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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

NOV 15 2011

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[Signature]

In the matter of
WELDON BEALL, an unmarried man,
and
WELDON LLC, an Arizona limited liability
company,
Respondents.

DOCKET NO. S-20792A-11-0114

SECURITIES DIVISION'S POST HEARING
BRIEF¹

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

I. PROCEDURAL HISTORY

On March 16, 2011, the Securities Division filed a Notice of Opportunity against
WELDON BEALL ("BEALL") and WELDON LLC ("WELDON"). On April 27, 2011, the
Respondents filed an Answer and requested a hearing. Pursuant to a Procedural Order dated May
31, 2011, a hearing was set to begin on September 12, 2011. The hearing began on September 12,
2011, and continued through September 15, 2011, and September 19, 2011. The ALJ admitted
Division Exhibits S-1 through S-23 and R-1 through R-11 into evidence.²

¹ Pursuant to Administrative Law Judge Stern's recommendation, the Securities Division's Post
Hearing Brief incorporates its response to the Legal Memorandum Re: ARS §1844(1) Exemption
("Legal Memorandum") filed by Respondents on September 7, 2011. Hearing Transcript "H.T." pg
13:8 - 10.

² H.T. pg. 10:1 - 6 and 14 - 19; pg. 133:19 - 20; pg. 192:20 - 22; pg. 329:17 - 18; pg. 694:25 -
695:2; pg. 737:13 - 15.

1 **II. JURISDICTION**

2 The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
3 Constitution and the Arizona Securities Act ("Securities Act").

4 **III. FACTS**

5 The facts in this case are not in dispute. Respondents agree that they offered and sold
6 securities in the form of investment contracts.³ The issue is whether or not the offering was exempt
7 from the registration requirements of the Securities Act under A.R.S. § 44-1841.

8 BEALL invented a displayable money vault and applied for and eventually received a
9 patent for the displayable money vault.⁴ On October 13, 2006, BEALL formed WELDON and has
10 been its sole manager/member.⁵ BEALL solicited friends, acquaintances and co-workers to fund
11 the expenses related to obtaining and marketing the patent.⁶ BEALL, on behalf of WELDON,
12 signed "Agreements" with investors that stated the amount of their investments and the expected
13 returns.⁷ The Agreements were drafted by BEALL.⁸

14 According to the Agreements, BEALL, through WELDON, raised \$246,000 from 11
15 investors.⁹ None of the investors had a pre-existing business relationship with BEALL.¹⁰ Most
16 investors had little or no investment experience.¹¹

17 Except for the Agreements, BEALL and the investors agree that there were no disclosure
18 documents, financial statements, or prospectuses provided to investors prior to making their
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21 ³ See Legal Memorandum, pg 1:19 – 22.

22 ⁴ H.T. 536:7 – 24; Exhibit R-10.

23 ⁵ H.T. pg 534:20 – 24; Exhibit S-2.

24 ⁶ H.T. pg 21:16 – 20; pg 95:25 – pg 96:1 - 5; pg 198:8 – 12; pg 399:21 – 25; pg 402:21 - 23.

25 ⁷ Exhibits S-3 – S-12; S-21; R-1 – R-8.

26 ⁸ H.T. pg 103:4 – 6; pg 212:25 – pg 213:1; pg 268:25 – pg 269:1 -4; pg 501:5 - 10.

⁹ Exhibits S-3 – S-12; S-19; S-21; R-1 – R-8.

¹⁰ H.T. pg 25:4 – 7; pg 201:12 – 14; pg 519:17 – 20; pg 586:12 – 19; pg 586:25 – pg 587:2; pg
587:5 – 588:15; pg 589:13 – pg 590:25; pg 616:24 – pg 624:22; pg 625:6 – 12; pg 763:17 – 19; pg
764:3 - 5.

¹¹ H.T. pg 21:8 – 12; pg 50:20 – 25 – pg 51:1 – 7; pg 502:13 - 18.

1 investments.¹² BEALL admits he did not inquire into the investors' net worth.¹³ BEALL admits he
 2 did not inquire into the investors' annual income.¹⁴ Nor did BEALL inquire into the investors'
 3 ability to withstand a loss of their investment funds.¹⁵ In addition, BEALL admits he did not inquire
 4 into the prior investment experiences of the investors.¹⁶ Nor did BEALL disclose the risk involved
 5 with the investment.¹⁷ According to an investor, Mr. Mays, BEALL represented that there was no
 6 risk since it was a "done deal."¹⁸ The investors had no role with respect to WELDON after
 7 investing their funds.¹⁹

8 The Agreements with the investors all stated that WELDON was the owner of the U.S.
 9 Patent Application titled *Displayable Money Vault For A Casino*.²⁰ The evidence showed that
 10 BEALL (not WELDON, as stated in the Agreements or represented to the investors) was the owner
 11 of the patent until at least September 15, 2011.²¹ BEALL signed the documents to transfer his
 12 personal interest to WELDON at the end of this administrative hearing.²²

13 The Agreements stated that the investment funds would be used for "marketing of the
 14 intellectual property" or the "protection of the intellectual property."²³ Some investors believed that
 15 their funds would be used to pay the setup costs for WELDON and patent expenses.²⁴ BEALL
 16 provided no other written disclosure information regarding how the investment funds were going to

17 ¹² H.T. pg 25:8 -22; pg 51:12 - 24; pg 435:25 - pg 436:1 - 3; pg 436:13 - 16; pg 482:1 - 11; pg
 18 496:5 - 9; pg 504:24; pg 508:23 - pg 509: pg 591:6 - 17; 1; pg 629:18 - 22; pg 765:6 - 8.

19 ¹³ H.T. pg 24:18 - 19; pg 200:1 - 2; pg 328:19 - 22; pg 437:6 - 7; pg 519:21 - 22; pg 624:23 - pg
 20 625:1; pg 626:5 - 7; pg 764:22 - 24.

¹⁴ H.T. pg 24:20 - 22; pg 200:3 - 4; pg 328:19 - 22; pg 437:4 - 5; pg 519:23 - 24; pg 626:8 - 9; pg
 21 764:25 - 1 - 2.

¹⁵ H.T. pg 25:1 - 3.

¹⁶ H.T. pg 24:23 - 25; pg 626:10 - 11; pg 765:3 - 5.

¹⁷ H.T. pg 23:19 - 21; pg 25:23 - 26:1; pg 520:3 - 12.

¹⁸ H.T. pg 203:11 - 19; pg 204:17 - 21; 205:18 - 23; pg 328:23 - pg 329:4.

¹⁹ H.T. pg 103:16 - 19; pg. 304:24 - pg 305:1; pg 426:11 - 12; pg 435:20 - 21; pg 473:12 - 15; pg
 23 484:10 - 13; pg 508:6 - 7; pg 512:19 - 23; pg 520:16 - 18; pg 629:4 - 6; pg 764:19 - 21.

²⁰ H.T. pg 26:14 - 21; pg 64:19 - 22; pg 213:7 - 11; pg 536:7 - 24; pg 537:2 - 9; Exhibits S-3 - S-
 24 12; S-21; R-1 - R-8.

²¹ H.T. pg 696:3 - pg 698:12; Exhibits S-3 - S-12; S-21; R-1 - R-8; R-10 and 11.

²² H.T. pg 537: 7 - 22; Exhibits R-10 and 11.

²³ H.T. pg 518:1 - 7; pg 749:24 - 750:1; Exhibits S-3 - S-12; S-21; R-1 - R-8.

²⁴ H.T. pg 23:25 - 24:1 - 4; pg 206:2 - 8; pg 479:8 - 14; pg 517:19 - pg 518:9.

1 be used other than what was contained in the Agreements.²⁵ Contrary to the written Agreements,
2 BEALL admitted that investor funds were used to pay his personal expenses.²⁶ Further, BEALL
3 admitted that his sole source of income was from the investors.²⁷

4 The Agreements listed the return each investor expected to receive.²⁸ All of the Agreements
5 promised that the first funds in “revenue received from the sale or license of any of the intellectual
6 property” would be paid to each investor.²⁹ In at least one instance, an investor believed that he
7 would receive the “first” funds received from the sale of the invention and that he had a priority
8 over the other investors because of the representation in the Agreement.³⁰ The Agreements also
9 state that after the initial payment of returns, each investor would receive “all revenue received
10 from the sale of license of the Intellectual Property up to” a set amount depending upon the
11 investor.³¹

12 Even though the Agreements detailed the manner in which investors would receive returns,
13 in at least one instance an investor received repayment of some of his investment funds prior to the
14 time when such payment was due.³² The return of investment came from funds received from other
15 investors.³³

16 Subsequent to receiving the final patent on the money vault, BEALL informed the investors
17 that he negotiated an agreement with Hard Rock Café to purchase the patent for around \$51
18 million.³⁴ According to some of the witnesses, Mr. Mays, Mr. McCullough, Mr. Hood and Ms.
19 Eagle (“Witness[es]”), BEALL showed them a signed contract between WELDON and the Hard
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²⁵ H.T. pg 23:22 – 24.

22 ²⁶ H.T. pg 582:3 – 6; pg 579:24 – pg 580:5.

23 ²⁷ H.T. pg 44:6 – 16; pg 466:8 - 11.

24 ²⁸ Exhibits S-3 – S-12; S-21; R-1 – R-8.

25 ²⁹ Exhibits S-3 – S-12; S-21; R-1 – R-8.

26 ³⁰ H.T. pg 523:13 – pg 524:1.

³¹ Exhibits S-3 – S-12; S-21; R-1 – R-8.

³² H.T. pg 484:23 – pg 485:7.

³³ H.T. pg 632:20 – 23.

³⁴ H.T. pg 41:1 – 2; pg 60:8 - 12; pg 117:1 - 5; pg 117:9 – 12; pg 204:17 – 21.

1 Rock Café Casinos.³⁵ The Witnesses believed that BEALL had sold the patent and had a contract
 2 that was to pay within a short period of time.³⁶ The only reason Mr. Mays invested was because he
 3 saw the contract with Hard Rock Café and Casino and was told it was a “sure thing.”³⁷ In addition,
 4 the Witnesses also were shown a document from Homeland Security regarding the transfer of
 5 money from the Hard Rock Café Casinos overseas.³⁸ Ms. Eagle testified that she saw the
 6 documents and even attempted to establish whether the documents were authentic.³⁹ Ms. Eagle
 7 testified that she communicated with Hard Rock Café and Casino and was told there was no
 8 agreement or any negotiations.⁴⁰

9 IV. LEGAL ARGUMENT

10 A. Pursuant to A.R.S. §44-1841, Securities Must Be Registered Or Qualify For A 11 Valid Exemption.

12 Pursuant to A.R.S. § 44-1841, it is unlawful to sell securities within or from Arizona unless
 13 the securities have been registered or there is an applicable exemption. In this case, the
 14 Respondents have admitted that they offered and sold securities in the form of investment
 15 contracts.⁴¹ The securities were not registered. Accordingly, Respondents violated the registration
 16 provisions of the Securities Act under A.R.S. § 44-1841.

17 B. Under A.R.S. §44-1842, Beall Was Required To Be Registered Or Have A Valid 18 Exemption.

19 Pursuant to A.R.S. §44-1842, it is unlawful for any dealer or salesman to offer to sell
 20 securities within or from Arizona unless the dealer is registered under the Act. Neither the BEALL

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 22 ³⁵ H.T. pg 39:22 – 40:1 – 6; pg 40:21 – 25; pg 59:22 – pg 60:1 – 12; pg 61:6 – pg 62:1 - 9; pg
 23 80:17 – 20; pg 114:21 – 25 pg 115:1 – 25; pg 203:16 – 25 – pg 204:1 – 11; pg 228:3 -23; pg 284 –
 24 pg 289:1 – 9; pg 299:13 – pg 300:1 – 22; 328:4 - 11.

25 ³⁶ H.T. pg 204:17 – 21; pg 227:2 – 6; pg 328: 15 - 18.

26 ³⁷ H.T. pg 226:24 – pg 227:9.

³⁸ H.T. pg 42:23 – 24; pg 43:13 - 25; pg 116:16 – 18; pg 118:14 – 25 – pg 119:1 – 10; pg 301:7 -

23.

³⁹ Exhibit S-20.

⁴⁰ Exhibit S-20.

⁴¹ See Legal Memorandum. Page 1 line 19.

1 nor WELDON was registered as a dealer or salesman under the Act.⁴² Accordingly, Respondents
2 violated the registration provisions of the Securities Act under A.R.S. § 44-1842.

3 **C. The Burden Is On The Person Claiming an Exemption To Prove It Is**
4 **Applicable.**

5 BEALL asserts that the offering was exempt under A.R.S. § 44-1844(A)(1).⁴³ Pursuant to
6 A.R.S. § 44-2033, in any action, when a defense is based upon any exemption under the Act, the
7 burden of proving the exemption exists shall be upon the party raising the defense. "The general
8 rule governing the burden of proof in Arizona is that a party who asserts the affirmative of an issue
9 has the burden of proving it." *Black, Robertshaw, Frederick, Copple & Wright, P.C. v. U.S.*, 130
10 Ariz. 110, 114, 634 P.2d 398, 492 (Ct. App. 1981) quoting *Harvey v. Aubrey*, 53 Ariz. 210, 213,
11 87 P.2d 482, 483 (1939). In any action, civil or criminal, the burden of proving the applicability of
12 an exemption from registration under the Securities Act falls upon the party raising such a defense.
13 *See* A.R.S. §44-2033. *See also, State v. Barber*, 133 Ariz. 572, 578, 653 P.2d 29, 35, (Ct. App.
14 1982).

15 The Securities Act is for protection of the public, fair and equitable business practices and
16 the suppression of fraudulent or deceptive practices in the sale of purchase of securities. *See*
17 Arizona Securities Act, Intent and Construction, Laws 1951, Ch.18 § 20. An exemption from
18 registration should be narrowly construed to further the purpose of the Securities Act. *See SEC v.*
19 *Murphy*, 626 F.2d 633, 641 (9th Cir. 1980).⁴⁴

20 BEALL and WELDON assert that the offer and sale of securities by Respondents were
21 exempt from registration pursuant to A.R.S. § 44-1844(A)(1) based upon their claim that there was
22 no public offering. The Respondents misinterpret the statute.

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24 ⁴² Exhibit S-1.

25 ⁴³ *See* Legal Memorandum.

26 ⁴⁴ Arizona courts look to federal courts for guidance in interpreting state securities statutes. *See*
Nutek Information Systems, Inc. v. Arizona Corp. Comm'n, 194 Ariz. 104, 108, 977 P.2d 826, 830
(Ct. App. 1998).

1 Courts have developed a flexible test for determining whether an offering is a “private”
2 offering to qualify for the exemption.⁴⁵ *Id.* at 644 - 645. The Courts look to a variety of factors
3 including, but not limited to: 1) the number of offerees; 2) the sophistication of the offerees; 3) the
4 size and manner of the offering; and 4) the relationship of the offerees to the issuer. *Id.* at 644 -
5 645.

6 **1. Number of offerees and investors.**

7 Although, the number of investors in this case is limited, there is not a specific number that
8 determines a public versus private offering. *See SEC v. Ralston Purina Co.*, 346 U.S. 119, 125, 73
9 S.Ct. 981, 984, 97 L.Ed. 1494 (1953).

10 In their Legal Memorandum, Respondents made the argument that there were a series of
11 offerings; that each investment was a separate offering or the offers made in each year constituted a
12 separate offering.⁴⁶ According to the Respondents, this tribunal should not look at the total number
13 of victims, but how many in each year invested. This is incongruent.

14 In order to determine if there are separate offerings, the courts look to a number of factors:
15 1) whether the offerings are part of a single plan of financing; 2) whether the offerings involve
16 issuance of the same class of securities; 3) whether the offerings are made at or about the same
17 time; 4) whether the same kind of consideration is to be received; and 5) whether the offerings are
18 made for the same general purposes. *See Murphy*, 626 F.2d at 645.

19 The investors all put their funds into WELDON for the purpose of funding the “marketing
20 of the intellectual property” or the “protection of the intellectual property.”⁴⁷ The terms of the
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22 ⁴⁵ To qualify for [private offering] exemption, the purchasers of the securities must: (1) have
23 enough knowledge and experience in finance and business matters to evaluate the risks and merits
24 of the investment (the ‘sophisticated investor’), or be able to bear the investment’s economic risk;
25 (2) have access to the type of information normally provided in a prospectus; and (3) agree not to
resell or distribute the securities to the public. In addition, you may not use any form of public
solicitation or general advertising in connection with the offering. *See*
<http://www.sec.gov/info/smallbus/qasbsec.htm>, Section VI(B).

26 ⁴⁶ Page 5 lines 1 – 3; lines 12 - 17.

⁴⁷ H.T. pg 749:24 – 750:1; Exhibits S-3 – S-12; S-21; R-1 – R-8.

1 Agreements are essentially all the same for the investors.⁴⁸ The amount of the investments and the
2 expected returns may differ; however, the overall financing scheme is outlined in the Agreements.⁴⁹

3 All investors receive the same type of securities with the same terms. All investors would be
4 paid from the sale of the invention.⁵⁰ In fact, all the investors would receive the “first” funds
5 received from the sale of the invention.⁵¹ The investments spanned a couple of years, but all had
6 the same purpose - “marketing of the intellectual property” or the “protection of the intellectual
7 property” for the displayable money vault.⁵² There was only one integrated offering by BEALL
8 and WELDON.

9 The securities offered and sold by the Respondents were part of one integrated offering, not
10 a series of smaller offerings. Having an integrated offering, suggests a public offering rather than a
11 private offering.

12 2. Sophistication of the offerees.

13 Next, the sophistication of the offerees and investors needs to be analyzed in order to
14 determine if the offerees and investors in this case need the protections of the Securities Act. “The
15 focus of the inquiry should be on the need of the offerees for the protections afforded by
16 registration.” *See SEC v. Ralston Purina Co.*, 346 U.S. 119, 127, 73 S.Ct. 981, 984, 97 L.Ed. 1494
17 (1953). BEALL acknowledges that he did not have nor seek information related to the investors’
18 business knowledge and experience in making investments.⁵³ BEALL did not provide any of the
19 investors with access to the information necessary to make an informed investment decision.
20 Instead, BEALL made assumptions based upon the way an investor dressed or where the investors

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23 ⁴⁸ Exhibits S-3 – S-12; S-21; R-1 – R-8.

24 ⁴⁹ Exhibits S-3 – S-12; S-21; R-1 – R-8.

25 ⁵⁰ Exhibits S-3 – S-12; S-21; R-1 – R-8.

26 ⁵¹ Exhibits S-3 – S-12; S-21; R-1 – R-8.

⁵² Exhibits S-3 – S-12; S-21; R-1 – R-8.

⁵³ H.T. pg 618:11 – 13; pg 619:9 – 12; pg 620:1 – 2; pg 620:13 – 14; pg 620:20 – 21; pg 621:7 – 9;
pg 622:3 – 5; pg 622:12 – 15; pg 623:9 – 11; pg 624:3 – 7; pg 624:19 – 22.

1 lived that the person was qualified to make the investment.⁵⁴ As issuers, BEALL and WELDON
2 are required to **know** the sophistication level of their investors. *See Murphy*, 626 F.2d at 646.

3 BEALL testified that he based his opinion of the investors' sophistication by the suit an
4 investor wore or the fact that they had a big home.⁵⁵ BEALL did not make any inquiries into the
5 sophistication of the offerees and investors.⁵⁶ Nor did BEALL provide any evidence that he gave the
6 investors access to the information a sophisticated investor would need to make an informed
7 investment decision. Just because someone may dress nice, have a nice home or are able to make
8 home repairs does not mean they are sophisticated investors who do not need the protections of the
9 Securities Act.

10 Neither BEALL nor WELDON produced any evidence to establish that each offeree and
11 investor was sophisticated and did not need the protection of the Securities Act. The court in
12 *Murphy* found that since *Murphy* failed to provide any evidence to establish that the investors were
13 sophisticated, he failed to meet his burden. *Id.* at 646; *see also* A.R.S. § 44-2033.

14 The lack of sophistication of the investors suggests a public rather than a private offering.

15 **3. Manner of offering.**

16 BEALL and WELDON sought out friends and acquaintances and used word of mouth to
17 obtain their investors.⁵⁷ However, the courts still look to whether the investors, as a group, are the
18 type to need the protections of the Securities Act. *Id.* at 646 - 647. The testimony from investors
19 and confirmed by BEALL indicates that there was no pre-existing business relationship between
20 the investors and BEALL or WELDON.⁵⁸ Some of the investors testified they met BEALL
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23 ⁵⁴ H.T. pg 702:7 - 19; pg 702:23 - pg 703:10; pg 703:11 - pg 704:2.

24 ⁵⁵ H.T. pg 702:23 - pg 703:10; 702:11 - 19; pg 700 - pg 719.

25 ⁵⁶ H.T. pg 624:19 - pg 925:12; pg 625:25 - pg 626:15.

26 ⁵⁷ H.T. pg 21:16- 20; pg. 197:24 - pg 198:2; pg 325:4 - 19; pg 399:11 - pg 400:10; pg 402:21 -
23; pg 414: 11 - 23; pg 448:20 - 23; pg 493:8 - 15.

⁵⁸ H.T. pg 25:4 - 7; pg 201:12 - 14; pg 519:17 - 20; pg 586:12 - 19; pg 586:25 - 587:2; pg 587:5 -
588:15; pg 589:13 - pg 590:25; pg 616:24 - 624:22; pg 625:6 - 12; pg 763:17 - 19; pg 764:3 - 5.

1 through other investors and were mere acquaintances of BEALL.⁵⁹ BEALL accepted investments
2 from friends, acquaintances and friends of acquaintances.

3 Even with no general advertising, the manner in which BEALL and WELDON obtained
4 investors (word of mouth and casual relationships) indicates a public rather than a private offering.

5 **4. Relationship between the offerees and the issuer.**

6 Lastly, the courts look to the relationship between the issuer (BEALL and WELDON) and
7 the investors. *Id.* at 646. "A court may only conclude that the investors do not need the protection
8 of the Act if all the offerees have relationships with the issuer affording them access to or
9 disclosure of the sort of information about the issuer that registration reveals." *Id.* at 647. As
10 BEALL and the investors testified, they met BEALL through other investors and were mere
11 acquaintances of BEALL.⁶⁰ BEALL accepted investments from friends, acquaintances and friends of
12 acquaintances.

13 BEALL and WELDON provided no information to the investors regarding the use of funds
14 (other than what was contained in the Agreements), financial statements, or any other information
15 except that BEALL invented a displayable money vault and had applied for a patent.⁶¹ Respondents
16 failed to provide the type of information that a **reasonable investor** would need to have in order to
17 allow them to make a reasonable investment decision.⁶²

18 To determine if a security offering qualifies as a private offering, the offerees **must receive**
19 **or have access to the information that is material to their investment decision.** *Id.* at 643.
20 (emphasis added). The court in *Murphy* stated that information is material if there is a substantial
21 likelihood that a **reasonable person** would consider it important in deciding whether to invest. *Id.*
22 at 643. (emphasis added).

23 ⁵⁹ H.T. pg 325:4 – 19; pg 414: 11 – 23.

24 ⁶⁰ H.T. pg 325:4 – 19; pg 414: 11 – 23.

25 ⁶¹ H.T. pg 25:8 -22; pg 51:12 – 24; pg 435:25 – pg 436:1 – 3; pg 436:13 – 16; pg 482:1 – 11; pg
26 496:5 – 9; pg 504:24; pg 508:23 – 509: pg 536:7 – 24; pg 591:6 – 17; 1; pg 629:18 – 22; pg 765:6 –
8; Exhibits S-3 – S-12; S-21; R-1 – R-8; R-10.

⁶² H.T. pg 25:8 -22; pg 51:12 – 24; pg 435:25 – pg 436:1 – 3; pg 436:13 – 16; pg 482:1 – 11; pg
496:5 – 9; pg 504:24; pg 508:23 – 509: pg 591:6 – 17; 1; pg 629:18 – 22; pg 765:6 - 8.

1 The information required to be provided to **reasonable investors** to allow them to make an
2 informed decision to invest is extensive. *Id.* at 647. Courts may conclude that investors do not need
3 the protections of the Securities Act, but only if the offerees and investors have relationships with
4 the issuer affording them access to or disclosure of the sort of information about the issuer that
5 registration reveals. *Id.* at 647. It is incumbent upon the Respondents *to produce evidence* that the
6 offerees and investors had the necessary information to make an informed investment decision. *Id.*
7 at 647. Neither BEALL nor WELDON provided the evidence necessary to overcome this
8 requirement.

9 Under the Securities Act, the information that is required to be provided to offerees and
10 investors is “designed to protect the investor by furnishing him with detailed knowledge of the
11 company and its affairs.” *Id.* at 647. “If the securities are sold without full disclosure or effective
12 access to significant information, there is not exemption.” *See Cook v. Avien, Inc.*, 573 F.2d 685,
13 691 (Ct. App. 1978).

14 Respondents state in their Legal Memorandum⁶³ that the offerees and investors did not
15 receive any written disclosure documents nor did they ask for any disclosure documents. The
16 burden is not on the investors to seek the information from the issuer. *See Trimble v. American Sav.*
17 *Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (Ct. App. 1986). (“This requirement not
18 only removes the burden of investigation from an investor, but places a heavy burden upon the
19 offeror not to mislead potential investors in any way.”). The burden is on the issuer to provide the
20 necessary information for a **reasonable investor** to make a reasonable investment decision.
21 Offerors have an **affirmative duty** to not mislead the investors in any way. *See Aaron v. Fromkin*,
22 196 Ariz. 224, 227, 994 P.2d 1039, 1042 (Ct. App. 2000) and *Trimble*, 152 Ariz. at 553, 733 P.2d
23 at 1136. Under the Securities Act, the investors are not required to conduct due diligence; that burden
24 is on BEALL and WELDON as the offerors and they failed to meet their burden.

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⁶³ Page 3 line 21.

1 The Respondents state throughout their Legal Memorandum that “everybody knew”
 2 information about the offering and about the Respondents. The mere statement is unpersuasive. The
 3 issuer has the burden to *prove* that all offerees and investors received the information necessary to
 4 make a reasonable and informed investment decision. The blanket statement that “everybody knew”
 5 does not meet the standard. In fact, the burden is on the issuer to prove that he had the knowledge
 6 through inquiry or a pre-existing business relationship that he had a reasonable basis to believe the
 7 offeree was sophisticated and had the ability to evaluate the information provided to make the
 8 investment decision. *See Murphy*, 626 F.2d at 646 - 647. Respondents did not meet their burden in
 9 this case.

10 In their Legal Memorandum, Respondents state that everybody knows that “[i]nvestors are
 11 always silent partners in a limited liability company.”⁶⁴ This statement is not true. As the investors and
 12 BEALL testified, the investors had no role in WELDON other than to provide money.⁶⁵ They had no
 13 management authority.⁶⁶ Nor did the investors have any ability to control the bank account or direct
 14 how funds were spent.⁶⁷

15 The investors in this matter needed the protections of the Securities Act. The evidence
 16 established that BEALL did not have the type of relationship with the investors that would support the
 17 assertion that the investors did not need the protections of the Securities Act. Therefore, this suggests a
 18 public rather than a private offering, as suggested by Respondents.

19 **D. Weldon Beall and Weldon LLC violated the antifraud provisions of the Arizona**
 20 **Securities Act.**

21 Under A.R.S. § 44-1991, it is a fraudulent practice and unlawful for a person, in connection
 22 with a transaction or transactions within or from this state involving an offer to sell or buy
 23 securities, or a sale or purchase of securities, to directly or indirectly do any of the following: (1)

24 ⁶⁴ Page 6 line 25- 26.

25 ⁶⁵ H.T. pg 103:16 – 19; pg. 304:24 – pg 305:1; pg 426:11 – 12; pg 435:20 – 21; pg 473:12 – 15; pg
 484:10 – 13; pg 508:6 – 7; pg 512:19 – 23; pg 520:16 – 18; pg 629:4 – 6; pg 764:19 - 21.

26 ⁶⁶ H.T. pg 103:23 – pg 104:4; pg 305:14 – 24; pg 435:18 – 21; pg 520:22 – pg 521:1; pg 764:3 – 7; pg
 764:16 - 18.

⁶⁷ H.T. pg 103:20 – 22; pg 305:9 – 13; pg 435:22 – 24; pg 484:4 – 9; pg 520:13 – 15; pg 764:8 – 15.

1 employ any device, scheme or artifice to defraud; (2) make untrue statements of material fact, or
2 omit to state any material fact necessary in order to make the statements made, in the light of the
3 circumstances in which they were made, not misleading; or (3) engage in any transaction, practice
4 or course of business which operates or would operate as a fraud or deceit. See A.R.S. § 44-
5 1991(A). Securities fraud may be proven by any one of these acts. *Hernandez v. Superior Court*,
6 179 Ariz. 515, 880 P.2d 735 (Ct. App. 1994).

7 In the context of these provisions, “materiality” requires a showing of substantial likelihood
8 that, under all the circumstances, the misstated or omitted fact would have assumed actual significance
9 in the deliberations of a **reasonable buyer**. See *Trimble*, 152 Ariz. at 553, 733 P.2d at 1136 (emphasis
10 added) citing *Rose v. Dobras*, 128 Ariz. 209, 214, 624 P.2d 887, 892 (Ct. App. 1981), quoting *TSC*
11 *Industries v. Northway, Inc.*, 426 U.S. 438, 96 S. Ct. 2126, 48 L. Ed. 2d 757 (1976). Under this
12 objective test, there is no need to investigate whether an omission or misstatement was actually
13 significant to a particular buyer. Courts look to the significance of an omitted or misrepresented fact
14 to a **reasonable investor**. See *TSC Industries*, 426 U.S. at 445, 96 S. Ct. 2126, 48 L. Ed. 2d 757
15 (1976). “It is whether the existence or nonexistence of the fact in question is a matter to which a
16 **reasonable man** would attach importance in determining his choice of action in the transaction.” See
17 *SEC v. Seaboard Corporation*, 677 F.2d 1301, 1306 (9th Cir. 1982) (emphasis added).

18 In this case, the only information BEALL provided to investors was contained in the
19 Agreements.⁶⁸ Whether the investors “knew” or not was the responsibility of Respondents. BEALL
20 admitted to not disclosing to his investors the details of the use of funds.⁶⁹ Whether the specific
21 investors in this case would want to know the details of this investment is irrelevant. The standard
22 Courts use is what a **reasonable investor** would want to know.

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26 ⁶⁸ Exhibits S-3 – S-12; S-21; R-1 – R-8.

⁶⁹ H.T. pg 629:18 - 22.

1 Additionally, there is an affirmative duty not to mislead potential investors in any way and
2 places a heavy burden on the offeror and removes the burden of investigation from the investor.
3 *Trimble*, 152 Ariz. at 553.

4 A misrepresentation or omission of a material fact in the offer and sale of a security is
5 actionable even though it may be unintended or the falsity or misleading character of the statement
6 may be unknown. In other words, scienter or guilty knowledge is not an element of a violation of
7 A.R.S. § 44-1991(A)(2)(3). *See e.g., State v. Gunnison*, 127 Ariz. 110, 113, 618 P.2d 604 (1980);
8 *Allstate Life Insurance Company v. Baird & Co., Inc.*, 756 F.Supp.2d 1113 (2010). Stated differently,
9 a seller of securities is strictly liable for any of the misrepresentations or omissions he makes. *Rose*,
10 128 Ariz. at 214. Additionally, there is no requirement to show that investors relied on the
11 misrepresentations or omissions or that the misrepresentations or omissions caused injury to the
12 investors. *Trimble*, 152 Ariz. at 553. “Plaintiffs’ burden of proof requires only that they demonstrate
13 that the statements were material and misleading.” *Aaron*, 196 Ariz. at 227, 314 P.2d at 1042.

14 A primary violation of A.R.S. § 44-1991 can be either direct or indirect. It is now well settled
15 in Arizona that indirectly violating A.R.S. § 44-1991 is not to be narrowly interpreted. *See e.g. Barnes*
16 *v. Vozack*, 113 Ariz. 269, 550 P.2d 1070 (1976)(Officers of company could be liable under A.R.S. §
17 44-1991 for the fraudulent statements of a salesman of the security.)

18 Mr. Mays, Mr. McCullough, Mr. Hood (through Special Investigator Michael Brokaw), and
19 Ms. Eagle all testified that they were shown documents representing that the displayable money
20 vault had been sold to Hard Rock Café and Casino for \$51 million.⁷⁰ According to some investors,
21 BEALL showed them a signed contract between WELDON and Hard Rock Café Casinos.⁷¹ The
22 testimony from Mr. Mays, Mr. McCullough, Mr. Hood (through Special Investigator Michael
23 Brokaw), and Ms. Eagle was consistent and had similar facts including the name of the “Hamish
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25 ⁷⁰ H.T. pg 41:1 – 2; pg 60:8 - 12; pg 117:1 - 5; pg 117:9 – 12; pg 204:17 – 21.

26 ⁷¹ H.T. pg 39:22 – 40:1 – 6; pg 40:21 – 25; pg 59:22 – pg 60:1 – 12; pg 61:6 – pg 62:1 - 9; pg
80:17 – 20; pg 114:21 – 25 pg 115:1 – 25; pg 203:16 – 25 – pg 204:1 – 11; pg 228:3 -23; pg 284 –
pg 289:1 – 9; pg 299:13 – pg 300:1 – 22; 328:4 - 11.

1 Dodds" who is one of Hard Rock's executives.⁷² In addition, the testimony from Mr. Mays, Mr.
2 McCullough, and Ms. Eagle indicated that they also were shown a document that appeared to be
3 from Homeland Security related to the transfer of the \$51 million.⁷³

4 Mr. Mays testified that the only reason he invested was because of the sale of the money
5 vault to Hard Rock Café and Casino.⁷⁴ Mr. Mays testified that he had been approached by BEALL
6 previously but thought the risk was too great.⁷⁵ When Mr. Mays invested, it was only because of
7 the sale to Hard Rock that made the risk much less and therefore Mr. Mays was willing to make the
8 investment.⁷⁶ Although only a few investors testified to the existence of the Hard Rock documents,
9 if BEALL led just one investor to believe that the displayable money vault had been sold, A.R.S. §
10 44-1991 was violated.

11 At hearing, the testimony established that BEALL and WELDON misrepresented to investors
12 that WELDON owned the patent to the displayable money vault as represented in the Agreements.⁷⁷
13 The owner of the patent was BEALL individually.⁷⁸ The patent was not transferred to WELDON until
14 the testimony showed that the Agreements were misleading.⁷⁹ The transfer, if it took place, was
15 attempted during the administrative hearing.⁸⁰

16 At the hearing, through testimony, it was discovered that one investor received the return of
17 some investment funds from BEALL and WELDON.⁸¹ The source of the funds was funds received
18 from other investors.⁸² The other investors were not told that one investor would receive a return of
19 some of his investment funds from funds being invested by other investors.⁸³

20 ⁷² H.T. pg 41:13 - 18; pg 115:13 - 22; pg 204:6 - 11.

21 ⁷³ H.T. pg 42:21 - pg 43:14; 116:18 - 25.

22 ⁷⁴ H.T. pg 203:11 - 19; pg 204:17 - 21; 205:18 - 23; pg 226:24 - pg 227 6; pg 228:12 - 19.

23 ⁷⁵ H.T. pg 278:2 - 14.

24 ⁷⁶ H.T. pg 203:11 - 19; pg 204:17 - 21; 205:18 - 23; pg 226:24 - pg 227 6; pg 228:12 - 19.

25 ⁷⁷ H.T. pg 279:8 - 14; pg 696:8 - pg 698:12; Exhibits S-3 - S-12; S-19; S-21; R-1 - R-8.

26 ⁷⁸ Exhibit R-10.

⁷⁹ Exhibit R-11.

⁸⁰ H.T. pg 694:6 - 20; Exhibit R-11.

⁸¹ H.T. pg 484:14 - pg 487:3.

⁸² H.T. 632:20 - 23.

⁸³ H.T. pg 521:5 - 8.

1 In addition, Linda McNellis, BEALL's significant other, received a large amount of
2 investment funds from WELDON's bank accounts.⁸⁴ The source of the funds in the WELDON bank
3 accounts came from investors.⁸⁵ BEALL testified that Ms. McNellis was in no way involved with
4 WELDON.⁸⁶

5 Any *one* of these actions would violate A.R.S. §44-1991. Taken together, they show BEALL
6 and WELDON violated the antifraud provisions of Securities Act.

7 E. Restitution.

8 According to the Agreements entered into evidence, BEALL and WELDON raised
9 \$246,000 from investors.⁸⁷ Testimony from some investors indicated that less may have been
10 raised.⁸⁸ Neither BEALL nor WELDON provided any documentation to support their contention
11 that they did not receive the full \$246,000. In fact, BEALL testified that he would honor the
12 Agreements as written – based upon the full \$246,000.⁸⁹ BEALL and WELDON should be held
13 accountable for the full amount of funds listed in the Agreements. *See* A.R.S. § 44-2032.

14 V. CONCLUSION

15 The evidence presented at the hearing establishes that BEALL and WELDON, while not
16 being registered as securities dealers or salesmen, offered unregistered securities, in the form of
17 investment contracts, within or from Arizona, to Arizona investors. The testimony and evidence show
18 that neither the securities nor BEALL or WELDON qualified for an exemption. Further, the evidence
19 presented at hearing also establishes that BEALL or WELDON violated the antifraud provisions of
20 the Securities Act.

21 The Securities Division established that a **reasonable investor** would have wanted to know
22 more information than what BEALL and WELDON provided. In addition, the burden is on the
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24 ⁸⁴ Exhibit S-13.

⁸⁵ H.T. 632:20 – 23.

⁸⁶ H.T. pg 734:18 – 23.

⁸⁷ Exhibits S-3 – S-12; S-21; R-1 – R-8.

⁸⁸ Testimony of Kenneth L. Graham, Vol. III pg 396 - 443.

⁸⁹ H.T. pg 601:7 – 12; pg 661:8 – 18.

1 Respondents to provide evidence that the issuer knew the investors were sophisticated and the issuer
2 provided the investors the information necessary to allow a **reasonable investor** to make an informed
3 investment decision. The Respondents did not meet their burden.

4 Based upon the evidence presented, the Division respectfully requests this tribunal to:

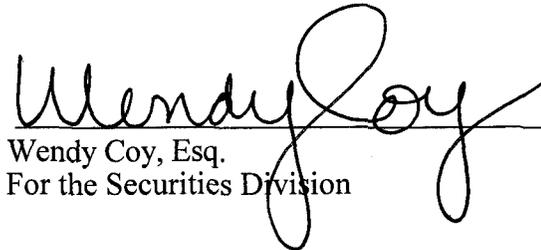
5 A. Order BEALL and WELDON to cease and desist from further violations of the Act
6 pursuant to A.R.S. §44-2032;

7 B. Order BEALL and WELDON to pay an administrative penalty of not less than \$55,000⁹⁰
8 pursuant to A.R.S. §44-2036(A);

9 C. Order BEALL and WELDON to pay restitution in the amount of \$246,000 pursuant to
10 A.R.S. §44-2032; and

11 D. Order any other relief this tribunal deems appropriate or just.

12 Respectfully submitted this 15th day of November, 2011.

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14 
15 Wendy Coy, Esq.
16 For the Securities Division
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25 ⁹⁰ Pursuant to A.R.S. §44-2036(A), the Commission is authorized to order administrative penalties
26 in an amount not to exceed \$5,000 per violation. The Securities Division alleges violations of
A.R.S. §§ 44-1841, 44-1842 and 1991. The Securities Division only seeks administrative penalty
of \$5,000 for each of the 11 investors totaling \$55,000.

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ORIGINAL AND THIRTEEN (13) COPIES
of the foregoing filed this
15th day of November, 2011, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

COPY of the foregoing hand-delivered this
15th day of November, 2011 to:

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