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NEW

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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ORIGINAL

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

In the matter of:

) Docket No. S-03585A-05-0000

) LISTO, INC., a Nevada corporation  
) 668 N. 44<sup>th</sup> St., Suite 233  
) Phoenix, Arizona 85008

) **TEMPORARY ORDER TO CEASE AND  
) DESIST AND NOTICE OF OPPORTUNITY  
) FOR HEARING**

) ROBERT SMART and JANE DOE SMART,  
) husband and wife  
) #819 Donato Guerra Rep. Belice Col. Machi-  
) Lopez  
) Hermosillo, Senora, Mexico 83127

) KEVIN KRAUSE, an unmarried man  
) 23444 N. 21<sup>st</sup> Way  
) Phoenix, Arizona 85024

) Respondents.  
)

**NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY**

**EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that LISTO, INC., a Nevada corporation, ROBERT SMART and JANE DOE SMART, and KEVIN KRAUSE engaged in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act") and that the public welfare requires immediate action.

Arizona Corporation Commission

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**I.**

**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

**II.**

**RESPONDENTS**

2. LISTO, Inc., a Nevada corporation (“LISTO”), was organized on January 14, 2002 and subsequently merged with GBO, Inc., a Nevada corporation, with the surviving entity retaining the name of LISTO, effective July 15, 2003. The principal place of business of LISTO is 668 N. 44<sup>th</sup> Street, Suite 233, Phoenix, Arizona 85008. LISTO is not authorized to transact business in Arizona.

3. ROBERT SMART (“SMART”) was at all relevant times a principal of LISTO whose last known residential address is 36640 N. Sidewinder Rd., Carefree, Arizona 85377 and last known business address is #819 Donato Guerra Rep. Belice Col. Machi-Lopez, Hermosillo, Sonora, Mexico 93127.

4. JANE DOE SMART was at all relevant times the spouse of SMART. JANE DOE SMART is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

5. At all times relevant, SMART and JANE DOE SMART were acting for their own benefit, and for the benefit or in furtherance of the marital community.

6. KEVIN H. KRAUSE (“KRAUSE”) was at all relevant times a principal of LISTO whose last known address is 23444 N. 24<sup>th</sup> Way, Phoenix, Arizona 85024.

7. LISTO, SMART and KRAUSE may be collectively referred to as “Respondents.” JANE DOE SMART may be referred to as “Respondent Spouse.”

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**III.**

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**FACTS**

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8. Since January 2002, Respondents have been offering securities in the form of common stock in LISTO.

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9. SMART holds himself out to be the president of LISTO and is the majority stock holder and control person of LISTO.

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10. Respondents represent that LISTO is seeking capital for the development of oil and gas wells in the Holbrook area of Northeastern, Arizona (the "Energy Project"). The Respondents claim that the Energy Project is to be advanced through the use of land leases between LISTO and the Arizona Land Department. That claim is false. There are no land leases between Respondents and the Arizona Land Department.

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11. Respondents have failed to explain to offerees and/or investors the risk and costs involved in the Energy Project.

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12. Respondents also represent that LISTO is seeking capital for the development of a new community located in the Puerto Penasco (i.e., Rocky Point) district of Mexico, which development plan includes condominiums, a resort style hotel, medical facilities, marina, casino, and airport, referred to as "Ciudad de La Blanca Rosa at Los Almejas" (the "Mexico Project"). The Respondents informed investors that the site of the Mexico Project was to be located in an area of Rocky Point known as "Sandy Beach," but later told investors that the site was to be on a larger parcel of property located further south in the Rocky Point district.

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13. Respondents have claimed that the Mexico Project had commenced; however, its development has not progressed past the planning stage.

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14. Respondents have claimed that profits received from the Energy Project would also be used to fund the Mexico Project.

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2 15. Respondents have induced the public to invest in LISTO through detailed  
3 presentations about the Mexico Project and/or the Energy Project through local seminars,  
4 advertisements in the *Arizona Republic*, and, currently, an internet website located at  
5 <http://www.listoinc.com>.

6 16. Respondents have sold to investors approximately 2.3 million shares of common  
7 stock in LISTO at a purchase price ranging from \$ 0.25 to \$0.50 per share to investors. The  
8 majority of investors are residents of Arizona.

9 17. Respondents have failed to disclose to investors that common stock in LISTO was to  
10 be issued to certain individuals without payment to the corporation or that it was sold at varying  
11 purchase prices per share, thereby diluting the value of the stock.

12 18. Respondents told investors that LISTO was to become public corporation at or  
13 around the close of 2003 and told investors that the value of common stock would then increase  
14 to approximately \$2.00 - \$7.00 per share. LISTO remains a private corporation.

15 19. Respondents failed to inform investors that KRAUSE was to receive a  
16 commission for the sale of common stock in LISTO. KRAUSE has received at least \$63,950.00  
17 in commissions from the sale of common stock in LISTO.

18 20. Respondents failed to inform investors that funds raised would be used to pay for  
19 the personal expenses of SMART. Upon information and belief, SMART has used investor  
20 funds for the payment of personal expenses including, but not limited to, housing, living, and  
21 entertainment expenses.

22 21. The common stock in LISTO is not registered as securities in Arizona nor is it  
23 exempt from registration.

24 22. LISTO is not registered as a securities dealer in Arizona and neither SMART nor  
25 KRAUSE are registered as securities salesmen in Arizona nor are they exempt from registration.

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2 **IV.**

3 **VIOLATION OF A.R.S. § 44-1841**

4 **(Offer and Sale of Unregistered Securities)**

5 23. From on or about January 2002, RESPONDENTS offered or sold securities within  
6 or from Arizona in the form of common stock in LISTO.

7 24. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
8 Securities Act.

9 25. This conduct violates A.R.S. § 44-1841.

10 **V.**

11 **VIOLATION OF A.R.S. § 44-1842**

12 **(Transactions by Unregistered Dealers or Salesmen)**

13 26. RESPONDENTS offered or sold securities within or from Arizona while not  
14 registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

15 27. This conduct violates A.R.S. § 44-1842.

16 **VI.**

17 **VIOLATION OF A.R.S. § 44-1991**

18 **(Fraud in Connection with the Offer or Sale of Securities)**

19 28. In connection with the offer or sale of securities within or from Arizona,  
20 RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii)  
21 made untrue statements of material fact or omitted to state material facts which were necessary in  
22 order to make the statements made not misleading in light of the circumstances under which they  
23 were made; or (iii) engaged in transactions, practices or courses of business which operated or  
24 would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes,  
25 but is not limited to, the following:  
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1 a) Respondents have failed to explain to offerees and/or investors the risk and  
2 costs involved in the Energy Project;

3 b) Respondents have falsely informed investors that they have land leases with  
4 the State Land Department in conjunction with the Energy Project;

5 c) Respondents have falsely informed investors that profits received from the  
6 Energy Project would also be used to fund the Mexico Project;

7 d) Respondents have falsely informed investors that the Mexico Project has  
8 advanced beyond the development planning stage;

9 e) Respondents have falsely informed investors that LISTO was to become  
10 publicly traded company at or around the close of 2003;

11 f) Respondents have failed to disclose to investors that common stock in  
12 LISTO was to be issued to certain individuals without payment to the corporation or that it  
13 was sold at varying purchase prices per share, thereby diluting the value of the stock;

14 g) Respondents have failed to inform investors that KRAUSE was to receive a  
15 commission for the sale of common stock in LISTO; and

16 h) Respondents have failed to inform investors that investor funds would be  
17 used to pay the personal expenses of SMART.

18 29. This conduct violates A.R.S. § 44-1991.

19 **XII.**

20 **TEMPORARY ORDER**

21 **Cease and Desist from Violating the Securities Act**

22 THEREFORE, based on the above allegations, and because the Division has determined that  
23 the public welfare requires immediate action,

24 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and A.A.C. R14-4-307, that the  
25 RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active  
26 concert or participation with them CEASE AND DESIST from any violations of the Securities Act.

1 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in  
2 effect for 180 days unless sooner vacated, modified or made permanent by the Commission.

3 IT IS FURTHER ORDERED that this Order shall be effective immediately.

4 **XIII.**

5 **REQUESTED RELIEF**

6 The Division will request that the Commission grant the following relief against  
7 RESPONDENTS:

8 1. Order RESPONDENTS to permanently cease and desist from violating the  
9 Securities Act pursuant to A.R.S. § 44-2032;

10 2. Order RESPONDENTS to take affirmative action to correct the conditions resulting  
11 from their acts, practices or transactions, including a requirement to make restitution pursuant to  
12 A.R.S. § 44-2032;

13 3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to  
14 five thousand dollars (\$5,000) for each violation of the Securities Act pursuant to A.R.S. § 44-2036;

15 4. Order that the marital community of RESPONDENT KRAUSE and JANE DOE  
16 KRAUSE be subject to any order of restitution, rescission, administrative penalties, or other  
17 appropriate affirmative action pursuant to A.R.S. § 25-215; and

18 5. Order any other relief that the Commission deems appropriate.

19 **XIV.**

20 **HEARING OPPORTUNITY**

21 RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-  
22 4-307. **If any respondent or respondent spouse requests a hearing, the respondent must also**  
23 **answer this Temporary Order and Notice.** A request for hearing must be in writing and received  
24 by the Commission within 20 days after service of this Temporary Order to Cease and Desist. Each  
25 RESPONDENT must deliver or mail the request for hearing to Docket Control, Arizona  
26 Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. A Docket Control

1 cover sheet must also be filed with the request for hearing. A cover sheet form and instructions may  
2 be obtained from Docket Control at (602) 542-3477 or on the Commission's Internet web site at  
3 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

4 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10  
5 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,  
6 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**  
7 **Order shall remain effective from the date a hearing is requested until a decision is entered.**  
8 After a hearing, the Commission may vacate, modify or make permanent this Temporary Order,  
9 with written findings of fact and conclusions of law. A permanent Order may include ordering  
10 restitution, assessing administrative penalties or other action.

11 If a request for hearing is not timely made, the Division will request that the Commission  
12 make permanent this Temporary Order, with written findings of fact and conclusions of law, which  
13 may include ordering restitution, assessing administrative penalties or other relief.

14 Persons with a disability may request a reasonable accommodation such as a sign language  
15 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,  
16 Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail  
17 [lhogan@cc.state.az.us](mailto:lhogan@cc.state.az.us). Requests should be made as early as possible to allow time to arrange the  
18 accommodation.

19 **XV.**

20 **ANSWER REQUIREMENT**

21 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE  
22 requests a hearing, the RESPONDENT or RESPONDENT SPOUSE must deliver or mail an  
23 Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation Commission,  
24 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of  
25 this Temporary Order to Cease and Desist and Notice of Opportunity for Hearing,. A Docket  
26 Control cover sheet must accompany the Answer. A cover sheet form and instructions may be

1 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site  
2 at www.cc.state.az.us/utility/forms/index.htm.

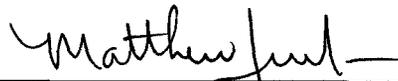
3       Additionally, the RESPONDENT OR RESPONDENT SPOUSE, must serve the Answer  
4 upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by  
5 mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup>  
6 Floor, Phoenix Arizona, addressed to JULIE COLEMAN.

7       The Answer shall contain an admission or denial of each allegation in this Temporary  
8 Order and Notice and the original signature of each RESPONDENT, RESPONDENT SPOUSE or  
9 the RESPONDENT's attorney. A statement of a lack of sufficient knowledge or information shall  
10 be considered a denial of an allegation. An allegation not denied shall be considered admitted.

11       When a RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a  
12 part or a qualification of an allegation, the RESPONDENT or RESPONDENT SPOUSE shall  
13 specify that part or qualification of the allegation and shall admit the remainder. The  
14 RESPONDENT or RESPONDENT SPOUSE waives any affirmative defense not raised in the  
15 answer.

16       The officer presiding over the hearing may grant relief from the requirement to file an  
17 Answer for good cause shown.

18       BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 10<sup>th</sup> day of March,  
19 2005.

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22 Matthew J. Neubert  
23 Director of Securities  
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