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BEFORE THE ARIZONA CORPORATION COMMISSION

2011 SEP 27 P 4:43

COMMISSIONERS

AZ CORP COMMISSION
DOCKET CONTROL

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

In the matter of:)
 JOSEPH COSENZA, an individual;)
 U.S. MEDIA TEAM, LLC, an Arizona)
 limited liability company;)
 THOMAS BRANDON and DIANE M.)
 BRANDON, husband and wife;)
 CELL WIRELESS CORPORATION, a)
 Nevada corporation, formerly known as U.S.)
 SOCIAL SCENE, a Nevada corporation;)
 DAVID SHOREY and MARY JANE)
 SHOREY, husband and wife;)
 Respondents.)

DOCKET NO. S-20763A-10-0430
SECURITIES DIVISION'S POST HEARING
BRIEF

Arizona Corporation Commission
DOCKETED

SEP 27 2011

DOCKETED BY

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") submits its post-hearing brief as follows:

I. PROCEDURAL HISTORY

On October 21, 2010, the Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and for Other Affirmative Action ("Notice"). The Notice alleged that Respondents JOSEPH COSENZA, THOMAS BRANDON, U.S. MEDIA TEAM, LLC, CELL WIRELESS CORPORATION, and DAVID SHOREY engaged in acts, practices, and transactions that constituted violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act")

1 The spouses (“Respondent Spouses”) of Respondents THOMAS BRANDON and DAVID
2 SHOREY were joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of
3 determining the liability of their respective marital communities.

4 The Respondents and Respondent Spouses were duly served with copies of the Notice.

5 On November 5, 2010, DAVID SHOREY, MARY JANE SHOREY, and CELL
6 WIRELESS requested a hearing.

7 On November 15, 2010, THOMAS BRANDON and DIANE BRANDON filed a request for
8 a hearing.

9 On July 14, 2011, counsel for DAVID SHOREY, MARY JANE SHOREY, and CELL
10 WIRELESS and the Division stipulated to the admitting each respective parties’ exhibits.

11 The hearing was held from July 19-21, 2011.

12 The ALJ admitted Division Exhibits S-1 through S-59 into evidence as well as Respondent
13 SHOREY Exhibits RS-1 through RS-102 (*Tr. p. 24, ll. 9-20, and p. 25, ll. 22-23 to p. 26 ll. 1-12*)

14 On August 17, 2011, the Commission entered Decision No. 72525, Order to Cease and
15 Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same by Joseph
16 Cosenza and U.S. Media Team, LLC.

17 II. STANDARD OF PROOF

18 In administrative actions brought by the Commission, the well-recognized standard of proof
19 for alleged violations of the Act is the “preponderance of the evidence.” *See, e.g., Steadman v.*
20 *Securities and Exchange Commission*, 450 U.S. 91 (1981) (Securities and Exchange Commission
21 properly applied the ‘preponderance of the evidence’ standard when determining administrative
22 proceeding); *Geer v. Ordway*, 156 Ariz. 588, 589, 754 P.2d 315, 316 (App. 1987) (in context of
23 administrative hearing, proper standard of proof is preponderance of the evidence). Therefore, the
24 preponderance of the evidence standard is applicable in this matter.

1 SHOREY as U.S. Social Scene's sole director, president, secretary, and treasurer, changed U.S. Social
2 Scene, Inc.'s name back to CELL WIRELESS. (*Exs. S-26a and S-26b*) Therefore, at all times
3 relevant, CELL WIRELESS and U.S. Social Scene had been the same company. (*Exs. S-25, S-26a,*
4 *and S-26b*)

5 DIANE M. BRANDON ("D. BRANDON") is the spouse of BRANDON and has been
6 BRANDON's spouse during all relevant times. (*Ex. S-58, at p. 15, ll. 5-10*).

7 MARY JANE SHOREY ("M. SHOREY") is the spouse of SHOREY and has been
8 SHOREY's spouse during all relevant times. (*Ex. S-44 at p.16, ll. 1-8*)

9 **A. MEDIA PROMISSORY NOTE INVESTMENT**

10 In or around May 2007, BRANDON, on behalf of his company, EquiVest Heritage Group,
11 LLC ("EHG") entered into an agreement with Cosenza and Media for consulting services. (*Ex. S-*
12 *17*) At all times relevant, BRANDON and Lonna Walker were the sole managers and members of
13 EHG. (*Tr. p. 378, ll. 18-25 to p. 379, ll. 1-7 and Exs. S-4b and S-4*) Under the terms of the
14 agreement, BRANDON was required to raise capital for the business operations of Cosenza and
15 Media. (*S-17 at ACC001625*)

16 Cindy Atkinson ("Mrs. Atkinson") testified that in June 2007 she and her husband
17 (collectively "Atkinsons") were given a proposal for an investment in Media from her friend, Scott
18 Busse ("Busse"). (*Tr. p. 48, ll. 16-22 and Tr. p. 49, ll. 14-16*) Mrs. Atkinson explained that Busse
19 and his business partner, BRANDON, represented to her that they sold investments for a living and
20 had been in business together for a long time. (*Tr. p. 50, ll. 4-9 and Tr. p. 83, ll. 16-20*)

21 Mrs. Atkinson testified that the Media investment documents were provided to her by Busse
22 via email. The email was originated by BRANDON and then forwarded to Mrs. Atkinson by Busse.
23 (*Tr. p. 51, ll. 2-7 and Ex. S-2a at ACC00001*) Attached to the email was a memorandum entitled,
24 "Investment Opportunity" ("Memorandum"). (*Tr. p. 52, ll.1-3, Ex. S-2a at ACC ATK00011*)

25 According to the Memorandum, the investment funds were to be used by Media to acquire
26 stock in a new publicly traded company. (*Ex. S-2a at ATK00011*) In the offering materials, Media

1 represented that it had provided advertising services for organizations such as the Professional
2 Golfers Association ("PGA"), the National Basketball Association ("NBA"), National Football
3 League ("NFL"), and the Reuters Financial Group. Media was seeking investment funds in the
4 amount of \$100,000 for a 30 day period and for which Media would pay a rate of return of twenty
5 percent (20%) interest. (*Id.*) According to the Memorandum, investment was "as close to no risk
6 as possible with a high rate of return" and would be collateralized by a purchase order with the
7 Sports Network (a/k/a Clear Channel). (*Id.*)

8 Mrs. Atkinson also testified that BRANDON told her that Media had advertising contracts
9 with the PGA, NBA, and NFL. (*Tr. p. 56, ll. 11-25 to p. 57, ll. 1-15*)

10 BRANDON testified that the Atkinsons' investment funds were used to help Cosenza make
11 U.S. Social Scene a publicly traded company. (*Tr. p. 487, ll. 19-25*) However, the Atkinsons
12 invested on June 22, 2007. (*Tr. p. 381, ll. 4-11 and Ex. S-9 at ACC003438*) The alleged attempt to
13 make U.S. Social Scene a public company did not occur, at the earliest, until January 2008 when
14 SHOREY and Cosenza entered into an asset purchase agreement. (*Ex. S-33*)

15 Mrs. Atkinson testified that she spoke with both Busse and BRANDON about the
16 investment before she and her husband invested. (*Tr. p. 52, ll. 19-23*) After speaking with them,
17 Mrs. Atkinson was convinced by Busse and BRANDON that they had been successful businessmen
18 and that there was very little risk to Media Note was low risk. (*Tr. p. 52 ll. 23-25 and p. 53, ll. 1-3*
19 *and ll. 16-18*) As proof, BRANDON gave her a copy of the purported purchase order with the
20 Sports Network. (*Tr. p. 53, ll. 19-22 and Tr. p. 55, ll. 1-4*)

21 Mrs. Atkinson testified that she was not very educated about investing. (*Tr. p. 77, ll. 2-3*)
22 Mrs. Atkinson further testified that she was a layperson and does not understand the difference
23 between private and public stock. (*Tr. p. 77, ll. 4-5*) Mrs. Atkinson testified that the Atkinson
24 would not have invested had there been any kind of risk of repayment of their investment in Media.
25 (*Tr. p. 72, ll. 2-9*)

26

1 In exchange for the receipt of Mrs. Atkinson's investment funds in the amount of \$100,000,
2 Media issued a promissory note ("Note") to Mrs. Atkinson. (*Tr. p. 63, l. 25 to p. 64, ll. 1-16 and*
3 *Ex. S-2a at ATK00017 and ATK00019*) The Note provided for a return of twenty percent (20%) on
4 the amount invested, with both principal and interest to be paid in thirty days. (*Ex. S-2a*) The Note
5 set forth that repayment was "backed by \$152,500 in commissions due [Media] on July 16, 2007."
6 (*Id.*) The commissions referenced were alleged to be owed to Media pursuant to an advertising
7 contract between Media and the Sports Network. (*Ex. S-2a at ATK00011*)

8 Mrs. Atkinson wired the funds to Media's Arizona based bank account on June 22, 2007.
9 (*Tr. p. 64, ll. 9-12 and Ex. S-9 at ACC003438*) When the Atkinsons did not receive timely
10 repayment of the Note, Mrs. Atkinson contacted BRANDON by telephone and email regarding
11 repayment of their investment. (*Tr. p. 64, ll. 24-25 to p. 65, ll. 1-7, p. 65, ll. 21-23 and Exs. S-2b*
12 *and S-2c*) BRANDON advised Mrs. Atkinson that the delay in repayment was due to an "Internal
13 Revenue Service freeze on Cosenza's bank account." (*Id.*) BRANDON also told Mrs. Atkinson
14 that he was working with other investors and that "as soon as the money comes in, we [Atkinsons]
15 are a priority to be paid first." (*Tr. p. 66, ll. 1-6*) Mrs. Atkinson further testified that BRANDON
16 gave her the impression that once other investors were found, the Atkinsons would be repaid. (*Tr.*
17 *p. 66, ll. 18-23*)

18 Mrs. Atkinson testified that, in response to her repeated requests for repayment,
19 BRANDON told her his company, EHG, would guarantee the Media investment. (*Tr. p. 68, ll. 7-21*
20 *and Ex. 2-b at ATK00071-ATK00072*)

21 Mrs. Atkinson further testified that BRANDON told the Atkinsons that "Again, I realize
22 that this was your first investment with us [Media] and things didn't go as expected. However, all
23 of us are absolutely committed to you and Cindy getting paid plus penalties." (*Tr. p. 91, ll. 5-8 and*
24 *Ex. S-2b at ATK00082*) BRANDON further represented that there would be an exceptional return
25 of the investment. (*Tr. p. 91, ll. 22-25 to p. 92, ll. 1-2 and Ex. S-2b at ATK00082*)
26

1 Mr. Michael Brokaw ("Mr. Brokaw"), a special investigator with the Division, testified that
2 he had reviewed Commission records and interviewed witnesses related to BRANDON, Cosenza,
3 Media, and EHG. (*Tr. p. 373, ll. 2-4 and 15-21*)

4 While BRANDON testified that he called the Sports Network and was told the purchase
5 order had not been fulfilled, BRANDON also admitted that he did not contact the Sports Network
6 until after the Atkinsons invested. (*Tr. p. 482, ll. 9-11 and p. 504, ll. 20-25*) Mr. Brokaw testified
7 that Media did not have a purchase order with the Sports Network. (*Tr. p. 375, ll. 9-25 to p. 377, ll.*
8 *1-20*) In fact, a Sports Network representative advised Mr. Brokaw that the purported purchase
9 order was nonexistent. (*Tr. p. 377, ll. 19-20*) Furthermore, Mr. Brokaw testified that Media never
10 had a contract with the PGA. (*Tr. p. 375, ll. 9-25 to p. 377, ll. 1-2*)

11 Mr. Brokaw testified he reviewed the bank records for Media. (*Tr. p. 380, ll. 9-11 and Ex. S-*
12 *8*) The bank statement shows the deposit of the \$100,000 wire transfer from Mrs. Atkinson on June
13 22, 2007. (*Tr. p. 381, ll. 4-11 and Ex. S-9 at ACC003438*) For the statement period immediately
14 prior to the Atkinsons' investment, the Media account had a negative balance. (*Tr. p. 381, ll. 12-16*
15 *and Ex. S-9 at ACC003438*)

16 On June 25, 2007, \$50,000 was wired out from the Media account to an entity called BNF
17 First Clearing, LLC to benefit BRANDON. (*Tr. p. 381, ll. 17-19 p. 388, ll. 15-25 to p. 390, ll. 1-5,*
18 *and Exs. S-9 at ACC003438, S-12, and S-14*) BRANDON then used the funds to withdraw cash,
19 pay bills, and to make payments to his wife and other family members, EHG, and other unrelated
20 individuals. (*Tr. p. 390, ll. 6-25 to p. 393, ll. 1-24 and Ex. S-14*)

21 While BRANDON characterized the receipt of the \$50,000 as "coincidental" to Mrs.
22 Atkinson's investment, he received the \$50,000 three days after the Atkinsons provided their
23 investment funds to Media. (*Tr. p. 484, ll. 22-24 and Exs. S-9, S-12, and S-14*) BRANDON
24 attempted to justify the receipt of the investment funds by testifying that he was "owed a lot of
25 money" by Cosenza. BRANDON did not disclose that fact to Mrs. Atkinson before the Atkinsons
26

1 invested. (*Tr. p. 486, ll. 3-6*) Mrs. Atkinson testified she would not have invested if her investment
2 funds were not going to be used as promised. (*Tr. p. 72, ll. 10-15*)

3 Even though the Atkinsons were not repaid when promised, BRANDON solicited
4 investments from at least five other persons on behalf of Media., the purpose of which was to
5 obtain funds from which the Atkinsons could be repaid. (*Tr. p. 509, ll. 15-16 and p.510, ll. 2-5 and*

6 On March 4, 2008, BRANDON wired \$25,000 into the Atkinsons' checking account. (*Tr.*
7 *p. 69, ll. 16-23, p. 82, ll. 15-21, and Ex. S-2c at ATK00189*) BRANDON admitted that the source
8 of the \$25,000 repayment to the Atkinsons was from CELL WIRELESS investors. (*Tr. p. 511, ll.*
9 *16*)

10 **B. CELL WIRELESS CORPORATION/U.S. SOCIAL SCENE STOCK INVESTMENT**

11 On July 8, 2007, a meeting was held by the board of directors of CELL WIRELESS
12 ("Board") at SHOREY's home. (*Ex. S-27 at ACC001440*) The Board authorized SHOREY, a
13 board member, to negotiate and complete the sale of CELL WIRELESS to Media, recognized an
14 obligation to compensate EHG for its consulting services regarding the sale transaction, and
15 authorized the opening of a CELL WIRELESS checking account with SHOREY as the account
16 signatory. (*Id.*) SHOREY signed the minutes of the July 8, 2007 meeting as a member of the
17 Board. (*Id.*)

18 CELL WIRELESS and EHG entered into a "Strategic Consulting Agreement" ("EHG
19 Agreement") on or about March 31, 2007. (*Ex. S-28*) BRANDON, as its manager, signed on behalf
20 of EHG and SHOREY, as its chief financial officer ("CFO"), signed on behalf of CELL
21 WIRELESS. (*Id.*) Under the terms of the EHG Agreement, EHG was to facilitate the sale of CELL
22 WIRELESS to Media, or the merger of the two entities.

23 SHOREY testified that EHG was hired to "find money" and that BRANDON represented
24 that he had "quite a bit" of experience raising money through the sale of stock and promissory
25 notes. (*Ex. S-44 at p. 33, ll.23-23, p. 35, ll. 20-22 and p. 36, ll. 2-4*) SHOREY further testified that
26

1 BRANDON reported directly to SHOREY regarding his efforts to raise money and that they were
2 in constant contact. (*Ex. S-44 at p. 38, ll. 8-11 and p. 36, ll. 18-20*)

3 On or about July 7, 2007, SHOREY, on behalf of CELL WIRELESS, negotiated and
4 entered into an agreement with Media for the sale of CELL WIRELESS to Media ("CELL
5 WIRELESS-Media Agreement"). (*Ex. S-29*) Media agreed to pay \$600,000 in exchange for an
6 eighty percent (80%) interest in CELL WIRELESS. (*Id.*) The controlling interest would be passed
7 on to Media upon payment of the full amount of money. (*Id.*) SHOREY, as CFO, signed on behalf
8 of CELL WIRELESS and Cosenza, as manager, signed on behalf of Media. (*Id.*)

9 Pursuant to the terms of the CELL WIRELESS-Media Agreement, SHOREY and Cosenza
10 signed a subscription agreement on behalf the respective entities. (*Ex. S-29*) This same subscription
11 agreement, with minor differences, was subsequently given to the investors in CELL WIRELESS.
12 (*Exs. S-18 and S-29*)

13 On November 27, 2007, SHOREY emailed Cosenza stating that Media was in default of the
14 CELL WIRELESS-Media Agreement. (*Ex. S-30*) SHOREY signed the email as CFO of CELL
15 WIRELESS. The email indicated that the corporate office of CELL WIRELESS was still located at
16 the home of SHOREY. (*Id.*)

17 On December 31, 2007, SHOREY sent a letter to Cosenza again notifying him that Media
18 was in default of the CELL WIRELESS-Media Agreement and that that Media has not "provided
19 any of his commitment" to CELL WIRELESS. (*Ex. S-31*) The letter, which was prepared on
20 CELL WIRELESS letterhead, was signed by SHOREY as CFO of CELL WIRELESS, and
21 indicated that the corporate office of CELL WIRELESS was still located at the home of SHOREY.
22 (*Id.*)

23 On or about January 4, 2008, SHOREY, on behalf of CELL WIRELESS, sent a letter to
24 Cosenza seeking to confirm whether Cosenza was interested in merging Cosenza's business, U.S.
25 Social Scene, with CELL WIRELESS. SHOREY indicated in his letter that CELL WIRELESS
26

1 would be the parent company and U.S. Social Scene would be a wholly-owned subsidiary. (*Ex. S-*
2 *32*)

3 On or about January 7, 2008, SHOREY, as CFO and on behalf of CELL WIRELESS,
4 entered into an “asset purchase agreement” with Cosenza, individually. (*Ex. S-33*) The effective
5 date of the agreement was January 1, 2008. (*Id.*) Pursuant to the terms of the agreement, CELL
6 WIRELESS was purchasing the “assets” US Social Scene, including the use of its name (“CELL
7 WIRELESS-U.S. Social Scene Agreement”). (*Id.*) Pursuant to the terms of the CELL WIRELESS-
8 U.S. Social Scene Agreement, CELL WIRELESS would acquire one hundred percent (100%) of the
9 assets of U.S. Social Scene from Cosenza for which Cosenza would receive eighty percent (80%)
10 of the shares of stock in CELL WIRELESS. (*Id.*)

11 On January 7, 2008, SHOREY and Cosenza became the only members of the Board, and
12 SHOREY was appointed as the CFO of WELL WIRELESS. (*Ex. S-27 at ACC001411*). Both
13 SHOREY and Cosenza signed the minutes of the Board meeting. (*Id.*)

14 SHOREY testified that CELL WIRELESS operated the “combined company” of CELL
15 WIRELESS and U.S. Social Scene as CELL WIRELESS until its name change to U.S. Social
16 Scene on March 14, 2008. (*Tr. p. 344, ll. 1-3 and S-27 at ACC001408*)

17 In or around January 2008, Josh Benson (“Josh B.”) met Cosenza when Josh B. spoke to a
18 small business group in Phoenix. (*Tr. p. 97, ll. 7-10*) At the time, Josh B. was living in Arizona
19 working for his company, Optimum Marketing Group, a marketing company. (*Tr. p. 98, ll. 1-25 to*
20 *p. 99, ll. 1-3, p. 164, ll. 2-25 to p. 165, ll. 1-6*) Josh B. and/or Optimum Marketing Group (“OMG”)
21 entered into an oral agreement by which he and/or OMG would provide marketing services to U.S.
22 Social Scene [CELL WIRELESS]. (*Tr. p. 104, ll. 13-25 to p. 105, ll. 1-4, p. 118, ll. 12-14, p. 137,*
23 *ll. 9-11, and Ex. S-55*)

24 In or around February 29, 2008, Josh B., and his father, Terry Benson (“Terry B.”) testified
25 they attended a meeting (“the February 29, 2008, Meeting”) in Arizona with BRANDON,
26 SHOREY, Cosenza, and CELL WIRELESS, through SHOREY and Cosenza, to discuss the

1 purchase of stock in U.S. Social Scene [CELL WIRELESS] through a convertible debenture. (*Tr.*
2 *p. 100, ll. 19-25, p. 101, ll. 12-16, p. 212, ll. 20-22, p. 213, l. 9, p. 214, ll. 21-25, p. 277, ll. 4-9 and*
3 *Ex. S-18*)

4 Both Josh B. and Terry B. had limited investment experience. Josh B. testified that at the
5 time of this meeting he was either 23 or 24 years old and his investment experience was limited to a
6 single class in finance. (*Tr. p. 143, ll. 5-6*) Terry B. testified that he invested once before in a penny
7 stock. (*Tr. p. 216, ll. 16-24, p. 246, ll. 5-16, and p. 246, ll. 22-25*)

8 Terry B. testified that before he invested in U.S. Social Scene [CELL WIRELESS]
9 BRANDON gave him a memorandum that explained the investment (“U.S. Social Scene
10 Subscription Agreement”). (*Tr. p. 230, ll. 9-10, p. 231, ll. 19-25 to p. 232, ll. 1-8 and Ex. S-18 at*
11 *ACC000054 TO ACC00056*) The Memorandum contained in the U.S. Social Scene Subscription
12 Agreement contained the following information:

- 13 - “U.S. Social Scene, Scottsdale, Arizona;”
- 14 - “U.S. Social Scene, Inc. a Nevada company (formerly known as Cell Wireless
15 Corporation);”
- 16 - “Convertible Debenture Investment Opportunity;”
- 17 - “unique, one time opportunity, Convertible Debenture Investment Program;”
- 18 - “Significant profits over a short period of time (usually from 4 to 6 months);”
- 19 - “During the four to six month period, the investor is in a position to recover their initial
20 investment and a significant profit while also conserving approximately fifty percent of
21 the original shares purchased in the Convertible Debenture Investment Program;”
- 22 - “Raise expansion funds in order to complete several acquisitions;”
- 23 - “[T]hey will need an additional \$1 million cash infusion above existing cash flow;” and
- 24 - “This limited, one time, investment opportunity offers investors in U.S. Social Scene’s
25 Convertible Debenture Program a limited time opportunity to minimize investment risk
26 while maximizing their potential return on investment (ROI).”

1 (*Ex. S-18 at ACC000054 TO ACC00056*)

2 SHOREY admitted that he provided a subscription agreement to BRANDON and that they
3 had discussed using this document to raise funds on behalf of U.S. Social Scene. (*Tr. p. 321, ll. 22-*
4 *25 to p. 322, l.4, p. 328, ll. 12-17 and Ex. S-44 at p. 43, ll. 24-25 to p. 44, ll. 1-2*) BRANDON
5 admitted that he and Cosenza drafted the U.S. Social Scene Subscription Agreement Memorandum.
6 (*Tr. p. 514, ll.2-19 and Ex. S-18 at ACC000054 TO ACC00056*) Terry B. testified and BRANDON
7 also admitted he provided the U.S. Social Scene Subscription Agreement to Terry B. before Terry
8 B. invested. (*Tr. p. 515, ll. 3-9 and Tr. p. 230, ll. 24-25 to p. 231, ll. 1-10 and Ex. S-18*)

9 Josh B. and Terry B. both testified that at the February 29, 2008, meeting SHOREY
10 discussed the financial condition of the company. (*Tr. p. 101, ll. 23-25 to p. 102, ll. 1-3 and p.*
11 *214, ll. 13-15*) SHOREY testified that U.S. Social Scene [CELL WIRELESS] was making money
12 and functioning “wonderfully;” however, SHOREY admitted he never reviewed the books of U.S.
13 Social Scene [CELL WIRELESS]. (*Tr. p. 346, ll. 22-25, and p. 348, ll. 6-9*) SHOREY also
14 admitted that CELL WIRELESS had no operations since March 2007, was “deep in debt,” was
15 losing money, and had “huge operating losses on the books.” (*Tr. p. 313, ll. 9-10, p. 329, ll. 13-15*
16 *and p. 345, ll. 13-16, and p. 345, l. 21*)

17 Terry B. also testified that SHOREY said, “yes, this investment is a good opportunity” and
18 Terry B. relied on SHOREY’s statements to make the investment. (*Tr. p. 272, ll. 7-11 and p. 282,*
19 *ll. 11-14*)

20 At the February 29, 2008, Meeting, Cosenza talked about the various other companies that
21 were going to become part of CELL WIRELESS. (*Tr. p. 100, ll. 1-10*) After the discussion of the
22 convertible debenture, Josh B., and Terry B. toured several different companies but eventually
23 learned that those companies were not part of CELL WIRELESS. (*Tr. p. 99, ll. 8-25, p. 100, ll. 4-*
24 *10, p. 182, ll. 9-25 to p 183, ll. 1-16, and p. 245, ll. 15-17*)

25 Josh B. and/or Terry B. testified that BRANDON made a number of representations
26 regarding the investment in CELL WIRELESS:

1 - BRANDON verified that Cosenza invested \$4 million into U.S. Social Scene [CELL
2 WIRELESS]. *(Tr. p. 169, ll. 5-10)*

3 - The convertible debenture was a “for sure win; there was no way that this could lose.” *(Tr.*
4 *p. 102, ll. 9-10)*

5 - “We can’t legally say that this is a sure thing, but it’s a for sure thing.” *(Tr. p. 102, ll. 20-*
6 *23)*

7 - That the investment in CELL WIRELESS is a good investment. *(Tr. p. 148, ll. 22-25)*

8 - This was a legitimate investment. *(Tr. p. 216, ll. 23-24 and p. 217, ll. 8-10)*

9 - This was a “can’t miss” investment. *(Tr. p. 242, l. 25 to p. 243, l. 1 and p. 254, ll. 16-22)*

10 Terry B. testified that BRANDON explained the “can’t miss” opportunity as one where BRANDON
11 said “within a three-month period, we would have our original investment back,” plus the investors
12 would still hold stock in the company. *(Tr. p. 254, ll. 16-22)*

13 - The stock would increase 10-fold or 20-fold within a two-or three month period. *(Tr. p.*
14 *218, 14-23 and p. 255, ll. 14-18)*

15 BRANDON admitted that he was aware that CELL WIRELESS had no operations since
16 March 2007. *(Tr. p. 519, ll. 22-23)* Furthermore, BRANDON admitted that CELL WIRELESS was
17 “in need of money” because it was “losing money.” *(Tr. p. 520, ll. 4-20)*

18 Josh B. and Terry B. testified that BRANDON represented that their investment funds
19 would be used to pay for the merger of CELL WIRELESS and U.S. Social Scene. *(Tr. p. 284, ll. 2-*
20 *5) (Tr. p. 106, ll. 10-18)* Josh B. testified that SHOREY and Cosenza made this same representation
21 to potential investors at the February 29, 2008, Meeting. *(Tr. p. 106, ll. 19-21)*

22 Josh B. and Terry B. testified that there was a sense of urgency and pressure to invest in
23 U.S. Social Scene [CELL WIRELESS] immediately. *(Tr. p. 102, ll. 4-6, p. 221, l. 7, p. 276, ll. 20-*
24 *25 to p. 277, ll. 1-3, p. 282, ll. 8-10, and p. 283, ll. 3-20)*

25 Josh B. and Terry B. testified that on February 29, 2008, BRANDON directed Terry B. to
26 wire his funds to Global Business Development and no one contradicted why the funds were to be

1 sent to an entity other than CELL WIRELESS. (*Tr. p. 109, ll. 10-22, p. 221, ll. 24-25 to p. 222, ll.*
2 *1-8, p. 239, ll. 24-25, and Ex. S-19*)

3 Mr. Brokaw testified that he had reviewed Commission records and interviewed witnesses
4 related to BRANDON, SHOREY, CELL WIRELESS, U.S. Social Scene, Inc., GBD, Cosenza,
5 Media, and EHG. (*Tr. p. 373, ll. 2-4 and 15-21*)

6 Mr. Brokaw testified reviewed the GBD bank records. (*Tr. p. 431, ll. 13-16 and Exs. S-35,*
7 *S-36, and S-37*) Mr. Brokaw testified that the beginning balance of the GBD bank account was
8 \$40.54 on February 11, 2008, when approximately \$126,000 was deposited to the account. (*Tr. p.*
9 *432, ll. 5-10 and Ex. S-36 at ACC000364*) Mr. Brokaw testified that the \$126,000 was comprised
10 of the following:

- 11 - February 26, 2008, a deposit of \$1,000, source unknown;
- 12 - February 29, 2008, a wire in the amount of \$60,000 from Terry Benson, an investor;
- 13 - February 29, 2008, a wire in the amount of \$25,000 from Kristi Block, an investor;
- 14 - February 29, 2008, a total of \$25,000 (\$16,900 and \$8,100) from Curt Mottinger, an
15 investor;
- 16 - March 4, 2008, a wire in the amount of \$10,000 from Ardell Hjelle, an investor; and
- 17 - March 4, 2008, \$5,000 from Karen Turner, an investor.

18 (*Tr. p. 432, ll. 14-25 to p. 434, ll. 1-10 and Ex. S-36 at ACC000364 to ACC000365*)

19 Mr. Brokaw then testified that the investor monies were disbursed as follows:

- 20 - March 3, 2008, \$20,000 to CELL WIRELESS, an account where SHOREY was the sole
21 signatory on the account;
- 22 - March 3, 2008, five cash withdrawals in the amounts of \$9,950, \$9,950, \$8,450, \$8,000,
23 and \$5,000, with no determination as to the end use of those monies;
- 24 - March 4, 2008, a wire in the amount of \$25,000 to Randy and Cindy Atkinson, investors
25 in the Media note investment; and
- 26 - March 11, 2008, a cash withdrawal in the amount of \$9,950.

1 (Tr. p. 434, ll. 11-25 to p. 438, ll. 1-11, Ex. S-36 at ACC000365 to ACC000366, and Ex. S-37)

2 Mr. Brokaw also testified that the GBD statement for the period ending on March 9, 2008,
3 disclosed just one deposit in the amount of \$5,000. (Tr. p. 435, ll. 20-25 to p. 436, ll. 1-14 and Ex.
4 S-36 at ACC000367) That deposit was from Lori Hjelle, an investor in CELL WIRELESS. (Id.)
5 That statement also had various withdrawals and check card purchases for restaurants and retail
6 outlets, resulting in the depletion of the GBD bank account. (Tr. p. 435, ll. 15-19 and Ex. S-36 at
7 ACC000367 to ACC000370)

8 BRANDON admitted that GBD is a Nevada limited liability company of which he is an
9 owner. (Tr. p. 479, ll. 19-21 and p. 480, l. 2) BRANDON testified that Lonna Walker has been his
10 business partner for 17 years. (Tr. p. 512, ll. 20-23) BRANDON testified Lonna Walker and
11 BRANDON have a "50/50" partnership. (Tr. p. 513, ll. 3-5) BRANDON further stated that they
12 collaborate on almost every project. (Tr. p. 513, ll. 6-7) Lonna Walker was the sole signatory on
13 the GBD bank account. (Tr. p. 431, ll. 19-21 and Ex. S-36 at ACC000158)

14 BRANDON testified that when funds are deposited into GBD's account, BRANDON
15 considers those funds to be payments of fees and available for his personal use. (Tr. p. 498, ll. 17-
16 22) BRANDON further explained that the funds disbursed from the GBD bank account were used
17 to pay the expenses of his family and his wife. (Tr. p. 511, ll. 2-9)

18 SHOREY opened the CELL WIRELESS bank account during the account period of July 17,
19 2007, to July 31, 2007. (Ex. S-39 at ACC000111) From the opening period through February 29,
20 2008, there was never more than a couple of hundred dollars deposited into the account. (Id. at
21 ACC000110 to ACC000125) On March 3, 2008, a few days after five of the six investors deposited
22 their funds into GBD bank account, GBD wired \$20,000 to the CELL WIRELESS bank account.
23 (Ex. S-39 at ACC000127) SHOREY then distributed portions of that \$20,000 to himself,
24 BRANDON, and SHOREY's company, SSI Development. (Tr. p. 360, ll. 10-14, Ex. S-39 at
25 ACC000127 to ACC000128, Ex. S-40 at ACC001813, ACC0001814, ACC001818, and
26 ACC001819)

1 SHOREY also opened bank accounts in the name of U.S. Social Scene. (*Ex. S-39 at*
2 *ACC000138 to ACC000148*) From the opening date of April 1, 2008, to August 31, 2008, there
3 was essentially no activity in these U.S. Social Scene bank accounts. (*Id.*)

4 SHOREY was the sole signatory on the CELL WIRELESS and U.S. Social Scene bank
5 accounts. (*Ex. S-39 at ACC000149-ACC000151*)

6 Mr. Brokaw testified that he reviewed the stock records for CELL WIRELESS from Pacific
7 Stock Transfer Company. (*Tr. p. 299, ll.1-21, p. 300, ll. 4-7, p. 440, ll. 2-10, and Ex. S-41*) Mr.
8 Brokaw testified he reviewed the Capitalization Record, a document that shows the date,
9 shareholder, amount of shares, and the balance of shares, and the Transfer Report, a document that
10 records the date stock type, presenter, buyer, and seller for the period January 1, 2007 to May 13,
11 2009. (*Tr. p. 441, ll. 9-17, p. 445, ll. 2-10, and Ex. S-41 at ACC002728 to ACC002732 and Ex. S-*
12 *41 at ACC002838 to ACC00002842*) Mr. Brokaw testified that there no shares of stock in CELL
13 WIRELESS were ever issued to the [U.S. Social Scene] investors, Cosenza, or Media. (*Tr. p. 444,*
14 *ll. 14-20, p. 445, ll. 12-16, Ex. S-41 ACC002728 to ACC002732, and Ex. S-41 at ACC002838 to*
15 *ACC00002842*) SHOREY admitted that he owned twelve percent (12%) of the stock in CELL
16 WIRELESS as of May 2007. (*Tr. p. 313, ll. 24-25*)

17 Josh B. and Terry B. testified that BRANDON, SHOREY, and Cosenza never challenged
18 any of the representations made by BRANDON, SHOREY, and/or Cosenza regarding the
19 investment in U.S. Social Scene [CELL WIRELESS]. (*Tr. p. 102, ll. 22-25 to p. 103, ll. 1-2, p.*
20 *103, ll. 17-23, p. 110. ll. 3-5, p. 151, ll. 16-18, p. 220, ll. 7-11 and ll. 20-21*) Terry B. testified that
21 he never received the stock certificates. (*Tr. p. 223, ll. 1-3*) Terry B. said he contacted BRANDON
22 who told him that Cosenza's tax problems with the Federal government. (*Tr. p. 223, ll. 11-13*)
23 Terry B. testified that he would not have invested if he would have known that the funds were not
24 going to be used for their stated purposes or that he was not going to receive the stock in accordance
25 with the U.S. Social Scene Subscription Agreement. (*Tr. p. 233, ll. 13-18*) Finally, Terry B.
26

1 testified that he would not have invested if this was not going to be a “can’t miss” investment. (*Tr.*
2 *p. 233, ll. 19-25*)

3 On March 13, 2008, the Board met to formally change the name of the combined company
4 from CELL WIRELESS to U.S. Social Scene, Inc. (“Company”). (*Ex. S-27 at ACC001408*) On
5 March 13, 2008, SHOREY filed with the Nevada Secretary of State a list of officers and directors
6 for the Company. (*Ex. S-24*) SHOREY was listed as the secretary, treasurer, and director. (*Id.*)
7 Cosenza was listed as the president and director. (*Id.*) There were no other officers or directors
8 listed on the Nevada Secretary of State filing. (*Id.*)

9 On March 14, 2008, SHOREY and Cosenza, as the only members of the Board, presented,
10 voted, and elected Josh B. as Chief Technical Officer, Steve Anderson as Chief Operations Officer,
11 Dean Gekas as Vice President National Sales, and Steven Harper as Vice President Marketing for
12 the Company. (*Ex. S-27 at ACC001409*) However, on February 23, 2010, SHOREY filed a list of
13 officers for the Company with the Nevada Secretary of State that listed himself as the president,
14 secretary, treasurer, and director. (*Ex. S-26a*). No other individuals were identified as being an
15 officer or director of the Company. (*Id.*)

16 On February 23, 2010, SHOREY filed documents with the Nevada Secretary of State that
17 requested a change in the name of the Company from U.S. Social Scene back to CELL WIRELESS,
18 effective February 1, 2010. (*Ex. S-26b*)

19 Mr. Brokaw testified that BRANDON, SHOREY, CELL WIRELESS, and Cosenza were
20 not registered as securities dealers or securities salesmen with the Commission, and that the
21 investments offered and sold by BRANDON, SHOREY, CELL WIRELESS, and Cosenza have not
22 been registered with the Commission. (*Exs. S-1a, S-1b, S-1c, S-1d, S-1e, and S-1f*)

23 Mr. Brokaw testified that the Atkinsons are owed a total of \$75,000 for the Media note and
24 \$130,000 for the U.S. Social Scene [Cell Wireless] investment. (*Tr. p. 447 l. 5 to p. 448 l. 10, Ex.*
25 *S-59*)
26

V. ARGUMENT

Media Investment

A. BRANDON offered and sold to the Atkinsons a security in the form of a note, or in the alternative an investment contract, in Media.

The Arizona Securities Act provides that a security may not be sold in Arizona unless it is registered with the Commission. See A.R.S. § 44-1841. “[A]ny note” is a security. See A.R.S. § 44-1801(26).

Arizona courts have developed *two* separate approaches in distinguishing between security and non-security notes under the Arizona Securities Act. The analysis used depends upon whether the issue is the violation of the registration provisions or the violation of antifraud provisions of the Arizona Securities Act.

1. The Media note that BRANDON offered and sold to the Atkinsons is a security for purposes of the registration provisions of the Arizona Securities Act.

For purposes of the registration provisions, the Arizona Supreme Court held that A.R.S. §§ 44-1841 and 44-1842 provided a clear meaning for the words “any note,” and, therefore, the court had no reason to use any of the tests fashioned by the federal courts for determining whether a particular note was a security. *Tober*, 173 Ariz. at 213, 213 841 P.2d at 208. Specifically, the Arizona Supreme Court looked to the Arizona statutory definition of security and held that *all* notes are securities that must be registered [with the Arizona Corporation Commission] unless an exemption applies. *Id.* Specifically, the *Tober* court stated:

We disagree. In our view, *neither* the “risk capital” test of *Amfac*, the “family resemblance” test of *Reves v. Ernst & Young*, *** nor any variant applies to the charges under A.R.S. § 44-1841 and § 44-1842. These two sections are part of a comprehensive statutory scheme that defines the universe of securities, exempt securities, and exempt transactions. The statutory scheme leaves no room for judicial gloss, and thus there is no uncertainty in its application.

1 *Id.* (citation omitted) (emphasis added). *Tober* applies to all cases, administrative, civil, and criminal,
2 involving violations of the registration provisions of the Arizona Securities Act. *See* Respondents'
3 Memorandum at 19:3-7; *Tober*, 173 Ariz. at 213, 841 P.2d at 208; *MacCollum v. Perkinson*, 185 Ariz.
4 179, 185, 913 P.2d 1097, 1103 (Ct. App. 1996). Accordingly, the Media note is a security for
5 purposes of the registration provisions of the Arizona Securities Act.

6 **2. The note sold by BRANDON is a security for the purposes of the anti-fraud**
7 **provisions of the Securities Act**

8 According to *MacCollum*, the Court adopted the analysis articulated in *Reves v. Earnst &*
9 *Young*, 494 U.S. 56 (1990), to determine if a note violated the antifraud provisions of the Arizona
10 Securities Act. 185 Ariz. at 185, 913 P.2d at 1103 (App. 1996). Arizona courts apply it to determine
11 whether a note is a security for purposes of fraud under the Arizona Securities Act. *Id.*; *see also*
12 A.R.S. § 44-1991(A).

13 The *Reves* court started with the presumption that notes are securities and established a two-
14 part test with which the presumption may be rebutted. *Reves*, 494 U.S. at 63. The first part of the
15 *Reves* test is that the presumption may be rebutted by a showing that the note “bears a strong
16 resemblance” to an instrument listed in an enumerated category of exceptions. *Id.*

17 Elaborating on the family resemblance test, the Supreme Court identified a four-factor test to
18 assist in ascertaining whether a note resembles one of the families of notes that are not securities.
19 The first factor established by the Court is to assess the motivations of the buyer and seller to enter
20 into the transaction at issue. If the seller’s purpose is to raise money for the general use of a
21 business enterprise or to finance substantial investments and the buyer is interested primarily in the
22 profit the note is expected to generate, the instrument is likely to be a security. *Id.* The second
23 factor is the plan of distribution. The Court stated that the plan of distribution must be examined to
24 determine if the “note” is an instrument in which there is “common trading for speculation or
25 investment.” *Id.* at 68-69; *see also MacCollum*, 185 Ariz. at 187, 913 P.2d at 1105 (“Offering and
26 selling to a broad segment of the public is all that is required to establish the requisite ‘common

1 trading' in an instrument."), quoting *Reves*, 494 U.S. at 68 and citing *Landreth Timber Co. v.*
2 *Landreth*, 471 U.S. 681, 694 (1985) (stock of closely held corporation not traded on any exchange
3 held to be a security). In defining common trading, in *Stoiber v. S.E.C.*, the court found that
4 thirteen customers were not enough to meet the common trading element. 161 F.3d 745, 751 (D.C.
5 Cir. 1998). However, when the court considered the fact that individuals were solicited, as opposed
6 to sophisticated financial institutions, the court found the common trading element was satisfied.
7 *Id.*; see also *S.E.C. v. Global Telecom Services, L.L.C.*, 325 F.Supp. 2d 94 (D.Conn. 2004) (stating
8 that the broad sale to the public factor must be weighed against the purchaser's need for protection
9 and noting that where notes are sold to individuals rather than sophisticated institutions, common
10 trading has been found). The third factor is to examine the reasonable expectations of the
11 investment public. The Court stated that it will consider instruments to be securities on the basis of
12 such public expectations, even where an economic analysis of the circumstances of the particular
13 transaction might suggest that the instruments are not securities as used in that transaction. *Id.* The
14 fourth and final factor is whether some factor such as the existence of another regulatory scheme
15 significantly reduces the risk of the instrument, thereby rendering application of the securities laws
16 unnecessary. *Id.*; see also *MacNabb v. S.E.C.*, 298 F.3d 1126 (9th Cir. 2002). Failure to satisfy one
17 of the factors is not dispositive; they are considered as a whole. See *MacNabb*, 298 F.3d at 1132-33
18 (holding that, although the third factor supported neither side's position, the notes in question
19 nevertheless constituted securities).

20 The second part of the *Reves* test is that if the note does not resemble one of the families of
21 notes that are not securities, then, using the same four factors, the presumption may be rebutted by a
22 showing that the note represents a category that should be added as a non-security. *Id.*

23 The evidence in the administrative record supports the determination that the notes are
24 securities under the *Reves* test because:

- 25 (1) The motivations of the buyer and seller. The Atkinsons bought the Media Note to
26 earn twenty percent (20%) interest on their funds. BRANDON and Cosenza raised

1 the funds to finance the costs associated with taking CELL WIRELESS [U.S. Social
2 Scene] public;

3 (2) Common trading. The offer and sale of the note was made to unsophisticated
4 individuals. Mrs. Atkinson testified that she was not educated about investing, that
5 she was a layperson, and that she did not understand the difference between private
6 and public stock. In addition, BRANDON made several additional presentations
7 regarding the Media Note opportunity to potential investors whose sophistication is
8 unkown;

9 (3) The reasonable expectations of the investing public. The Atkinsons reasonably
10 expected to make money from their participation in the Note. BRANDON used the
11 term "investment" (i.e., characterizing the Note as an investment) in his
12 communications with the Atkinsons; and

13 (4) Risk reducing factors. BRANDON represented that the Note was collateralized by
14 commissions due to Cosenza/Media from the Sports Network. However, the
15 commissions were nonexistent. The investment transaction involving the Atkinsons
16 was not subject to any other regulatory scheme. As such, the record is void of any
17 apparent factors that reduced the risk associated with the note which would render
18 the application of the securities laws unnecessary.

19 Consequently, the note is a security for purposes of the antifraud provisions of the Arizona
20 Securities Act.

21 **3. In the alternative, BRANDON offered and sold an investment contract to the**
22 **Atkinsons.**

23 An investment contract is included in the definition of "security" under the Securities Act.
24 See A.R.S. § 44-1801(26). The core definition of an investment contract was set forth in *S.E.C. v.*
25 *W.J. Howey Co.*, 328 U.S. 293 (1946). Under the *Howey* test, an investment contract exists if it
26 involves (1) an investment of money or other consideration; (2) in a common enterprise; and (3)

1 with the expectation of profits earned solely from the efforts of the promoter or a third party.¹
2 Although the test was designed to interpret federal law, Arizona courts have adopted the *Howey* test
3 and ordinarily apply it to determine whether an investment is a security. *See Rose v. Dobras*, 128
4 Ariz. 209, 211, 624 P.2d 887, 889 (Ct. App. 1981).

5 Arizona courts agree that the “investment contract” definition of a security embodies a
6 flexible principal, “that is capable of adaptation to meet the countless and variable schemes devised
7 by those who seek to use the money of others on the promise of profits.” *Nutek*, 194 Ariz. at 108,
8 977 P.2d at 830. This flexible approach recognizes the investor’s economic reality and maximizes
9 the protection that the Arizona Securities Act provides to Arizona investors. *See Rose*, 128 Ariz. at
10 212, 624 P.2d at 890 (“The supreme court has consistently construed the definition of ‘security’
11 liberally.”); *Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990).

12 Two tests have been developed to determine the existence of the “common enterprise”
13 element: (1) horizontal commonality; and (2) vertical commonality. *See Daggett v. Jackie Fine*
14 *Arts, Inc.*, 152 Ariz. 559, 565, 733 P.2d 1142, 1148 (Ct. App. 1987). The commonality element is
15 satisfied if horizontal *or* vertical commonality is demonstrated. *Id.* at 566, 733 P.2d at 1149; *see*
16 *also S.E.C. v. R.G. Reynolds Ent., Inc.*, 952 F.2d 1125, 1130 (9th Cir. 1991). Horizontal
17 commonality requires a pooling of investor funds collectively managed by the promoter. *Daggett*,
18 152 Ariz. at 565, 733 P.2d at 1148. Vertical commonality is “an enterprise common to an investor
19 and seller, promoter, or some third party” and can be shown when “the fortunes of the investors are
20 linked with those of the promoters.” *R.G. Reynolds*, 952 F.2d at 1130; *see also Daggett*, 152 Ariz.
21 at 565, 733 P.2d at 1148.

22 The third and final prong of the *Howey* test has evolved since it was first handed down over
23 50 years ago. In order to satisfy the third *Howey* prong in Arizona, one must only establish that the
24 efforts made by those other than the investors were the undeniably significant ones, and were those

25
26 ¹ The *Howey* case originally used the phrase “solely from the efforts of others,” however, this language was later
modified to “substantially” in *SEC v. Glenn W. Turner Enterprises*, 474 F.2d 476, 482 (9th Cir. 1973).

1 essential managerial efforts that affected the failure or success of the enterprise. *See Nutek*, 194
2 Ariz. at 108, 977 P.2d at 830.

3 The first prong of the *Howey* test is satisfied because the Atkinsons paid their money to
4 Media in exchange for a twenty percent (20%) return on their investment. The second prong of the
5 *Howey* test, vertical commonality, is satisfied because the Atkinsons could only have realized a
6 profit if Media was successful in assisting another company U.S. Social Scene [CELL WIRELESS]
7 in becoming a publically traded company. The third prong of the *Howey* test is satisfied because the
8 Atkinsons would earn a profit from the investment in Media Note , which profits could only be
9 derived from the managerial efforts of Cosenza and BRANDON. Without the success of
10 BRANDON and Cosenza, the Atkinsons would not receive the return on their investment pursuant
11 to the terms of the Media Note. The Atkinsons had no managerial role whatsoever and simply
12 surrendered their money to Media. Therefore, the Media Note constitutes an investment contract
13 (i.e., security) under the Securities Act.

14
15 **B. BRANDON offered and sold to the Atkinsons the Media note which was an
unregistered security.**

16 The Arizona Securities Act provides that a security may not be sold in Arizona unless it is
17 registered with the Commission. *See* A.R.S. § 44-1841. Whether the Media Note is considered a
18 note or an investment contract, it must be registered with the Commission. *See* A.R.S. § 44-
19 1807(26). Mr. Brokaw testified that the Media investment was not registered with the Commission.
20 Consequently, BRANDON sold an unregistered security in violation of the registration provisions
21 of the Securities Act. *See* A.R.S. § 44-1841.

22 **C. BRANDON acted as an unregistered salesman in violation of A.R.S. § 44-1842.**

23 A person who sells securities in Arizona must be registered as a dealer or salesman with the
24 Commission. *See* A.R.S. § 44-1842. Under the Securities Act, a salesman is defined as “an
25 individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities”
26 within Arizona. *See* A.R.S. § 44-1801(22).

1 BRANDON was hired by Media to sell the investment in Media (i.e., the Media Note).
2 BRANDON offered and sold the Media Note to the Atkinsons. Therefore, BRANDON acted as a
3 securities salesman. Mr. Brokaw testified that BRANDON was not registered with the Commission
4 as a salesman. Consequently, BRANDON sold the Media Note in violation of the registration
5 provisions of the Securities Act. *See* A.R.S. § 44-1842.

6 **D. BRANDON violated the antifraud provisions of the Securities Act when he sold**
7 **the Media Note to the Atkinsons.**

8 Under the Securities Act, it is a fraudulent practice for *any* person in connection with a
9 transaction involving an offer or sale of securities, **directly or indirectly**, do any of the following:
10 (1) employ any device, scheme or artifice to defraud; (2) make untrue statements of material fact, or
11 omit to state any material fact necessary in order to make the statements made, in the light of the
12 circumstances in which they were made, not misleading; or (3) engage in any transaction, practice
13 or course of business which operates or would operate as a fraud or deceit. *See* A.R.S. § 44-
14 1991(A) (emphasis added). Securities fraud may be proven by any *one* of these acts. *See Hernandez*
15 *v. Superior Court*, 179 Ariz. 515, 880 P.2d 735 (Ct. App. 1994).

16 In *State v. Gunnison*, the Arizona Supreme Court held that scienter (i.e., intent to defraud) is
17 not a necessary element of a violation of A.R.S. § 44-1991(A)(2). 27 Ariz. 110, 113, 618 P.2d
18 604, 607 (1980). Reliance also is not an element of a violation of A.R.S. § 44-1991(A)(2). *See*
19 *Rose*, 128 Ariz. at 214, 624 P.2d at 892. As explained in *Aaron v. Fromkin*, “[t]he elements of
20 securities fraud are articulated within the statute itself.” 196 Ariz. 224, 227, 994 P.3d 1039, 1042
21 (Ct. App. 2000). Nothing in the language of A.R.S. § 44-1991(A) speaks of reliance. *See* A.R.S. §
22 44-1991(A).

23 A “material fact” is a statement or omission that would have assumed actual significance in
24 the deliberations of the reasonable buyer. *See Aaron*, 196 Ariz. at 227, 994 P.3d at 1042. Arizona
25 courts have held that the issuer of securities has an affirmative duty not to mislead potential
26 investors. *See Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (Ct.

1 App. 1986).

2 BRANDON engaged in multiple violations of the antifraud provisions of the Securities Act.
3 See A.R.S. § 44-1991(A). First, BRANDON represented to the Atkinsons that Cosenza and Media
4 had relationships with the PGA and the Sports Network; however, neither relationship existed.
5 Second, BRANDON represented to the Atkinsons that their investment would be used to facilitate
6 the public offering of CELL WIRELESS [U.S. Social Scene] stock; however, the Atkinsons'
7 investment funds (1) were evenly split between BRANDON and Cosenza and used for personal
8 purposes, (2) used to make payments to individuals not related to the intended purpose of the
9 investment, and (3) the alleged attempt to take CELL WIRELESS [U.S. Social Scene] public did
10 not occur, at the earliest, until January 2008, several months after the Atkinsons invested. Third,
11 BRANDON represented to the Atkinsons that there was little or no risk to the investment because
12 the Media Note was collateralized by commissions owed to Cosenza/Media. However, those
13 commissions were non-existent. Therefore, in at least three instances, BRANDON committed
14 securities fraud in connection with his offer and sale of the Media note to the Atkinsons in violation
15 of the Securities Act. See A.R.S. § 44-1991(A).

16 **CELL WIRELESS/U.S. SOCIAL SCENE INVESTMENT**

17 **A. BRANDON, SHOREY, and CELL WIRELESS offered and sold an unregistered**
18 **security in the form of stock.**

19 The Arizona Securities Act provides that a security may not be sold in Arizona unless it is
20 registered with the Commission. See A.R.S. § 44-1841. Stock is a security. See A.R.S. § 44-
21 1801(26). According to testimony from Josh B., Terry B., and Mr. Brokaw, the investors believed
22 they were buying stock whether it was called stock, a convertible debenture, or something else. Mr.
23 Brokaw testified that the stock in CELL WIRELESS [U.S. Social Scene] was not registered with
24 the Commission. Therefore, the stock in CELL WIRELESS [U.S. Social Scene] was offered and
25 sold in violation of the registration provisions of the Securities Act. See A.R.S. § 44-1841.

1 **B. CELL WIRELESS acted as an unregistered dealer and BRANDON and SHOREY**
2 **acted as unregistered salesmen in violation of A.R.S. § 44-1842.**

3 A person who sells securities in Arizona must be registered as a dealer or salesman with the
4 Commission. *See* A.R.S. § 44-1842. Under the Securities Act, a “dealer” is defined, in part, as
5 an issuer, other than an investment company, who, directly or through an officer, director,
6 employee or agent who is not registered as a dealer under this chapter, engages in selling
7 securities issued by such issuer.

8 A.R.S. § 44-1801(9)(b).

9 CELL WIRELESS issued stock under its former company name, U.S. Social Scene.
10 Therefore, CELL WIRELESS is a dealer. *See* A.R.S. § 44-1801(9)(b)

11 BRANDON and SHOREY offered and sold stock in CELL WIRELESS [U.S. Social Scene]
12 to investors. Consequently, both BRANDON and SHOREY are salesmen. *See* A.R.S. § 44-
13 1801(22).

14 Mr. Brokaw testified that CELL WIRELESS was not registered as a dealer with the
15 Commission, and BRANDON and SHOREY were not registered with the Commission as
16 salesmen. As a result, BRANDON, SHOREY, and CELL WIRELESS violated the registration
17 provisions of the Securities Act. *See* A.R.S. § 44-1842.

18 **C. BRANDON, SHOREY, and CELL WIRELESS violated the antifraud provisions**
19 **of the Securities Act when they offered and sold securities to the investors.**

20 BRANDON, SHOREY, and CELL WIRELESS violated the antifraud provisions of the
21 Securities Act when they offered and sold securities to the investors in U.S. Social Scene [CELL
22 WIRELESS]. BRANDON and SHOREY, individually and on behalf of CELL WIRELESS [U.S.
23 Social Scene], described the CELL WIRELESS [U.S. Social Scene] to investors as financially
24 sound. Josh B. testified that BRANDON confirmed that Cosenza invested the \$4 million into the
25 company. However, this was not true. Both Josh B. and Terry B. testified that SHOREY
26 represented to them the positive financial condition of CELL WIRELESS [U.S. Social Scene].

1 SHOREY said that the company was operating “wonderfully” and was a “good investment.”
2 However, SHOREY failed to tell both Josh B. and Terry B. that CELL WIRELESS had no
3 operations since March 2007, was “deep in debt,” and that SHOREY never reviewed the books and
4 record so the company. Furthermore, Mr. Brokaw testified that none of the bank records from
5 CELL WIRELESS or U.S. Social Scene showed any significant deposits except for the investor
6 funds which GBD wired to the CELL WIRELESS bank account.

7 BRANDON and SHOREY, individually and on behalf of CELL WIRELESS represented
8 that the investors would receive stock in U.S. Social Scene [CELL WIRELESS] in exchange for
9 their investment funds. However, Josh B. Terry B., and Mr. Brokaw testified that not one of the
10 investors received stock.

11 BRANDON and SHOREY, individually and on behalf of CELL WIRELESS, represented
12 that the investor funds would be used to facilitate the merger between CELL WIRELESS and U.S.
13 Social Scene. However, Mr. Brokaw testified that \$25,000 of the investor funds were returned to
14 the Atkinsons, the Media Note investors, \$20,000 was wired to the CELL WIRELESS [U.S. Social
15 Scene] bank account, and most of the rest of the investor funds were withdrawn as cash. Mr.
16 Brokaw testified that SHOREY disbursed portions of the \$20,000 to BRANDON, SHOREY,
17 SHOREY’s company, and used for the payment of some other miscellaneous expenditures.

18 BRANDON, individually, and on behalf of CELL WIRELESS told Josh B. and Terry B.
19 that the investment in CELL WIRELESS [U.S. Social Scene] was “for sure win; there was no way
20 that this could lose,” “we can’t legally say that this is a sure thing, but it’s a for sure thing,” that it
21 was a good investment, that it was legitimate, that it was a “can’t miss” investment, and that the
22 stock would increase 10-fold or 20-fold within a two-or three month period. However,
23 BRANDON admitted that he was aware that CELL WIRELESS [U.S. Social Scene] had no
24 operations since March 2007 and admitted that CELL WIRELESS [U.S. Social Scene] was in need
25 of additional capital because it was losing money.

26

1 Both Josh B. and Terry B. testified that during the time BRANDON and SHOREY made
2 the various misrepresentations of the financial condition of CELL WIRELESS, the potential
3 increase in the value of the stock, and the risk-free nature of the investment, not one of them
4 corrected the other. Instead, BRANDON and SHOREY nodded their heads in agreement with the
5 other. Consequently, BRANDON, SHOREY, and CELL WIRELESS all violated the antifraud
6 provisions of the Securities Act. *See* A.R.S. § 44-1991(A).

7 **D. SHOREY is a person who controlled CELL WIRELESS within the meaning**
8 **of A.R.S. § 44-1999, so that SHOREY is jointly and severally liable to the same extent**
9 **as CELL WIRELESS for violations of the antifraud provisions of the Securities Act.**

10 SHOREY is not only liable for his own multiple violations of the antifraud provisions of
11 the Securities Act, but SHOREY, as a control person, is also liable for the violations of the
12 antifraud provisions committed by CELL WIRELESS. Arizona Revised Statute § 44-1999(B)
13 imposes presumptive liability “on those persons who have the *power* to directly or indirectly
14 control the activities of those persons or entities liable as primary violators of A.R.S. § 44-1991.”
15 *Eastern Vanguard Forex Ltd. v. Ariz. Corp. Comm’n*, 206 Ariz. 399, 412, 79 P.3d 86, 89 (Ct.
16 App. 2003) (emphasis in original); *See also* A.R.S. § 44-1999(B).

17 SHOREY had the power to indirectly or directly control CELL WIRELESS the
18 day-to-day business operations of CELL WIRELESS. First, SHOREY held the following
19 numerous positions of power and responsibility with CELL WIRELESS: he was a Board
20 member, CFO, treasurer, and secretary. Second, SHOREY controlled the finances of CELL
21 WIRELESS. SHOREY was the only signatory of the CELL WIRELESS and U.S. Social Scene
22 bank accounts. Third, the corporate books and records were maintained at the home of SHOREY.
23 The Fourth, the evidence shows that only SHOREY received stock in CELL WIRELESS. While
24 Cosenza was to receive stock pursuant to the CELL-WIRELESS-Social Scene Agreement, no
25 stock was ever issued to Cosenza. Fifth, SHOREY was the only one to negotiate and contracted
26 with BRANDON to raise capital on behalf of CELL WIRELESS. Finally, SHOREY was the

1 only one authorized by the board of directors of CELL WIRELESS to negotiate the sale and/or
2 merger of CELL WIRELESS with Media and U.S. Social Scene. As previously discussed,
3 CELL WIRELESS violated the antifraud provisions of the Securities Act. Accordingly,
4 SHOREY is also liable for those violations as the control person of CELL WIRELESS. See
5 A.R.S. § 44-1999(B).

6 **E. BRANDON, SHOREY, and CELL WIRELESS are liable for the payment of**
7 **restitution and administrative penalties for their violations of the registration and**
8 **antifraud provisions of the Securities Act.**

9 BRANDON, SHOREY, and CELL WIRELESS are liable for the payment of restitution for
10 their violations of the registration and antifraud provisions of the Securities Act. "If it appears to
11 the [C]ommission ... that any person has engaged in ... any act, practice or transaction that
12 constitutes a violation" of the Arizona Securities Act, the Commission is permitted "...to take
13 appropriate affirmative action to correct the conditions resulting from the [Respondents'] acts,
14 including a requirement to provide restitution as prescribed by rules of the Commission." A.R.S. §
15 44-2032(1) (emphasis added). BRANDON, SHOREY, and CELL WIRELESS raised \$130,000
16 from six investors. As both were participants in the violation of the registration and antifraud
17 provisions of the Securities Act and since SHOREY is a control person of CELL WIRELESS, an
18 entity who participated in the violation of the antifraud provisions of the Securities Act, they are
19 each liable for the repayment of the \$130,000 raised from the six investors.

20 The Commission may also assess an administrative penalty of up to \$5,000 per violation of
21 the Securities Act. See A.R.S. § 44-2036. The Securities Division believes that \$75,000 is the
22 appropriate amount of administrative penalties to assess against BRANDON, SHOREY, and CELL
23 WIRELESS, jointly and severally, for their multiple violations of the registration and antifraud
24 provisions of the Securities Act with respect to the CELL WIRELESS [U.S. Social Scene]
25 investment. The Securities Division further believes that \$15,000 is the appropriate amount of
26 administrative penalties to assess against BRANDON for his multiple violations of the registration

1 and antifraud provisions of the Securities Act with respect to the Media Note.

2 **F. The respective marital communities of BRANDON and SHOREY are subject to**
3 **liability under the Securities Act.**

4 Pursuant to A.R.S. § 25-211, all property acquired by either husband or wife during the
5 marriage is the community property of the husband and wife except for property that is acquired by
6 gift, devise, descent or is acquired after service of a petition for dissolution of marriage, legal
7 separation or annulment if the petition results in a decree of dissolution of marriage, legal
8 separation or annulment. During marriage, “the spouses have equal management, control and
9 disposition rights over their community property and have equal power to bind the community.”
10 A.R.S. § 25-214(B). In addition, “..., either spouse may contract debts and otherwise act for the
11 benefit of the community” A.R.S. § 25-215(D). “(T)he presumption of law is, in the absence of
12 the contrary showing, that all property acquired and all business done and transacted during
13 coverture, by either spouse, is for the community.” *Johnson v. Johnson*, 131 Ariz. 38, 45, 638 P.2d
14 705, 712 (1981) (emphasis added).

15 First, the Respondent Spouses failed to present any evidence that their respective spouses,
16 BRANDON and SHOREY, were acting for their own benefit and for the benefit or in furtherance of
17 their marital communities. Additionally, BRANDON testified that the money he received was used
18 by himself and his family. Also, the evidence demonstrates that D. BRANDON received investment
19 funds.

20 Second, BRANDON and SHOREY neither contested the liability of the marital community
21 nor presented any evidence that they were not married at the time they offered and sold the
22 investments.

23 Third, BRANDON, SHOREY, and Respondent Spouses failed to rebut the presumption that
24 a debt incurred during marriage is a community obligation. The Arizona Court of Appeals has
25 stated, “[a] debt incurred by a spouse during marriage is presumed to be a community obligation; a
26 party contesting the community nature of a debt bears the burden of overcoming that presumption

1 by clear and convincing evidence.” *Hrudka v. Hrudka*, 186 Ariz. 84, 91, 919 P.2d 179, 186 (Ct.
2 App. 1995). Furthermore, “... a debt is incurred at the time of the actions that give rise to the debt.”
3 *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111, 193 P.3d 802, 806 (Ct. App. 2008). Here, the
4 actions giving rise to the debt occurred while BRANDON and SHOREY were married. Therefore,
5 the debt was incurred during marriage and is presumed to be a community debt. Since BRANDON,
6 SHOREY, and the Respondent Spouses failed to overcome this presumption, the debt remains a
7 liability of their respective marital communities.

8 Based on the foregoing, the restitution and administrative penalty is a community debt. The
9 Commission need not determine whether the Respondent Spouses had knowledge, participation, or
10 intent in order to bind the community for the debt incurred. The presumption of intent is enough to
11 bind the community, even if the Respondent Spouse was unaware or did not approve of their
12 participant spouses’ actions. The *Ellsworth* court stated, “[I]f the husband acts with the object of
13 benefiting the community, a fact not questioned here, the obligations so incurred by him are
14 community in nature, whether or not the wife approved thereof.” *Ellsworth v. Ellsworth*, 5 Ariz.
15 App. 89, 92, 423 P.2d 364, 367 (Ct. App. 1967) citing *Donato v. Fishburn*, 90 Ariz. 210, 367 P.2d
16 245 (1961). Since SHOREY, BRANDON, and the Respondent Spouses failed to meet their burden
17 and present “highly probable” evidence to rebut the presumptions, the debts are liabilities of their
18 respective marital communities. See A.R.S. § 25-215. Therefore, the marital communities of
19 BRANDON, SHOREY, and the Respondent Spouses are subject to any order of restitution,
20 administrative penalties, or other appropriate affirmative.

21 IV. REQUEST FOR RELIEF

22 For the reasons set forth above, the Securities Division requests the following relief:

- 23 1. Order Respondents, and any of Respondent’s agents, employees, successors and
24 assigns, permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
- 25 2. Order BRANDON, individually, the marital community of BRANDON and D.
26 BRANDON, SHOREY, individually, and the marital community of SHOREY and MARY JANE

1 SHOREY, and CELL WIRELESS, jointly and severally with Respondent Cosenza under Docket
2 No. S-20763A-10-0430, to pay restitution to the Commission in the principal amount of \$130,000,
3 pursuant to A.R.S. §§ 44-2032 and 25-215, for the CELL WIRELESS [U.S. Social Scene
4 investment];

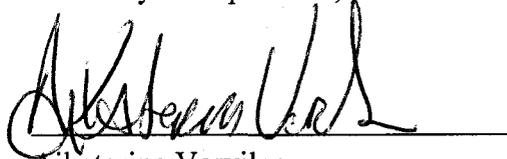
5 3. Order BRANDON, individually, and the marital community of BRANDON and D.
6 BRANDON, jointly and severally with Respondent Cosenza under Docket No. S-20763A-10-0430, to
7 pay restitution to the Commission in the principal amount of \$75,000, pursuant to A.R.S. §§ 44-2032
8 and 25-215, for the Media Note investment;

9 4. Order BRANDON, individually, the marital community of BRANDON and D.
10 BRANDON, SHOREY, individually, and the marital community of SHOREY and MARY JANE
11 SHOREY, and CELL WIRELESS, jointly and severally, to pay the state of Arizona administrative
12 penalties in the amount of \$75,000 for multiple violations of the registration and antifraud provisions
13 of the Securities Act, pursuant to A.R.S. §§ 44-2036 and 25-215, for the CELL WIRELESS [U.S.
14 Social Scene] investment;

15 5. Order BRANDON, individually, and the marital community of BRANDON and D.
16 BRANDON, jointly and severally, to pay the state of Arizona administrative penalties in the amount
17 of \$15,000 for violations of the registration and antifraud provisions of the Securities Act, pursuant to
18 A.R.S. §§ 44-2036 and 25-215, for the Media Note investment; and

19 6. Order any other relief that the Commission deems appropriate.

20 RESPECTFULLY SUBMITTED this 27th day of September, 2011.

21 

22 Aikaterine Vervilos
23 Counsel for the Securities Division

1 ORIGINAL AND EIGHT (8) COPIES
2 of the foregoing filed this 27th day of September,
3 2011, with

4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington St.
7 Phoenix, AZ 85007

8 COPY of the foregoing hand-delivered
9 this 27th day of September, to:

10 Administrative Law Judge Marc Stern
11 Arizona Corporation Commission
12 1200 W. Washington St.
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed and e-mailed
15 this 27th day of September, to:

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