

1
2 STATE OF OREGON
3 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
4 DIVISION OF FINANCIAL REGULATION

5 In the Matter of:

Case No. INS-19-0140

6 ANDREW M. THOMAS, A/K/A
7 ANDREW G. KLEIN

FINAL ORDER TO CEASE AND
DESIST, FINAL ORDER REVOKING
LICENSE, AND FINAL ORDER
ASSESSING CIVIL PENALTIES

8 Respondent.

9
10 **HISTORY OF THE CASE**

11 On July 23, 2020, the Department of Consumer & Business Services, Division of
12 Financial Regulation, (Department) issued Andrew Thomas an Order to Cease and Desist,
13 Proposed Order Revoking License, Proposed Order Assessing Civil Penalties, and Notice
14 of Right to An Administrative Hearing (Notice). On August 4, 2020, Mr. Thomas
15 requested a hearing.

16 On June 4, 2021, the Department referred the matter to the Office of Administrative
17 Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha A. Fair
18 to preside at hearing. On July 23, 2021, ALJ Fair convened a prehearing conference. Mr.
19 Thomas appeared. Assistant Attorney General Jacob Gill appeared on the Department's
20 behalf. Adam Blechman also appeared on behalf of the Department. ALJ Fair scheduled
21 an in-person hearing for January 4 through 7, 2022, and set deadlines for the submission
22 of motions by October 1, 2021, and for the submission of witness lists and exhibits by
23 December 14, 2021.

24 On September 30 and October 1, 2021, the Department and Mr. Thomas,
25 respectively, requested an extension of the deadline for filing discovery motions. On
26 October 1, 2021, ALJ Fair granted the requests and extended the deadline for the filing of

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1 discovery motions to October 22, 2021.

2 On December 3, 2021, ALJ Fair advised the parties that an in-person hearing could
3 not be conducted because of the pandemic and offered to convert the hearing to a video
4 conference hearing if the Department approved of the conversion.¹ On December 8, 2021,
5 the Department agreed to a video conference hearing. On December 9, 2021, ALJ Fair
6 converted the in-person hearing to a video conference hearing.

7 On December 13, 2021, Mr. Thomas requested an extension of the filing deadline
8 for his witness list and exhibits. On December 14, 2021, ALJ Fair granted his request and
9 extended the deadline for his submissions to December 15, 2021.

10 On December 14, 2021, the Department filed its witness list, Exhibits A1 through
11 A31, and Pleadings P1 through P32.

12 On December 14, 2021, Mr. Thomas filed Exhibits R1A and R87. On December
13 15, 2021, Mr. Thomas filed the remainder of his exhibits.

14 On December 28, 2021, Mr. Thomas withdrew from consideration Exhibits R8,
15 R81, R84 and R98.

16 ALJ Fair convened a video conference hearing on January 4, 2022. Mr. Thomas
17 appeared and testified. Mr. Gill appeared and represented the Department. Testifying on
18 behalf of the Department were Janice Hart, a Department Rates and Forms Analyst, and
19 Chris Aldrich, a Department Investigator. During the course of the hearing, the
20 Department submitted Exhibit A33.² The hearing testimony concluded on January 4, 2022.
21 The evidentiary record was left open through January 14, 2022, for Mr. Thomas to submit
22 an audio recording. The procedural record was left open for the receipt of the parties'
23 closing arguments to be submitted no later than March 18, 2022.

24 _____
25 ¹ OAR 137-003-0525(1)(b) makes the hearing location subject to the approval of the agency. At the July 23,
26 2021 prehearing conference, Mr. Thomas had requested the hearing be held via video conference. At that
time, the Department had opposed the video conference option.

² The Department had marked, but never submitted, an Exhibit A32.



1 On January 14, 2022, the evidentiary record closed without receipt of any additional
2 evidence from Mr. Thomas. On that same date, Mr. Thomas filed a motion to compel
3 discovery. On January 19, 2022, ALJ Fair issued a Ruling on Motion to Compel
4 Discovery, denying the motion.

5 On March 9, 2022, Mr. Thomas requested to reopen the evidentiary record.³ On
6 March 10, 2022, ALJ Fair denied the request.

7 On March 18, 2022, the Department requested an extension to March 21, 2022, for
8 the filing of closing arguments. ALJ Fair granted the request and extended the deadline to
9 March 21, 2022.

10 On March 21, 2022, Mr. Thomas filed his closing argument. On March 25, 2022,
11 the Department filed its closing argument. On that same date, Mr. Thomas filed an
12 objection to the Department's closing argument. On March 29, 2022, ALJ Fair excluded
13 the Department's closing argument for being untimely-filed.

14 On April 8, 2022, the Department filed a request for the ALJ to reconsider her
15 decision to exclude the closing argument. On April 11, 2022, Mr. Thomas filed his
16 objection to the request. On April 11, 2022, ALJ Fair denied the Department's request.

17 On May 31, 2022, ALJ Fair issued a Proposed Order (Proposed Order).

18 Respondent failed to timely file exceptions to the Proposed Order.⁴

19 Having considered the Proposed Order, the Department, acting under Oregon
20 Revised Statutes (ORS) 59.005 to 59.505, 59.991 and 59.995 (the Oregon Securities Law),
21 ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750 (the
22 Insurance Code), ORS chapter 183, and the Oregon Administrative Rules (OAR)
23 promulgated under those laws, hereby adopts the Proposed Order as the Final Order in this
24 case.

25 ³ Mr. Thomas sought to submit additional documents but not the audio recording for which the record had
previously been left open.

26 ⁴ See *infra* at p. 45.

1 **ISSUES**

2 1. Whether Mr. Thomas sold an unregistered security in Oregon. ORS
3 59.055(1).⁵

4 2. Whether Mr. Thomas transacted business in Oregon as a broker-dealer or
5 salesperson without being licensed under the Oregon Securities Law. ORS 59.165(1).

6 3. Whether Mr. Thomas, in connection with the sale of a security, made any
7 omissions or untrue statements of material fact or engaged in any acts which operated or
8 would operate as fraud or deceit. ORS 59.135(2) and (3).

9 4. Whether Mr. Thomas used fraudulent, coercive or dishonest practices, or
10 demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct
11 of insurance producer business. ORS 744.074.

12 5. Whether Mr. Thomas employed a scheme to defraud or obtain money by
13 means of omissions or untrue statements of material fact to induce or attempt to induce an
14 insured to surrender an issued life insurance policy. ORS 746.075(1) and (2).

15 6. Whether Mr. Thomas complied with a Department subpoena. ORS 59.245(2)
16 and ORS 59.315(1).

17 7. Whether the Department should revoke Mr. Thomas' insurance producer
18 license. ORS 744.074(1).

19 8. Whether the Department should assess Mr. Thomas civil penalties for any
20 established violations, including the forfeiture of any profits made from any established
21 violations. ORS 59.995(1),⁶ ORS 744.992(1) and ORS 731.988.⁷

22 _____
23 ⁵ Mr. Thomas suggested that the Department relied on the wrong version of the statutes at issue. None of the
24 statutes that the Department alleges Mr. Thomas violated were amended after 2007.

24 ⁶ The current statute cited herein has an effective date of 2017. The prior version of the statute was effective
25 1999. The 2017 amendments made no changes to the statute that would change the outcome of this
26 proceeding.

25 ⁷ The current statute cited herein has an effective date of 2013. The prior version of the statute was effective
26 2003. The 2013 amendments made no changes to the statute that would change the outcome of this
proceeding.



1 9. Whether the Department may issue Mr. Thomas a cease and desist order.
2 ORS 59.245(4) and ORS 731.252.

3 **EVIDENTIARY RULINGS**

4 Exhibits A1 through A31 and A33, offered by the Department, were admitted into
5 the record without objection.

6 Mr. Thomas submitted the following Exhibits: R1A; R2 through R7; R9 through
7 R15, including R9b, R10a, and R10b; R17a through R20, including R17b; R22 through
8 R35; R37 through R40; R42 through R66a, including R43b, R60a, R60b, R60c, R61a,
9 R61b, R62a, R62b, R65a, R65b, R65c; R66b and R66c; R68 through R71; R73 through
10 R80; R82; R83; R85; R87 and R99. The following exhibits were admitted into the record
11 without objection: R3, R5, R7, R10a, R10b, R11, R12, R14, R15, R17a, R17b, R19, R20,
12 R22, R24, R26 through R32, R34, R37, R42, R43, R46, R74, R83, R85, R87, and R99.

13 The Department's objections were upheld and the following exhibits were excluded
14 from the record: R1A,⁸ R2, R6, R9, R9b, R18, R23, R25, R33, R38 through R40, R45,
15 R47, R54, R65a, R66c, R68, R69, R71, R73, and R77 through R80.

16 The Department's objection to Exhibit R63 was overruled and the exhibit was
17 admitted into the record.

18 The Department also objected to the admission of written and typed annotations
19 and extraneous comments added to exhibits by Mr. Thomas. The Department's objection
20 was upheld and the following exhibits are admitted except for any written or typed
21 annotations and extraneous comments: R4, R13, R35, R43b, R44, R48 through R50, R50a,
22 R51 through R53, R55 through R59, R60a, R60b, R61a, R61b, R62a, R62b, R64, R65b,
23 R65c, R66a, R66b, R70, R75, R76 and R82.

24 ///

25 ⁸ During the hearing, the Department raised an objection to Exhibit R1A that was not ruled on during the
26 hearing. Pursuant to OAR 137-003-0610(4), the ALJ upholds the objection and excludes the exhibit in this Proposed Order.



1 **CREDIBILITY DETERMINATION AND RELIABILITY OF EVIDENCE**

2 Mr. Thomas asserted that the Department and its employees lied and committed
3 fraud in pursuing its allegations against him. ORS 44.370 provides, in part:

4 A witness is presumed to speak the truth. This presumption,
5 however, may be overcome by the manner in which the witness
6 testifies, by the character of the testimony of the witness, or by
7 evidence affecting the character or motives of the witness, or by
8 contradictory evidence.

9 The reliability of evidence, including witness credibility, can be based on a number
10 of factors, other than the manner of testifying. These factors include the inherent
11 probability of the evidence, whether the evidence is corroborated, whether the evidence is
12 contradicted by other testimony or evidence, whether there are internal inconsistencies, and
13 “whether human experience demonstrates that the evidence is logically incredible.” *Tew*
14 *v. DMV*, 179 Or App 443, 449 (2002), *citing Lewis and Clark College v. Bureau of Labor*,
15 43 Or App 245, 256 (1979) *rev den* 288 Or 667 (1980) (Richardson, J., concurring in part,
16 dissenting in part).

17 The Department called two of its employees to testify during the hearing: Ms. Hart
18 and Mr. Aldrich. Ms. Hart’s testimony was limited to her employment and educational
19 history; a general description of annuities and noting some specifics of the annuity at issue;⁹
20 the Department’s approval process for the sale of annuities in Oregon; and her opinion,
21 based upon her years of experience in evaluating annuity contracts for the Department, that
22 the annuity at issue in this matter would not have been approved for sale in Oregon by the
23 Department because of the high surrender charges and the lengthy period over which the
24 surrender charges were assessed. In his closing argument, Mr. Thomas stated that Ms. Hart
25 perjured herself but failed to cite the statements that he alleged were false. Thomas Closing
26 Argument at 8. In fact, he noted that Ms. Hart truthfully testified that the annuity at issue
was not sold in Oregon and, therefore, did not need to meet Oregon’s standards. *Id.* I do

⁹ The annuity at issue was included as Exhibit A2.

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1 not find that Ms. Hart had any motive to lie, her testimony was not contradicted by any
2 other evidence, and her testimony (other than her background and her opinion) was
3 primarily a brief review of settled insurance principles (description of annuities) and
4 Department practices. I conclude that Ms. Hart was a credible and reliable witness.

5 In his testimony, Mr. Aldrich also described his employment history. The
6 remainder of his testimony was foundational testimony that described the sources (where
7 he obtained the documents) and contents of the Department's Exhibits A1 through A31
8 and A33. He received the majority these exhibits from reliable or self-authenticating
9 sources such as court docket records, state licensing information, and bank records. Other
10 records included copies of Department-issued subpoenas and requests and Mr. Thomas'
11 responses to those actions. Of the Department's exhibits, Mr. Aldrich authored only three
12 of them: his investigative report and his contemporaneous notes of two interviews he
13 conducted. There was no evidence of fraud in Mr. Aldrich's representations of the
14 statements made by the individuals he interviewed as the witnesses' statements were
15 substantively consistent to statements provided to a non-Department investigator and
16 corroborated by independent evidence, such as bank and check records. I find the records
17 obtained by Mr. Aldrich and his representations regarding his interviews to be credible and
18 reliable.

19 Mr. Aldrich represented in his investigative report that he emailed the subpoena to
20 Mr. Thomas. Exhibit A1 at 7. During the hearing, he testified as to his practice of emailing
21 subpoenas as well as mailing them. During the hearing, he was given an opportunity to
22 produce the email to Mr. Thomas, but he acknowledged he was unable to do so. Therefore,
23 the evidence failed to establish, more likely than not, that he emailed a subpoena to Mr.
24 Thomas. However, I do not find that this error in his investigative report reflects adversely
25 on the credibility and reliability of his testimony or the documents he obtained during the
26 course of the Department's investigation. Similarly, I do not find that any timeline errors



1 Mr. Aldrich made during his investigation regarding Mr. Thomas’ securities licensing
2 history reflect adversely on the credibility and reliability of his testimony or the submitted
3 exhibits.¹⁰ The licensing history as represented by the different state agencies establish
4 Mr. Thomas’ history. Those documents speak for themselves.

5 In sum, I find the Department’s witnesses credible and the evidence presented by
6 the Department, in the form of witness testimony and exhibits, was credible and reliable.

7 In contrast, the same cannot be said of Mr. Thomas’ testimony and several of his
8 exhibits, primarily the exhibits that contain written statements authored by Mr. Thomas.¹¹
9 The primary incidents at issue involve an allegation that Mr. Thomas solicited funds from
10 Ms. Brugato for a fraudulent business investment involving the development of an alleged
11 computer software program (herein after the software development project) and an
12 allegation that Mr. Thomas failed to comply with a subpoena. In his testimony and
13 materials, Mr. Thomas made the following representations:

- 14 • Mr. Thomas claimed that the Department concealed the exculpatory evidence he
15 submitted to it, however, he never produced this evidence he claimed the
16 Department concealed. Exhibit A27 at 11; Testimony of Thomas.
- 17 • Mr. Thomas stated that California (a state in which he was licensed and his business
18 was based) did not require investment advisers to retain records for more than five
19 years after they ceased being an investment adviser, here October 2018. Thus, he
20 argued he no longer had records regarding his interactions with Ms. Brugato.
21 Exhibit A27 at 24. However, this claim is contradicted by his insistence that he
22 sent vast amounts of exculpatory evidence (he claimed more than 200 pages) to the
23 Department; his production of shipping statements for items purchased through him
24 by Ms. Brugato and Ms. Russell (sisters) from 2014 and 2015; that he spoke with
25 an investigator about Ms. Brugato and Ms. Russell’s fraud claims in November
26 2018 and that he was aware of the Department’s investigation in 2019; and that,
prior to the investigator’s November 2018 contact, he had already refused Ms.
Brugato’s demand to return her money. Exhibits A3 at 18; A27 at 11, 20, 51-52;

¹⁰ In fact, Mr. Thomas’ securities licensing history with California and Idaho are not relevant to the allegations made by the Department. The only licensing fact that is relevant to the Department’s allegations is Mr. Thomas not being licensed as a broker-dealer in Oregon, a fact that was not in dispute.

¹¹ Mr. Thomas’ exhibits comprised duplicative Department exhibits (to which he added comments), some original exhibits, and a number of exhibits that were simply his written factual representations and legal arguments.



1 R48-R51. The later contacts demonstrated Mr. Thomas' knowledge of the sisters'
2 fraud claims, and these contacts occurred prior to the cessation of his relationship
3 with Ms. Brugato and his alleged destruction of his records. A person who had
4 knowledge of a pending fraud claim would not destroy exculpatory records simply
5 because California did not legally require investment advisers to retain the records.

- 6 • Mr. Thomas was evasive in answering questions. He first displayed a pattern of
7 evasive answers when questioned by an investigator in November 2018 about the
8 fraud claims as he would not answer the question of "Are you developing a
9 computer program?" other than with evasive answers including "I do a lot of
10 different things." Exhibit A3 at 18. He continued such evasions in responding to
11 the Department's 2021 subpoena. When asked to explain any funds he received
12 from the sisters, he responded that he did not "have any records of ever receiving
13 and [sic] funds from [the sisters] that were outside of the normal adviser/client
14 relationship." Exhibit A27 at 8. However, he proceeded to acknowledge receiving
15 funds from the sisters for such items as ion generators that are not within the scope
16 of a normal adviser/client relationship.¹² Exhibit A27 at 2. Also, his response
17 implied that he had records for his adviser/client relationship, and he further
18 asserted that his records include "brokerage statements, * * *, insurance
19 statements," but then subsequently denied having any such records. *Id.* at 10.
20 During his testimony, Mr. Thomas repeatedly refused to answer simple questions,
21 such as whether his written statements he previously provided to the Department
22 were accurate. He continued evading the question even when the question was
23 modified with the qualifier of whether the statements were accurate to the best of
24 his knowledge. He was also evasive and nonresponsive to the question of whether
25 he had indeed authored the written statements submitted to the Department when it
26 was apparent from a review of the statements and records of his signature that he
had authored them. Exhibits A2 at 35; A3 at 10; A17 at 3; A27; A29; and A31.
His contradictory and evasive answers demonstrate the untrustworthiness of his
testimony and evidence based upon his statements.
- Mr. Thomas asserted that he only provided financial investment advice to Ms.
Brugato in 2008 and 2009 but then asserted that he "fired" her as a client in 2013.
Exhibit A27 at 3, 7. He stated that he increased the value of her estate by
approximately two million dollars and that she had millions of dollars in
investments that were showing "tremendous performance" including earning
thousands of dollars per week, but he then asserted that he deferred receiving
payment on her investment adviser bill and discounted his bill because of her lack
of funds. Exhibits A27 at 13, 31; A29 at 10. These contradictory statements further
support a finding that Mr. Thomas' testimony and written statements are unreliable.
- Mr. Thomas had a litany of complaints about basically everyone involved in these
matters. His complaints included:
 - Ms. Brugato "created a false story." Exhibit A27 at 20;

¹² Specifically, Mr. Thomas stated, "The [sisters] were investment adviser and insurance clients. That's it. There were no other outside business activities between the [sisters] and me." Exhibit A27 at 11.



- 1 • “Her entire family has been out to get me for the last two years. They’ve all
2 been plotting and scheming.” *Id.* at 17;
- 3 • Mr. Blechman, a Department Financial Enforcement Officer, “fabricated and
4 created a case out of thin air and with no evidence,” and he called Mr.
5 Blechman “an incompetent, lying, evil piece of shit.” Exhibit R24 at 1-2; and
- 6 • He accused Ms. Brugato’s attorney of being a “scumbag.” Exhibit A27 at 7.

7 During the course of the hearing, he engaged in verbal outbursts and commentary that
8 interrupted and denigrated the proceedings. His insistence that all others involved in
9 this matter are liars coupled with his outbursts reflect adversely on the reliability and
10 credibility of his testimony and written statements.

- 11 • In a written statement, dated April 8, 2021, Mr. Thomas acknowledged that his
12 father received a subpoena for Mr. Thomas in 2019, provided it to Mr. Thomas who
13 began to draft a response. Exhibit A27 at 51. Despite this prior acknowledgement,
14 during the hearing, he denied receiving any such subpoena. Testimony of Thomas.
- 15 • Mr. Thomas asserted that neither he nor his business ever had custody of any of
16 Ms. Brugato’s funds and that Symmetry Partners, a third-party turnkey asset
17 management program, held all her funds. Exhibit A27 at 2. However, his bank
18 records and Ms. Brugato’s checks clearly established that he received funds from
19 her. Those records also establish that Mr. Thomas placed those funds into his
20 personal bank account and spent them on his personal expenditures. Exhibits A7,
21 A11, R52, and R56.
- 22 • Mr. Thomas asserted that he was Ms. Brugato’s financial adviser but then stated,
23 “If she chose to take money out of an account and incur a surrender charge then
24 that’s her business, not yours or mine.” Exhibit A31 at 12. Such a position is
25 logically incompatible for a financial adviser. Similarly, he asserted, “I don’t
26 remember the details. She took money out of her own account by her own free will.
It’s not up to your department to be the nanny for every dumb decision a client
makes. It looks to me like she had been taking money from that account and not
telling me.” *Id.* at 11. In addition to being a statement that is logically incompatible
for a financial adviser to make, the evidence persuasively established that Mr.
Thomas facilitated Ms. Brugato’s removal of money from the referenced account
despite his representation to the contrary and that the removal of the funds was to
his benefit and her significant financial detriment.

23 These examples of Mr. Thomas’ statements¹³ demonstrate that his testimony and
24 prior written statements were internally inconsistent, contradicted by other persuasive

25 _____
26 ¹³ The evidentiary record contained too many examples of internally inconsistent statements and statements
contradicted by other definitive evidence to list them all.

1 evidence, and logically implausible. I find his inconsistent and logically implausible
2 statements support the conclusion that his evidence is unpersuasive and unreliable. I also
3 find that, because Mr. Thomas was false in so much of his testimony and written
4 statements, that all of his testimony and written statements are untrustworthy unless
5 corroborated or adverse to his interests. *See* ORS 10.095(3) (“That a witness false in one
6 part of the testimony of the witness may be distrusted in others.”). Therefore, in weighing
7 the evidence, I conclude that, with respect to the material events and details, the prior
8 statements and hearing testimony of Mr. Thomas were not reliable, persuasive, or credible.
9 Thus, where his testimony and prior statements conflict with other evidence, I accord
10 greater weight to the other evidence.

11 **FINDINGS OF FACT**

12 1. On April 13, 1998, Mr. Thomas filed a petition for a Chapter 13 bankruptcy
13 in the U.S. Bankruptcy Court for the District of Idaho. (Ex. A19 at 1.) On October 22,
14 1998, Mr. Thomas’ bankruptcy petition was dismissed. (*Id.* at 3.)

15 2. On October 23, 1998, Mr. Thomas filed a petition for a Chapter 7 bankruptcy
16 in the U.S. Bankruptcy Court for the District of Oregon. On January 28, 1999, the court
17 entered an order discharging the debts and closing the bankruptcy estate. (Ex. A20 at 1.)

18 3. On August 9, 2005, Mr. Thomas filed a petition for a Chapter 7 bankruptcy
19 in the U.S. Bankruptcy Court for the District of Idaho. (Ex. A21 at 1.) On December 17,
20 2006, the court entered an order approving the final report and closing the bankruptcy
21 estate. (*Id.* at 4.)

22 4. On January 4, 2007, Mr. Thomas filed a petition for a Chapter 13 bankruptcy
23 in the U.S. Bankruptcy Court for the District of Idaho. (Ex. A22 at 1.) On April 30, 2007,
24 Mr. Thomas filed a notice to dismiss his bankruptcy petition, which the court granted. (*Id.*
25 at 5.)

26 5. On November 3, 2007, Mr. Thomas passed the Uniform Investment Adviser





1 Law Examination. (Exs. A3 at 39; R64 at 1.) On November 8, 2007, Mr. Thomas filed a
2 business registration in California for his wholly-owned company, California Financial,
3 LLC, describing the company as an investment and financial services adviser. (Exs. A17
4 at 3-5; R10a at 1.) Mr. Thomas was registered in California as an investment adviser with
5 the firm California Financial, LLC, beginning May 5, 2008. (Exs. A3 at 37; R7 at 1.)
6 California Financial remained registered as an investment adviser in California until
7 October 1, 2013, when Mr. Thomas dissolved the company. (Exs. A17 at 7; A27 at 27.)
8 Mr. Thomas never held a securities license in Oregon. (Ex. A27 at 25-30.)

9 6. The Department issued Mr. Thomas an insurance producer license on
10 September 14, 2000. It was last renewed on May 1, 2017, expired on April 30, 2019, and
11 remains inactive. (Ex. A15 at 1; test. of Aldrich.) Mr. Thomas was also licensed as an
12 insurance producer in other states, including Idaho and California. (Exs. A27 at 30; R20
13 at 3-6; R28 at 9, 11-12.)

14 7. Ms. Russell, currently approximately 85 years old, and Ms. Brugato, currently
15 approximately 94 years old, are sisters. The sisters do not have any experience in
16 investments or sophisticated financial matters. Ms. Brugato has an education of no more
17 than the third grade level. (Exs. A4 at 1; A5 at 1.)

18 8. In 2005, Ms. Russell met Mr. Thomas, who was an insurance agent and sold
19 her an annuity. After Ms. Brugato complained to her sister about fraudulent activities by
20 a different insurance agent, Ms. Russell arranged for Ms. Brugato, who resided in Portland,
21 Oregon, to meet with Mr. Thomas at Ms. Russell's Idaho residence. (Ex. A5 at 1.) Mr.
22 Thomas became friendly with the sisters and would regularly call them over the next
23 several years. (Ex. A6 at 5.)

24 9. On August 25, 2008, Ms. Brugato and Mr. Thomas signed a Financial
25 Planning Agreement, appointing California Financial as her investment adviser. The
26 agreement included an arbitration clause that required any claim arising out of the



1 agreement to be settled by arbitration at the option of California Financial and be governed
2 by the laws of Oregon. In the agreement, California Financial agreed to provide a financial
3 plan for Ms. Brugato and charged her zero fees for its services. (Ex. R65b at 1-7.) Ms.
4 Russell and Mr. Thomas also signed a Financial Planning Agreement with the same
5 provisions on the same day. (Ex. R65c at 1-6.)

6 10. At Mr. Thomas' direction, on May 6, 2009, Ms. Brugato completed an
7 annuity¹⁴ application for an Allianz Life Insurance Company (Allianz) MasterDex 5 Plus
8 Annuity (Annuity), an individual annuity with her trust as the sole beneficiary and funded
9 by a cash deposit of \$250,000. (Ex. A2 at 29-35.) At the time she signed the application,
10 she was 82 years old, visiting her sister, and listed her address as her sister's Boise, Idaho
11 address. (Exs. A2 at 6-7, 29, 35; A3 at 16.) The source of the \$250,000 for the Annuity
12 were inheritances Ms. Brugato had received, and she intended to use the Annuity to finance
13 her retirement. (Ex. A4 at 1.)

14 11. Allianz reviewed the application and determined Ms. Brugato's suitability for
15 the Annuity based upon figures provided by Mr. Thomas. Allianz listed the information
16 used to determine her suitability as: Ms. Brugato had \$3,000 of monthly income with \$400
17 of monthly expenses; had approximate household net worth of "\$2500000;" had
18 approximate household liquid assets of "\$300000;" and had annuities, including the
19 Annuity, in the total value of "\$250000.00." (Ex. A2 at 27; test. of Thomas.)

20 12. On May 14, 2009, Allianz issued the Annuity to Ms. Brugato with an effective
21 date of May 11, 2009. (Ex. A2 at 3, 62.) Allianz added a premium bonus of five percent
22 of the premiums Ms. Brugato originally paid to the Annuity's value. Because of the
23 premium bonus, the initial accumulation value for the Annuity was \$262,500, which was
24 distributed among three index accounts. (*Id.* at 3-4, 7, 9.) Pursuant to the terms of the

25 ¹⁴ An annuity is a contract that transfers a contract holder's longevity risk to the life insurance company. An
26 annuity provides lifetime income to the contract holder, either in a lump sum or a series of payments, per the
terms of the contract. (Test. of Hart.)



1 Annuity, Ms. Brugato would begin receiving monthly distributions when she was 92 years
2 old.¹⁵ (*Id.* at 4.)

3 13. The Annuity included the following terms:

- 4 • A surrender charge was the penalty the holder paid to withdraw all or part of the
5 Annuity during the first 10 years; (Ex. R29 at 8.)
- 6 • Surrender charges applied during the first 10 contract years and may result in the
7 loss of premium bonuses, interests and principal; (*Id.* at 7.)
- 8 • The surrender charge was 15 percent of the Annuity’s accumulation value (all
9 premiums paid into the Annuity, any premium bonus, and any accumulated interest)
10 for the first four years of the contract and then decreased by 0.1786 percent each
11 month thereafter; (*Id.* at 7-8.)
- 12 • Penalty-free partial withdrawals were available after the first contract year if annual
13 partial withdrawals were less than 10 percent of the total premium paid; and (*Id.* at
14 8.)
- 15 • Withdrawals may be taxed as ordinary income. (*Id.* at 11-12.)

16 14. The Annuity further provided that a partial surrender resulted in the
17 accumulation value of the Annuity being reduced by the partial surrender amount and any
18 associated surrender charges.¹⁶ (Ex. A2 at 47, 56.)

19 15. The Department never approved the Annuity for sale in Oregon. The Annuity
20 would not have been approved for sale in Oregon because the amount of the surrender
21 charges and the length of the period in which they were assessed would be deemed
22 excessive. (Test. of Hart.)

23 16. In 2009, shortly after Allianz issued the Annuity to Ms. Brugato, Mr. Thomas
24 informed Ms. Brugato and Ms. Russell that he was developing “a computer program which
25 would automatically make trades in the stock market.” (Exs. A4 at 1; A5 at 1; A6 at 5.)
26 He indicated he needed funds to finish developing the software before it could be marketed

¹⁵ On that same date, Allianz also issued Ms. Russell, who was 72 years old at that time, two annuities: one funded by a \$20,000 deposit and the other funded by an \$115,000 deposit. Mr. Thomas was the agent that sold these annuities to Ms. Russell. (Ex. A3 at 59-60.)

¹⁶ Some partial surrenders are penalty-free if they meet certain provisions provided in the Annuity. (Ex. A2 at 47.)



1 to buyers. (Exs. A4 at 1; A5 at 1.) He advised the sisters to invest money in this venture,
2 assuring them that they would not lose their investments and would profit from the
3 prospective sales of the software program. (Exs. A4 at 2; A5 at 2; A6 at 5.) The sisters
4 agreed to invest in Mr. Thomas’ software development project “because they trusted him.”
5 Mr. Thomas did not provide the sisters any documents regarding the project or their
6 investment in the project. (Exs. A4 at 2; A5 at 2.) Mr. Thomas never created any type of
7 software program or was involved in any project for the creation of a saleable software
8 program. (Ex. A27 at 10.)

9 17. Mr. Thomas never informed the sisters of his history of bankruptcy filings. If
10 the sisters had known of the filings, they would not have invested money in Mr. Thomas’
11 venture. (Exs. A4 at 3; A5 at 2.)

12 18. On August 4, 2009, Ms. Russell issued personal check, number 1732, for
13 \$5,000 that she provided to California Financial for the software development project.¹⁷
14 (Exs. A5 at 2; A6 at 13; A9 at 2.)

15 19. From 2009 to 2016, Mr. Thomas would discuss how more money was needed
16 for different aspects of the software development project and would request additional
17 funds from Ms. Brugato. He would complete Allianz’s Withdrawal Request Forms (a form
18 required by Allianz to be completed for the early withdrawal of funds) and forward them
19 to Ms. Brugato for her to sign. She would return the forms to Mr. Thomas who would
20 submit them to Allianz. Once Ms. Brugato received the funds from Allianz, she would
21 then issue checks to Mr. Thomas or his company California Financial at his direction. (Exs.
22 A4 at 2; A5 at 2.) Ms. Brugato did not understand the Allianz forms she signed and she
23 did not understand why Mr. Thomas wanted some checks payable to him and others to his
24 company. (Ex. A4 at 2.)

25 _____
26 ¹⁷ Ms. Russell indicated that she provided Mr. Thomas \$10,000 in 2009 for the software development project,
but she could only provide documentation for a \$5,000 payment. (Exs. A5 at 2; A9 at 2.)



1 20. Ms. Brugato signed a Withdrawal Request Form, dated September 26, 2009,
2 requesting a partial surrender of \$40,000 from the Annuity. (Ex. A12 at 1-2.) On
3 September 29, 2009, Allianz called Mr. Thomas and explained that the proposed partial
4 surrender would result in a commission chargeback to him. Mr. Thomas advised Allianz
5 to proceed with the partial surrender. (Ex. A3 at 11.) On September 30, 2009, Allianz
6 issued Ms. Brugato a check in the amount of \$40,000 as a partial surrender of the Annuity.
7 Allianz reduced the cash and accumulation values of the Annuity by the surrender amount,
8 a surrender charge of \$7,061.47 and a shipping fee of \$15. (Exs. A3 at 16, A13 at 1.) On
9 October 5, 2009, Ms. Brugato issued Mr. Thomas a personal check, number 1010, to Mr.
10 Thomas in the amount of \$40,000. Mr. Thomas signed the check over to Lena Thomas,
11 his wife, who negotiated the check. (Ex. A7 at 1; test. of Thomas.)

12 21. On July 9, 2010, Mr. Thomas advised Allianz to update Ms. Brugato's
13 mailing address from Ms. Russell's Boise, Idaho address to Ms. Brugato's Portland,
14 Oregon address. (Ex. A3 at 11.)

15 22. Ms. Brugato signed a Withdrawal Request Form, dated July 8, 2010,
16 requesting a penalty-free withdrawal of \$15,000 from the Annuity. (Ex. A12 at 3-4.) On
17 July 23, 2010, Allianz transferred \$15,000 to Ms. Brugato's bank account as a withdrawal
18 from the Annuity and reduced the Annuity's values by the withdrawal amount and a \$20
19 wire fee. (Exs. A3 at 16; A13 at 2.) Ms. Brugato issued a personal check, number 156, to
20 Mr. Thomas in the amount of \$15,000, which he negotiated on August 9, 2010. (Exs. A4
21 at 2; A8 at 2.)

22 23. Ms. Brugato signed a Withdrawal Request Form, dated January 17, 2011,
23 requesting a partial surrender of \$35,000 from the Annuity. (Ex. A12 at 5-6.) On February
24 7, 2011, Allianz issued Ms. Brugato a check in the amount of \$35,000 as a partial surrender
25 of the Annuity and reduced the Annuity's values by the surrender amount and a surrender
26 charge of \$4,415.29. (Exs. A3 at 16; A13 at 3.) On February 22, 2011, Ms. Brugato had



1 a teller check from her personal bank account issued to California Financial, in the amount
2 of \$34,000. (Exs. A7 at 3; A8 at 3.)

3 24. Ms. Brugato signed a Withdrawal Request Form, dated February 16, 2012,
4 requesting a partial surrender of \$41,000 from the Annuity. (Ex. A12 at 7-9.) On February
5 28, 2012, Allianz transferred \$41,000 to Ms. Brugato’s bank account as a partial surrender
6 of the Annuity and reduced the Annuity’s values by the surrender amount, a wire transfer
7 fee of \$20, and a surrender charge of \$2,827.06. (Exs. A3 at 11, 16; A13 at 4.) On May
8 2, 2012, Ms. Brugato’s personal checks, numbers 335 and 336 in the amounts of \$15,500
9 and \$15,000 respectively, were negotiated by Mr. Thomas. (Exs. A7 at 6-7; A8 at 4.)
10 When Ms. Brugato issued these checks, they were payable to Mr. Thomas, dated February
11 17, 2012, and had the word “investment” written in the memo line. At the time Mr. Thomas
12 negotiated the checks, Mr. Thomas¹⁸ had changed the payees to California Financial on
13 check number 335 and California Financial and Andrew Thomas on check number 336,¹⁹
14 the date to April 27, 2012, and the memo line to “trust fees.” (Ex. A7 at 4-7.)

15 25. Approximately April 17, 2013, Ms. Brugato’s personal check, number 455
16 with “loan” in the notation line, in the amount of \$8,000 was negotiated by Mr. Thomas
17 and deposited into his personal bank account. (Exs. A7 at 5, 8; A8 at 5; A11 at 1.)
18 Approximately May 2, 2013, Ms. Brugato’s check, number 457 with “loan” in the notation
19 line, in the amount of \$7,000 was negotiated by Mr. Thomas and deposited into his personal
20 bank account. (Exs. A7 at 5; A8 at 6; A11 at 2.)

21 26. For the period April 2013 through July 2013, Mr. Thomas used his personal
22 bank account to purchase items, in the total amount of \$30,085.41, at places such as Costco,
23 Vons, Dominos, Home Depot, BodyBuilding, PetSmart, CVS, Pannera Bread, Sprouts,

24 ¹⁸ With the exception of Ms. Brugato’s signature, the original entries on the checks had been removed and
25 replaced by a third party. The handwriting of the third party was distinctly different from the original
handwriting, supporting the conclusion that Mr. Thomas altered the checks. (Ex. A7.)

26 ¹⁹ Ms. Brugato’s original “Andrew Thomas” had been removed from check number 336 and replaced by a
third party’s “California Financial, LLC Andrew Thomas.” (Ex. A7 at 5.)



1 Zappos and Rite Aid. For the period January 16, 2013 through August 15, 2013, Mr.
2 Thomas' personal bank account received an additional deposit of \$11,937.04 as
3 commissions from Allianz, and periodic small deposits totaling \$3,502.85, of which
4 \$1,139.49 were refunds of purchases, reversal of a bank fee, and interest. (Ex. A11 at 1-6.)

5 27. On July 11, 2013, two cashier's checks in the amounts of \$8,000 and \$7,000
6 respectively were issued to Ms. Brugato from Mr. Thomas' personal bank account. (Ex.
7 A11 at 5.) On August 2, 2013, these checks in the total amount of \$15,000 were deposited
8 into Ms. Brugato's bank account, and two teller checks, in the amounts of \$7,000 and
9 \$8,000 made payable to California Financial, were issued from her personal account. (Exs.
10 A7 at 10-11; A8 at 7.)

11 28. On August 9, 2013, Mr. Thomas signed and negotiated the two teller checks
12 by depositing \$7,000 into California Financial's 6312 bank account and depositing \$8,000
13 into California Financial's 7133 bank account. At the time of the deposit, there was
14 \$210.01 and \$180.38 in the respective accounts. In August 2013, no further deposits were
15 made into the accounts and a total of \$2,291.65 had been debited from the account for
16 multiple cash withdrawals and purchases at places such as restaurants and Party City. (Exs.
17 A7 at 10-11; A10 at 1-4.)

18 29. On August 25, 2014, Ms. Russell issued a check to Mr. Thomas in the amount
19 of \$1,400 for Ray Guards. On October 9, 2014, Ms. Russell issued a check to Mr. Thomas
20 in the amount of \$1,130 for five ion generators. (Ex. A9 at 1.)

21 30. On August 27, 2014, Ms. Brugato issued a check to Mr. Thomas in the amount
22 of \$1,450 for ion generators, which he negotiated. (Exs. A7 at 12; R48-R53.) On
23 December 19, 2014, three ion generators, paid for by Mr. Thomas/California Financial,
24 were shipped to Ms. Brugato.²⁰ (Exs. R48, R49 and R50.)

25 _____
26 ²⁰ With shipping and booklet charges, Mr. Thomas paid a total of \$459.47 for these generators. (Ex. R53 at 3.)



1 31. Ms. Brugato signed a Withdrawal Request Form, dated November 21, 2014,
2 requesting a free withdrawal of \$15,000 from the Annuity but checked the box to have
3 Allianz withhold federal taxes from the disbursement. (Ex. A12 at 13-15.) On November
4 24, 2014, Allianz issued Ms. Brugato a check in the amount of \$11,550 as a withdrawal
5 from the Annuity and reduced the Annuity's values by the withdrawal amount. (Exs. A3
6 at 16; A13 at 6.) Allianz had withheld state and federal taxes in the total amount of \$3,450
7 from the requested \$15,000 amount. (Ex. A13 at 6.) Ms. Brugato forwarded the funds to
8 Mr. Thomas. (Ex. A3 at 23, 77.)

9 32. On December 5, 2015, Ms. Brugato issued a check to Mr. Thomas in the
10 amount of \$700 for ion generators, which he negotiated. (Ex. A7 at 13.)

11 33. Ms. Brugato signed a Withdrawal Request Form, dated October 26, 2016,
12 requesting a free withdrawal of \$20,000 from the Annuity. (Ex. A12 at 16-18.) On
13 November 1, 2016, Allianz issued Ms. Brugato a check in the amount of \$20,000 as a
14 withdrawal from the Annuity and reduced the Annuity's values by the amount of the
15 withdrawal. (Exs. A3 at 16; A13 at 7.) Ms. Brugato retained that withdrawal for herself.
16 (Exs. A3 at 16; A12.)

17 34. In 2016, Ms. Brugato ceased providing funds to Mr. Thomas. Mr. Thomas
18 asked Ms. Russell for additional funds for his software development project, but she
19 declined and informed him she had no excess funds to invest. (Exs. A4 at 2; A5 at 2.)
20 Subsequently, the sisters asked for the return of their investment money. Mr. Thomas
21 refused and advised the sisters that he had declared bankruptcy and had no assets. (Exs.
22 A4 at 2; A5 at 2; A6 at 5.) Mr. Thomas never reimbursed the sisters for any funds they
23 had sent him. (Exs. A4 at 2; A5 at 2.)

24 35. On January 19, 2018, Allianz terminated its agency contract with Mr. Thomas
25 for non-production. (Ex. A3 at 7.)

26 36. On September 20, 2018, Ms. Russell contacted Allianz regarding Ms.



1 Brugato’s loss of her Annuity funds to Mr. Thomas. (Ex. A3 at 14-15.) On December 14,
2 2018, Allianz reported Ms. Russell’s allegations about Mr. Thomas to the Oregon and
3 Idaho insurance departments.²¹ (*Id.* at 6, 12.) On January 18, 2019, the Department request
4 Allianz provide its investigatory file. (*Id.* at 25.)

5 37. On June 28, 2019, Mr. Thomas filed a petition for a Chapter 7 bankruptcy in
6 the U.S. Bankruptcy Court for the District of Idaho. (Ex. A23 at 1.) In the petition, he
7 declared under the penalty of perjury, that his residence and mailing address was 3590
8 Grand Forest Dr., Apt 101, Boise, Idaho 83716. In the petition, he stated he had not used
9 any business names, including trade names or doing business as names, in the prior eight
10 years. (*Id.* at 5.) He stated his debts were primarily consumer debts (debts “incurred for a
11 personal, family or household purpose”) and not business debts (debts incurred “for a
12 business or investment or through the operation of the business or investment”). (*Id.* at 9.)
13 Mr. Thomas listed assets of a total value of \$8,401 and liabilities in the total amount of
14 \$621,564. (*Id.* at 12.) Ms. Brugato and Ms. Russell were not listed as creditors in his
15 bankruptcy petition. (*Id.* at 27-45.) On October 24, 2019, the court entered an order
16 discharging the debts and closing the bankruptcy estate. (*Id.* at 3.)

17 38. On August 23, 2019, the Department mailed a letter to Mr. Thomas at the
18 Montego address, advising him of its investigation and its intent to obtain and review his
19 financial records. (Ex. R83 at 1.)

20 39. On October 28, 2019, Mr. Aldrich, the Department’s assigned investigator,
21 completed a Subpoena Duces Tecum (2019 Subpoena) addressed to Mr. Thomas. The
22 2019 Subpoena stated, in part:

23 Pursuant to Oregon Revised Statute 59.245, you are required to
24 produce the items listed * * * to the following location by the date

25 ²¹ On November 12, 2018, the Allianz investigator spoke to Mr. Thomas about Ms. Russell’s allegations.
26 (Ex. A3 at 18.) At that time, Mr. Thomas had an active resident insurance producer licenses in Idaho, but he
completed a form to surrender his license on November 12, 2018, which he submitted to Idaho the following
day. (Ex. A16 at 1-2; R74 at 1.)



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and time specified:

BY: **Friday November 22, 2019 by 5:00 p.m.**
To: **Chris Aldrich**

* * * * *

Records and documents requested in this manner should be transmitted no later than the date for appearance * * *. If additional time is required to produce the requested documentation, please contact the issuer as indicated on the face of this subpoena.

* * * * *

This Subpoena Duces Tecum is issued in the course of an official investigation by the Oregon Division of Financial Regulation and concerns possible violations of Oregon Securities Law.

* * * * *

ITEMS TO PRODUCE

1: RE: CECILEA BRUGATO & PATRICIA RUSSELL

Our investigation indicates that between 09/2009 and 11/2016, you, either personally or as your former company, California Financial LLC, received between \$100,000 and \$225,000 from Cecilia Brugato * * *.

* * * * *

Please provide us an explanation as to why you received funds from these two person, regardless of the reason(s).

If the funds were, in fact part of an “investment”, (something to do with a computer software product * * *), please provide us copies of any documentation related to this “investment” as evidence that it ever existed.

Please provide us with several dates in the next 30 days that we can contact you for an interview related to this matter.

(Ex. A24 at 1-2.; emphasis in original.) On October 30, 2019, a Department administrative employee sent the 2019 Subpoena by certified mail to Mr. Thomas at the following two addresses:

3590 Grand Forest Dr Apt 101
Boise, ID 83716

3101 S Montego Wy
Nampa, ID 83686

(Ex. A25 at 1.)²² On November 2, 2019, Mr. Thomas’ father received the Subpoena at the

²² Mr. Aldrich used these two addresses because Mr. Thomas provided the Grand Forest address for his



1 Montego address. Mr. Thomas began drafting a reply to the 2019 Subpoena but did not
2 finish or submit it. (Exs. A27 at 51; A33 at 1.)

3 40. On July 23, 2020, the Department issued Mr. Thomas the Notice, alleging
4 multiple violations of Oregon securities and insurance laws. (Ex. R82 at 1-20.)

5 41. On February 23, 2021, the Department issued another Subpoena Duces
6 Tecum directed to James Oberholtzer, Mr. Thomas' then attorney, and requested the
7 documents be provided to the Department by March 12, 2021. (Ex. A26 at 1.) The
8 subpoena requested all documents pertaining to financial or insurance services Mr. Thomas
9 provided to Ms. Brugato or Ms. Russell; any communications between Mr. Thomas and
10 Ms. Brugato or Ms. Russell; any payments or loans made between these individuals; and
11 any exculpatory documents regarding the violations alleged in the Notice. (*Id.* at 4.) At
12 Mr. Thomas' request, the Department subsequently extended the March 12 deadline. (Ex.
13 R12 at 1.)

14 42. Mr. Thomas completed a Subpoena Answers and Affirmative Defenses for
15 the Department, dated April 8, 2021.²³ (Ex. A27 at 1.) In this response, he noted that he
16 took "full responsibility for not answering the [2019 Subpoena] in time." (*Id.* at 52.)

17 43. On May 27, 2021, the Idaho Department of Finance concluded "its review of
18 a consumer complaint" involving Mr. Thomas, Idaho Financial, LLC, and California
19 Financial, LLC.²⁴ (Ex. R15 at 1.)

20 44. In 2005, Ms. Brugato's revocable trust received approximately \$350,000 in
21 annuity distributions. (Ex. R30 at 10-11.) On November 4, 2006, Ms. Brugato's living
22 trust had an account balance of \$1,034,605.06 with a cash surrender value of \$826,856.35.

23 _____
24 bankruptcy case that was active from June 28 to October 24, 2019, and he repeatedly provided the Montego
25 address when registering his company in Idaho from March 29, 2016 through May 16, 2019. (Exs. A18 at
26 1, 4-8; A23 at 5; A27 at 47; test. of Aldrich.)

²³ Mr. Thomas noted his address as the Montego address in his response to the Department. (Ex. A27 at 1.)

²⁴ The email from the Idaho agency did not include any additional information about the nature of the complaint or the results of the investigation. (Ex. R15 at 1.)

1 (*Id.* at 5.) In 2008, the revocable trust received \$622,970.64 in distributions. (*Id.* at 13.)
2 On November 12, 2008, Ms. Brugato signed an Irrevocable Life Insurance Trust for the
3 benefit of her descendants and named Ms. Russell her trustee. At the time of its creation,
4 she transferred a total of \$10 to the trust. (Ex. R63 at 1, 6, 53, and 54.) From October 1,
5 2008 to December 31, 2008, Ms. Brugato’s revocable trust had a starting balance of
6 \$1,104,517.05 prior to a \$816,000 withdrawal transfer to the irrevocable trust. (Ex. R30 at
7 7, 16.) For the period of December 4, 2011, to December 3, 2012, the irrevocable trust had
8 a cash value of \$797,824.30. (*Id.* at 2.)

9 **CONCLUSIONS OF LAW**

- 10 1. Mr. Thomas sold an unregistered security in Oregon.
- 11 2. Mr. Thomas transacted business in Oregon as a broker-dealer without being
12 licensed under the Oregon Securities Law.
- 13 3. Mr. Thomas, in connection with the sale of a security, made omissions and
14 untrue statements of material fact and engaged in acts which operated as fraud or deceit.
- 15 4. Mr. Thomas used fraudulent, coercive or dishonest practices, and
16 demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct
17 of insurance producer business.
- 18 5. Mr. Thomas employed a scheme to defraud or obtain money by means of
19 omissions and untrue statements of material fact to induce an insured to surrender an issued
20 life insurance policy.
- 21 6. Mr. Thomas failed to comply with a Department subpoena.
- 22 7. The Department should revoke Mr. Thomas’ insurance producer license.
- 23 8. The Department should assess Mr. Thomas civil penalties for violations of
24 the Oregon Securities Law and the Insurance Code, including the forfeiture of profits made
25 from the established violations.
- 26 9. The Department may issue Mr. Thomas a cease and desist order.

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1 **OPINION**

2 The Department proposes to assess Mr. Thomas civil penalties in the total amount
3 of \$201,650, to revoke his non-resident insurance producer license, and to issue Mr.
4 Thomas a cease and desist order, based on allegations that he failed to comply with the
5 Oregon Securities Law and the Insurance Code. As the proponent of the allegations, the
6 Department has the burden to establish, by a preponderance of the evidence, that the
7 allegations are correct and that it is entitled to impose the penalties, revoke his license, and
8 issue the order as proposed in the Notice. ORS 183.450(2) (“The burden of presenting
9 evidence to support a fact or position in a contested case rests on the proponent of the fact
10 or position”); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418
11 (1991) (burden is on Commission in disciplinary action); *Dixon v. Board of Nursing*, 291
12 Or App 207, 213 (2018) (in administrative actions, burden of proof is by a preponderance
13 of the evidence). Proof by a preponderance of the evidence means that the fact finder is
14 persuaded that the facts asserted are more likely true than not true. *Riley Hill General*
15 *Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

16 *i. Statute of Limitations*

17 Mr. Thomas argued that the Department is time barred from proceeding on the
18 allegations raised in its Notice. He asserted that the Department had one year, beginning
19 August 23, 2019, to conclude its investigation into its allegations. Closing Argument at 4-
20 5. Mr. Thomas relies on *Gabelli v. Sec. & Exch. Comm’n*, 568 US 442 (2013) to support
21 his argument. In *Gabelli*, the Securities and Exchange Commission (SEC) brought an
22 enforcement action, pursuant to 15 USC § 80b-6(1) and (2), in 2008 against investment
23 advisers for defrauding clients from 1999 to 2002. Pursuant to 28 USC § 2462, actions
24 seeking civil penalties must be filed within five years from the date the claim first accrued.
25 The SEC argued the application of the discovery rule, *i.e.* the limitation period did not
26 begin to run until the fraud was discovered, meant that its enforcement action was not time

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1 barred. *Gabelli*, 568 US at 447. The Supreme Court disagreed and found that the discovery
2 rule is only applicable for actions brought by victims of fraud, not government agencies
3 seeking to punish fraudulent actors. However, *Gabelli* is a decision based on the
4 interpretation of a federal statute of limitation. Mr. Thomas cited no authority for the
5 proposition that the federal statute of limitation applies to violations of state law. Because
6 the Department’s action is based on enforcement of Oregon statutes, not federal statutes,
7 Mr. Thomas’ reliance on *Gabelli* is mistaken as the federal limitation contained within 28
8 USC § 2462 is inapplicable in this matter.

9 ORS chapter 12 sets forth the statutes of limitations for actions in Oregon, ORS
10 12.110(2) provides:

11 An action upon a statute for a forfeiture or penalty to the state or
12 county shall be commenced within two years.

13 At first blush, it appears that the Department’s ability to proceed on its July 23,
14 2020 Notice, in which it seeks to assess civil penalties and cancel a license, would be barred
15 as it was not commenced within two years of the 2009 to 2016 factual allegations raised in
16 the Notice. However, that would only be the case if the Department’s Notice constituted
17 an “action.”

18 ORS chapter 12 does not define “action.” It is therefore necessary to consider the
19 analytical approach set forth in *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993)
20 and *State v. Gaines*, 346 Or 160 (2009) to discern the meaning of the word, as it is used in
21 ORS 12.110(2). In *PGE*, the Oregon Supreme Court explained that to determine legislative
22 intent, a court begins by examining a statute’s text within its statutory context. If the
23 legislative intent is unambiguous, the court stops at that first level of analysis. *PGE*, 317
24 Or at 610-11.

25 ///

26 ///

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1 Although ORS chapter 12 does not specifically define “action,” ORS 12.020
2 provides:

3 (1) Except as provided in subsection (2) of this section, for the
4 purpose of determining whether an action has been commenced
5 within the time limited, an action shall be deemed commenced
6 as to each defendant, *when the complaint is filed, and the
7 summons served* on the defendant, or on a codefendant who is a
8 joint contractor, or otherwise united in interest with the
9 defendant.

10 (2) If the first publication of summons or other service of
11 summons in an action occurs before the expiration of 60 days
12 after the date on which the complaint in the action was filed, the
13 action against each person of whom the court by such service
14 has acquired jurisdiction shall be deemed to have been
15 commenced upon *the date on which the complaint in the action
16 was filed.*

17 (Italics added.) Thus, for purposes of ORS chapter 12, an “action” is commenced by filing
18 a “complaint” and by serving a “summons.” A complaint and a summons are particular to
19 court proceedings. Under ORS 12.110(2) an “action” must be “commenced” within two
20 years. The statutory context makes it clear that an action can *only* be commenced by filing
21 a complaint in a court of law. Neither a complaint nor a summons is required, or even
22 contemplated, under the Administrative Procedures Act (APA).²⁵ Rather, commencement
23 of a contested case proceeding is initiated by serving a “notice” on the parties to the
24 proceeding. ORS 183.413 and 183.415. *See also Reynolds Metals v. Rogers*, 157 Or App
25 147, 151 (1998) (a workers’ compensation claim that is initiated with a written request for
26 compensation filed with the worker’s employer is not an action for purposes of the
limitation contained in ORS 12.140.)

27 The statutory context demonstrates that the limitations period set forth in ORS
28 12.110(2) applies to proceedings in courts of law. It does not apply to cases under the

29 ²⁵ The APA provides the procedures for contested case proceedings in which parties are afforded an
30 opportunity for hearing. ORS 183.415(2) and ORS 183.417.





1 APA. Therefore, the Department is not barred from enforcing violations that took place
2 more than two years prior to the date of the Notice in this case. *See Spray v. Board of*
3 *Medical Examiners*, 50 Or App 311, 326 (1981) (finding that there is no statutory
4 requirement to bring an administrative action within a certain amount of time).

5 *ii. The Department's Jurisdiction*

6 Mr. Thomas asserted that the Department does not have jurisdiction over him to
7 pursue the allegations in the Notice. The Notice includes two sets of allegations: one set
8 for violating provisions of the Oregon Insurance Code and the other set for violating
9 provisions of the Oregon Securities Law.

10 Although the Annuity referenced in the Notice was issued, and therefore sold, in
11 Idaho, Mr. Thomas' conduct that forms the basis of the allegations contained in the Notice
12 occurred after the issuance of the Annuity. The actual issuance of the Annuity is not the
13 basis of the allegations. Instead, Mr. Thomas' subsequent interactions with an Oregon
14 resident form the basis of the allegations. Because he was interacting with an Oregon
15 resident, Mr. Thomas was conducting business in Oregon.

16 Additionally, Mr. Thomas held an Oregon insurance producer license from
17 September 14, 2000, to April 30, 2019. ORS 744.074 grants the Department the authority
18 to take action against an insurance producer for violating any insurance laws or rules, ORS
19 744.074(1)(b), or for "fraudulent, coercive or dishonest practices, or demonstrating
20 incompetence, untrustworthiness or financial irresponsibility *in the conduct of business in*
21 *this state or elsewhere.*" ORS 744.074(1)(h) (emphasis added.). As demonstrated by ORS
22 744.074(1)(h), the Department has the authority to take action against Mr. Thomas for
23 insurance-related conduct regardless of the loci of his conduct.²⁶

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25 _____
26 ²⁶ ORS 744.994(2) provides that the Division may still investigate and initiate proceedings against a person with an expired or surrendered license.



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ORS 59.235 provides, in part:

[T]he Director of the Department of Consumer and Business Services shall have general supervision and control over all issuers, registrants of securities, broker-dealers, federal covered investment advisers, state investment advisers, investment adviser representatives and salespersons residing or doing business in this state and engaged in any activity with respect to securities or any aspect of the securities business[.]

Additionally, ORS 59.245(1) authorizes the Department to:

make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated or is about to violate any provision of the Oregon Securities Law or any rule or order of the director, or to aid in the enforcement of the Oregon Securities Law[.]

The Oregon Securities Law grants the Department investigatory powers regardless of the locus of the investigation and grants the Department supervisory powers over any investment advisers or issuers doing business in Oregon. Even though Mr. Thomas and his wholly-owned business entities did not reside in Oregon, he conducted business with an Oregon resident and that conduct forms the basis of the allegations in the Notice. Based upon Mr. Thomas' conduct with Ms. Brugato, the Department had jurisdiction over Mr. Thomas to investigate and take enforcement action for violations of the Oregon Securities Law and the Oregon Insurance Code.

Mr. Thomas also argued that the Department did not have jurisdiction because the sisters signed contracts that included an arbitration clause. However, the Department was not a party to the sisters' contracts, and this contested case proceeding involves the Department's allegations against Mr. Thomas that he violated the Oregon Securities Law and the Oregon Insurance Code. Therefore, this matter is not subject to the arbitration clause.

Mr. Thomas also raised other issues, such as allegations of fraud committed by the Department and the OAH, the Department's listing of Mr. Thomas' previously used name in the caption to the Notice, a typographical error in the footer of the Notice, and a factual

1 error in the Notice regarding his licensing dates. I find these issues have no merit or, such
2 as the factual error involving his licensing dates, are not relevant to the allegations in the
3 Notice. He also raised legal issues, such as the Statute of Frauds²⁷ and estoppel;²⁸ however,
4 his arguments demonstrated a lack of understanding²⁹ of these legal principles and they
5 were not applicable in this matter.

6 Sale of Unregistered Securities in Oregon

7 In its Notice, the Department alleged that Mr. Thomas sold an unregistered security
8 in the form of an investment contract to Ms. Brugato. ORS 59.015(19)(a) defines a
9 “security” and provides, in part:

10 “Security” means a note, stock, * * *, investment contract, * * *,
11 or, in general, any interest or instrument commonly known as a
12 “security,” * * * [.]

13 Mr. Thomas informed Ms. Brugato and Ms. Russell that he was developing a
14 computer software program he intended to market for sale once completed. He encouraged
15 them to provide him money for this project, promised them that they would profit from the
16 prospective sales of the computer software program, and assured them that they would not
17 lose their money, thereby promising the sisters that their principal was not at risk. The
18 question is then whether this arrangement, the payment of money based upon Mr. Thomas’
19 representations of the software development project, constitute an investment contract.

20 The Oregon Supreme Court established a test for an “investment contract” that

21 ²⁷ Oregon’s Statute of Frauds (certain agreements are void unless in writing) is contained in ORS 41.580 and
22 does not include investments.

23 ²⁸ A party asserting the application of equitable estoppel must prove the existence of a false representation;
24 made with knowledge of the facts; made with the intention that it would induce action by the other party; and
25 that actually induced the other party to act upon the representation. *See Wilkinson v. PERB*, 188 Or App 92
26 (2003). There was no evidence that Mr. Thomas relied upon a material misrepresentation by the Department
that caused him to violate the Oregon Securities Act or the Oregon Insurance Code. Similarly, there was no
evidence that Mr. Thomas relied upon a material misrepresentation made by the sisters.

²⁹ Part of Mr. Thomas’ lack of understanding appears to be his conflation of the enforceability of his
agreements with the sisters and the Department’s action. The Department’s action is an enforcement action,
an action seeking to enforce and ensure compliance with the Oregon Securities Law and the Oregon Insurance
Code. The enforceability of any agreement between Mr. Thomas and the sisters is not relevant to whether
Mr. Thomas violated the Oregon Securities Law and the Oregon Insurance Code.





1 provides the following:

2 [T]he requirements are: (1) an investment of money (or money's
3 worth), (2) in a common enterprise, (3) with the expectations of
4 a profit, (4) to be made through the management and control of
others[.]

5 *Pratt v. Kross*, 276 Or 483, 497 (1976). Ms. Brugato invested money for Mr. Thomas'
6 software development project with the expectation of earning a profit based upon Mr.
7 Thomas' representation. She had no control over the management, conduct, or operation
8 of Mr. Thomas' project. Thus, the first, third, and fourth prongs of the "investment
9 contract" test are satisfied. That leaves the second prong: whether the loans were part of a
10 common enterprise.

11 In *Pratt*, the Oregon Supreme Court found that "one-to-one transaction[s] without
12 any public offering or solicitation" can constitute an "investment contract." *Pratt*, 276 Or
13 at 495. Subsequently in *Computer Concepts v. Brandt*, 310 Or 706 (1990), the Oregon
14 Supreme Court expanded on the *Pratt* finding by adopting the federal test for "common
15 enterprise" that requires either horizontal or vertical commonality. *Computer Concepts*,
16 310 Or at 715. Horizontal commonality requires more than one investor with a pooling of
17 investments, and vertical commonality requires either dependence on the promotor's
18 expertise or that the investor and the promotor's investment is interwoven with and
19 dependent on the fortunes of others. *Computer Concepts*, 310 Or at 714-15. Facts, such
20 as the pooling of investments in the form of proceeds of loans to invest in the same real
21 estate development project, satisfy the requisites of "horizontal commonality" and the
22 transactions are "investment contracts." *State v. Nistler*, 268 Or App 470, 483(2015).
23 Additionally, in *Foelker v. Kwake*, 279 Or 379, 385 (1977), the Oregon Supreme Court
24 made the determination that "the Oregon Securities Law is to be liberally construed so as
25 to afford the 'greatest possible protection' to the public," and concluded that an oral
26 investment contract is a security. *Id.* at 381, 385; *see also State v. Foust*, 215 Or App 649,

1 654 (2007) (loans made to a company with the promise that lenders would receive a 10
2 percent return and their principal would not be at risk were investment contracts as listed
3 in ORS 59.015(19)(a)).

4 In light of this framework developed by the Oregon Supreme Court, Ms. Brugato’s
5 payments of money to Mr. Thomas for his software development project based upon his
6 representations that her money would be protected and she would earn a profit from the
7 project demonstrate horizontal commonality and satisfy the second prong of the
8 “investment contract” test. Because the transactions were investment contracts, Mr.
9 Thomas sold securities to Ms. Brugato.³⁰

10 ORS 59.055 provides, in part:

11 It is unlawful for any person to offer or sell any security in this
12 state, unless:

- 13 (1) The security is registered * * *;
14 (2) The security is exempt under ORS 59.025 or the sale is
15 exempt under ORS 59.035; or
16 (3) The security is a federal covered security[.]

17 Because the software development project never existed and was merely a
18 mechanism to defraud the sisters, the security was not registered or a federal covered
19 security. Therefore, Mr. Thomas sold a security to Ms. Brugato that was not registered and
20 was not a federal covered security. The exemptions under ORS 59.025³¹ are not applicable
21 to the security at issue. Mr. Thomas argued that the sale was exempt under ORS 59.035
22 because Ms. Brugato was an accredited investor. Although the Department has the burden
23 of proof to establish that Mr. Thomas unlawfully sold a security to Ms. Brugato, it does not
24 have the burden of proof to establish that the sale was exempt under ORS 59.035. “The

24 ³⁰ Mr. Thomas argued that a “check” is not a security. However, it is not the form of the payment, here a
25 check, that is the security. It is the entire transaction, the payment of money based upon an expectation of
26 the receipt of profits from the software development project, that constitutes the security.

³¹ ORS 59.025 exempts securities that meet certain requirements, such as issued by the United States or
guaranteed by a national bank, etc.



1 general rule is that the burden of proof is upon the proponent of the fact or position, the
2 party who would be unsuccessful if no evidence were introduced on either side.” *Harris*
3 *v. SAIF*, 292 Or 683, 690 (1982). *See also* ORS 183.450(2) (“The burden of presenting
4 evidence to support a fact or position in a contested case rests on the proponent of the fact
5 or position.”). In this case, if neither party presented any evidence establishing the
6 existence of an exemption, then the exemption of the sale as provided in ORS 59.055(2)
7 would not be applicable. Therefore, Mr. Thomas has the burden of proof to support his
8 position that the sale of the security was exempt under ORS 59.035.

9 ORS 59.035 provides, in part:

10 The following transactions are exempt from ORS 59.049 and
11 59.055 if they are not part of an attempt to evade fraudulently
12 any provision of the Oregon Securities Law:

13 * * * * *

14 (5) Any transaction by an offeror with an accredited investor as
15 defined in section 2 (15)(i) or (ii) of the Securities Act of 1933,
16 as amended, or rules of the Director of the Department of
17 Consumer and Business Services, but only if there is no public
18 advertising or general solicitation in connection with the
19 transaction[.]

20 15 USC § 77b provides, in part:

21 (15)The term “accredited investor” shall mean—

22 (ii)

23 Any person who, on the basis of such factors as financial
24 sophistication, net worth, knowledge, and experience in
25 financial matters, or amount of assets under management
26 qualifies as an accredited investor under rules and regulations
which the Commission shall prescribe.

23 Ms. Brugato has a limited educational background and relies on others to provide
24 her financial advice. She does not have the financial sophistication, knowledge, or
25 experience to make her an accredited investor. Mr. Thomas argued that she was an
26 accredited investor based upon her net worth.



1 The Department promulgated OAR 441-035-0010³² to define “accredited
2 investor.” It provides, in part:

3 For purposes of ORS 59.035(5) accredited investor includes:

4 * * * * *

5 (5) Any natural person whose individual net worth, or joint net
6 worth with that person’s spouse, at the time of the purchase
7 exceeds \$1,000,000, excluding the value of the natural
8 investor’s primary residence.

9 (6) Any natural person who had an individual income in excess
10 of \$200,000 in each of the two most recent years or joint income
11 with that person’s spouse in excess of \$300,000 in each of those
12 years and has a reasonable expectation of reaching the same
13 income level in the current year.

14 (7) Any trust, with total assets in excess of \$5,000,000[.]

15 The only evidence that Ms. Brugato had a net worth that exceeded \$1,000,000 was
16 a single checked box on the Annuity application that was completed based on Mr. Thomas’
17 representations to Allianz. Pursuant to the finding regarding Mr. Thomas’ credibility, in
18 the absence of independent corroborating evidence, this evidence is insufficient.
19 Additionally, even in the absence of the credibility finding, the single checked box on the
20 Annuity application from May 2009 would not be persuasive evidence that, more likely
21 than not, Ms. Brugato had an individual net worth that exceeded \$1,000,000 at the time she
22 issued the checks to invest in Mr. Thomas’ software development project. Those checks
23 were issued beginning October 2009 and on a yearly basis thereafter. Mr. Thomas failed
24 to establish that at the time Ms. Brugato made the investments in his software development
25 project that her net worth exceeded \$1,000,000 or that her individual income exceeded
26 \$200,000 per year in the most recent two years prior to the investments.

The only other evidence in the record regarding income or assets were for trusts,
rather than for Ms. Brugato as an individual investor. First, the evidence regarding the

³² 17 CFR § 230.501 provides the same definition for “accredited investor.”





1 trust's asset valuations do not coincide with the same dates as when the securities
2 transactions occurred. Therefore, it cannot be determined whether the trusts met the
3 minimum limit of the exemption at the time each check was issued. Secondly, as noted in
4 OAR 441-035-0010, trusts have a different threshold than the threshold for a natural
5 person. To meet the accredited investor exemption, the trust assets must exceed
6 \$5,000,000. In this case, the evidence failed to establish that any of the trusts exceeded
7 that amount. Finally, Mr. Thomas did not obtain the investment proceeds from the trusts.
8 He obtained them from Ms. Brugato directly. Because he obtained the funds from a natural
9 person, here Ms. Brugato, the trusts' assets are not relevant in the determination of whether
10 Ms. Brugato meets the definition of an accredited investor.

11 Finally, the exemptions are only available if the transactions "are not part of an
12 attempt to evade fraudulently any provision of the Oregon Securities Law." ORS 59.035.
13 In this case, Mr. Thomas fraudulently induced Ms. Brugato to invest money in his non-
14 existent software development project. Mr. Thomas' actions were an attempt to
15 fraudulently evade the requirements of the Oregon Securities Law.

16 The sale of the security was not exempt under ORS 59.035; therefore, Mr. Thomas
17 unlawfully sold an unregistered, nonexempt security to Ms. Brugato in violation of ORS
18 59.055.³³

19 In its Notice, the Department alleged that the payments made for the ion generators
20 and Ray Guards were part of the fraudulent securities scheme. However, the evidence did
21 not support that contention. There was evidence of ion generator and Ray Guard purchases
22 and shipments involving the sisters and Mr. Thomas, and the evidence also demonstrated
23 that Ms. Brugato only used funds from the Annuity for the software development project,

24 _____
25 ³³ Mr. Thomas also argued that the transaction was exempt under a "de minimus" exemption asserting that
26 Ms. Brugato was the only Oregon resident he advised. ORS 59.015(20)(b)(J) provides that a state investment
adviser does not include an individual with fewer than six clients in Oregon. However, the Department is
alleging that Mr. Thomas acted as a broker-dealer, not a state investment adviser, in these transactions with
Ms. Brugato. The broker-dealer definition does not provide any "de minimus" exemption. ORS 59.015(1).

1 and the checks for the other purchase did not come from the Annuity. The Department
2 also alleged that the 2016 withdrawals from the Annuity were forwarded to Mr. Thomas
3 as part of the fraudulent securities scheme. However, the evidence was insufficient to
4 support that allegation. The evidence demonstrated that Ms. Brugato advised Mr. Thomas
5 in 2016 that she would no longer provide him funds; on one occasion, Ms. Russell informed
6 the Allianz investigator that Ms. Brugato kept the \$20,000 from the 2016 withdrawal; and
7 the 2016 Withdrawal Request Form was distinguishable from the prior forms that Mr.
8 Thomas had completed. Therefore, the Department proved that Mr. Thomas engaged in
9 six sales, not seven, of unregistered, nonexempt securities to Ms. Brugato during the years
10 2009 through 2014.

11 Transacting Business as a Broker-Dealer

12 ORS 59.165(1) provides:

13 It is unlawful for any person to transact business in this state as
14 a broker-dealer or salesperson unless the person is licensed
under the Oregon Securities Law.

15 ORS 59.015 provides, in part:

16 (1) “Broker-dealer” means a person who engages, all or part of
17 the time, in effecting transactions in securities for the account of
others or for the person’s own account. * * *.

18 * * * * *

19 (9) “Issuer” means a person who issues, proposes to issue or has
20 issued a security and includes an issuer to be formed.

21 * * * * *

22 (18)(a) “Salesperson” means a person, other than a broker-
23 dealer, who represents or purports to represent a broker-dealer,
issuer or owner of securities in effecting or attempting to effect
in any manner transactions in securities[.]

24 Because Mr. Thomas solicited funds from Ms. Brugato for investment in his
25 purported software development project, he engaged in effecting a transaction in securities
26 for his own account. He did not purport to represent a third party. Mr. Thomas’ actions



1 meet the definition of broker-dealer contained in ORS 59.015(1). Because he was not
2 licensed as a broker-dealer in Oregon, he violated ORS 59.1565(1) when he transacted
3 business with Ms. Brugato, an Oregon resident, by effecting transactions in securities when
4 he soliciting funds from her for his software development project.

5 Untrue Statements or Fraud

6 ORS 59.135 provides, in part:

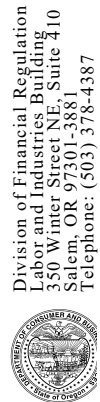
7 It is unlawful for any person, directly or indirectly, in connection
8 with the purchase or sale of any security or the conduct of a
9 securities business or for any person who receives any
10 consideration from another person primarily for advising the
11 other person as to the value of securities or their purchase or sale,
12 whether through the issuance of analyses or reports or otherwise:

11 * * * * *

- 12 (2) To make any untrue statement of a material fact or to omit to
13 state a material fact necessary in order to make the statements
14 made, in the light of the circumstances under which they are
15 made, not misleading;
- 16 (3) To engage in any act, practice or course of business which
17 operates or would operate as a fraud or deceit upon any person[.]

16 Mr. Thomas encouraged Ms. Brugato to provide him funds for a software
17 development project. Mr. Thomas never had any such project. For the initial 2009
18 solicitation of funds and for every subsequent solicitation when he indicated he needed
19 more funds for the fake project, Mr. Thomas made untrue statements of material fact that
20 also acted to operate as a fraud upon Ms. Brugato. Mr. Thomas also assured Ms. Brugato
21 that her principal investments were safe and that she would receive profits from her
22 investments. Again, because there was no actual investment project, Mr. Thomas’
23 representations were untrue statements of material fact that acted to defraud Ms. Brugato
24 of her money.

25 In 1998, 2005, and 2007, Mr. Thomas filed bankruptcy petitions, two of which were
26 subsequently granted and his debts were discharged. Mr. Thomas began soliciting funds



1 from Ms. Brugato within two years of his last filing for bankruptcy and never advised her
2 of the 2007 filing or the prior 1998 and 2005 completed bankruptcy cases. Filing a petition
3 for bankruptcy is evidence of a person's inability to manage their debts and is crucial
4 information for an investor to assess the soundness of providing investment funds to such
5 an individual. Mr. Thomas' omission of that information prevented Ms. Brugato from
6 properly evaluating the risks associated with investing her money in Mr. Thomas' project
7 or obtaining collateral or a bond to protect her interests. Mr. Thomas omitted a material
8 fact to mislead Ms. Brugato into investing her money in his fake project.

9 The review of Mr. Thomas' limited bank records demonstrated that he used the
10 2013 funds received from Ms. Brugato for his personal expenses as he deposited the funds
11 in his personal bank account and used them to pay for purchases at such retail stores as
12 Costco, Vons, Dominos, Home Depot, BodyBuilding, PetSmart, CVS, Pannera Bread,
13 Sprouts, Zappos and Rite Aid. Similarly, his subsequent deposits of her funds into his
14 business bank accounts also went to personal expenditures in the form of cash withdrawals,
15 restaurants expenses and Party City. By 2019, Mr. Thomas had accumulated over
16 \$600,000 in mostly consumer, not business, debt with less than \$10,000 in assets.
17 Additionally, because he never actually tried to develop a computer program, the funds
18 provided by Ms. Brugato never went to such a project. The evidence established that, more
19 likely than not, Mr. Thomas utilized Ms. Brugato's investment funds for his personal
20 expenses. Mr. Thomas' failure to advise Ms. Brugato that her investment funds would be
21 used to pay his personal expenses was an omission of a material fact that would have
22 affected her decision to make the investment.

23 By omitting material facts, making untrue statements of material facts, and by
24 engaging in conduct to defraud Ms. Brugato, Mr. Thomas repeatedly violated ORS
25 59.135(2) and (3).

26 ///



1 Failure to Respond to a Subpoena

2 In its Notice, the Department asserted that Mr. Thomas failed to comply with the
3 demands of the 2019 Subpoena.

4 ORS 59.245 provides, in part:

5 The Director of the Department of Consumer and Business
6 Services:

7 * * * * *

8 (2) May require or permit a person to file a statement in writing,
9 under oath or otherwise as the director determines, as to all the
10 facts and circumstances concerning the matter to be
11 investigated[.]

12 ORS 59.315 provides, in part:

13 (1) For the purpose of an investigation or proceeding under the
14 Oregon Securities Law, the Director of the Department of
15 Consumer and Business Services may *** require the
16 production of books, papers, correspondence, memoranda,
17 agreements or other documents or records which the director
18 deems relevant or material to the inquiry. * * *.

19 (2) If a person fails to comply with a subpoena so issued or a
20 party or witness refuses to testify on any matters, the judge of
21 the circuit court or of any county, on the application of the
22 director, shall compel obedience by proceedings for contempt[.]

23 On October 30, 2019, the Department issued the 2019 Subpoena to Mr. Thomas.
24 As allowed by ORS 59.245(2) and ORS 59.315(1), the 2019 Subpoena required Mr.
25 Thomas to produce documents and a written statement regarding his transactions with Ms.
26 Brugato and Ms. Russell and the software development project. The Department mailed
the 2019 Subpoena to Mr. Thomas at the Grand Forest address, an address used by Mr.
Thomas in his June 2019 bankruptcy petition, and the Montego Way address, his father's
address that he used as his mailing address from 2016 through 2019.

There was no evidence that anyone received the 2019 Subpoena at the Grand Forest
address. On November 2, 2019, Mr. Thomas' father received the 2019 Subpoena. Mr.

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350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 Thomas acknowledged his receipt of the 2019 Subpoena from his father and that he began
2 to respond to it but did not complete or submit a response. In his response to the
3 Department’s subsequent subpoena, Mr. Thomas accepted his responsibility for failing to
4 respond to the subpoena.

5 The evidence established that Mr. Thomas received the 2019 Subpoena and was
6 aware that it required him to file a response with the Department. By failing to do so, he
7 violated ORS 59.245(2) and ORS 59.315(1).

8 Conduct of Insurance Producer Business

9 ORS 744.074 provides, in part:

10 (1) The Director of the Department of Consumer and Business
11 Services may place a licensee on probation or suspend, revoke
12 or refuse to issue or renew an insurance producer license and
13 may take other actions authorized by the Insurance Code in lieu
14 thereof or in addition thereto, for any one or more of the
15 following causes:

16 * * * * *

17 (b) Violating any insurance laws, or violating any rule, subpoena
18 or order of the director or of the insurance commissioner of
19 another state or Mexico or Canada.

20 * * * * *

21 (h) Using fraudulent, coercive or dishonest practices, or
22 demonstrating incompetence, untrustworthiness or financial
23 irresponsibility in the conduct of business in this state or
24 elsewhere[.]

25 In the course of engaging in dishonest practices to defraud Ms. Brugato as outlined
26 above, Mr. Thomas induced Ms. Brugato to withdraw funds from the Annuity to invest in
his fraudulent software development project. The Oregon Insurance Code includes a
variety of classes of insurance. ORS 731.154(1) defines an annuity as “any agreement to
make periodic payments where the making of the payments is dependent upon the
continuance or human life.” Because the Annuity provides for regular monthly payments
once Ms. Brugato reaches the age of 92, the Annuity is an annuity as defined by ORS

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1 731.154(1). Pursuant to ORS 731.170(2), such an annuity is considered “life insurance”
2 for purposes of the Oregon Insurance Code.

3 Because the Annuity is a class of insurance, Mr. Thomas’ course of conduct to
4 induce Ms. Brugato to withdraw funds from the Annuity and invest them in his fraudulent
5 software development project constituted dishonesty in the conduct of insurance business
6 and demonstrated his untrustworthiness in such business, in violation of ORS
7 744.074(1)(h).

8 Inducement to Surrender a Life Insurance Policy

9 ORS 746.075 provides, in part:

10 (1) A person may not engage, directly or indirectly, in any action
11 described in subsection (2) of this section in connection with:

12 * * * * *

13 (b) Any inducement or attempted inducement of any insured or
14 person with ownership rights under an issued life insurance
15 policy to lapse, forfeit, surrender, assign, effect a loan against,
16 retain, exchange or convert the policy.

17 (2) Subsection (1) of this section applies to the following
18 actions:

19 * * * * *

20 (e) Employing any device, scheme or artifice to defraud;

21 (f) Obtaining money or property by means of any untrue
22 statement of a material fact or any omission to state a material
23 fact necessary in order to make the statement, in light of the
24 circumstances under which it was made, not misleading;

25 (g) Engaging in any other transaction, practice or course of
26 business that operates as a fraud or deceit upon the purchaser,
insured or person with policy ownership rights[.]

23 By engaging in the dishonest practices explained above, Mr. Thomas employed a
24 scheme to defraud Ms. Brugato, obtained money from Ms. Brugato by means of untrue
25 statements of material fact and omissions of material facts, and engaged in a course of
26 conduct to defraud Ms. Brugato. In the course of engaging in these dishonest practices,



1 Mr. Thomas repeatedly induced Ms. Brugato into surrendering portions of the Annuity, a
2 life insurance policy, and transferring those funds to Mr. Thomas for his fraudulent
3 software development project. By these actions, Mr. Thomas violated 746.075(1)(b).

4 Revocation of License

5 Mr. Thomas engaged in dishonest business practices and demonstrated
6 untrustworthiness in the conduct of insurance business in violation of ORS 744.074(1)(h).
7 He also repeatedly violated ORS 746.075(1)(b) over the course of several years. Pursuant
8 to ORS 744.074(1)(b) and (h), the Department has the authority to revoke Mr. Thomas’
9 insurance producer license.

10 In the course of his dishonest business practices, Mr. Thomas defrauded Ms.
11 Brugato, a vulnerable person older than 65 years of age³⁴ on each occasion he induced her
12 to transfer funds from the Annuity to him for his fraudulent software development project.
13 In 2008, Mr. Thomas signed a Financial Planning Agreement with Ms. Brugato, appointing
14 his wholly-owned business as her financial adviser. As such, Mr. Thomas had a fiduciary
15 relationship with Ms. Brugato that he exploited for his own personal gain. He engaged in
16 his exploitative conduct over the course of several years, fraudulently obtained \$146,050³⁵
17 from Ms. Brugato, preyed on a vulnerable person, violated his fiduciary relationship, and
18 caused Ms. Brugato to incur significant surrender fees that increased her total financial
19 loss. Based upon the nature of this conduct, the Department should revoke Mr. Thomas’
20 insurance producer license.

21 Assessment of Civil Penalties

22 ORS 59.995 provides, in part:

23 (1)(a) Except as provided in paragraph (b) of this subsection, in
24 addition to all other penalties and enforcement provisions
provided by law, any person who violates or who procures, aids

25 _____
26 ³⁴ ORS 124.100(1)(a) and (e) define a “vulnerable person” to include persons 65 years of age or older.

³⁵ \$40,000 + \$15,000 + \$34,000 + (\$15,000 + \$15,500) + \$15,000 + \$11,550 = \$146,050.



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or abets the violation of ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995 or any rule or order of the Director of the Department of Consumer and Business Services shall be subject to a penalty of not more than \$20,000 for every violation, which shall be paid to the General Fund of the State Treasury.

* * * * *

(2) Every violation described in subsection (1)(a) of this section is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed \$100,000.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745[.]

ORS 744.992(1) provides, in part:

A person who violates any provision of ORS 744.318 to 744.384, 744.991 and 744.992 is subject to civil penalties under ORS 731.988[.]

ORS 731.988 provides, in part:

(1) A person that violates any provision of the Insurance Code, any lawful rule or final order of the Director of the Department of Consumer and Business Services or any judgment that a court makes in response to the director's application, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director that does not exceed \$10,000 for each offense. The civil penalty for individual insurance producers, adjusters or insurance consultants may not exceed \$1,000 for each offense. Each violation is a separate offense.

(2) In addition to the civil penalty specified in subsection (1) of this section, a person that violates any provision of the Insurance Code, any lawful rule or final order of the director or any judgment that a court makes in response to the director's application, may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director that does not exceed the amount by which the person profited in any transaction that violates the provision, rule, order or judgment.

* * * * *

(8) Civil penalties under this section must be imposed and enforced in accordance with ORS 183.745[.]



1 In its Notice, the Department sought to assess civil penalties against Mr. Thomas
2 in the following amounts:

3 \$20,000 for violating ORS 59.135(2) and (3);

4 \$20,000 for violating ORS 59.055 and ORS 59.165(1);

5 \$10,000 for violating ORS 59.245 and ORS 59.315; and

6 \$151,650 for violating ORS 744.074(1)(h) and ORS 746.075(1)(b).

7 As shown above, the Department established that Mr. Thomas repeatedly violated
8 ORS 59.135(2) and (3) by making untrue statements of material fact, omissions of material
9 fact, and engaged in a course of conduct that defrauded Ms. Brugato. During this course
10 of conduct, Mr. Thomas violated ORS 59.055 and ORS 59.165(1) by unlawfully selling an
11 unregistered and nonexempt security when he was not licensed as a broker-dealer. During
12 his deceptive course of conduct that included conduct related to insurance, he fraudulently
13 induced Ms. Brugato, on six occasions, to surrender portions of a life insurance policy and
14 transfer a total of \$146,050 of the Annuity's funds to him in violation of ORS 744.074(1)(h)
15 and ORS 746.075(1)(b). Mr. Thomas then personally profited from those funds as he used
16 them to pay for his personal expenses.

17 In light of the repetitious nature of his conduct that occurred over the course of
18 multiple years and his targeting of a vulnerable person to whom he had a fiduciary duty,
19 the civil penalties sought by the Department for the securities violations are appropriate
20 and should be assessed. Mr. Thomas must pay \$20,000 for his repeated violations of ORS
21 59.135(2) and (3); \$20,000 for his repeated violations of ORS 59.055 and ORS 59.165(1);
22 and \$10,000 for his violation of ORS 59.245 and 59.315.

23 For the repetitious and egregious nature of his conduct in defrauding Ms. Brugato,
24 Mr. Thomas should be assessed civil penalties in the maximum amount of \$1,000 for each
25 violation of ORS 744.074(1)(h) and ORS 746.075(1)(b) and forfeit the amount he profited
26 from each violation as an additional civil penalty. Because he fraudulently induced her to

1 surrender a portion of her annuity on six separate occasions, he violated each statute six
2 times. Mr. Thomas must pay \$6,000 for his violations of ORS 744.074(1)(h) and another
3 \$6,000 for his violations of ORS 746.075(1)(b). He must also pay an additional civil
4 penalty in the amount of \$146,050 as the profit he made from his violations of the Oregon
5 Insurance Code for civil penalties in the total amount of \$158,050 (\$146,050 + \$6,000 +
6 \$6,000).

7 Pursuant to ORS 183.745(2),³⁶ the civil penalties are due and payable 10 days after
8 the final order imposing the civil penalties becomes final by operation of law or on appeal.

9 Orders to Cease and Desist

10 ORS 59.245(4) provides:

11 If the director has reason to believe that any person has engaged,
12 is engaging or is about to engage in any violation of the Oregon
13 Securities Law, may issue an order, subject to ORS 59.295,
14 directed to the person to cease and desist from the violation or
15 threatened violation.

16 ORS 744.992(1) provides, in part:

17 A person who violates any provision of ORS 744.318 to 744.384,
18 744.991 and 744.992 is subject to * * * cease and desist orders
19 under ORS 731.252.

20 ORS 731.252(1) provides, in part:

21 Whenever the Director of the Department of Consumer and
22 Business Services has reason to believe that any person has been
23 engaged or is engaging or is about to engage in any violation of the
24 Insurance Code, the director may issue an order, directed to such
25 person, to discontinue or desist from such violation or threatened
26 violation[.]

27 As explained above, the Department established that Mr. Thomas violated multiple
28 provisions of the Oregon Securities Law and Insurance Code. Therefore, pursuant to ORS
29 59.245(4) and ORS 731.252(1), Mr. Thomas must cease and desist from any further

30 _____
31 ³⁶ ORS 183.745(2) provides: “A civil penalty imposed under this section shall become due and payable 10
32 days after the order imposing the civil penalty becomes final by operation of law or on appeal.”



1 violations of ORS 59.055, ORS 59.165(1), ORS 59.135(2) and (3), ORS 59.245, ORS
2 59.315, ORS 744.074(1)(h) and ORS 746.075(1)(b).

3 EXCEPTIONS

4 Under ORS 183.460, a party adversely affected by a proposed order has the
5 opportunity to file exceptions. Likewise, under OAR 137-003-0645(5), a proposed order
6 shall include a statement that the party may file exceptions and shall include information
7 as to where and when written exceptions must be filed to be considered by the agency. The
8 Proposed Order in this case provided that the parties had the right to file written exceptions
9 and written argument within 30 days from the date that the order was sent to the parties by
10 delivering the same to the Division. On May 31, 2022, OAH served the Proposed Order
11 on the parties, including by electronic and certified mail to Mr. Thomas. Accordingly, Mr.
12 Thomas had until June 30, 2022, to file written exceptions. On July 1, 2022, Mr. Thomas
13 faxed to the Division a document entitled “Proposed Order Response.” That filing was
14 untimely and therefore is not considered.

15 ORDERS

16 The Director issues the following orders:

17 Order to Cease and Desist

18 1. Pursuant to ORS 59.245(4) and ORS 731.252(1), the Director hereby
19 ORDERS Respondent to CEASE AND DESIST from violating ORS 59.055, ORS
20 59.165(1), ORS 59.135(2), ORS 59.135(3), ORS 59.245, ORS 59.315, ORS 744.074(1)(h),
21 and ORS 746.075(1)(b).

22 Order Revoking License

23 2. Pursuant to the authority of ORS 744.074(1) and ORS 744.994(2), the
24 Director hereby REVOKES Respondent’s non-resident insurance producer license for
25 violations of ORS 744.074(1)(h), ORS 746.075(1)(b), and ORS 746.075(2)(e)-(2)(g).

26 ///



1 Order Assessing Civil Penalties

2 3. Pursuant to the authority of ORS 59.995(1) and ORS 731.988(1) and (2), the
3 Director hereby ORDERS the assessment of CIVIL PENALTIES against Respondent in
4 the amount of two hundred eight thousand fifty dollars (\$208,050) as follows:

5 A. One hundred fifty-eight thousand fifty dollars (\$158,050) for violating ORS
6 744.074(1)(h) and ORS 745.075(1)(b);

7 B. Twenty thousand dollars (\$20,000) for violating ORS 59.135(2) and (3);

8 C. Twenty thousand dollars (\$20,000) for violating ORS 59.055 and ORS
9 59.165(1); and

10 D. Ten thousand dollars (\$10,000) for violating ORS 59.245 and ORS 59.315.

11 IT IS SO ORDERED.

12 Dated this 19th day of July, 2022.

13 ANDREW STOLFI, Director
14 Department of Consumer and Business Services

15
16 /s/ Dorothy Bean
17 Dorothy Bean, Chief of Enforcement
18 Division of Financial Regulation

19 **NOTICE OF RIGHT TO JUDICIAL APPEAL**

20 You are entitled to judicial review of this order in accordance with ORS 183.482.

21 You may request judicial review by filing a petition with the Court of Appeals in Salem,
22 Oregon, within 60 days from the date this order is served.

23
24 *[The remainder of this page intentionally left blank.]*
25
26

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Telephone: (503) 378-4387

