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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 2 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 9:58 a.m., on the 16th of
6 January, 2014.

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BEFORE: MARC E. STERN, Administrative Law Judge

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10 APPEARANCES:

11

For the Arizona Corporation Commission Securities
12 Division:

13

Ms. Wendy Coy
Staff Attorney, Securities Division
14 1300 West Washington Street
15 Phoenix, Arizona 85007

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16 For the Respondents:

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Mr. Kent Maerki and Mrs. Norma Jean Maerki, Pro Per
Dental Support Plus Franchise, LLC
18 10632 North Scottsdale Road, #B-479
19 Scottsdale, Arizona 85254

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KAREN L. KESSLER, RPR
Certified Reporter
24 Certificate No. 50821

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1 ALJ STERN: We're on the record in the matter of
2 Kent -- is it Maerki?

3 MR. MAERKI: Maerki. Yes, sir.

4 ALJ STERN: Maerki. In Docket
5 No. S-20897A-13-0391.

6 My name is Marc Stern. I'll preside this
7 morning.

8 And at this time we'll take appearances. And on
9 behalf of the Securities Division.

10 MS. COY: Wendy Coy.

11 ALJ STERN: And on behalf of -- I guess you're
12 representing yourself, Mr. Maerki?

13 MR. MAERKI: Yes, sir.

14 ALJ STERN: Is that your wife with you, sir?

15 MR. MAERKI: Yes, sir, it is.

16 ALJ STERN: And you're representing yourself,
17 ma'am?

18 MS. MAERKI: Yes.

19 ALJ STERN: And Dental Support Plus Franchise,
20 LLC, that's the company you're involved in, right?

21 MR. MAERKI: Yes.

22 ALJ STERN: All right. Ms. Coy, have you had a
23 chance to discuss anything with this respondent, or the
24 respondents at this time?

25 MS. COY: No, not at this time.

1 ALJ STERN: Okay. Mr. Maerki, are you going to
2 want to talk to Ms. Coy this morning to -- maybe you can
3 resolve this. I don't know if we have to schedule this
4 for a procedural conference, a status conference, or a
5 hearing.

6 MR. MAERKI: Certainly --

7 ALJ STERN: Could you pull the microphone over
8 and make sure your little green light is on at the
9 bottom?

10 MR. MAERKI: It is on, sir.

11 ALJ STERN: Okay.

12 MR. MAERKI: We'd certainly like to resolve this
13 and get it behind us; however, I don't know if that can
14 be done this morning or not. And we've had, I've had
15 one conversation with Ms. Coy, Norma had another
16 conversation with Ms. Coy, and our franchise attorneys
17 had another conversation with Ms. Coy. And then we
18 received this docket that's a pretty unusual document in
19 that it's just right rife with errors.

20 ALJ STERN: That's a notice of opportunity for
21 hearing?

22 MR. MAERKI: Yeah.

23 ALJ STERN: Okay. Ms. Coy, do you need some
24 more time to discuss this matter with the respondents?

25 MS. COY: We request that we go ahead and set a

1 hearing on this matter. I mean, we can have
2 discussions, but I'd like to have a hearing set.

3 ALJ STERN: Okay. We can schedule a hearing,
4 but it's going to be some months out.

5 And I noticed in the complaint, or the notice,
6 that you've alleged there is 360, or thereabouts,
7 investors in this offering.

8 MS. COY: That's correct.

9 ALJ STERN: And you're saying \$7 million is the
10 amount that was invested.

11 MS. COY: That's probably a minimum amount, yes.

12 MR. MAERKI: Sir.

13 ALJ STERN: Yes, sir.

14 MR. MAERKI: This is a franchise. These are not
15 investors. And that's where they have failed to
16 understand that this is a franchise. And we -- it was
17 put together by franchise attorneys and sold as a
18 franchise, and they keep saying investor, investor,
19 investor. It was sold as a franchise. It is a
20 franchise.

21 ALJ STERN: Well, I wouldn't know that until we
22 had a hearing and I listen to the case. In the interim,
23 perhaps you and your franchise attorneys can talk to the
24 Division and maybe work this out. They're requesting a
25 hearing be scheduled, and I can schedule a hearing. It

1 won't be until probably sometime this summer, or
2 probably in, I'm guessing the earliest time, June.

3 How many --

4 MR. MAERKI: I'm in concert with her relative to
5 the desire for a hearing as well.

6 ALJ STERN: Well, like I say, sometimes you can
7 resolve these things. Maybe you have evidence they're
8 not aware of that might help to resolve the matter, but
9 I don't know at this time what that situation will be.

10 Ms. Coy, how many witnesses, if this matter
11 would go to hearing with so many investors -- or what's
12 the status in terms of days of hearing?

13 MS. COY: I don't anticipate calling all 300
14 investors. We would anticipate six to seven days for
15 the Securities Division's case. That would include
16 investor witnesses, Staff witnesses, and possibly some
17 salespeople witnesses.

18 ALJ STERN: So you're saying people that were
19 involved in the sale of this offering?

20 MS. COY: Correct.

21 ALJ STERN: How many witnesses are we possibly
22 talking -- you say six to seven days. I mean, that
23 might be 15 or 20 witnesses at this point.

24 MS. COY: Right now we're somewhere between
25 seven and ten. Some people will be fairly short.

1 There's a few that are probably going to take most of
2 one day.

3 ALJ STERN: Mr. Maerki, I don't know how much
4 experience you have in litigation, but if this matter
5 would be required to be heard, do you anticipate you'll
6 be calling some witnesses to, you know, to validate your
7 claim?

8 MR. MAERKI: Yes, sir.

9 ALJ STERN: How many do you think you might
10 call?

11 MR. MAERKI: It could be an equal number.

12 ALJ STERN: Do you think you'll end up with an
13 attorney before, if it goes to hearing?

14 MR. MAERKI: I expect that to be the case, yes,
15 sir.

16 ALJ STERN: All right. What we normally do in a
17 case like this, I think we're probably, I'll have to
18 schedule this for about two weeks, maybe. I'm not going
19 to pick a date now.

20 Ms. Coy, do you have any particular problems
21 with dates in the summertime or -- let's, right now I'm
22 looking probably June onward.

23 MS. COY: At this point I don't have anything
24 scheduled.

25 ALJ STERN: Okay. Mr. Maerki, are you going to

1 be around in the heat of the summer?

2 MR. MAERKI: I'm sorry to say, yes.

3 ALJ STERN: Okay. And you don't have any idea
4 how many witnesses, if this matter would go to a
5 hearing, would be involved for your side, do you?

6 MR. MAERKI: No. But I would think a sufficient
7 number would max out at around half a dozen.

8 ALJ STERN: Okay. All right. I think,
9 initially, I'm going to set this up for a two-week
10 hearing, and I think it's far enough out that we should
11 be able to adapt to it.

12 And what I normally do in these cases, Mr.
13 Maerki, is ask the Division, about 45 days before the
14 hearing, to provide you with copies of exhibits and a
15 list of their witnesses so you know what is going to be,
16 at least have some idea of what's involved. And I ask
17 you to provide, or your attorney to provide, the same
18 materials to the Division in a mutual exchange and
19 provide me with a copy.

20 MR. MAERKI: Sir, if I have an attorney that is
21 not an Arizona Bar registered attorney, may they
22 represent them, represent me on an pro hac vice basis?

23 ALJ STERN: They know the procedures to follow.
24 They can contact -- they have to affiliate with an
25 Arizona attorney and file the necessary motion over at

1 the State Bar. And I'm sure they'll know what to do.
2 It's not a problem. We have had attorneys like that
3 previously representing clients.

4 MR. MAERKI: Okay. Relative to having
5 discussion in the interim with Ms. Coy, we've had two or
6 three meetings where we've had attorneys with us but the
7 attorneys weren't allowed to participate. Is that a
8 condition that will continue?

9 ALJ STERN: Well, you know, I don't know what
10 your situation is, sir. You mean this is an
11 out-of-state attorney, or --

12 MR. MAERKI: In the past we have had local
13 counsel, but it was a waste of time in that they weren't
14 allowed to participate in the forum.

15 ALJ STERN: Well, perhaps that was --
16 Was that an examination under oath or something?

17 MS. COY: His local attorneys were allowed to
18 participate, out-of-state attorneys not licensed in
19 Arizona were not.

20 ALJ STERN: And did the, did you advise them to
21 contact the State Bar?

22 MS. COY: I have never been approached on the
23 procedure for pro hac vice. All I ask is they do it
24 with sufficient time, because it does take a month or
25 six weeks or so to go through the entire process. So if

1 that's going to happen, I recommend it start fairly soon
2 so we can meet the deadline for the hearing.

3 MR. MAERKI: The point I was bringing up is that
4 we, in fact, did have attorneys at those discussions and
5 they were not allowed to participate. They were
6 present. They weren't allowed to participate in the
7 discussion.

8 ALJ STERN: What --

9 MS. COY: It was an examination under oath. The
10 attorneys are able to make objections, ask questions, do
11 what they're normally able to do during, if they're
12 licensed here.

13 ALJ STERN: Well, I don't know what you're
14 talking about, Mr. Maerki, according to her.

15 MR. MAERKI: According to me, we were told that
16 the attorneys could not participate at all and we could
17 not have any discussion except when we were outside of
18 the hearing room.

19 ALJ STERN: You were there for the examination?

20 MS. COY: I was present, and that's not
21 accurate. If he wanted to consult with his attorney,
22 one of the parties left the room, but other than that --
23 I know the nonlicensed attorney was not present during
24 one of the examinations under oath, but we didn't
25 prevent Mrs. Maerki from leaving the room or having that

1 attorney come in and talk.

2 ALJ STERN: Well, I don't really understand the
3 mechanics of it all, and I don't know what transpired.
4 I'm more concerned with what happens at the hearing, and
5 in that instance you'll have to have someone who's
6 admitted here representing you or a, somebody who comes
7 in by motion and then is authorized to represent you.

8 MR. MAERKI: I'm sorry to belabor this, but if
9 in fact Ms. Coy and I, we would have discussions in the
10 meantime, is there a particular protocol where we could
11 be represented by counsel or have counsel present in,
12 for that discussion where they could participate?

13 MS. COY: Mr. Maerki can contact me and we'll
14 discuss it.

15 ALJ STERN: I don't think it's that big of a
16 problem. I have seen them negotiate with lots of
17 respondents without attorneys and with respondents with
18 attorneys. I don't know what the problem is, but it
19 shouldn't be a problem.

20 As far as where we're at in this thing, I didn't
21 quite understand the mechanics of how this case works,
22 and he's saying this a franchise, so I hope the evidence
23 is better than, you know, what I have seen so far in
24 reading over the notice. He's saying we're dealing with
25 franchise holders, which is the first time I ever heard

1 that in some of these cases. But maybe this is a
2 franchise. I don't know.

3 I guess, Mr. Maerki -- we have, we have requests
4 for hearings from both Maerkis. And Mr. Maerki, you're
5 the manager and/or sole member, I imagine, of this
6 Dental Support Plus organization.

7 MR. MAERKI: I may be incorrect on that, but I
8 believe Norma Jean is the sole managing member of the
9 Dental Support Plus Franchise.

10 ALJ STERN: Okay. And she's the sole member?

11 MR. MAERKI: No, sir. Yes, sir. My apologies.

12 ALJ STERN: She's the member and manager?

13 MR. MAERKI: She's the sole member and managing
14 member, yes.

15 ALJ STERN: Okay.

16 MR. MAERKI: And by the way, just for
17 clarification purposes, that was a change. It was not
18 that initially. It was us, now it's her.

19 ALJ STERN: It was what?

20 MR. MAERKI: It was the two of us and now it's
21 her.

22 ALJ STERN: Oh, I see. Ms. Coy, with respect to
23 Mrs. Maerki, who's here today, it's alleged that she's
24 named solely as the, to determine liability of the
25 marital community though?

1 MS. COY: That's correct.

2 ALJ STERN: That's the way it goes. Okay. So
3 you're not saying she's an active participant such as
4 Mr. Maerki?

5 MS. COY: The way it's pled is she's there for
6 the community property issue.

7 ALJ STERN: Okay. All right. I'll put out a
8 procedural order. I'll schedule this matter for the
9 appropriate length of hearing from what I'm hearing,
10 from what we discussed today, the length of time.

11 Mr. Maerki, you're aware of the fact you have a
12 right to an attorney if you want to get one. This isn't
13 a criminal proceeding; it's an administrative civil
14 proceeding. However, there is quite a large amount of
15 money that's been alleged to have been collected,
16 whether it's security offer and sale is to be decided,
17 or whether it's a franchise, as you allege. But you
18 could be facing significant financial penalties and
19 restitution order, so you may want to consult with an
20 attorney.

21 If you're going to use an out-of-state attorney,
22 fine, but be sure to make your retention come about
23 fairly soon so he can get approved for appearing in the
24 proceedings. You may want your attorney to conduct
25 negotiations with the Division so --

1 MR. MAERKI: Yes, sir, I agree.

2 ALJ STERN: -- you've got to get going on that.

3 Okay.

4 Anything else?

5 MS. COY: No, sir.

6 ALJ STERN: All right. Thanks for your time
7 today, and I'll do a procedural order.

8 And I just want to make sure we have a good
9 mailing address for you, Mr. Maerki. 10632 North
10 Scottsdale Road, B-479; is that accurate?

11 MR. MAERKI: That's accurate, yes, sir.

12 ALJ STERN: Okay. All right. Thank you. That
13 concludes this proceeding at this time.

14 MS. MAERKI: Thank you.

15 MR. MAERKI: Thank you.

16 MS. COY: Thank you.

17 (The proceedings concluded at 10:13 a.m.)

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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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7 I, KAREN L. KESSLER, RPR, Certified Reporter
 8 No. 50821 for the State of Arizona, do hereby certify
 9 that the foregoing printed pages constitute a full, true
 10 and accurate transcript of the proceedings had in the
 11 foregoing matter, all done to the best of my skill and
 12 ability.

13

14 WITNESS my hand this 28th day of January,
 15 2014.

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 KAREN L. KESSLER, RPR
 Certified Reporter
 Certificate No. 50821

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