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California Corporations Commissioner  
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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS  
9 OF THE STATE OF CALIFORNIA

11	In the Matter of	)	CASE NO.
12	THE CALIFORNIA CORPORATIONS	)	FILE NO. 923-6045
13	COMMISSIONER,	)	FIRST AMENDED ACCUSATION TO BAR
14	Complainant,	)	BRIAN D. GIBBS
15	v.	)	(CORPORATIONS CODE SECTION 25232.1)
16	BRIAN D GIBBS,	)	
17	Respondent.	)	
18		)	
19		)	

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21 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the  
22 Department of Corporations ("Department") alleges and charges as follows:

23 **I. JURISDICTION AND VENUE**

- 24 1. The Commissioner brings this action pursuant to the provisions of California
- 25 Corporations Code ("CC") section 25232.1 and the rules and regulations promulgated thereunder.
- 26 2. The Commissioner is authorized to administer and enforce the provisions of the
- 27 Corporate Securities Law of 1968, Corporations Code section 25000 et seq. ("CSL") and the
- 28 regulations thereunder at Title 10, California Code of Regulations ("CCR").

## II. STATEMENT OF FACTS

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2 3. This action is brought in order to issue an order barring Brian D. Gibbs (referenced  
3 hereinafter as "Gibbs" or "Respondent") from any position of employment, management or control  
4 of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code  
5 section 25232.1.

6 4. On June 25, 2010, Heritage Wealth Management, Inc. ("HWM") filed its investment  
7 adviser application with the Commissioner. On July 15, 2010, HWM submitted Brian D. Gibbs  
8 ("Gibbs") Uniform Application for Securities Industry Registration and Transfer Form seeking to  
9 have Gibbs as an investment adviser representative. HWM is located at 11440 W. Bernardo Court,  
10 Ste. 106, San Diego, California 92127. Gibbs is a licensed insurance agent with the Department of  
11 Insurance and sells insurance products and annuities through Heritage Financial and Insurance  
12 Services, Inc. ("HFIS"). Gibbs, HWM and HFIS are not licensed as investment advisers or broker-  
13 dealers with the Commissioner.

14 5. On October 2, 2002, the Department issued Desist and Refrain Orders against Gibbs  
15 and Gibbs Financial Services, Inc. ("GFS"), for violations of CC sections 25110, 25210 and 25401  
16 ("Commissioner's Orders"). Gibbs and GFS violated CC section 25110 by selling unqualified, non-  
17 exempt securities, violated CC section 25210 by engaging in unlicensed broker-dealer activity, and  
18 violated CC section 25401 by making material misrepresentations and omissions regarding securities  
19 solicited. On January 29, 2003, a Department investigator served the Commissioner's Orders on  
20 Gibbs, as an individual and also as President on behalf of GFS. The investigator informed counsel  
21 shortly after serving the Commissioner's Orders on Gibbs that Gibbs said that he does not plan to  
22 contest them and wants to put this behind him. Furthermore, Gibbs and GFS had one year from  
23 receipt of the Commissioner's Orders to ask for a hearing to contest them. Gibbs and GFS never  
24 requested a hearing and therefore the Commissioner's Orders are final.

25 6. From about November 30, 2009 through July 30, 2010, Gibbs sold 21 policies of Life  
26 Partners, Inc. ("LP") life settlement contracts to investors in an amount over \$1.5 million without  
27 being licensed as a broker-dealer in violation of CC section 25210.

28 7. Gibbs provided investment advice to investors for compensation without being

1 licensed as an investment adviser in violation of CC section 25230.

2 8. Gibbs failed to disclose the Commissioner's Orders he received on January 29,  
3 2003, to the investors that bought LP life settlement contracts from Gibbs and to the investors that  
4 Gibbs gave investment advice to in violation of CC section 25401.

5 9. By violating CC sections 25210 and 25401, Gibbs is also in violation of the Desist  
6 and Refrain Orders issued on October 2, 2002 to protect investors.

7 **III. RESPONDENT GIBBS SHOULD BE BARRED FROM ANY POSITION OF**  
8 **EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER,**  
9 **BROKER-DEALER OR COMMODITY ADVISER**

10 10. Corporations Code Section 25232.1 provides, in pertinent part:

11 The commissioner may, after appropriate notice and opportunity for hearing,  
12 by order censure, or suspend for a period not exceeding 12 months, or bar  
13 from any position of employment, management or control of any investment  
14 adviser, broker-dealer or commodity adviser, any officer, director, partner,  
15 employee of, or person performing similar functions for, an investment  
16 adviser, or any other person, if he or she finds that the censure, suspension or  
17 bar is in the public interest and that the person has committed any act or  
18 omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232 ... or  
19 is subject to any order specified in subdivision (d) of Section 25232

20 11. Corporations Code section 25232 provides, in pertinent part:

21 The commissioner may, after appropriate notice and opportunity for hearing,  
22 by order censure, deny a certificate to, or suspend for a period not exceeding  
23 12 months or revoke the certificate of, an investment adviser, if the  
24 commissioner finds that the censure, denial, suspension, or revocation is in the  
25 public interest and that the investment adviser, whether prior or subsequent to  
26 becoming such, or any partner, officer or director thereof or any person  
27 performing similar functions or any person directly or indirectly controlling  
28 the investment adviser, whether prior or subsequent to becoming such, or any  
employee of the investment adviser while so employed:

(d) Is or has been subject to... (3) any other order of the commission or any  
administrator, association, or exchange referred to in this subdivision which is  
or has been necessary for the protection of any investor.

(e) Has willfully violated any provision of . . . Title 4 (commencing with  
Section 25000)... or of any rule or regulation under any of those statutes, or  
any order of the commissioner which is or has been necessary for the  
protection of any investor.



1 has first applied for and secured from the commissioner a certificate, then in effect,  
2 authorizing that person to act in that capacity.

3 16. CC section 25004 provides, in pertinent part:

4 (a) "Broker-dealer" means any person engaged in the business of effecting  
5 transactions in securities in this state for the account of others... "Broker-dealer"  
6 does not include any of the following:

7 (1) Any other issuer.

8 (2) An agent, when an employee of a broker-dealer or issuer.

9 17. Under CC section 25019, life settlement contracts are listed as securities and since  
10 Gibbs sold 21 of these policies for LP to investors located in the state of California, he engaged in  
11 the business of effecting transactions in securities in California for the account of others. In order to  
12 meet an exemption from being required to be licensed as a broker-dealer to sell life settlement  
13 contracts, Gibbs would have to show he was an "issuer agent" of LP under CC section 25209. In  
14 documents produced to the Commissioner pursuant to subpoenas, LP has stated that the life agents,  
15 including Gibbs that sold LP policies were not agents of the company. Furthermore, under CC  
16 section 25003 (b), an agent does not include an individual who only represents an issuer in effecting  
17 transactions in securities exempted by CC section 25102. CC section 25102(q) is the exemption  
18 being relied upon by LP in selling these securities in California and as such Gibbs is not an agent.  
19 Furthermore, Gibbs is not an employee of LP and therefore Gibbs is not an agent of LP.

20 18. Therefore, Gibbs was required to be licensed as a broker-dealer in the state of  
21 California to effect these securities transactions for the account of others and by failing to do so is in  
22 violation of CC section 25210 and should be barred.

23 19. Gibbs failed to disclose the Commissioner's Orders to investors in violation of CC  
24 section 25401. Since Gibbs sold securities by soliciting investors to purchase LP life settlement  
25 contracts, he was required to disclose all material facts in connection with the offer and sale of  
26 securities, including material facts about himself.

27 20. CC section 25401 provides, in pertinent part:

28 It is unlawful for any person to offer or sell a security in this state...by means of any  
written or oral communication which includes an untrue statement of a material fact

1 or omits to state a material fact necessary in order to make the statements made, in  
2 light of the circumstances under which they were made, not misleading.

3 21. Courts have held that the failure to disclose state and federal regulatory actions for  
4 violations of securities laws is a “material” omission. *See, e.g., S.E.C. v. Merchant Capital, LLC*  
5 (11<sup>th</sup> Cir. 2007) (failure to disclose state cease and desist order against identical instruments is  
6 “clearly relevant to reasonable investor” and “clear error not to count this as a material  
7 misrepresentation”); *S.E.C. v. Physicians Guardian Unit Inv. Trust* (M.D. Fla. 1999) 72 F.Supp.2d  
8 1342, 1351 (allegation that promoter failed to disclose existence of state cease and desist order  
9 supported securities fraud claim); *S.E.C. v. Paro* (N.D.N.Y. 1979) 468 F. Supp. 635, 646 (material  
10 omission when failed to disclose cease and desist orders and injunctions issued by federal and state  
11 courts against similar predecessor interests). Therefore, Gibbs was required to disclose the  
12 Commissioner’s Orders issued against him to investors when selling the LP life settlement contracts  
13 and in failing to do so violated CC section 25401 and should be barred.

14 22. Gibbs gave investment advice to investors, including recommending the purchase of  
15 LP life settlement contracts without being licensed as an investment adviser in violation of CC  
16 section 25230.

17 23. CC section 25230 provides, in pertinent part:

18 (a) It is unlawful for any investment adviser to conduct business as an investment  
19 adviser in this state unless the investment adviser has first applied for and secured  
20 from the commissioner a certificate, then in effect, authorizing the investment adviser  
21 to do so or unless the investment adviser is exempted by the provisions of Chapter 1  
(commencing with Section 25200) of this part or unless the investment adviser is  
subject to Section 25230.1.

22 24. CC section 25009 provides, in pertinent part:

23 (a) “Investment adviser” means any person who, for compensation, engages in the  
24 business of advising others, either directly or through publications or writings, as to  
25 the value of securities or as to the advisability of investing in, purchasing or selling  
26 securities, or who, for compensation and as a part of a regular business, publishes  
analyses or reports concerning securities.

27 (b) “Investment adviser” also includes any person who uses the title “financial  
28 planner” and who, for compensation, engages in the business, whether principally or  
as part of another business, of advising others...as to the value of securities or as to

1 the advisability of investing in, purchasing or selling securities...

2 25. Gibbs, HWM and HFIS are not licensed as investment advisers with the  
3 Commissioner or the Securities and Exchange Commission. Because Gibbs recommended to  
4 California investors that they purchase LP life settlement contracts and received compensation for  
5 doing so in the form of commissions, Gibbs was acting as an investment adviser. Furthermore,  
6 Gibbs used the title "Financial Planner" with his clients and engaged in the business of advising  
7 others as to the advisability of investing in, purchasing and selling securities, including investing in  
8 and purchasing the LP life settlement contracts for compensation. Lastly, Gibbs advises his clients  
9 to sell securities in order to purchase insurance products and annuities. Gibbs receives compensation  
10 for selling insurance products and annuities and therefore Gibbs was required to obtain an  
11 investment adviser license when recommending clients sell securities to buy other investment  
12 products. Therefore, Gibbs engaged in unlicensed investment adviser activity in violation of CC  
13 section 25230 and should be barred.

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15 C. GIBBS HAS WILLFULLY VIOLATED THE COMMISSIONER'S DESIST AND  
16 REFRAIN ORDERS WHICH HAVE BEEN NECESSARY FOR THE PROTECTION OF  
17 INVESTORS AND SHOULD BE BARRED

18 26. As described above, Gibbs has violated CC sections 25210 and 25401. Since the  
19 Commissioner's Orders prohibited Gibbs from violating these code sections, Gibbs is in violation of  
20 the Commissioner's Orders and therefore should be barred.

21 **IV. RELIEF REQUESTED**

22 Because Gibbs has been subject to uncontested Orders that were necessary for the protection  
23 of investors and Gibbs willfully violated CC sections 25110, 25210, 25230 and 25401 and the  
24 Commissioner's Desist and Refrain Orders, Gibbs should be barred from any position of  
25 employment, management or control of any investment adviser, broker-dealer or commodity adviser  
26 pursuant to CC section 25232.1 for orders and acts enumerated in subdivisions 25232 (d) and (e).

27 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest  
28 to bar Brian D. Gibbs from any position of employment, management or control of any investment

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adviser, broker-dealer or commodity adviser pursuant to CC section 25232.1 for orders listed under CC section 25232(d) and for willful acts committed as specified in CC section 25232(e).

WHEREFORE, IT IS PRAYED that Respondent Brian D. Gibbs be barred from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to CC section 25232.1

Dated: June 7, 2011

PRESTON DuFAUCHARD  
California Corporations Commissioner

By: \_\_\_\_\_  
MICHELLE LIPTON  
Sr. Corporations Counsel  
Enforcement Division