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7

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

10	In the Matter of)	CASE NO.
11	THE CALIFORNIA CORPORATIONS)	
12	COMMISSIONER,	)	1) STATEMENT IN SUPPORT OF
13	Complainant,	)	ORDER LEVYING ADMINISTRATIVE
14	v.	)	PENALTIES (CORPORATIONS CODE
15	RALPH O. BERRY III, aka Ralph O. Berry, aka	)	SECTION 25252);
16	Ralph Berry, BILL LAWRENCE, BERRY)	
17	RESOURCES, INC., and BERRY PROSPECT	)	2) CLAIM FOR ANCILLARY RELIEF
18	#21, KENTUCKY LIMITED PARTNERSHIP,	)	(CORPORATIONS CODE SECTION
19	Respondents.	)	25254);
20		)	3) DESIST AND REFRAIN ORDER
21		)	(CORPORATIONS CODE SECTION
22		)	25532)

19 Preston DuFauchard, the California Corporations Commissioner (“Commissioner”) of the
20 Department of Corporations (“Department”) (collectively, “Complainant”), finds as follows:

21 1. At all relevant times, Ralph O. Berry, III, also known as Ralph O. Berry, also known
22 as Ralph Berry (hereinafter “Ralph Berry”), was President of Berry Resources, Inc. (hereinafter
23 “Berry Resources”), a Kentucky corporation with an address of 1106 Lovers Lane, Suite A-18,
24 Kentucky, 42103.

25 2. At all relevant times, Berry Resources was the Managing General Partner of Berry
26 Prospect #21, Kentucky Limited Partnership (hereinafter “Prospect #21”), which also used the
27 business address of 1106 Lovers Lane, Suite A-18, Kentucky, 42103.

28 3. At all relevant times, Bill Lawrence was employed by Berry Resources and/or

1 Prospect #21 to solicit investors in Prospect #21.

2 4. Beginning in or about November 26, 2007, Ralph Berry, Bill Lawrence, Berry
3 Resources, and Prospect #21 offered or sold securities in the form of units of Prospect #21,
4 Kentucky Limited Partnership.

5 5. Through cold-calling or other means of general solicitation, Ralph Berry, Bill
6 Lawrence, Berry Resources, and Prospect #21 offered or sold 30 units at \$17,000 per unit to raise
7 \$510,000, plus a call for \$3,000 per unit per well if the well were deemed productive.

8 6. The purported purpose of the offering was to raise funds to drill and complete two oil
9 and/or gas wells in Pickett County or North Central, Tennessee. Investors are told that Berry
10 Resources has the exclusive and complete discretion and responsibility for the management of the
11 wells, and that investors are not entitled to participate in the management and control of the wells or
12 the subsequent business and affairs of the operation.

13 7. Prospect #21 employed Ralph Berry, Bill Lawrence, and Berry Resources to solicit
14 potential investors through cold-calling or other means of general solicitation. Ralph Berry, Bill
15 Lawrence, and Berry Resources engaged in the business of offering or selling the securities of
16 Prospect #21 in the State of California.

17 8. These securities were offered or sold in this state in issuer transactions. The
18 Department of Corporations has not issued a permit or other form of qualification authorizing any
19 person to offer or sell these securities in this state.

20 9. In connection with these offers or sales, Ralph Berry, Bill Lawrence, Berry
21 Resources, and Prospect #21 misrepresented to investors or omitted to disclose to investors that:

22 a. On or about June 25, 1997, the Pennsylvania Securities Commission issued a Cease
23 and Desist Order against Ralph Berry for selling unregistered securities on behalf of Explo Oil, Inc.,
24 a purported oil and gas exploration production company for a proposed Kentucky drilling project in
25 violation of state securities laws.

26 b. On or about October 2, 2002, the Kentucky Department of Financial Institutions
27 (“DFI”) filed an administrative complaint against Ralph Berry and Berry Resources for violating
28 state securities laws involving investments in various oil and gas partnerships which the parties

1 settled on or about January 9, 2003 and which resulted in a Final Order dated January 13, 2003. In
2 describing this order to investors, Ralph Berry, Bill Lawrence, Berry Resources, and Prospect #21
3 omit to disclose that in addition to ordering Ralph Berry and Berry Resources to ensure proper
4 licensing of all persons having contact with investors and to file necessary reports with DFI, the
5 respondents were also ordered to amend and make certain disclosures in their offering materials.
6 The respondents were also ordered to inquire into future investor suitability and to include language
7 in the offering materials indicating that they would make such investor determinations in the future.

8 c. Although investors are told that Ralph Berry was issued an Order of Prohibition by
9 the State of Wisconsin against making sales until exemptions were available and agents were
10 licensed, investors are not told that the Wisconsin Department of Financial Institutions also issued in
11 February, 2003 an order of prohibition against Berry Resources which prohibits it from offering or
12 selling unregistered securities and from employing unregistered agents to offer or sell securities.

13 d. On or about May 5, 2005, the Indiana Secretary of State, Securities Division filed an
14 Administrative Complaint and Cease and Desist Order (“C&D”) against Ralph Berry and Berry
15 Resources. In describing this order to investors, Ralph Berry, Bill Lawrence, Berry Resources, and
16 Prospect #21 omit to disclose that the C&D finds that the respondents offered and sold unregistered
17 securities in an oil and gas venture while acting as unlicensed broker-dealers. Ralph Berry, Bill
18 Lawrence, Berry Resources, and Prospect #21 also misrepresent that there were no allegations of
19 misrepresentation when the C&D finds that the securities were offered or sold by means of material
20 misrepresentation or omissions of fact.

21 e. On or about January 27, 2006, the Kentucky Office of Financial Institutions (“OFI”)
22 once again filed an administrative complaint and subsequent amended complaint against Ralph
23 Berry and Berry Resources for violating state securities laws which the parties settled in a Final
24 Order dated February 9, 2007. In describing this order to investors, Ralph Berry, Bill Lawrence,
25 Berry Resources, and Prospect #21 omit to disclose that the complaints involved sales of interests in
26 oil and gas well exploration programs in violation of state securities laws, using unregistered broker-
27 dealer agents, and misrepresent that there were no allegations of misrepresentation when in fact the
28 complaints allege that the respondents’ offering materials failed to contain material facts or

1 misstated facts essential to the investment decision. Investors are also not told that the offering
2 violated OFI's prior Final Order issued to the respondents back on January 13, 2003. Ralph Berry,
3 Bill Lawrence, Berry Resources, and Prospect #21 also misrepresent that they have defenses to the
4 complaints which they believe will be successful, when in fact the matter had already become final
5 by order as of February 9, 2007.

6 Ralph Berry, Bill Lawrence, Berry Resources, and Prospect #21 also omit to disclose that the
7 Final Order requires Ralph Berry and Berry Resources to employ only those who are registered as an
8 agent or broker-dealer, as well as to pay an administrative fine of \$5,000. In addition, the
9 respondents were ordered to update their offering materials for their offers in BRI-Heidi #1-21 and
10 #2-21, Prospect #11 and Prospect #12, and future oil and gas programs because the OFI was of the
11 opinion that the offering materials were deficient and failed to provide full disclosure to prospective
12 investors. The respondents were ordered to submit their offerings to the OFI for review and to
13 participate in a joint effort to continue refining the offering materials to provide all material
14 information. All future offering materials were ordered to be substantially similar to the revised
15 materials.

16 f. On October 24, 2007, the California Department of Corporations,
17 Complainant herein, issued a Desist and Refrain Order ("D&R") against Ralph Berry, Bill
18 Lawrence, Berry Resources, and Berry Prospect #19 for selling unqualified securities. In describing
19 the D&R to investors, Ralph Berry, Bill Lawrence, Berry Resources, and Berry Prospect #21 omit to
20 disclose that the securities were offered or sold by means of material misrepresentation or omission
21 of fact. Investors are also not told that the purported purpose of Berry Prospect #19 was essentially
22 identical to that of Berry Prospect #21, in that the offering was to raise funds to drill and complete
23 two oil and/or gas wells in Pickett County, Tennessee.

24 I.

25 ORDER LEVYING ADMINISTRATIVE PENALTIES

26 (For violations of Corporations Code sections 25110, 25210 and 25401)

27 10. Complainant reincorporates by reference paragraphs 1-9 of this Statement in Support
28 as though fully set forth herein, and based on information and belief, alleges and charges as follows.

1 11. Corporations Code section 25252 of the Corporate Securities Law of 1968 (“CSL”)
2 authorizes the Commissioner to issue an order levying administrative penalties against any person
3 for willful violations of any provision of the CSL and any rules promulgated thereunder.

4 Specifically, Corporations Code section 25252 provides in relevant part:

5 The commissioner may, after appropriate notice and opportunity for
6 hearing, by orders, levy administrative penalties as follows:

7 (a) Any person subject to this division, other than a broker-dealer or
8 investment adviser, who willfully violates any provision of this
9 division, or who willfully violates any rule or order adopted or
10 issued pursuant to this division, is liable for administrative penalties
11 of not more than one thousand dollars (\$1,000) for the first violation,
12 and not more than two thousand five hundred dollars (\$2,500) for
13 each subsequent violation.

14 (b) Any broker-dealer or investment adviser that willfully violates
15 any provision of this division to which it is subject, or that willfully
16 violates any rule or order adopted or issued pursuant to this division
17 and to which it is subject, is liable for administrative penalties of not
18 more than five thousand dollars (\$5,000) for the first violation, not
19 more than ten thousand dollars (\$10,000) for the second violation,
20 and not more than fifteen thousand dollars (\$15,000) for each
21 subsequent violation.

22 12. Based on the foregoing findings of fact, as set forth above in paragraphs 1-9,
23 Respondents willfully violated the following provisions of the CSL and/or the Commissioner’s D&R
24 issued October 24, 2007 as follows:

25 a) Pursuant to Corporations Code section 25252(a), Prospect #21 willfully violated
26 Corporations Code section 25110 by offering and selling securities that are not qualified by the
27 Department or exempt to at least 1 investor;

28 b) Pursuant to Corporations Code section 25252(a), Prospect #21 willfully violated
29 Corporations Code section 25401 by making misrepresentations and omissions of material fact in
30 connection with the offer and sale of securities to at least 1 investor;

31 c) Pursuant to Corporations Code section 25252(b), Ralph Berry, Bill Lawrence, and
32 Berry Resources, acting as unlicensed broker-dealers, willfully violated Corporations Code
33 section 25110 and willfully violated the Commissioner’s D&R issued October 24, 2007 by
34 offering and selling securities that are not qualified by the Department or exempt to at least 1
35 investor;

1 d) Pursuant to Corporations Code section 25252(b), Ralph Berry, Bill Lawrence, and
2 Berry Resources, acting as unlicensed broker-dealers, willfully violated Corporations Code
3 section 25210 by effecting a transaction in, or inducing or attempting to induce the purchase or
4 sale of, a security in California without having first applied for and secured from the
5 Commissioner a certificate authorizing such broker-dealer activity;

6 e) Pursuant to Corporations Code section 25252(b), Ralph Berry, Bill Lawrence, and
7 Berry Resources, acting as unlicensed broker-dealers, willfully violated Corporations Code
8 section 25401 and the Commissioner's D&R issued October 24, 2007 by making
9 misrepresentations and omissions of material fact in connection with the offer and sale of
10 securities to at least 1 investor.

11 **WHEREFORE**, pursuant to Corporations Code section 25252, the Commissioner prays
12 for an order to levy administrative penalties against Respondents Ralph O. Berry, III, also known
13 as Ralph O. Berry and Ralph Berry, Bill Lawrence, Berry Resources, Inc., and Berry Prospect #21,
14 Kentucky Limited Partnership, jointly and severally, as follows:

15 A) That, pursuant to Corporations Code section 25252(a), the Commissioner may levy
16 administrative penalties of one thousand dollars (\$1,000) for Prospect #21's violation of
17 Corporations Code section 25110, and one thousand dollars (\$1,000) for the first of its six violations
18 of Corporations Code section 25401, as outlined in paragraph 9a, and two thousand five hundred
19 dollars (\$2,500) for its second through sixth violations of Corporations Code section 25401, as
20 outlined in paragraphs 9b-f for a total of fourteen thousand five hundred dollars (\$14,500).

21 B) That, pursuant to Corporations Code section 25252(b), the Commissioner may levy
22 administrative penalties of:

23 i) five thousand dollars (\$5,000) each to Ralph Berry, Bill Lawrence, and
24 Berry Resources for their violations of Corporations Code section 25110, and five thousand dollars
25 (\$5,000) each to Ralph Berry, Bill Lawrence, and Berry Resources for their sale of unqualified
26 securities in violation of the Commissioners D&R issued October 24, 2007 which prohibited any
27 further violations of Corporations Code section 25110 for a total of thirty thousand dollars
28 (\$30,000);

1 ii) five thousand dollars (\$5,000) each to Ralph Berry, Bill Lawrence, and
2 Berry Resources for their violations of Corporations Code section 25210 for a total of fifteen
3 thousand dollars (\$15,000);

4 iii) five thousand dollars (\$5,000) each to Ralph Berry, Bill Lawrence, and
5 Berry Resources for their first of six violations of Corporations Code section 25401, as outlined in
6 paragraph 9a; ten thousand dollars (\$10,000) each to Ralph Berry, Bill Lawrence, and Berry
7 Resources for their second of six violations of Corporations Code section 25401, as outlined in
8 paragraph 9b; and fifteen thousand dollars (\$15,000) each to Ralph Berry, Bill Lawrence, and
9 Berry Resources per the third, fourth, fifth and sixth violations of Corporations Code section
10 25401 as outlined in paragraphs 9c-f for a total of two hundred twenty five thousand dollars
11 (\$225,000);

12 iv) five thousand dollars (\$5,000) each to Ralph Berry, Bill Lawrence, and
13 Berry Resources for their first of six misrepresentations or omissions of material fact, as outlined
14 in paragraph 9a, in violation of the Commissioner's D&R issued October 24, 2007 which
15 prohibited any further violations of Corporations Code section 25401; ten thousand dollars
16 (\$10,000) each to Ralph Berry, Bill Lawrence, and Berry Resources for their second of those six
17 misrepresentations or omissions, as outlined in paragraph 9b, in violation of the Commissioner's
18 D&R issued October 24, 2007; and fifteen thousand dollars (\$15,000) each to Ralph Berry, Bill
19 Lawrence, and Berry Resources, per the third, fourth, fifth and sixth misrepresentation or omission
20 of material fact, as outlined in paragraphs 9c-f, in violation of the Commissioner's D&R issued
21 October 24, 2007 for a total of two hundred twenty five thousand dollars (\$225,000).

22 D) For a total amount of administrative penalties

23 i) Against Prospect #21 of \$14,500 for its violations of Corporations Code
24 sections 25110, 25401; and

25 ii) Against Ralph Berry, Bill Lawrence, and Berry Resources of \$495,000 for
26 their violations of Corporations Code sections 25110, 25210, 25401 and for their violations of the
27 Commissioner's D&R Order issued October 24, 2007.

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III.

CLAIM FOR ANCILLARY RELIEF

(For violations of Corporations Code sections 25110, 25210 and 25401)

13. Complainant reincorporates by reference paragraphs 1-9 of this Statement in Support as though fully set forth herein and alleges and charges as follows.

14. Corporations Code section 25254 authorizes the Commissioner to seek ancillary relief on behalf of any person injured by violations of any provision of the CSL and any rules promulgated thereunder. Corporations Code section 25254 states:

(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney’s fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

15. Based on the foregoing findings of fact, as set forth above in paragraphs 1-9, Respondents sold unqualified securities in an amount of at least \$14,000.00 to at least 1 California investor in violation of Corporations Code sections 25110, 25210 and 25401.

WHEREFORE, the Commissioner has determined that this action is in the public interest and necessary for the protection of the public based upon the Respondents’ repeated violations of the CSL, and hereby prays for an order of ancillary relief from this Court pursuant to Corporation Code section 25254, individually, jointly and severally against Respondents as follows:

- A) Full restitution, consisting of the investor’s investment principal in an amount of at least \$14,000.00 plus the legal rate of interest accumulated on the investment principal;
- B) Recovery of attorney’s fees, investigative expenses, and costs in an amount of at least \$7,963.85.

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IV.

DESIST AND REFRAIN ORDER

16. Complainant reincorporates by reference paragraphs 1-9 of this Statement in Support as though fully set forth herein.

17. Corporations Code section 25532, in pertinent part, states:

(a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law ...

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer...or has been or is engaging in broker-dealer...activities, in violation of Section 25210..., the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

18. Based upon the foregoing findings of fact, as set forth above in paragraphs 1-9, the California Corporations Commissioner is of the opinion that the units of Prospect #21 are securities subject to qualification under the California Corporate Securities Law of 1968 and are being or have been offered or sold without being qualified in violation of Corporations Code section 25110.

19. In addition, based upon the foregoing, the California Corporations Commissioner is of the opinion that Ralph Berry, Bill Lawrence, and Berry Resources have effected transactions in securities as broker-dealers without having first applied for and secured from the Commissioner a certificate, authorizing these person(s) to act in that capacity, in violation of Corporations Code section 25210.

20. Further, the California Corporations Commissioner is of the opinion that the securities of Prospect #21 were offered or sold in this state by means of written or oral communications which included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of Corporations Code section 25401.

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IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY THAT:

A) Pursuant to section 25532 of the CSL, Ralph O. Berry, III, also known as Ralph O. Berry and Ralph Berry, Bill Lawrence, Berry Resources, Inc., and Berry Prospect #21, Kentucky Limited Partnership are hereby ordered to desist and refrain from the further offer or sale in the State of California of securities, including but not limited to investment contracts in the form of units, unless and until qualification has been made under the law, or unless exempt.

B) Pursuant to section 25532 of the CSL, Ralph O. Berry, III, also known as Ralph O. Berry and Ralph Berry, Bill Lawrence, and Berry Resources, Inc. are hereby ordered to desist and refrain from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security in this state, unless and until they have applied for and secured from the Commissioner a certificate, then in effect, authorizing these persons to act in that capacity, or unless exempt.

C) Pursuant to section 25532 of the CSL, Ralph O. Berry, III, also known as Ralph O. Berry and Ralph Berry, Bill Lawrence, Berry Resources, Inc., and Berry Prospect #21, Kentucky Limited Partnership are hereby ordered to desist and refrain from offering or selling or buying or offering to buy any security in the State of California, including but not limited to investment contracts in the form of units, by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies, and provisions of the CSL.

Dated: April 5, 2011

PRESTON DUFAUCHARD
California Corporations Commissioner

By: _____
ALAN S. WEINGER
Deputy Commissioner