Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF: **BRENDAN ROBERT MURTON, CRD#2509502** **Respondent.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-10-0077**

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondent Brendan Robert Murton ("Murton"), hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*
2. On November 8, 2010, the Division initiated an administrative action against the Respondent by filing a Petition to Sanction Licensee.
3. Respondent has agreed with the Division to settle this matter by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the November 8, 2010 Petition.
4. Respondent admits the jurisdiction of the Division over him and over the subject matter of this action.
5. Respondent waives any right to a hearing to challenge the Division's evidence and present

evidence on his behalf.

6. Respondent has read the Order, understands its contents, and submits to this Order voluntarily. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.

7. Respondent is represented by attorney Erik A. Christiansen and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

8. Murton is currently licensed as a broker-dealer agent of PFS Investments, Inc. ("PFS"), CRD#10111. He has been employed with PFS since June 1994 and licensed as a broker-dealer agent since July 1994.

9. PFS is a securities broker-dealer headquartered at 3120 Breckinridge Boulevard, Bldg. 700, Duluth, Georgia, 30099.

10. Murton has taken and passed the Series 6, 26, and 63 examinations. Pursuant to PFS supervisory procedures, he is the "Person-in-Charge" Series 26 Principal for PFS's South Jordan, Utah office.

11. During the period relevant to this action, the Central Registration Depository ("CRD")[1] identified Murton as the OSJ (Office of Supervisory Jurisdiction) supervisor for 28 PFS branch offices[2], 23 of which are located in Utah. Murton was also the supervisor of 18 PFS

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[1]CRD is a computerized database maintained by the Financial Industry Regulatory Authority ("FINRA"). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

[2]At the time of the examination, this figure was determined to be incorrect due to reassignments of several offices to other OSJs. PFS, however, had failed to update CRD with

registered representatives working out of the PFS South Jordan branch.

Division Examination

12. On November 18, 2009, the Division conducted an examination of the PFS South Jordan office. The examination resulted from a complaint and concerns reported to the Division regarding one of the PFS offices supervised by Murton ("Draper branch"). The examination revealed numerous deficiencies, although no customers were harmed by Murton's actions and omissions.

Failure to Supervise and Delegating Supervisory Activities to Unlicensed Office Staff

13. Pursuant to PFS's written supervisory procedures, each OSJ must conduct annual "Leadership Visits" to each branch office the OSJ supervises. The visits must be conducted by the designated OSJ supervisor or a designee who is licensed as a Series 26 principal.

14. PFS's written supervisory procedures indicate that "Leadership Visits are a critical part of PFSI's field supervision system and must be performed properly."

15. During the visit, the supervising principal interviews branch agents and reviews branch office files for compliance with securities industry regulations and PFS policies. The supervising principal must then follow up and ensure correction of any field audit exceptions, review business practices, procedures, and conduct compliance training.

16. As part of the visit, the principal completes an OSJ Leadership Visit Form which is later submitted to the PFS home office. The Leadership Visit Form indicates the visits are "one of the methods to implement required OSJ Supervision" under FINRA Rule 3010[3]. The

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current information.

[3]FINRA Rule 3010 sets forth supervisory requirements for broker-dealers.

Form further provides:

> These visits are a critical method by which PFSI and OSJ's [sic] are able to achieve required supervision to ensure compliance with SEC and NASD requirements. Further the information obtained through this Form is likewise critical in achieving compliance and fulfillment of the necessary elements of OSJ Supervision. These visits must meaningfully assess the RVP [a.k.a. Branch Office Manager] and Satellite offices to supervise for compliance.

17. During 2007 and 2008, Murton delegated his responsibility for Leadership Visits to two office administrators who were not licensed in the securities industry in any capacity at the time.

18. In that period, the unlicensed staff conducted 26 visits – approximately 59 % of the OSJ visits.

19. In one instance, an office administrator was asked to complete the leadership visit of her husband's branch office – despite the obvious conflict of interest. In an interview with the Division, she stated she had received no training on securities compliance issues.

20. Despite PFS having communicated to Murton the importance of Leadership Visits as one of his OSJ responsibilities and obligations, Murton sent untrained and unlicensed individuals to conduct the visits.

21. The Leadership Visit Forms require identification of the individual completing the visit. In the instances where the unlicensed staff conducted the visits, the unlicensed person signed Murton's name and PFS identification number as the principal conducting the visit.

22. Despite having an opportunity to do so, Murton did not correct the erroneous signing of his name because he did not review the forms after they were completed. As a result, PFS was

led to believe Murton completed the visits when in fact he had not done so.[4] As a result, PFS was led to believe Murton completed the visits when in fact he had not done so.

Other Deficiencies

23. During 2008, five routine field audits completed by PFS for branch offices supervised by Murton, including the PFS Draper branch, had exceptions related to trade blotter completion. Out of 85 trades sampled in those offices, 14 were not recorded in the branch office trade blotters. One of the omissions was Murton's own transaction.

24. Despite Murton being informed of these deficiencies, three months after one of the audits, a cashier's check for $3000 was not properly recorded and accounted for on the trade blotter of the PFS Draper branch. Although no client funds were lost, the check was ultimately lost.

25. In Murton's own South Jordan PFS office, a May 20, 2009 internal audit by PFS identified that trade blotters were not being properly maintained. This failure occurred after six separate instances were reported to Murton of non-compliance with firm policy regarding maintaining trade blotters.

26. The Division's examination of Murton's branch also revealed failure to follow PFS policies with respect to two investor checks which were returned with new account documents as not-in-good-order. Rather than promptly returning the checks to the investors as required by PFS policy, the checks were retained, and placed in a correspondence file where they had been for nine (9) days as of the time of the Division's examination.

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[4]Murton has represented to the Division that he did not know his name was being signed by others. Because this assertion is not documented in the Division's investigation, it is not included in the Division's findings of fact.

27. The Division's examination further revealed that Murton's branch failed to comply with PFS policies with respect to maintaining incoming and outgoing client correspondence in separate files.

II. CONCLUSIONS OF LAW

Failure to Supervise Under § 61-1-6(2)(a)(ii)(J) of the Act

28. Murton failed to conduct Leadership Visits required of him as an OSJ supervisor. He delegated the visits to unlicensed and unqualified individuals in contravention of firm policy and industry standards, permitted an unlicensed person to sign his name to the Leadership Visit Forms, and otherwise failed reasonably to supervise as described above, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

29. Respondent neither admits nor denies the Division's findings or conclusions, but consents to the sanctions below being imposed by the Division.

30. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.

31. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine in the amount of $10,000, which shall be paid within thirty (30) days following entry of this Order.

32. Respondent is suspended from acting as a securities agent in Utah for a period of five business days, which suspension shall run from December 27 to December 31, 2010.

33. Respondent is suspended from acting in the capacity of a securities principal in Utah for a period of two (2) years, effective as of the date this Order is entered. At the end of the

suspension, upon successfully requalifying by passing the Series 26 Examination, Respondent may reapply for licensure as a securities principal. The Division shall retain full discretion, however, to grant or deny such request in the same manner as the Division grants or denies such request for all licensed individuals.

34. Respondent shall cease and desist from violating the Utah Uniform Securities Act and shall comply with the requirements of the Act in all future business in this state.

IV. FINAL RESOLUTION

35. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondent further acknowledges that if the Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

36. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.

37. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities

Dated this 11 day of January, 2011.

By: _____

Dave R. Hermansen
Director of Licensing and Compliance

Dated this 6 day of January, 2011.

_____

Brendan Robert Murton

Approved:

_____

D. Scott Davis
Assistant Attorney General

Approved:

_____

Erik A. Christiansen
Attorney for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. the Division's Findings and Conclusions, which are neither admitted nor denied by Respondent, are hereby entered.
2. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent shall pay a fine in the amount of $10,000, which shall be paid within thirty (30) days following entry of this Order.
3. Respondent is suspended from acting as a securities agent in Utah for a period of five business days, which suspension shall run from December 27 to December 31, 2010.
4. Respondent is suspended from acting in the capacity of a securities principal in Utah for a period of two (2) years, effective as of the date this Order is entered. At the end of the suspension, upon successfully requalifying by passing the Series 26 Examination, Respondent may reapply for licensure as a securities principal. The Division shall retain full discretion, however, to grant or deny such request in the same manner as the Division grants or denies such requests for all licensed individuals.
5. Respondent shall cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.

BY THE UTAH SECURITIES COMMISSION:

DATED this 20th day of January, 2011.

Tim Bangerter

Jane Cameron

Erik Christiansen

Michael O'Brien

Laura Polacheck

CERTIFICATE OF MAILING

I, Julie Price, hereby certify that on the 24th day of January 2011, I mailed, by certified mail, a true and correct copy of the forgoing **Stipulation and Consent Order** to:

Erik Christiansen
Parsons Behle & Latimer
201 S Main St, Suite 1800
Salt Lake City, UT 84145-0898
Certified Mail # 7007 0220 0001 0065 4725

Julie Price
Executive Secretary