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 8 and David A. and Deborah Fazio

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CORP COMMISSION

9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

10 COMMISSIONERS

11 MARC SPITZER, Chairman
 12 WILLIAM A. MUNDELL
 13 JEFF HATCH-MILLER
 14 MIKE GLEASON
 15 KRISTIN K. MAYES

16 **In the matter of:**

17 FOUNTAIN CAPITAL MANAGEMENT, LLC
 18 c/o DAVID A. FAZIO
 19 3616 West Cortez
 20 Phoenix, Arizona 85029

21 INTEGROWTH FINANCIAL GROUP
 22 C/O ROGER ALVIN SANDE
 23 CDC # V06974
 24 P.O. Box 2210
 25 Susanville, California 96130

26 RICHARD A. FANDRICH
 27 11424 North 25th Avenue
 28 Phoenix, Arizona 85029

29 DAVID A. and DEBORAH FAZIO
 30 3616 West Cortez
 31 Phoenix, Arizona 85029

DOCKET NO. S-03505A-04-0000

**ANSWER OF RESPONDENTS
 FOUNTAIN CAPITAL
 MANAGEMENT, LLC,
 AND DAVID A. AND DEBORAH
 FAZIO**

Arizona Corporation Commission

DOCKETED

JUN 18 2004

DOCKETED BY	
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1 DONALD and HELEN ABERNATHY
2 2323 North Central Avenue, #803
3 Phoenix, Arizona 85004

4 STEPHEN A. and JANE DOE HILTBRAND
5 2156 E. Estrella Circle
6 Mesa, Arizona 85202

7 ROGER ALVIN SANDE
8 CDC # V06974
9 P.O. Box 2210
10 Susanville, California 96130

11 Respondents.

12 Respondents David A. Fazio (“Fazio”) and Deborah Fazio, Fountain Capital
13 Management, LLC, (“Fountain Capital”), (together “Fazio Respondents”), admit, deny and
14 allege:

15 **I.**
16 **JURISDICTION**

17 1. Admit that the Division has jurisdiction but reserves the right to deny that the
18 investments at issue are securities.

19 **II.**
20 **RESPONDENTS**

- 21 2. Admit.
- 22 3. Allege that they are without knowledge or information sufficient to form a
23 belief as to the allegations set forth in this paragraph and therefore deny the same.
- 24 4. Allege that they are without knowledge or information sufficient to form a
25 belief as to the allegations set forth in this paragraph and therefore deny the same.
- 26 5. Admit.
- 27 6. Admit that Deborah Fazio was David Fazio's wife at all relevant times, but
28 deny that she is a proper party to this matter and reserve the right to have her removed.

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16. Admit.

17. Allege that the advertisements speaks for themselves; admit that when approached, the Fazio Respondents sold certain programs; deny the remaining allegations.

The Viatical Policies

18. Admit that Fazio offered and sold about 17 viatical settlement contracts; deny that these are securities; deny the remaining allegations.

19. Admit that the viatical policies sold by Fazio Respondents were on behalf of Future First Financial Group of Pointe Verda Beach, Florida; deny the remaining allegations.

20. Allege that purchasers of the viatical settlement policies received all relevant and material medical records; deny the remaining allegations.

21. Deny.

22. Allege that they are without knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph and therefore deny the same.

23. Allege that all material information, including risk, was disclosed to the investors; deny the remaining allegations.

24. Admit that Fazio offered and sold about 17 viatical settlement contracts to 15 investors for an amount totaling approximately \$400,000; deny the remaining allegations.

The Alpha Pay Telephone Contracts

25. Allege that they are without knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph and therefore deny the same.

26. Allege that they are without knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph and therefore deny the same.

27. Allege that they are without knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph and therefore deny the same.

...

1 28. Allege that they are without knowledge or information sufficient to form a
2 belief as to the allegations set forth in this paragraph and therefore deny the same.

3 29. Allege that the offering documents speak for themselves; deny the remaining
4 allegations.

5 30. Allege that they are without knowledge or information sufficient to form a
6 belief as to the allegations set forth in this paragraph and therefore deny the same.

7 31. Allege that they are without knowledge or information sufficient to form a
8 belief as to the allegations set forth in this paragraph and therefore deny the same.

9 32. Admit that the Fazio Respondents sold the Alpha investment to about seven
10 investors; deny the remaining allegations.

11 33. Allege that all material and information was disclosed to purchases of the
12 Alpha investment; deny the remaining allegations.

13 34. Deny.

14 35. Admit that the Fazio Respondents received commissions of 12% per telephone
15 sold.

16 36. Allege that they are without knowledge or information sufficient to form a
17 belief as to the allegations set forth in this paragraph and therefore deny the same.

18 37. Allege that they are without knowledge or information sufficient to form a
19 belief as to the allegations set forth in this paragraph and therefore deny the same.

20 38. Allege that they are without knowledge or information sufficient to form a
21 belief as to the allegations set forth in this paragraph and therefore deny the same.

22 39. Admit that the Fazio Respondents sold the Alpha pay phone investment to
23 seven investors.

24 **Chemical Trust Investment Contract**

25 40. Allege that the offering documents speak for themselves; deny the remaining
allegations.

1 41. Allege that the offering documents speak for themselves; deny the remaining
2 allegations.

3 42. Deny.

4 43. Allege that they are without knowledge or information sufficient to form a
5 belief as to the allegations set forth in this paragraph and therefore deny the same.

6 44. Allege that they are without knowledge or information sufficient to form a
7 belief as to the allegations set forth in this paragraph and therefore deny the same.

8 45. Admit that the Fazio Respondents sold Chemical Trust investment to about six
9 investors.

10 The ATM Program

11 46. Agree with the general description of the investment; admit that the Fazio
12 Respondents sold about six ATMs to about two investors.

13 47. Allege that the documents speak for themselves; deny the remaining
14 allegations.

15 48. Allege that they are without knowledge or information sufficient to form a
16 belief as to the allegations set forth in this paragraph and therefore deny the same.

17 49. Allege that the documents speak for themselves; deny the remaining
18 allegations.

19 50. Allege that they are without knowledge or information sufficient to form a
20 belief as to the allegations set forth in this paragraph and therefore deny the same as to the
21 first sentence; admit that the Fazio Respondents sold six ATMs to about two investors.

22 The Other Securities Orders

23 51. Allege that they are without knowledge or information sufficient to form a
24 belief as to the allegations set forth in this paragraph and therefore deny the same.

25 52. Allege that they are without knowledge or information sufficient to form a
belief as to the allegations set forth in this paragraph and therefore deny the same.

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53. Allege that they are without knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph and therefore deny the same.

54. Allege that they are without knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph and therefore deny the same.

55. Admit that on November 11, 2003, the Wisconsin Department issued an order against Fazio and FCM, which contained no admissions of guilt or wrongdoing.

56. Deny.

IV.

**VIOLATION OF A.R.S. § 44-1841
(Offer or Sale of Unregistered Securities)**

57. Deny.

58. Admit that the investments were not registered.

59. Deny.

V.

**VIOLATION OF A.R.S. § 44-1842
(Transactions by Unregistered Dealers or Salesmen)**

59. Deny.

60. Deny.

VI.

**VIOLATION OF A.R.S. § 44-1991
(Fraud in Connection with the Offer or Sale of Securities)**

61. Deny.

62. Deny.

63. Admit that Fazio was a member of FCM; deny the remaining allegations.

64. Allege that they are without knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph and therefore deny the same.

1 65. Respondents deny each and every allegation not specifically admitted herein.

2 66. Allege the following affirmative defenses:

3 a. The Notice fails to state a claim upon which relief can be based; and

4 b. Respondents deny any violation of applicable rules, regulations and
5 statutes.

6 67. Respondents reserve the right to add any affirmative defenses that become
7 apparent through discovery.

8 **VII.**

9 **REQUESTED RELIEF**

10 WHEREFORE, Respondents ask that this case be dismissed, that they receive their
11 costs and attorneys' fees, and for any other relief just and proper under the circumstances.

12 RESPECTFULLY SUBMITTED this 18 day of June, 2004.

13 RENAUD COOK DRURY MESAROS, PA

14 By: 
15 Michael Salcido
16 Phelps Dodge Tower
17 One North Central, Suite 900
18 Phoenix, AZ 85004-4417
19 *Attorneys for Respondents Fountain Capital*
20 *Management, LLC, and David A. and*
21 *Deborah Fazio*

22 **ORIGINAL** and ten (10) copies
23 filed with:

24 Arizona Corporation Commission
25 Docket Control Center
26 1200 West Washington Street
27 Phoenix, AZ 85007

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29 . . .

30 . . .

1 and a copy mailed to:
2 Mark Dinell
3 Arizona Corporation Commission
4 Securities Division
5 1300 West Washington Street, Third Floor
6 Phoenix, AZ 85007

7 Cynthia A. Jansen