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

12 In the Matter of:) CRD NO.: 115266
)
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
15 Complainant,)
)
16 v.)
)
17 BRENT WAYNE BARNES,)
)
18 Respondents.)
19)
20)

21 Brent Wayne Barnes (Barnes) and Complainant, the Commissioner of Business Oversight
22 (Commissioner) (hereafter the Parties), enter into this Consent Order (Order) based on the following
23 facts:

24 **RECITALS**

- 25 A. Barnes is an investment adviser operating as a sole proprietor with a principal place of business
26 at 1673 Terracina Drive, El Dorado Hills, CA 95762.
27 B. The Commissioner conducted a regulatory examination of Barnes' investment advisory
28 business on March 23, 2016.

1 C. During the examination, the Commissioner found that Barnes violated Corporations Code
2 section 25234 and Title 10, California Code of Regulations, section 260.234, by charging fees based
3 on the gains of investor funds.

4 D. In addition, the Commissioner found that Barnes recommended securities that were not
5 suitable for a client in violation of Corporation Code section 25238 and Title 10, California Code of
6 Regulations, section 260.238.

7 E. It is the intention and desire of the Parties to resolve this matter without the filing of an
8 enforcement action and without the need for a hearing or other litigation.

9 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
10 forth herein, the Parties agree as follows:

11 **TERMS AND CONDITIONS**

12 1. Purpose: The purpose of this Order is to settle and resolve the issues between the
13 Parties hereto, for judicial economy and expediency, and to avoid the expense of a hearing, and
14 possible further court proceedings.

15 2. Waiver of Hearing Rights: Barnes acknowledges that the Commissioner is able to file
16 an action in connection with the violation of laws under the Corporate Securities Law of 1968, and
17 hereby waives the right to any hearing, and to any reconsideration, appeal, or any other right to review
18 which may be afforded pursuant to the Corporate Securities Law of 1968, the California
19 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law,
20 and by waiving these rights, agrees to this Order.

21 3. Final Order to Discontinue Violations: Barnes stipulates to this final order to
22 discontinue violating Corporation Code sections 25234 and 25238, and Title 10, California Code of
23 Regulations, sections 260.234 and 260.238, and acknowledges that this action can be used in future
24 proceedings that may be initiated by or brought before the Department.

25 4. Future Actions by the Commissioner: Other than as to the matters resolved herein, the
26 Commissioner reserves the right to bring any future action(s) against Barnes for any and all unknown
27 or future violations of the Corporate Securities Act of 1968. Other than as to the matters resolved
28 herein, this Order shall not serve to exculpate Barnes from liability for any and all unknown or future

1 violations of the Corporate Securities Act of 1968.

2 5. Consent Order Coverage: The Parties hereby acknowledge and agree that this Order is
3 intended to constitute a full, final, and complete resolution of this matter. The Parties further
4 acknowledge and agree, except as provided in paragraph 4, above, that nothing contained in this Order
5 shall operate to limit the Commissioner's ability to cooperate with any other agency, county, state or
6 federal, with any prosecution, administrative, civil or criminal, brought by any such agency against
7 Barnes based upon any of the activities alleged in this matter or otherwise.

8 6. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it
9 has received or been advised to seek independent legal advice from its attorneys with respect to the
10 advisability of executing this Order.

11 7. No Other Representation: Each of the parties represents, warrants, and agrees that in
12 executing this Order has relied solely on the statements set forth herein and the advice of its own
13 counsel. Each of the parties further represents, warrants, and agrees that in executing this Order it has
14 placed no reliance on any statement, representation, or promise of any other party, or any other person
15 or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to
16 make any statement, representation or disclosure of anything whatsoever. The parties have included
17 this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute
18 this Order; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
19 contradict the terms of this Order.

20 8. Modifications and Qualified Integration: No amendment, change or modification of
21 this Order shall be valid or binding to any extent unless it is in writing and signed by all of the parties
22 affected by it.

23 9. Full Integration: This Order is the final written expression and the complete and
24 exclusive statement of all the agreements, conditions, promises, representations, and covenants
25 between the parties with respect to the subject matter hereof, and supersedes all discussions between
26 and among the parties, their respective representatives, and any other person or entity, with respect to
27 the subject matter covered hereby.

28 10. No Presumption From Drafting: In that the parties have had the opportunity to draft,

1 review and edit the language of this Order, no presumption for or against any party arising out of
2 drafting all or any part of this Order will be applied in any action relating to, connected to, or
3 involving this Order. Accordingly, the parties waive the benefit of Civil Code section 1654 and any
4 successor or amended statute, providing that in cases of uncertainty, language of a contract should be
5 interpreted most strongly against the party who caused the uncertainty to exist.

6 11. Counterparts: This Order may be executed in any number of counter-parts by the
7 Parties, and when each party has signed and delivered at least one such counterpart to the other party,
8 each counterpart shall be deemed an original and taken together shall constitute one and the same
9 Order. This Order may be executed via original signatures exchanged by facsimile or electronic
10 means.

11 12. Headings and Governing Law: The headings to the paragraphs of this Order are
12 inserted for convenience only and will not be deemed a part hereof or affect the construction or
13 interpretation of the provisions hereof. This Order shall be construed and enforced in accordance with,
14 and governed by, the laws of the State of California.

15 13. Authority For Settlement: Each party warrants and represents that such party is fully
16 entitled and duly authorized to enter into and deliver this Order. In particular, and without limiting the
17 generality of the foregoing, each party warrants and represents that it is fully entitled to enter into the
18 covenants, and undertake the obligations set forth herein.

19 14. Public Record: Barnes hereby acknowledges that this Order, including the attached bar
20 order and order denying the application, will be matters of public record.

21 15. Voluntary Agreement: The Parties each represent and acknowledge that he, she, or it is
22 executing this Order completely voluntarily and without any duress or undue influence of any kind
23 from any source.

24 16. Effective Date: This Order shall not be effective until signed by all parties and
25 delivered by the Commissioner's counsel by email to Respondent at bwarnesfp@comcast.net.

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

Dated: April 5, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: March 29, 2018

By _____
BRENT WAYNE BARNES, an Individual