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BEFORE THE ARIZONA CORPORATION COMMISSION
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MARC SPITZER
Chairman

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Commissioner

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Commissioner

KRISTIN K. MAYES
Commissioner

2005 APR 11 P 3:08
AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of

LISTO, INC., a Nevada corporation
668 N. 44th St., Suite 233
Phoenix, Arizona 85008

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

KEVIN KRAUSE, an unmarried man
23444 N. 21st Way
Phoenix, Arizona 85024

Respondents.

DOCKET NO. S-03585A-05-0000

RESPONDENT KEVIN KRAUSE'S
ANSWER

JURY TRIAL DEMANDED

Arizona Corporation Commission
DOCKETED
APR 11 2005
DOCKETED BY

Respondent Kevin Krause ("Krause") submits his Answer to the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing (the "Notice"). Krause responds to the numbered paragraphs of the Notice as follows:

I. JURISDICTION.

1. Respondent Krause is without sufficient information to admit or deny the allegations in paragraph 1 of the Notice, and therefore denies those allegations.

II. RESPONDENTS.

2. Respondent Krause is without sufficient information to admit or deny the allegations in paragraph 2 of the Notice, and therefore denies those allegations.

1 3. Respondent Krause admits that Mr. Smart was at all relevant times a principal of
2 Listo.

3 4. Respondent Krause lacks knowledge as to the truth or falsity of the allegations in
4 paragraph 4 of the Notice, and therefore denies each and every allegation in paragraph 4.

5 5. Respondent Krause lacks knowledge as to the truth or falsity of the allegations in
6 paragraph 5 of the Notice, and therefore denies each and every allegation in paragraph 5.

7 6. Respondent Krause admits that his address is set forth correctly in the Notice.
8 Respondent Krause denies each and every other allegation in paragraph 6 of the Notice.

9
10 7. This paragraph requires no response.

11 **III. FACTS.**

12 8. Respondent Krause denies each and every allegation in paragraph 8 of the Notice.

13 9. Respondent Krause admits the allegations in paragraph 9 of the Notice.

14 10. The allegations in paragraph 10 of the Notice contain an incomplete and inaccurate
15 statement of the facts, and are therefore denied.

16 11. Respondent Krause denies each and every allegation in paragraph 11 of the Notice.

17 12. The allegations in paragraph 12 of the Notice contain an incomplete and inaccurate
18 statement of the facts, and are therefore denied.

19 13. The allegations in paragraph 13 of the Notice contain an incomplete and inaccurate
20 statement of the facts, and are therefore denied.

21 14. The allegations in paragraph 14 of the Notice contain an incomplete and inaccurate
22 statement of the facts, and are therefore denied.

23 15. The allegations in paragraph 15 of the Notice contain an incomplete and inaccurate
24 statement of the facts, and are therefore denied.

25 16. The allegations in paragraph 16 of the Notice contain an incomplete and inaccurate
26 statement of the facts, and are therefore denied.

BADE & BASKIN PLC
80 EAST RIO SALADO PARKWAY
SUITE 515
TEMPE, ARIZONA 85281
TELEPHONE NO 480-968-1225
FACSIMILE 480-968-6255

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V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

- 26. Respondent Krause denies each and every allegation in paragraph 26 of the Notice
- 27. Respondent Krause denies each and every allegation in paragraph 27 of the Notice.

VI.

VIOLATION OF A.R.S. § 44-1991

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

- 28. Respondent Krause denies each and every allegation in paragraph 28 of the Notice.
- 29. Respondent Krause denies each and every allegation in paragraph 29 of the Notice.
- 30. Respondent Krause denies each and every allegation in the Notice not specifically

admitted herein.

AFFIRMATIVE DEFENSES

The following affirmative defenses nullify any potential claims asserted by the Division. Respondent Krause reserves the right to amend this Answer to assert additional defenses after completion of discovery.

First Affirmative Defense

No violation of the Arizona Securities Act occurred because the program at issue is not a security.

Second Affirmative Defense

Because the program at issue is not a security, the Arizona Securities Division has no jurisdiction to bring this action and the action should be dismissed.

Third Affirmative Defense

1 The Notice fails to state a claim upon which relief can be granted.

2 **Fourth Affirmative Defense**

3 The Division has failed to plead fraud with reasonable particularity as required by Rule
4 9(b) of the Arizona Rules of Civil Procedure.

5 **Fifth Affirmative Defense**

6 The Division has improperly used the “group pleading doctrine” and failed to identify any
7 statements or conduct attributable to Respondent Krause.

8 **Sixth Affirmative Defense**

9
10 The purchasers of the programs at issue did not rely, reasonably or otherwise, on any
11 alleged misrepresentation or omission of Respondent Krause.

12 **Seventh Affirmative Defense**

13 Respondent Krause did not know and in the exercise of reasonable care could not have
14 known of any alleged untrue statements or material omissions as set forth in the Notice.

15 **Eighth Affirmative Defense**

16 Respondent Krause did not act with the requisite scienter.

17 **Ninth Affirmative Defense**

18
19 Respondent Krause did not employ a deceptive or manipulative device in connection with
20 the purchase or sale of any security.

21 **Tenth Affirmative Defense**

22 Individuals purchasing the program at issue suffered no injuries or damages as a result of
23 Respondent Krause’s alleged acts.

24 **Eleventh Affirmative Defense**

1 Violations, if any, of the Arizona Securities Act were proximately caused and contributed
2 to by the improper conduct of intervening acts of other third persons who are not named in this
3 action as parties.

4 **Twelfth Affirmative Defense**

5 Purchasers of the program at issue approved and/or authorized and/or directed all of the
6 transactions at issue.

7 **Thirteenth Affirmative Defense**

8 If the program at issue was a security it was exempt from registration pursuant to A.R.S. §
9 44-1844(A)(1).
10

11 **Fourteenth Affirmative Defense**

12 This proceeding before the Arizona Corporation Commission denies Respondent Krause
13 essential due process and is lacking in fundamental fairness. Respondent Krause's constitutional
14 rights will be further denied if he is not afforded trial by jury of this matter.
15

16 **Fifteenth Affirmative Defense**

17 The Division cannot meet the applicable standards for any of the relief it is seeking in the
18 Notice.

19 **Sixteenth Affirmative Defense**

20 Respondent Krause did not offer or sell securities within the meaning of the Arizona
21 Securities Act.
22

23 **Seventeenth Affirmative Defense**

24 Respondent Krause alleges such other affirmative defenses set forth in the Arizona Rules of
25 Civil Procedure 8(c) as may be determined to be applicable during discovery.
26
27

BADE & BASKIN PLC
80 EAST RIO SALADO PARKWAY
SUITE 515
TEMPE, ARIZONA 85281
TELEPHONE NO 480-968-1225
FACSIMILE 480-968-6255

1 RESPECTFULLY SUBMITTED this 14 day of April, 2005.

2 BADE & BASKIN PLC

3
4 By 
5 Alan S. Baskin
6 80 East Rio Salado Parkway, Suite 515
7 Tempe, Arizona 85281
8 Attorneys for Respondent Kevin Krause

9 ORIGINAL and thirteen copies of the foregoing
10 filed this 14 day of April, 2005 with:

11 Docket Control
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, AZ 85007

15 COPY of the foregoing hand-delivered
16 this 14 day of April, 2005 to:

17 Matthew J. Neubert
18 Director of Securities
19 Securities Division
20 Arizona Corporation Commission
21 1300 W. Washington Street
22 Phoenix, AZ 85007

23 COPY of the foregoing mailed
24 this 14 day of April, 2005 to:

25 Julie Coleman
26 Securities Division
27 Arizona Corporation Commission
1300 W. Washington, 3rd Floor
Phoenix, AZ 85007


wsk.acc/pld/listo/answer.doc