

OPEN MEETING ITEM

3/16/11



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COMMISSIONERS
GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Gary Pierce, Chairman
Bob Stump
Sandra D. Kennedy
Paul Newman
Brenda Burns

Arizona Corporation Commission

DOCKETED

MAR 4 2011

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AZ CORP COMMISSION
DOCKET CONTROL

FROM: Matthew J. Neubert *mjn*
Director of Securities

DOCKETED BY *[Signature]*

DATE: February 28, 2011

RE: *In re David Come Viens, Scott Andrew Klaschka, Assisted Living Development Company, Inc., et al., Docket No. S-20773A-10-0493*

CC: Ernest G. Johnson, Executive Director

Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties ("Order") and Consent to Same By Respondents David Come Viens ("Viens"), Scott Andrew Klaschka ("Klaschka"), and their Arizona companies Assisted Living Development Company, Inc., ALDCO Investment #2 L.L.C., ALDCO Investment #3 L.L.C., ALDCO Investment #4 L.L.C., ALDCO Investment #5 L.L.C., ALDCO Investment #6 L.L.C., and ALDCO Investment #6 L.L.C. (collectively "ALDCO").

The Order finds that from 2005 to 2010, Respondents issued, offered and sold unregistered securities in the form of notes and limited liability company membership interest in the ALDCO entities (the "Investments") to raise capital for Respondents' acquisition, renovation and operation of eight assisted living and memory care facilities. Respondents promised investor profits in the form of interest on the Investments of, for instance, 204% per year.

Respondents sold fifty-one Investments to twenty-three investors totaling \$6,844,697. Respondents eventually exhausted their assets and financial resources, two of the ALDCO entities filed Chapter 7 bankruptcy petitions and Respondents have ceased business operations. Sixteen investors received \$3,996,250 from Respondents and have been paid in full, while Respondents still owe seven investors a total of \$2,310,895.

The Order finds that Respondents violated A.R.S. §§ 44-1841 & 44-1842 of the Arizona Securities Act ("Act") by offering unregistered securities while not being registered as a securities salesman or dealer, or exempt from registration.

The Order also finds that Respondents violated the anti-fraud provisions of the Act by failing to disclose to investors the existence of Viens' 1986 federal criminal conviction for conspiracy to commit wire fraud in an Arabian horse purchase scheme. The Order further finds that while Viens and Klaschka personally "guaranteed" some investors' investments, they further failed to disclose to the investors that Viens and Klaschka's assets were insufficient to honor said guarantees.

The Order requires Respondents to permanently cease and desist from violating the Act, and to jointly and severally pay restitution totaling \$2,310,895. The Order also requires Respondents to pay a total of \$200,000 in administrative penalties, with: (a) \$100,000 to be jointly and severally paid by Viens and Klaschka; and (b) \$100,000 to be paid by the ALDCO entities.

The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Mike Dailey

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE, Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 In the matter of

9 DAVID COME VIENS (f.k.a. "DAVID
10 WARNER COME," "DAVID ZACHERY
11 COMBS" & "DAVID ZACHERY"), a
12 single man,

13 SCOTT ANDREW KLASCHKA, a single
14 man,

15 ASSISTED LIVING DEVELOPMENT
16 COMPANY, INC., a dissolved Arizona
17 corporation,
18 3104 East Camelback Rd, #855
19 Phoenix, Arizona 85016,

20 ALDCO INVESTMENT #2 L.L.C. (d.b.a.
21 "CONCORDE ASSISTED LIVING"), an
22 Arizona limited liability company,
23 3104 East Camelback Rd, #855
24 Phoenix, Arizona 85016,

25 ALDCO INVESTMENT #3 L.L.C. (d.b.a.
26 "ASSISTED LIVING RESIDENCES AT
"51"), an Arizona limited liability company,
3104 East Camelback Rd, #855
Phoenix, Arizona 85016,

ALDCO INVESTMENT #4 L.L.C. (d.b.a
"BRIDGES OF ARCADIA ASSISTED
LIVING AND MEMORY CARE"), an
Arizona limited liability company,
3104 East Camelback Rd, #855
Phoenix, Arizona 85016,

ALDCO INVESTMENT #5 L.L.C. (d.b.a.
"COTTAGES AT COUNTRY CLUB I"),
an Arizona limited liability company,
3104 East Camelback Rd, #855
Phoenix, Arizona 85016,

DOCKET NO. S-20773A-10-0493

DECISION NO. _____

**ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY:**

RESPONDENT DAVID COME VIENS

**RESPONDENT SCOTT ANDREW
KLASCHKA**

**RESPONDENT ASSISTED LIVING
DEVELOPMENT COMPANY, INC.**

**RESPONDENT ALDCO INVESTMENT #2
L.L.C.**

**RESPONDENT ALDCO INVESTMENT #3
L.L.C.**

**RESPONDENT ALDCO INVESTMENT #4
L.L.C.**

**RESPONDENT ALDCO INVESTMENT #5
L.L.C.**

**RESPONDENT ALDCO INVESTMENT #6
L.L.C.**

**RESPONDENT ALDCO INVESTMENT #10
L.L.C.**

1 ALDCO INVESTMENT #6 L.L.C. (d.b.a.)
 2 "REFLECTION BAY ASSISTED LIVING)
 AND MEMORY CARE"), an Arizona)
 3 limited liability company,)
 3104 East Camelback Rd, #855)
 Phoenix, Arizona 85016,)
 4 ALDCO INVESTMENT #10 L.L.C. (d.b.a.)
 5 "GREAT PLAINS ASSISTED LIVING)
 AND MEMORY CARE"), an Arizona)
 6 limited liability company,)
 3104 East Camelback Rd, #855)
 Phoenix, Arizona 85016,)
 7 Respondents.)
 8

9 Respondents DAVID COME VIENS (f.k.a. "DAVID WARNER COME," "DAVID
 10 ZACHERY COMBS" & "DAVID ZACHERY"), SCOTT ANDREW KLASCHKA, ASSISTED
 11 LIVING DEVELOPMENT COMPANY, INC., ALDCO INVESTMENT #2 L.L.C. (d.b.a.
 12 "CONCORDE ASSISTED LIVING"), ALDCO INVESTMENT #3 L.L.C. (d.b.a. "ASSISTED
 13 LIVING RESIDENCES AT 51"), ALDCO INVESTMENT #4 L.L.C. (d.b.a. "BRIDGES OF
 14 ARCADIA ASSISTED LIVING AND MEMORY CARE"), ALDCO INVESTMENT #5 L.L.C.
 15 (d.b.a. "COTTAGES AT COUNTRY CLUB I"), ALDCO INVESTMENT #6 L.L.C. (d.b.a.
 16 "REFLECTION BAY ASSISTED LIVING AND MEMORY CARE"), and ALDCO
 17 INVESTMENT #10 L.L.C. (d.b.a. "GREAT PLAINS ASSISTED LIVING AND MEMORY
 18 CARE") ("Respondents"), elect to permanently waive any right to a hearing and appeal under
 19 Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act")
 20 with respect to this Order To Cease And Desist, Order For Restitution, Order for Administrative
 21 Penalties ("Order") and Respondents' Consent To Same. Respondents admit the jurisdiction of the
 22 Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact
 23 and Conclusions of Law contained in this Order; and consent to the entry of this Order by the
 24 Commission.

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I.

FINDINGS OF FACT

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3 1. At all times relevant, Respondent DAVID COME VIENS (f.k.a. "DAVID WARNER
4 COME," "DAVID ZACHERY COMBS" & "DAVID ZACHERY") ("VIENS") has been a single
5 man and an Arizona resident. At all times relevant, VIENS issued, offered and sold the investments
6 discussed below within and from Arizona in his individual capacity, and on behalf of Respondents: (a)
7 ASSISTED LIVING DEVELOPMENT COMPANY, INC. ("ALDCO") as its chief executive officer,
8 chairman, "Non-Executive Chairman" and investment salesman; (b) ALDCO INVESTMENT #2
9 L.L.C. (d.b.a. "CONCORDE ASSISTED LIVING") ("ALDCO #2") as its business consultant and
10 investment salesman; (c) ALDCO INVESTMENT #3 L.L.C. (d.b.a. "ASSISTED LIVING
11 RESIDENCES AT 51") ("ALDCO #3") as its business consultant and investment salesman; (d)
12 ALDCO INVESTMENT #4 L.L.C. (d.b.a. "BRIDGES OF ARCADIA ASSISTED LIVING AND
13 MEMORY CARE") ("ALDCO #4") as its business consultant and investment salesman; (e)
14 ALDCO INVESTMENT #5 L.L.C. (d.b.a. "COTTAGES AT COUNTRY CLUB I") ("ALDCO
15 #5") as its business consultant and investment salesman; (f) ALDCO INVESTMENT #6 L.L.C.
16 (d.b.a. "REFLECTION BAY ASSISTED LIVING AND MEMORY CARE") ("ALDCO #6") as its
17 business consultant and investment salesman; and (g) ALDCO INVESTMENT #10 L.L.C. (d.b.a.
18 "GREAT PLAINS ASSISTED LIVING AND MEMORY CARE") ("ALDCO #10") as its business
19 consultant and investment salesman. VIENS has not been registered as a securities salesman or
20 dealer by the Commission.

21 2. At all times relevant, Respondent SCOTT ANDREW KLASCHKA ("KLASCHKA")
22 has been a single man and an Arizona resident. At all times relevant, KLASCHKA issued, offered and
23 sold the investments discussed below within and from Arizona in his individual capacity, and on
24 behalf of: (a) ALDCO as its president, chief executive officer, chief operating officer and investment
25 salesman; (b) ALDCO #2 as its managing member and investment salesman; (c) ALDCO #3 as its
26 managing member and investment salesman; (d) ALDCO #4 as its managing member and investment

1 salesman; (e) ALDCO #5 as its managing member and investment salesman; (f) ALDCO #6 its
2 managing member and investment salesman; and (g) ALDCO #10 as its managing member and
3 investment salesman. KLASCHKA has not been registered as a securities salesman or dealer by the
4 Commission.

5 3. ALDCO was formed by KLASCHKA as an Arizona corporation on August 4, 2005.
6 At all times relevant, ALDCO maintained its principal places of business in Phoenix and Scottsdale,
7 Arizona, and it offered and sold the investments discussed below within and from Arizona. On
8 December 9, 2010, ALDCO was administratively dissolved as an Arizona corporation by the
9 Corporations Division of the Commission for its failure to maintain and/or appoint a statutory agent.
10 ALDCO has not been registered by the Commission as a securities dealer.

11 4. ALDCO #2 was organized by KLASCHKA as a manager-managed Arizona limited
12 liability company on October 19, 2005. At all times relevant, ALDCO #2 maintained its principal
13 places of business in Phoenix and Scottsdale, Arizona and it issued the investments discussed below
14 within and from Arizona. ALDCO #2 has not been registered by the Commission as a securities
15 dealer.

16 5. ALDCO #3 was organized as a manager-managed Arizona limited liability company
17 by KLASCHKA on October 19, 2005. According to ALDCO #3's Operating Agreement, its initial
18 managing member was ALDCO. At all times relevant, ALDCO #3 maintained its principal places of
19 business in Phoenix and Scottsdale, Arizona and it issued the investments discussed below within and
20 from Arizona. ALDCO #3 has not been registered by the Commission as a securities dealer.

21 6. ALDCO #4 was organized as a manager-managed Arizona limited liability company
22 by KLASCHKA on November 18, 2005. At all times relevant, ALDCO #4 maintained its principal
23 places of business in Phoenix and Scottsdale, Arizona and it issued the investments discussed below
24 within and from Arizona. ALDCO #4 has not been registered by the Commission as a securities
25 dealer.

26

1 7. ALDCO #5 was organized by KLASCHKA as a manager-managed Arizona limited
2 liability company on November 18, 2005. At all times relevant, ALDCO #5 maintained its principal
3 places of business in Phoenix and Scottsdale, Arizona and it issued the investments discussed below
4 within and from Arizona. ALDCO #5 has not been registered by the Commission as a securities
5 dealer.

6 8. ALDCO #6 was organized by KLASCHKA as a manager-managed Arizona limited
7 liability company on November 18, 2005. At all times relevant, ALDCO #6 maintained its principal
8 places of business in Phoenix and Scottsdale, Arizona and it issued the investments discussed below
9 within and from Arizona. ALDCO #6 has not been registered by the Commission as a securities
10 dealer.

11 9. ALDCO #10 was organized by KLASCHKA as a manager-managed Arizona limited
12 liability company on October 16, 2007. At all times relevant, ALDCO #10 maintained its principal
13 places of business in Phoenix and Scottsdale, Arizona and it issued the investments discussed below
14 within and from Arizona. ALDCO #10 has not been registered by the Commission as a securities
15 dealer.

16 10. VIENS, KLASCHKA, ALDCO, ALDCO #2, ALDCO #3, ALDCO #4, ALDCO #5,
17 ALDCO #6, and ALDCO #10, may be referred to as "Respondent(s)."

18 11. ALDCO #2, ALDCO #3, ALDCO #4, ALDCO #5, ALDCO #6 and ALDCO #10 may
19 be referred to individually as an "ALDCO Entity" or collectively as the "ALDCO Entities."

20 **A. Respondents' Assisted Living Facility Business**

21 12. At all times relevant, VIENS and KLASCHKA represented to offerees and
22 investors, both verbally and in writing, that Respondents were engaged in the business of
23 purchasing, leasing, developing and managing assisted living and memory care facilities (the
24 "Facility(ies)").

25 13. As explained on the "Welcome" page of Respondents' website at www.aldco.net
26 (the "Website"):

1 Assisted Living Development Company Inc. (ALDCO) is an Arizona based
2 corporation, in the business of owning and operating senior living and memory care
3 communities across the country...ALDCO's business model is to acquire
4 underperforming communities and build value through physical enhancements,
5 comprehensive operations and aggressive marketing programs that maximize
6 revenue potential...Each property is operated as a single asset entity under one of
7 ALDCO's numerous investment companies [*i.e.*, ALDCO #2, etc.] with Assisted
8 Living Development Company Inc. managing these properties...Acquisitions are
9 made as a result of private investment, long term financing and partnership
10 agreements. ALDCO's management team consists of a group of highly experienced
11 professionals with direct experience in over 250 communities.

12 14. From approximately 2005 to 2008, Respondents' investment solicitation materials
13 and/or Website included an "**Investment Opportunities**" page that stated:

14 ALDCO, Inc. is committed to maximizing investment returns and currently has both
15 short and long term investment opportunities available. To find out more
16 information on investment opportunities at ALDCO, Inc please contact: Scott
17 Klaschka, Chief Operating Officer....

18 (the "Investment Opportunities Page") (emphasis in original). The Investment Opportunities Page
19 provided potential investors with KLASCHKA's email address, and Respondents' Scottsdale,
20 Arizona business address, telephone and fax numbers.

21 15. From 2005 to 2008, Respondents' investment solicitation materials and/or Website
22 included a "Contact Us" page that provided potential investors with additional email addresses they
23 could use to request information regarding Respondents' "Investment Opportunities." Without
24 limitation, the Contact Us page also stated that: (a) VIENS was ALDCO's "Chief Executive
25 Officer;" and (b) that KLASCHKA was ALDCO's "Chief Operating Officer."

26 **B. The ALDCO Investments and Investors**

16. From on or about January 11, 2005, to 2010, Respondents issued, offered and sold
investments in the form of notes and limited liability company membership interests in the ALDCO
Entities within and from Arizona to raise capital for their acquisition, renovation and operation of
the Facilities.

1 17. These investments were documented, in part, by: (a) promissory notes made and
2 executed by both VIENS and KLASHKA in their individual capacities and on behalf of ALDCO
3 and/or the ALDCO Entities; (b) various written "Agreement[s]" executed by both VIENS and
4 KLASCHKA in their individual capacities, and on behalf of ALDCO and/or the ALDCO Entities;
5 (c) Operating Agreements for "Units" of limited liability company membership interests in the
6 ALDCO Entities, and related "Subscription Agreements" executed by investors, and acknowledged
7 and accepted by KLASCHKA in his capacity as managing member and "authorized representative"
8 of the ALDCO Entities; and (d) tax return documents, including "Schedule K-1" forms relating to
9 investors' income, losses, deductions and credits (the "ALDCO Investments").

10 18. The ALDCO Investments have not been registered as securities with the
11 Commission to be offered or sold within or from Arizona.

12 19. At all times relevant, VIENS and KLASCHKA represented to ALDCO Investment
13 investors that Respondents would pool and/or combine investors' ALDCO Investment funds
14 together with those obtained through, for example, bank loans and purchase money mortgages to
15 purchase, lease develop and/or operate various Facilities.

16 20. The ALDCO Investment investors' funds were transferred, wired and/or deposited
17 into Arizona bank accounts owned and controlled by Respondents. Respondents also often moved
18 and/or loaned ALDCO Investment funds between ALDCO and the ALDCO Entities as needed to
19 support Respondents' business operations. These inter-company loans and money transfers were
20 documented, in part, in ALDCO and/or ALDCO Entity balance sheets.

21 21. Respondents issued and sold fifty-one separate ALDCO Investments to twenty-three
22 investors totaling \$6,844,697. Of this amount, approximately: (a) \$6,844,697 of the ALDCO
23 Investments were issued and sold by VIENS and KLASHCKA individually and/or on behalf of
24 ALDCO; (b) \$616,054 of the ALDCO Investments were issued by ALDCO #2; (c) \$1,672,657 of
25 the ALDCO Investments were issued by ALDCO #3; (d) \$997,002 were issued by ALDCO #4; (e)
26 \$465,002 of the ALDCO Investments were issued by ALDCO #5; (f) \$490,002 of the ALDCO

1 Investments were issued by ALDCO #6; and (g) \$557,123 of the ALDCO Investments were issued
2 by ALDCO #10.

3 22. In particular, Respondents issued and sold twenty-eight separate ALDCO
4 Investments to an elderly investor who currently resides in California totaling \$817,447 (the
5 "Elderly Investor").

6 23. VIENS met and befriended the Elderly Investor in 2004 while the Elderly Investor
7 was a resident in an assisted living facility located in Henderson, Nevada, where VIENS worked as
8 a "Marketing Consultant" and "Advisor."

9 24. Respondents transported the Elderly Investor to view assisted living Facilities that
10 Respondents were interested in purchasing, in part, with the Elderly Investor's ALDCO Investment
11 funds. These Facilities were variously located in Arizona, California and/or Nevada.

12 25. In the memo field on her ALDCO Investment checks, the Elderly Investor referred
13 to the specific ALDCO Facility she was told would be acquired, in part, with her funds. For
14 example, the Elderly Investor's ALDCO Investment checks included the following notations: (a)
15 Facilities "1-5"; (b) "Facility #5"; (c) Facilities "6-7"; (d) Facility "8"; (e) Facility "9"; and (f)
16 Facility "10". A June 28, 2006, cashier's check for \$98,000 was made by the Elderly Investor
17 directly to "ALDCO INVESTMENTS [sic] #3". The personal check she made to generate the
18 funds for that cashier's check also included the notation, "Closing Phoenix," that refers to ALDCO
19 #3's lease/purchase of a Facility in Phoenix. The Elderly Investor also often referred to her
20 ALDCO Investments as "Investments" in the memo field of her ALDCO Investment checks.

21 26. Ultimately, Respondents used ALDCO Investment funds, without limitation, to
22 operate ALDCO and purchase, lease, renovate and manage Facilities through ALDCO #2, ALDCO
23 #3, ALDCO #4, ALDCO #5, ALDCO #6 and ALDCO #10.

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1 **C. ALDCO Investment Terms and Documentation**

2 27. The terms of the ALDCO Investments varied, and were documented, in part, via
3 notes and written agreements prepared and executed by VIENS and/or KLASHKA in their
4 individual capacities, and on behalf of ALDCO and the ALDCO Entities.

5 28. For example, the Elderly Investor purchased two \$50,000 ALDCO Investments
6 totaling \$100,000 on January 11, 2005. VIENS documented these two ALDCO Investments via a
7 written, one page, unsecured and notarized "AGREEMENT" signed by both VIENS in his
8 individual capacity and the Elderly Investor on January 11, 2005 (the "1st Written Agreement").
9 The 1st Written Agreement promises the Elderly Investor the return of her principal investments
10 plus an additional \$25,000 "one time interest" payment, for a total return of \$125,000 within thirty-
11 one days. The 1st Written Agreement further states that: (a) VIENS "will use the [Elderly
12 Investor's] funds at his discretion and in conjunction with the advancement of his enterprises
13 including but not limited to the assisted living industry;" and (b) that VIENS "supports this
14 agreement with a personal note of guarantee." The 1st Written Agreement, as well as those set forth
15 below executed by VIENS in his individual capacity were approved and/or ratified by
16 KLASCHKA.

17 29. On January 11, 2005, VIENS also made and executed an unsecured, two page
18 "PROMISSORY NOTE (Long Form)" in favor of the Elderly Investor in his individual capacity
19 before a notary public (the "Note"). Like the 1st Written Agreement, the Note promises the Elderly
20 Investor a total return of \$125,000 within thirty-one days.

21 30. VIENS next drafted and signed a one page agreement in his individual capacity
22 before a notary on April 22, 2005 (the "2nd Written Agreement"), that amended and expanded on
23 the 1st Written Agreement. The 2nd Written Agreement acknowledges the Elderly Investor's
24 purchase of an additional \$75,000 ALDCO Investment, and states that VIENS will use such funds
25 "to secure an option on a specific retirement/senior living community on or before June 1, 2005."
26 The 2nd Written Agreement promises that VIENS: (a) will make a \$250,000 payment to the Elderly

1 Investor by August 1, 2005; and (b) provide the Elderly Investor with a two percent ownership
2 interest in a Facility to be purchased, in part, with the Elderly Investor's funds. The 2nd Written
3 Agreement further states that it is "personally guaranteed" by VIENS.

4 31. On May 24, 2005, VIENS drafted another one page agreement that acknowledges
5 the Elderly Investor's purchase of two ALDCO Investments totaling \$39,367.42 (the "May 24
6 Agreement"). The May 24 Agreement was signed by VIENS in his individual capacity, and
7 promises the investor the return of her principal investment plus interest on the \$39,367.42 amount
8 at the rate of twenty percent until paid in full. Attached to the May 24 Agreement is a single page
9 document including calculations of how VIENS would use the Elderly Investor's \$39,367.42 in
10 investment funds to purchase an unspecified Facility.

11 32. VIENS also drafted a one page letter agreement dated January 11, 2006, on ALDCO
12 letterhead that acknowledges the Elderly Investor's purchase of \$167,987.20 worth of ALDCO
13 Investments (the "January 11 Agreement"). The January 11 Agreement: (a) promises the Elderly
14 Investor a "3% ownership" interest in ALDCO #2; (b) was signed by VIENS in his capacity as the
15 "CEO" of ALDCO; and (c) identifies ALDCO's Scottsdale, Arizona business address.

16 33. VIENS drafted another one page letter agreement dated January 11, 2006, on
17 ALDCO letterhead that acknowledges the Elderly Investor's purchase of \$352,654.99 worth of
18 ALDCO Investments (the "Second January 11 Agreement"). The Second January 11 Agreement:
19 (a) promises the Elderly Investor a "5% ownership" interest in ALDCO #3; (b) was signed by
20 VIENS in his capacity as the "CEO" of ALDCO; and (c) identifies ALDCO's Scottsdale, Arizona
21 business address.

22 34. In another typical case, on January 24, 2008, both VIENS and KLASCHKA
23 executed an ALDCO Investment "Agreement" in their individual capacities, and on behalf of
24 ALDCO and ALDCO #10 (the "ALDCO #10 Agreement"). The ALDCO #10 Agreement: (a)
25 memorializes an investor's purchase of a \$250,000 ALDCO Investment; (b) promises the investor a
26 total return of \$300,000 within thirty days; and (c) is personally guaranteed by KLASCHKA on

1 behalf of ALDCO, and by both KLASHCKA and VIENS in their individual capacities. The
2 ALDCO #10 Agreement further states that KLASCHKA and VIENS will personally “make
3 certain...[the investor] is fully paid...” as set forth in the agreement.

4 35. Although VIENS and KLASCHKA personally guaranteed ALDCO Investments
5 purchased by both the Elderly Investor and other investors, VIENS and KLASCHKA failed to
6 further disclose to them that their assets were and/or could be insufficient to honor said guarantees.

7 **D. General ALDCO Investment Allegations**

8 36. Respondents managed the essential aspects of the ALDCO Investments and, without
9 limitation: (a) selected, inspected, evaluated and obtained appraisals of Facilities; (b) procured
10 financing for the purchase, lease, improvement and/or management of the Facilities; (c) negotiated
11 the purchase and lease prices of the Facilities; (d) rehabilitated and/or improved Facilities; (e)
12 sought and/or procured licenses and permits as necessary to operate the Facilities; (f) marketed the
13 Facilities to residents; (g) hired, trained and managed Facility staff; (h) collected fees from Facility
14 residents and reimbursements from third parties, including health insurance providers; and (i)
15 marketed and resold the Facilities, as applicable.

16 37. The investors purchased their ALDCO Investments for their “passive” profit
17 potential in the form of: (a) annual interest payments on their principal ALDCO Investments; (b)
18 increases in the value of their equity ownership interests in the ALDCO Entities and/or related
19 Facilities; and/or (c) profit distributions made by ALDCO and/or the ALDCO Entities.

20 38. At all times relevant, VIENS and KLASCHKA represented to offerees and investors
21 that the success of the ALDCO Investments would be based on VIENS and KLASHCKA’s skill
22 and experience in managing ALDCO Investment funds, and cost-effectively acquiring and
23 operating Facilities. Without limitation, RESPONDENTS’ uses of ALDCO Investment funds,
24 fiscal strategies and cost saving and/or containment practices were detailed in annual reports
25 distributed to investors.

26 ///

1 **E. VIENS' Undisclosed Previous Federal Felony Criminal Conviction**

2 39. From at least 2005 to 2008, Respondents represented to offerees and investors, both
3 verbally and in writing, that the ALDCO Investments would be profitable, in part, because they and
4 their staff were some of the "finest people in the world" and because they operated their assisted
5 living Facility business "*with integrity*" (emphasis in original).

6 40. Unbeknownst to ALDCO Investment investors, however, VIENS was indicted by a
7 federal criminal grand jury at the request of the United States Attorney for the Eastern District of
8 Louisiana on December 12, 1985, for allegedly engaging in a conspiracy with his brother to
9 commit fraud by wire in violation of 18 U.S.C.A. §§ 371 and 1343 (*See, United States of America*
10 *v. David W. Come, a/k/a David Zachary Combs, a/k/a David Zachary, et al.*, Criminal Docket No.
11 85-454) (the "Criminal Case"). VIENS was indicted in the criminal case with his brother.

12 41. The Criminal Case arose from the fact that VIENS and/or his brother led their victim
13 to believe that they brokered Arabian horses, and that the victim could make money by paying to
14 VIENS, his brother and/or a fictitious company called "Arabian Horse Partnership #3:" (a) \$15,000
15 for breeding rights to a famous Arabian stallion called "Alladin" [sic]; (b) \$33,500 to purchase
16 thirteen Arabian horses that VIENS' brother represented were worth \$500,000; (c) \$6,000 to
17 transport the thirteen Arabian horses; and (d) \$4,300 to purchase a horse named "Beverly."

18 42. On or about February 18, 1986, VIENS pled guilty to conspiring with his brother to
19 commit wire fraud as charged in count one of the indictment in violation of 18 U.S.C. §§ 371,
20 1343, which alleged that: (a) VIENS opened up a bank account in the name of a non-existent entity
21 called "Arabian Horse Partnership #3;" (b) VIENS withdrew \$14,900 of the \$15,000 deposit made
22 by the victim into the bank account set up by VIENS, despite the fact that VIENS and his brother
23 did not broker Arabian horses, and did not have breeding rights to any Arabian horse named
24 Alladin [sic]; (c) VIENS and/or his brother only purchased eight horses for the victim at a cost of
25 \$9,000 that were not worth \$500,000; and (d) that no horse named Beverly was ever purchased by
26 VIENS and/or his brother for their victim at a cost of \$4,300.

1 43. As a result of VIENS' guilty plea, on March 26, 1986, VIENS was sentenced to
2 serve two years in federal prison and ordered to pay criminal restitution to his victim in the amount
3 of \$4,300. VIENS subsequently served his prison time and/or paid his restitution as ordered by the
4 judge in the Criminal Case.

5 44. The Elderly Investor would not have purchased her ALDCO Investments had she
6 been made aware of VIENS' previous federal felony conviction for conspiring to commit wire
7 fraud.

8 **F. VIENS' Undisclosed Name Change**

9 45. VIENS was indicted in the Criminal Case under his former name "David W. Come,"
10 and two related aliases "David Zachary Combs" and "David Zachary."

11 46. Unbeknownst to the ALDCO Investment investors, VIENS changed his name from
12 "David Warner Come" to "David Come Viens" on or about March 28, 1994 (*See*, Case No. 660266
13 (FC 6 (5)) (Circuit Court of St. Louis County, Missouri, 21st Judicial District).

14 47. VIENS' name change effectively prevented Respondents' investors from being able
15 to cost effectively or discover altogether VIENS' previous federal felony conviction for conspiring
16 to commit wire fraud.

17 **G. Status of the ALDCO Investments and Facilities**

18 48. Respondents did purchase, lease, renovate and operate eight Facilities located in
19 Arizona, Nevada and Oklahoma, in whole and/or in part, with the ALDCO Investment investors'
20 funds:

- 21 a. In October 2007, ALDCO #2 purchased the "Concorde Assisted Living" Facility
22 located at 2465 East Twain Ave., Las Vegas, Nevada. This Facility ceased
23 operations in January 2010, and was lost to foreclosure by its primary lender in
24 February 2010. ALDCO #2 also voluntarily filed a Chapter 11 bankruptcy in the
25 United States Bankruptcy Court, in and for the District of Arizona on October 28,
26 2009, that has since been converted to Chapter 7 (*See*, No. 2:09-bk-27459-CGC).

1 On November 16, 2010, the Chapter 7 Trustee in the no-asset ALDCO #2
2 bankruptcy filed a final "Report of no Distribution" stating that: (1) ALDCO #2
3 abandoned secured assets totaling \$14,285,400; and (2) ALDCO #2 had creditor
4 claims totaling \$9,931,6343.10, all of which would be discharged "without
5 payment."

6 b. In March 2006, ALDCO #3 leased and then purchased the "Assisted Living
7 Residences At 51" Facility located at 2935 N. 18th Place, Phoenix, Arizona. This
8 Facility was renovated and sold to a third party in December 2008.

9 c. From January 2007 to June 2007, ALDCO #4 leased the "Bridges of Arcadia"
10 Facility located at 5301 East Thomas, Phoenix, Arizona. Respondents renovated
11 and sold this Facility in May 2008.

12 d. In September 2007, ALDCO #5 leased and purchased the "Cottages at Country Club
13 I" Facility located at 1040 South Lebaron Street, in Phoenix Arizona. ALDCO #5
14 purchased this Facility in May 2008, and it was renovated by ALDCO. This Facility
15 was lost to foreclosure by a related hard-money lender in January 2009.

16 e. ALDCO #6 leased a Facility called "Reflection Bay Assisted Living" from
17 December 2006 to August 2007. ALDCO #6 then purchased and renovated this
18 Facility in August 2007. This Facility was closed in October 2009, and was lost to
19 foreclosure initiated by a related hard-money lender in March 2010. Additionally,
20 ALDCO #6 voluntarily filed a Chapter 11 bankruptcy in the United States
21 Bankruptcy Court, District of Arizona on September 28, 2009, that has since been
22 converted to Chapter 7 (*See*, No. 2:09-bk-24200-SSC). This bankruptcy is pending,
23 but winding down.

24 f. In June 2008, ALDCO #10 purchased the "Great Plains" Facility located at 2200 N.
25 Flamingo Ave., Bethany, Oklahoma. This Facility was lost to foreclosure in April
26 2010.

1 horse investor's funds as set forth in the Criminal Case discussed above; and (2) that
2 VIENS changed his name as discussed above such that ALDCO Investment
3 investors could not have cost effectively or discovered altogether VIENS' previous
4 mismanagement of the Arabian horse investor's funds.

- 5 b. Representing to ALDCO Investment investors that VIENS and KLASCHKA were
6 personally guaranteeing some of the investors' ALDCO Investments, while further
7 failing to adequately disclose to them that VIENS and KLASCHKA's assets were
8 and/or could be insufficient to honor said guarantees.

9 **III.**

10 **ORDER**

11 **THEREFORE**, on the basis of the Findings of Fact, Conclusions of Law, and Respondents'
12 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
13 that the following relief is appropriate, in the public interest, and necessary for the protection of
14 investors:

15 **IT IS ORDERED**, pursuant to A.R.S. § 44-2032, that Respondents, and any of
16 Respondents' agents, employees, successors and assigns, permanently cease and desist from
17 violating the Securities Act.

18 **IT IS FURTHER ORDERED** that Respondents comply with the attached Consent to Entry
19 of Order.

20 **IT IS FURTHER ORDERED**, pursuant to A.R.S. § 44-2032, that Respondents shall jointly
21 and severally pay restitution to the Commission in the principal amount of \$2,310,895. VIENS'
22 restitution obligation under this Order will be paid in full upon the earlier of: (a) payment(s) by
23 VIENS totaling \$2,310,895 plus interest; or (b) payment(s) by any Respondent(s) totaling
24 \$2,310,895 plus interest. KLASCHKA's restitution obligation under this Order will be paid in full
25 upon the earlier of: (a) payment(s) by KLASCHKA totaling \$2,310,895 plus interest; or (b)
26 payment(s) by any Respondent(s) totaling \$2,310,895 plus interest. ALDCO's restitution

1 obligation under this Order will be paid in full upon the earlier of: (a) payment(s) by ALDCO
2 totaling \$2,310,895 plus interest; or (b) payment(s) by any Respondent(s) totaling \$2,310,895 plus
3 interest. ALDCO #2's restitution obligation under this Order will be paid in full upon the earlier
4 of: (a) payment(s) by ALDCO #2 totaling \$616,054 plus interest; or (b) payment(s) by any
5 Respondent(s) totaling \$2,310,895 plus interest. ALDCO #3's restitution obligation under this
6 Order will be paid in full upon the earlier of: (a) payment(s) by ALDCO #3 totaling \$1,672,657
7 plus interest; or (b) payment(s) by any Respondent(s) totaling \$2,310,895 plus interest. ALDCO
8 #4's restitution obligation under this Order will be paid in full upon the earlier of: (a) payment(s)
9 by ALDCO #4 totaling \$705,950 plus interest; or (b) payment(s) by any Respondent(s) totaling
10 \$2,310,895 plus interest. ALDCO #5's restitution obligation under this Order will be paid in full
11 upon the earlier of: (a) payment(s) by ALDCO #5 totaling \$465,002 plus interest; or (b) payment(s)
12 by any Respondent(s) totaling \$2,310,895 plus interest. ALDCO #6's restitution obligation under
13 this Order will be paid in full upon the earlier of: (a) payment(s) by ALDCO #6 totaling \$490,002
14 plus interest; or (b) payment(s) by any Respondent(s) totaling \$2,310,895 plus interest. ALDCO
15 #10's restitution obligation under this Order will be paid in full upon the earlier of: (a) payment(s)
16 by ALDCO #10 totaling \$381,123 plus interest; or (b) payment(s) by any Respondent(s) totaling
17 \$2,310,895 plus interest. Payment is due in full on the date of this Order. Payment shall be made
18 to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.
19 Any principal amount outstanding shall accrue interest at the rate of 10 percent per annum from the
20 date of this Order until paid in full. The Commission, in its sole discretion, may credit the amount
21 of restitution owed by Respondents with the value of any restitution payments made by them to the
22 ALDCO Investment investors. Respondents shall provide to the Commission all information and
23 documentation to verify that such restitution has been paid which the Commission, in its sole
24 discretion, may accept or reject.

25 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
26 records of the Commission. Any restitution funds that the Commission cannot disburse because an

1 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
2 investor because the investor is deceased and the Commission cannot reasonably identify and
3 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
4 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
5 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
6 shall be transferred to the general fund of the state of Arizona.

7 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that VIENS and KLASCHKA
8 jointly and severally shall pay an administrative penalty in the amount of \$100,000. Payment is
9 due in full on the date of this Order. Payment shall be made to the "State of Arizona." Any
10 amount outstanding shall accrue interest as allowed by law.

11 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that ALDCO, ALDCO #2,
12 ALDCO #3, ALDCO #4, ALDCO #5, ALDCO #6, and ALDCO #10, jointly and severally shall
13 pay an administrative penalty in the amount of \$100,000. Payment is due in full on the date of this
14 Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue
15 interest as allowed by law.

16 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
17 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
18 shall be applied to the penalty obligations.

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1 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
2 default.¹ If any Respondent does not comply with this Order, any outstanding balance may be
3 deemed in default and shall be immediately due and payable.

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25 ¹ The Commission acknowledges that ALDCO #2 and ALDCO #6 have participated and/or are participating
26 in pending bankruptcies as noted in "Finding of Fact" paragraphs 48(a),(e) above. Any subsequent or future
bankruptcy petitions filed by Respondents following a discharge or dismissal of the above referenced
pending bankruptcy proceedings shall be viewed as a default.

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IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the Commission may bring further legal proceedings against that Respondent, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(MD)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents DAVID COME VIENS (f.k.a. "DAVID WARNER COME," "DAVID
3 ZACHERY COMBS" & "DAVID ZACHERY"), SCOTT ANDREW KLASCHKA
4 ("KLASCHKA") ASSISTED LIVING DEVELOPMENT COMPANY, INC. ("ALDCO"),
5 ALDCO INVESTMENT #2 L.L.C. (d.b.a. "CONCORDE ASSISTED LIVING") ("ALDCO #2"),
6 ALDCO INVESTMENT #3 L.L.C. (d.b.a. "ASSISTED LIVING RESIDENCES AT 51")
7 ("ALDCO #3"), ALDCO INVESTMENT #4 L.L.C. (d.b.a. "BRIDGES OF ARCADIA ASSISTED
8 LIVING AND MEMORY CARE") ("ALDCO #4"), ALDCO INVESTMENT #5 L.L.C. (d.b.a.
9 "COTTAGES AT COUNTRY CLUB I") ("ALDCO #5"), ALDCO INVESTMENT #6 L.L.C.
10 (d.b.a. "REFLECTION BAY ASSISTED LIVING AND MEMORY CARE") ("ALDCO #6"), and
11 ALDCO INVESTMENT #10 L.L.C. (d.b.a. "GREAT PLAINS ASSISTED LIVING AND
12 MEMORY CARE") ("ALDCO #10") ("Respondent(s)"), admit the jurisdiction of the Commission
13 over the subject matter of this proceeding. Respondents acknowledge that Respondents have been
14 fully advised of Respondents' right to a hearing to present evidence and call witnesses and
15 Respondents knowingly and voluntarily waive any and all rights to a hearing before the
16 Commission and all other rights otherwise available under Article 11 of the Securities Act and Title
17 14 of the Arizona Administrative Code. Respondents acknowledge that this Order To Cease And
18 Desist, Order For Restitution, Order For Administrative Penalties ("Order") and this Consent To
19 Entry of Order constitutes a valid final order of the Commission.

20 2. Respondents knowingly and voluntarily waive any right under Article 12 of the
21 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
22 resulting from the entry of this Order.

23 3. Respondents acknowledge and agree that this Order is entered into freely and
24 voluntarily and that no promise was made or coercion used to induce such entry.

25 4. Respondents acknowledge and agree that Respondents have reviewed this Order and
26 understand all terms it contains. Respondents acknowledge that Respondents have a right to seek

1 counsel regarding this Order, and that Respondent has had the opportunity to seek counsel prior to
2 signing this Order. Respondents acknowledge and agree that, despite the foregoing, Respondents
3 freely and voluntarily waive any and all right to consult or obtain counsel prior to signing this
4 Order.

5 5. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law
6 contained in this Order. Respondents agree that Respondents shall not contest the validity of the
7 Findings of Fact and Conclusions of Law contained in this Order in any present or future
8 proceeding in which the Commission or any other state agency is a party concerning the denial or
9 issuance of any license or registration required by the state to engage in the practice of any business
10 or profession.

11 6. By consenting to the entry of this Order, Respondents agree not to take any action or
12 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
13 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
14 basis. Respondents will undertake steps necessary to assure that all of Respondents' agents and
15 employees understand and comply with this agreement.

16 7. While this Order settles this administrative matter between Respondents and the
17 Commission, Respondents understand and agree that this Order does not preclude the Commission
18 from instituting other administrative or civil proceedings based on violations that are not addressed
19 by this Order.

20 8. Respondents understand and agree that this Order does not preclude the Commission
21 from referring this matter to any governmental agency for administrative, civil, or criminal
22 proceedings that may be related to the matters addressed by this Order.

23 9. Respondents understand that this Order does not preclude any other agency or
24 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
25 proceedings that may be related to matters addressed by this Order.

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1 10. Respondents agree that Respondent will not apply to the state of Arizona for
2 registration as a securities dealer or salesman or for licensure as an investment adviser or
3 investment adviser representative until such time as all restitution and penalties under this Order are
4 paid in full.

5 11. Respondents agrees that Respondents will not exercise any control over any entity
6 that offers or sells securities or provides investment advisory services within or from Arizona until
7 such time as all restitution and penalties under this Order are paid in full.

8 12. Respondents agree that Respondents will continue to cooperate with the Securities
9 Division including, but not limited to, providing complete and accurate testimony at any hearing in
10 this matter and cooperating with the state of Arizona in any related investigation or any other
11 matters arising from the activities described in this Order.

12 13. Respondents consent to the entry of this Order and agree to be fully bound by its
13 terms and conditions.

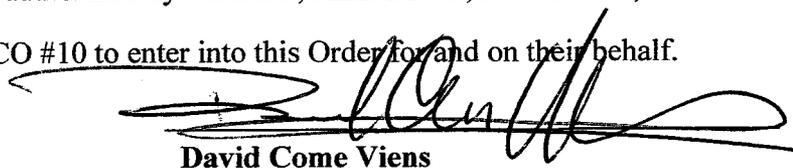
14 14. Respondents acknowledge and understand that if Respondents fail to comply with
15 the provisions of the order and this consent, the Commission may bring further legal proceedings
16 against Respondents, including application to the superior court for an order of contempt.

17 15. Respondents understand that default shall render Respondents liable to the
18 Commission for its costs of collection and interest at the maximum legal rate.

19 16. Respondents agree and understand that if Respondents fail to make any payment as
20 required in the Order, any outstanding balance shall be in default and shall be immediately due and
21 payable without notice or demand. Respondents agree and understand that acceptance of any
22 partial or late payment by the Commission is not a waiver of default by the Commission.

23 17. KLASCHKA represents and acknowledges that at all times relevant, he has been
24 the: (a) president of ALDCO; (b) managing member of ALDCO #2; (c) managing member of
25 ALDCO #3; (d) managing member of ALDCO #4; (e) managing member of ALDCO #5; (f)
26 managing member of ALDCO #6; and (g) the managing member of ALDCO #10. KLASCHKA

1 further represents that he has been authorized by ALDCO, ALDCO #2, ALDCO #3, ALDCO #4,
2 ALDCO #5, ALDCO #6 and ALDCO #10 to enter into this Order for and on their behalf.

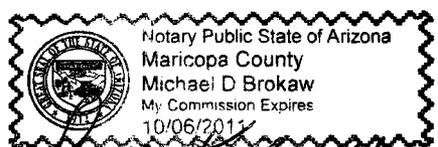
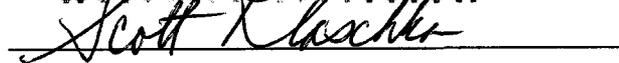
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4 **David Come Viens**

5 STATE OF ARIZONA)
6) ss
7 County of *maricopa*)

8 SUBSCRIBED AND SWORN TO BEFORE me this 15 day of ^{February} ~~January~~, 2011.

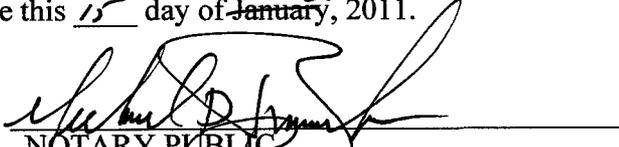
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10 NOTARY PUBLIC

11 My commission expires:
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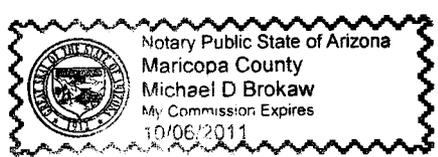
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14 
15 **Scott Andrew Klaschka**

16 STATE OF ARIZONA)
17) ss
18 County of *maricopa*)

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21 NOTARY PUBLIC

22 My commission expires:
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ALDCO Investment #3 L.L.C.

Scott Klaschka

By Scott Andrew Klaschka

Its managing member

STATE OF ARIZONA)
) ss
County of *maricopa*)

SUBSCRIBED AND SWORN TO BEFORE me this 15 day of ^{February}~~January~~, 2011.

[Signature]
NOTARY PUBLIC

My commission expires:



ALDCO Investment #4 L.L.C.

Scott Klaschka

By Scott Andrew Klaschka

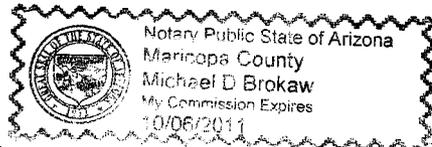
Its managing member

STATE OF ARIZONA)
) ss
County of *maricopa*)

SUBSCRIBED AND SWORN TO BEFORE me this 15 day of ^{February}~~January~~, 2011.

[Signature]
NOTARY PUBLIC

My commission expires:



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ALDCO Investment #5 L.L.C.

Scott Klaschka

By Scott Andrew Klaschka

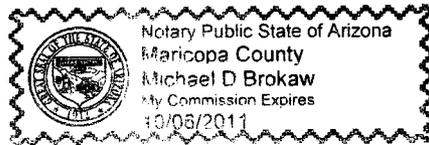
Its managing member

STATE OF ARIZONA)
) ss
County of *Maricopa*)

SUBSCRIBED AND SWORN TO BEFORE me this 15 day of ~~January~~^{February}, 2011.

Michael D. Brokaw
NOTARY PUBLIC

My commission expires:



ALDCO Investment #6 L.L.C.

Scott Klaschka

By Scott Andrew Klaschka

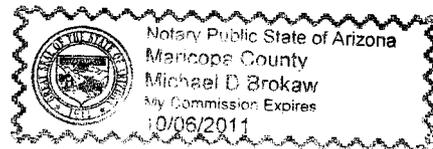
Its managing member

STATE OF ARIZONA)
) ss
County of *Maricopa*)

SUBSCRIBED AND SWORN TO BEFORE me this 15 day of ~~January~~^{February}, 2011.

Michael D. Brokaw
NOTARY PUBLIC

My commission expires:



1 SERVICE LIST FOR: *David Come Viens, et al., S-20773A-10-0493*

2 David Come Viens
3 9440 N. Sunset Ridge Drive
4 Fountain Hills, Arizona 85268
5 *Respondent*

6 Scott Andrew Klaschka
7 9513 East Olla Circle
8 Mesa, Arizona 85212
9 *Respondent, president and*
10 *managing member of*
11 *ALDCO, ALDCO #2,*
12 *ALDCO #3, ALDCO #4,*
13 *ALDCO #5, ALDCO #6, &*
14 *ALDCO #10*

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