

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 MARLOU de LUNA (CA BAR 162259)
Senior Corporations Counsel
4 320 West 4th Street, Suite 750
Los Angeles, California 90013-2344
5 Telephone: (213) 576-7606
6 Attorneys for Complainant
7

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA
10

11 In the Matter of) FILE NO. 150762
12)
13 THE CALIFORNIA COMMISSIONER OF)
BUSINESS OVERSIGHT,) SETTLEMENT AGREEMENT
14)
15 Complainant,)
16 v.)
17 ARTIENCE CAPITAL MANAGEMENT, LLC,)
18)
19 Respondent.)
20)
21)
22)
23)

24 This SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between the
25 Complainant the California Commissioner of Business Oversight (“Commissioner”), and
26 Respondent Artience Capital Management, LLC. (“Artience Capital”) (collectively the
27 “Parties”).
28 ///

RECITALS

This Agreement is made with reference to the following facts:

A. Artience Capital is, and was at all relevant times herein, an investment advisory firm with its principal place of business located at One Market St., Suite 3600, San Francisco, CA 94105. The company maintains a website at www.artiencecapital.com.

B. Kim Tracy Nordmo (“Nordmo”) is, and was at all relevant times herein, a principal of Artience Capital.

C. Artience Capital has operated as an investment advisory firm registered with the Securities and Exchange Commission (“SEC”), since July 2009. But as a result of the modification in the Investment Advisers Act of 1940, adopted as part of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2011, Artience Capital was required to terminate its SEC registration and re-register as an investment adviser with the California Department of Corporations, now known as the Department of Business Oversight¹.

D. Artience Capital terminated its registration with the SEC on December 11, 2012. In the intervening period, it filed its initial application with the Department through a Form ADV for an investment advisory certificate dated May 24, 2012. An investment advisory certificate was not issued because of a suspension in effect issued by the Financial Industry Regulatory Authority (“FINRA”) against Nordmo. The FINRA suspension was imposed because Nordmo had failed to pay a 2011 FINRA arbitration award in favor of her employer Merrill Lynch, Pierce, Fenner & Smith Incorporated.

E. On or about October 10, 2012, Artience Capital withdrew its application with the Department and an order declaring the application withdrawn was issued that same date. Artience

¹ Effective July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight in accordance with the Governor’s reorganization of state departments and agencies to provide services more efficiently and effectively. Pursuant to the reorganization, the name of the Department of Corporations was changed to Department of Business Oversight, headed by the Commissioner of Business Oversight. (See Fin. Code § 321)

1 Capital was also informed, in writing, that it could not engage in investment adviser activities unless
2 and until it received a certificate from the Commissioner authorizing it to do so.

3 F. On or about December 16, 2012, Artience Capital reapplied for an investment
4 advisory certificate. Through the application process, Artience Capital acknowledged that it
5 continued to service 120 investor advisory accounts. Subsequently, the company also disclosed that
6 it had collected approximately \$100,000 in fees during the period of December 11, 2012 through May
7 2013. To date the Commissioner has not issued an investment adviser certificate to Artience Capital.

8 G. On or about April 13, 2013, FINRA lifted its suspension against Nordmo.

9 H. Artience Capital voluntarily came forward and disclosed to the Commissioner that it
10 had continued to conduct its investment advisory activities after it withdrew its SEC registration, and
11 that it had responded fully to all of the Commissioner's requests for information regarding its
12 investment advisory business. The Commissioner had determined that the public interest will not be
13 served by denying Artience Capital's application to register as an investment adviser.

14 I. It is the intention and desire of the Parties to resolve this matter without the
15 necessity of a hearing and/or other litigation.

16 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
17 forth herein, the Parties agree and stipulate as follows:

18 **TERMS AND CONDITIONS**

19 1. **Purpose.** The purpose of this Agreement is to settle and resolve the matters
20 between the Parties hereto, for judicial economy and expediency, and to avoid the expense of a
21 hearing, and possible further court proceedings.

22 2. **Entry of Desist and Refrain Order.** Upon the Parties' execution of this
23 Agreement, the Commissioner shall issue a Desist and Refrain Order pursuant to California
24 Corporations Code section 25532, subdivision (b), directing Artience Capital to desist and
25 refrain from engaging in unlicensed investment adviser activities. A true and correct unsigned
26 copy of the Desist and Refrain Order is attached hereto as Exhibit A and incorporated herein by
27 reference.
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1 3. **Administrative Penalties.** Artience Capital agrees to pay to the Commissioner
2 penalties totaling, TEN THOUSAND DOLLARS (\$10,000) (“Penalties”). Artience Capital shall
3 pay the Penalties by way of four (4) installment payments of TWO THOUSAND FIVE HUNDRED
4 DOLLARS (\$2,500) on or before the 15th of each of the following month and year: October 2013,
5 January 2014, May 2014 and August 2014. The check shall be made payable to “The Department of
6 Business Oversight,” and shall be sent by Artience Capital to the following address:

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8 **Marlou de Luna, Esq.**
9 **Senior Corporations Counsel**
10 **Department of Business Oversight**
11 **320 W. 4th Street, Suite 750**
12 **Los Angeles, CA 90013**

13 In the event the payment due date falls on a weekend or holiday, the payment shall be due the next
14 business day. Artience Capital acknowledges that failure to timely pay the Penalties in this
15 Agreement shall be a breach of this Agreement and shall be cause for the Commissioner to
16 immediately revoke any licenses held by, and/or deny any pending application(s) of Artience
17 Capital, its successors and assigns, by whatever names they might be known. Artience Capital
18 hereby waives any notice and hearing rights to contest such revocations and/or denial(s) which may
19 be afforded under the Corporate Securities Law of 1968, the California Administrative Procedure
20 Act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

21 4. **Waiver of Hearing Rights.** Artience Capital acknowledges its right to a hearing
22 under the Corporate Securities Law of 1968 in connection with the Desist and Refrain Order and the
23 application for an investment adviser certificate and hereby waives that right to a hearing, and to
24 any reconsideration, appeal, or other right to review which may be afforded pursuant to the
25 Corporate Securities Law of 1968, the California Administrative Procedure Act, the California
26 Code of Civil Procedure, or any other provision of law, and by waiving such rights, consents to
27 the Penalties becoming final.

28 5. **Certification.** Artience Capital stipulates to undertake all appropriate steps designed
to assure full compliance with the laws of California in the conduct of its business. Artience

1 Capital acknowledges that failure to comply under this Agreement shall be a breach of this
2 Agreement and shall be cause for the Commissioner to immediately revoke any licenses held by,
3 and/or deny any pending application(s) of Artience Capital, its successors and assigns, by
4 whatever names they might be known. Artience Capital hereby waives any notice and hearing
5 rights to contest such revocations and/or denial(s) which may be afforded under the Corporate
6 Securities Law of 1968, the California Administrative Procedure Act, the California Code of Civil
7 Procedure, or any other provision of law in connection therewith.

8 6. **Future Actions by the Commissioner.** The Commissioner reserves the right to
9 bring any future action(s) against Artience Capital or any of the officers, directors,
10 shareholders, or employees of Artience Capital for any and all unknown or future violations of
11 the Corporate Securities Act of 1968. This Agreement shall not serve to exculpate Artience Capital
12 or any of the officers, directors, shareholders, or employees of Artience Capital from liability for any
13 and all unknown or future violations of the Corporate Securities Act of 1968.

14 7. **Effective Date.** This Agreement shall not become effective until signed, and
15 delivered by all parties.

16 8. **Settlement Agreement Coverage.** The Parties hereby acknowledge and agree that
17 this Agreement is intended to constitute a full, final, and complete resolution of this matter.
18 The Parties further acknowledge and agree that nothing contained in this Agreement shall operate to
19 limit the Commissioner's ability to assist any other agency, county, state or federal, with any
20 prosecution, administrative, civil or criminal, brought by any such agency against Artience
21 Capital based upon any of the activities alleged in this matter or otherwise.

22 9. **Independent Legal Advice.** Each of the Parties represents, warrants, and agrees
23 that it has received or been advised to seek independent legal advice from its attorneys with
24 respect to the advisability of executing this Agreement.

25 10. **No Other Representation.** Each of the parties represents, warrants, and agrees that in
26 executing this Agreement it has relied solely on the statements set forth herein and the advice of its
27 own counsel. Each of the parties further represents, warrants, and agrees that in executing
28 this Agreement it has placed no reliance on any statement, representation, or promise of any

1 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
2 party or any other person or entity to make any statement, representation or disclosure of
3 anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
4 party was in any way fraudulently induced to execute this Agreement; and (2) to preclude the
5 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
6 Agreement.

7 11. **Modifications and Qualified Integration.** No amendment, change or
8 modification of this Agreement shall be valid or binding to any extent unless it is in writing
9 and signed by all of the parties affected by it.

10 12. **Full Integration.** This Agreement is the final written expression and the
11 complete and exclusive statement of all the agreements, conditions, promises, representations,
12 and covenants between the parties with respect to the subject matter hereof, and supersedes all
13 discussions between and among the parties, their respective representatives, and any other
14 person or entity, with respect to the subject matter covered hereby.

15 13. **No Presumption From Drafting.** In that the parties have had the opportunity to
16 draft, review and edit the language of this Agreement, no presumption for or against any party
17 arising out of drafting all or any part of this Agreement will be applied in any action
18 relating to, connected to, or involving this Agreement. Accordingly, the parties waive the
19 benefit of Civil Code section 1654 and any successor or amended statute, providing that in
20 cases of uncertainty, language of a contract should be interpreted most strongly against the party
21 who caused the uncertainty to exist.

22 14. **Counterparts.** This Agreement may be executed in any number of counter-
23 parts by the Parties, and when each party has signed and delivered at least one such counterpart
24 to the other party, each counterpart shall be deemed an original and taken together shall
25 constitute one and the same Agreement.

26 15. **Headings and Governing Law.** The headings to the paragraphs of this Agreement
27 are inserted for convenience only and will not be deemed a part hereof or affect the
28 construction or interpretation of the provisions hereof. This Agreement shall be

1 construed and enforced in accordance with, and governed by, the laws of the State of
2 California.

3 16. **Authority For Settlement.** Each party warrants and represents that such party is
4 fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and
5 without limiting the generality of the foregoing, each party warrants and represents that it is
6 fully entitled to enter into the covenants, and undertake the obligations set forth herein.

7 17. **Public Record.** Artience Capital hereby acknowledges that this Agreement will
8 be a matter of public record.

9 18. **Voluntary Agreement.** The Parties each represent and acknowledge that he, she
10 or it is executing this Agreement completely voluntarily and without any duress or undue
11 influence of any kind from any source.

12 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement
13 on the dates set forth opposite their respective signatures.

14
15 JAN LYNN OWEN
16 Commissioner of Business Oversight

17 Dated: 10/14/13 _____ By _____
18 MARY ANN SMITH
19 Deputy Commissioner

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21 Dated: 10/11/13 _____ ARTIENCE CAPITAL MANAGEMENT, LLC

22
23 By _____
24 JOLIE BALES
25 Managing Member

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1 APPROVED AS TO FORM:

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3 Dated: 10/16/13 _____

Marlou de Luna
Senior Corporations Counsel

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7 Dated: 10/14/13 _____

James E. Grand
Attorney for ARTIENCE CAPITAL MANAGEMENT, LLC

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