berez, in his capacity of executive producer of the Luciano film and as president of Monarch Productions, offered or offered to sell to Hunter a limited partnership unit, or a fraction thereof, in the Luciano Development Partnership, a security. Berez attempted to sell said security to Hunter for value or solicited Hunter for an offer to buy said security for value. (Corp. Code, § 25017, subd. (b).)

(C) Based on Findings 3 – 11 above, the security offered to Hunter by respondents Berez and Monarch Productions constituted an "issuer transaction" within the meaning of sections 25010 and 25011.

(D) Based on Findings 3 – 11 above, respondent Berez's offer to sell said security to Hunter was made in the State of California within the meaning of sections 25008 and 25017. Costello and Berez made telephone calls to Hunter from California and Costello and Berez sent the offering memorandum and subscription agreement to Hunter from California.

(E) Based on Findings 3 – 11 above, the Commissioner has not issued a permit or other form of qualification to respondents Berez or Monarch Productions authorizing them to offer and sell securities in this state under section 25110. Respondents Berez and Monarch Productions did not present any evidence to establish that the offering of the limited partnership unit was qualified by the Commissioner or Department.

(F) Based on Findings 3 – 11 above, respondents Berez and Monarch Productions failed to establish that their offer to sell the limited partnership unit, or the sale of such security, was exempt from the qualification requirement under section 25110 due to application of state or federal law or regulation, including Rule 506 of Regulation D of section 402, subdivision (2) of the Securities Act of 1933. Aside from uncorroborated testimony, respondents Berez and Monarch Productions did not present any probative evidence of an exemption and thus failed to establish under section 25163 that said security or transaction was exempt from the qualification requirement.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSION

Grounds exist to uphold the Desist and Refrain Order issued to respondents Berez and Monarch Productions under Corporations Code section 25532, in that respondents offered a security in the State of California in the form of a limited partnership unit or interest in a partnership to develop a film, without issuance of a qualification for such offer of a security, and without having met the criteria for any exemption from qualification, in violation of Corporations Code section 25110, based on Findings 3 – 12 above.

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WHEREFORE, the following Order is hereby made:

ORDER

The Desist and Refrain Order, OAH Case No. 2008100191, issued by the California Corporations Commissioner to respondents Steven M. Berez and Monarch Productions, L.L.C., 15335 Morrison Street, Suite 210, Sherman Oaks, California 91403, is sustained. Respondents Steven M. Berez and Monarch Productions, L.L.C., are ordered to desist and refrain from the further offering or selling in the State of California of securities , including, but not limited to, limited partnership units or interests in Luciano Development Partnership, L.P., unless and until qualification has been made or received under the California Corporate Securities Law, or unless exempt.

Dated: March 9, 2009

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Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings