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BEFORE THE ARIZONA CORPORATION

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AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

- SUSAN BITTER SMITH, Chairman
- BOB STUMP
- BOB BURNS
- DOUG LITTLE
- TOM FORESE

In the matter of:

Docket No. S-20906A-14-0063

CONCORDIA FINANCING COMPANY, LTD,
a/k/a "CONCORDIA FINANCE,"

**MOTION TO DISMISS AND
ANSWER TO AMENDED
NOTICE OF OPPORTUNITY**

ER FINANCIAL & ADVISORY SERVICES,
LLC,

Arizona Corporation Commission

DOCKETED

LANCE MICHAEL BERSCH, and

JUN 08 2015

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

DOCKETED BY

RAM

PRELIMINARY STATEMENT

Michael Bersch and David Wanzek are well-respected CPAs who have practiced in the Lake Havasu area for many years, although David and his wife Linda later moved to Florida. In the 1990's, Michael and David became involved with Concordia Finance. Concordia helped truck drivers buy used "big rig" trucks by originating and servicing loans, which it then sold to investors. The loans were secured by the truck titles. According to the Securities Division, Concordia paid out to the investors more than it took in.¹ Twisting reality, the Securities Division now alleges that these truck loans were really "unregistered securities", and that the Respondents are therefore guilty of selling unregistered securities and selling securities without a license. But these simple truck loans were not—and were never intended to be—securities.

Moreover, Concordia was audited by reputable auditors and represented by represented by reputable lawyers. Reputable financial institutions, such as Chino Bank and Sunset Financial

¹ Amended Notice of Opportunity filed on May 7, 2015 at page 12 ¶ 62.

SNELL & WILMER
LLP
ONE ARIZONA CENTER
400 E. VAN BUREN, SUITE 1900
PHOENIX, ARIZONA 85004-2202

1 (an affiliate of Kansas City Life) were also involved in selling the loans or acting as custodians
2 for the truck titles. Mr. Bersch and Mr. Wanzek had no reason to suspect that the Securities
3 Division would—years after the fact—decide to argue that the loans were securities.

4 Further, the Division’s charges are very stale, covering the period from 1998 to 2008.²
5 That is 7 to 17 years ago. Records have been lost and memories dimmed over all these years.
6 Yet Mr. Bersch and Mr. Wanzek are being forced to defend their actions from up to 17 years
7 ago. What’s more, through the Division’s “securities fraud” charge, they are now being forced
8 to defend what they said in conversations up to 17 years ago. The Division’s charges are unfair
9 and without merit.

10 INTRODUCTION

11 Respondents ER Financial & Advisory Services, LLC³, Lance Michael Bersch, David
12 John Wanzek (collectively, the “ER Respondents”) and Linda Wanzek submit this combined
13 Motion to Dismiss and Answer to the Securities Division’s Amended Notice of Intent filed on
14 May 7, 2015 (“Amended Notice”). This Motion to Dismiss and Answer is made in accordance
15 with A.A.C. R14-23-106(H) and the Fourteenth Procedural Order in this docket. The ER
16 Respondents reserve all arguments and defenses they previously made in their Motion to Dismiss
17 and Answer (filed April 4, 2014) to the original Notice of Intent, as well as their Reply in
18 Support of Motion to Dismiss (filed May 16, 2014), each of which is preserved for the purposes
19 of Exceptions to the Commission and for any appeal, including without limitation the following
20 arguments and defenses:

- 21 • The violations alleged in the Notice (and now, Amended Notice) stretch back to
22 the 1990’s and are far too old to pursue under the Statute of Limitations, the Due
23 Process clauses of the United States and Arizona Constitutions, or the equitable
24 doctrines of laches.

25
26 ² Amended Notice of Opportunity filed on May 7, 2015 at ¶¶ 83, 86, 88.

27 ³ ER Financial & Advisory Services, LLC joins in this Motion to Dismiss and Answer only to the
28 extent that it exists and is capable of being sued or named as a respondent in this action. As the
Notice alleges (¶ 5), ER filed Articles of Termination and the Commission issued a Certificate of
Termination to ER, and ER’s existence is thus terminated.

1 its powers do not exceed those to be derived from a strict construction of the Constitution and
2 implementing statutes.”) The Commission’s limited powers must be strictly construed, and do
3 not include jurisdiction over escrow issues. Further, comity and respect for a fellow Arizona
4 State agency weigh against intruding into ADFI’s realm.

5 Moreover, even if the Commission had jurisdiction to adjudicate these escrow issues, and
6 even if the Division could prove a violation of ADFI’s escrow statutes, such a technical violation
7 does not constitute securities fraud. The Division does not allege that any of the investors
8 thought that the ER Respondents had an escrow license, or indeed, had ever heard of Arizona’s
9 escrow licensing scheme or the ADFI. Nor does the Division point to any protection or benefit
10 that an escrow license would have given investors. Further, the Division does not allege that the
11 ER Respondents knew about this obscure licensing requirement. Failing to disclose the absence
12 of an escrow license (if one was needed), when neither the ER Respondents nor the alleged
13 investors had ever heard of the licensing scheme, and when the licensing scheme would have
14 offered no additional protection to the investors, cannot be securities fraud. Indeed, such an
15 argument cheapens the concept of “fraud” to the point of absurdity.

16 Securities fraud in Arizona is defined as:

17 It is a fraudulent practice and unlawful for a person, in connection with a
18 transaction or transactions within or from this state involving an offer to sell or
19 buy securities, or a sale or purchase of securities, including securities exempted
20 under section 44-1843 or 44-1843.01 and including transactions exempted under
21 section 44-1844, 44-1845 or 44-1850, directly or indirectly to do any of the
22 following:

- 23 1. Employ any device, scheme or artifice to defraud.
- 24 2. Make any untrue statement of material fact, or omit to state any material fact
25 necessary in order to make the statements made, in the light of the
26 circumstances under which they were made, not misleading.
- 27 3. Engage in any transaction, practice or course of business which operates or
28 would operate as a fraud or deceit.

26 A.R.S. § 44-1991(A). There was no “device, scheme or artifice to defraud”, nor was the failure
27 to disclose the lack of an escrow license (if one was required) a “material fact necessary in order
28

1 to make the statements made, in the light of the circumstances under which they were made, not
2 misleading.” Thus, this part of the Amended Notice should be dismissed.

3 **ANSWER OF MRS. WANZEK**

4 Mrs. Wanzek is the classic innocent spouse. The Wanzeks have ten children, eight of
5 whom are minor children living with the Wanzeks in Florida. Five of the children are adopted.
6 Mrs. Wanzek has been very busy caring for the children. She had no involvement with her
7 husband’s business. Therefore, Mrs. Wanzek’s response to each and every allegation is that she
8 is without sufficient information to form a belief as to each allegation and, therefore, denies every
9 allegation. Further, Mrs. Wanzek is a resident of Florida (not a community property state), so
10 there is no marital community to join in this administrative proceeding. Moreover, Arizona lacks
11 personal jurisdiction over Mrs. Wanzek.

12 **ANSWER OF THE ER RESPONDENTS**

13 1. Answering Paragraph 1 of the Amended Notice, the ER Respondents state that
14 this allegation is a legal conclusion that does not require a response. In addition, the ER
15 Respondents deny that the Commission has any Constitutional authority in this enforcement
16 proceeding. *See Commercial Life Ins. Co. v. Wright*, 64 Ariz. 129, 140, 166 P.2d 943, 950
17 (1946)(“the Commission’s specific constitutional power over the sale of securities is limited to
18 inspection and investigation.”)

19 2. Answering Paragraph 2 of the Amended Notice, the ER Respondents state they
20 are without sufficient information to form a belief as to the truth of the allegations and they
21 accordingly deny the same.

22 3. The ER Respondents admit the allegations of Paragraph 3 of the Amended
23 Notice.

24 4. The ER Respondents admit the allegations of Paragraph 4 of the Amended
25 Notice.

26 5. The ER Respondents admit the allegations of Paragraph 5 of the Amended
27 Notice.

28

1 6. Answering Paragraph 6 of the Amended Notice, the ER Respondents state they
2 are without sufficient information to form a belief as to the truth of the allegations and they
3 accordingly deny the same. The ER Respondents deny that any contracts that were sold were
4 “investment contracts”, as that term is used in A.R.S. § 44-1801(26).

5 7. The ER Respondents admit the allegations of Paragraph 7 of the Amended
6 Notice.

7 8. Answering Paragraph 8 of the Amended Notice, the ER Respondents state that it
8 is not clear what actions of Linda Wanzek this allegation refers to, and that they are therefore
9 without sufficient information to form a belief as to the truth of the allegations and they
10 accordingly deny the same. The ER Respondents deny that Mrs. Wanzek has been validly joined
11 under A.R.S. § 44-2031(C), and they deny that she is subject to that statute or the jurisdiction of
12 this Commission. Mrs. Wanzek is a resident of Florida.

13 9. Answering Paragraph 9 of the Amended Notice, the ER Respondents state that
14 this is a legal conclusion which requires no response. If a response is required, the ER
15 Respondents state they are without sufficient information to form a belief as to the truth of the
16 allegations and they accordingly deny the same.

17 10. Answering Paragraph 10 of the Amended Notice, the ER Respondents state they
18 are without sufficient information to form a belief as to the truth of the allegations and they
19 accordingly deny the same.

20 11. Answering Paragraph 11 of the Amended Notice, the ER Respondents state they
21 are without sufficient information to form a belief as to the truth of the allegations and they
22 accordingly deny the same.

23 12. Answering Paragraph 12 of the Amended Notice, the ER Respondents state they
24 are without sufficient information to form a belief as to the truth of the allegations and they
25 accordingly deny the same.

26 13. Answering Paragraph 6 of the Amended Notice, the ER Respondents state they
27 are without sufficient information to form a belief as to the truth of the allegations and they
28 accordingly deny the same.

1 14. Answering Paragraph 14 of the Amended Notice, the ER Respondents state they
2 are without sufficient information to form a belief as to the truth of the allegations and they
3 accordingly deny the same.

4 15. Answering Paragraph 15 of the Amended Notice, the ER Respondents state that
5 the referenced documents speak for themselves and they deny any attempt to characterize them.
6 The ER Respondents state that they are without sufficient information to form a belief as to the
7 truth of the remaining allegations and they accordingly deny the same.

8 16. Answering Paragraph 16 of the Amended Notice, the ER Respondents state that
9 the referenced documents speak for themselves and they deny any attempt to characterize them.
10 The ER Respondents state that they are without sufficient information to form a belief as to the
11 truth of the remaining allegations and they accordingly deny the same.

12 17. Answering Paragraph 17 of the Amended Notice, the ER Respondents state that
13 the referenced documents speak for themselves and they deny any attempt to characterize them.
14 The ER Respondents state that they are without sufficient information to form a belief as to the
15 truth of the remaining allegations and they accordingly deny the same.

16 18. Answering Paragraph 18 of the Amended Notice, the ER Respondents state that
17 the referenced documents speak for themselves and they deny any attempt to characterize them.
18 The ER Respondents state that they are without sufficient information to form a belief as to the
19 truth of the remaining allegations and they accordingly deny the same.

20 19. Answering Paragraph 19 of the Amended Notice, the ER Respondents state that
21 the referenced documents speak for themselves and they deny any attempt to characterize them.
22 The ER Respondents state that they are without sufficient information to form a belief as to the
23 truth of the remaining allegations and they accordingly deny the same.

24 20. Answering Paragraph 20 of the Amended Notice, the ER Respondents state that
25 the referenced documents speak for themselves and they deny any attempt to characterize them.
26 The ER Respondents state that they are without sufficient information to form a belief as to the
27 truth of the remaining allegations and they accordingly deny the same.

28

1 21. Answering Paragraph 21 of the Amended Notice, the ER Respondents state that
2 the referenced documents speak for themselves and they deny any attempt to characterize them.
3 The ER Respondents state that they are without sufficient information to form a belief as to the
4 truth of the remaining allegations and they accordingly deny the same.

5 22. Answering Paragraph 22 of the Amended Notice, the ER Respondents state that
6 the referenced documents speak for themselves and they deny any attempt to characterize them.
7 The ER Respondents state that they are without sufficient information to form a belief as to the
8 truth of the remaining allegations and they accordingly deny the same.

9 23. Answering Paragraph 23 of the Amended Notice, the ER Respondents state that
10 the referenced documents speak for themselves and they deny any attempt to characterize them.
11 The ER Respondents state that they are without sufficient information to form a belief as to the
12 truth of the remaining allegations and they accordingly deny the same.

13 24. Answering Paragraph 24 of the Amended Notice, the ER Respondents state that
14 the referenced documents speak for themselves and they deny any attempt to characterize them.
15 The ER Respondents state that they are without sufficient information to form a belief as to the
16 truth of the remaining allegations and they accordingly deny the same.

17 25. Answering Paragraph 25 of the Amended Notice, the ER Respondents state that
18 the referenced documents speak for themselves and they deny any attempt to characterize them.
19 The ER Respondents state that they are without sufficient information to form a belief as to the
20 truth of the remaining allegations and they accordingly deny the same.

21 26. Answering Paragraph 27 of the Amended Notice, the ER Respondents state that
22 the referenced documents speak for themselves and they deny any attempt to characterize them.
23 The ER Respondents state that they are without sufficient information to form a belief as to the
24 truth of the remaining allegations and they accordingly deny the same.

25 27. Answering Paragraph 27 of the Amended Notice, the ER Respondents state that
26 the referenced documents speak for themselves and they deny any attempt to characterize them.
27 The ER Respondents further state that the referenced statute speaks for itself and accordingly
28 denies any characterization of it. The ER Respondents deny that an escrow license was required.

1 The ER Respondents also deny any implication that the Commission has authority over escrow
2 agents or to adjudicate issues under the escrow statutes, and the ER Respondents refer the
3 Commission to the Motion to Dismiss herein. The ER Respondents state that they are without
4 sufficient information to form a belief as to the truth of the remaining allegations and they
5 accordingly deny the same.

6 28. Answering Paragraph 28 of the Amended Notice, the ER Respondents state that
7 the referenced documents speak for themselves and they deny any attempt to characterize them.
8 The ER Respondents further state that the referenced statute speaks for itself and accordingly
9 denies any characterization of it. The ER Respondents deny that an escrow license was required.
10 The ER Respondents also deny any implication that the Commission has authority over escrow
11 agents or to adjudicate issues under the escrow statutes, and the ER Respondents refer the
12 Commission to the Motion to Dismiss herein. The ER Respondents state that they are without
13 sufficient information to form a belief as to the truth of the remaining allegations and they
14 accordingly deny the same.

15 29. Answering Paragraph 29 of the Amended Notice, the ER Respondents deny that
16 the salesperson and the individual who signed the Custodial Agreement were “in almost all
17 instances” the same. The ER Respondents state that they are without sufficient information to
18 form a belief as to the truth of the remaining allegations and they accordingly deny the same.

19 30. Answering Paragraph 30 of the Amended Notice, the ER Respondents state that
20 the referenced documents speak for themselves and they deny any attempt to characterize them.
21 The ER Respondents state that they are without sufficient information to form a belief as to the
22 truth of the remaining allegations and they accordingly deny the same.

23 31. Answering Paragraph 31 of the Amended Notice, the ER Respondents state that
24 the referenced documents speak for themselves and they deny any attempt to characterize them.
25 The ER Respondents state that they are without sufficient information to form a belief as to the
26 truth of the remaining allegations and they accordingly deny the same.

27 32. Answering Paragraph 32 of the Amended Notice, the ER Respondents state that
28 the referenced documents speak for themselves and they deny any attempt to characterize them.

1 The ER Respondents state that they are without sufficient information to form a belief as to the
2 truth of the remaining allegations and they accordingly deny the same.

3 33. Answering Paragraph 33 of the Amended Notice, the ER Respondents state they
4 are without sufficient information to form a belief as to the truth of the allegations and they
5 accordingly deny the same.

6 34. Answering Paragraph 34 of the Amended Notice, the ER Respondents state that
7 the referenced documents speak for themselves and they deny any attempt to characterize them.
8 The ER Respondents state that they are without sufficient information to form a belief as to the
9 truth of the remaining allegations and they accordingly deny the same.

10 35. Answering Paragraph 35 of the Amended Notice, the ER Respondents state they
11 are without sufficient information to form a belief as to the truth of the allegations and they
12 accordingly deny the same.

13 36. Answering Paragraph 36 of the Amended Notice, the ER Respondents state they
14 are without sufficient information to form a belief as to the truth of the allegations and they
15 accordingly deny the same.

16 37. Answering Paragraph 37 of the Amended Notice, the ER Respondents state they
17 are without sufficient information to form a belief as to the truth of the allegations and they
18 accordingly deny the same.

19 38. Answering Paragraph 38 of the Amended Notice, the ER Respondents state they
20 are without sufficient information to form a belief as to the truth of the allegations and they
21 accordingly deny the same.

22 39. Answering Paragraph 39 of the Amended Notice, the ER Respondents state they
23 are without sufficient information to form a belief as to the truth of the allegations and they
24 accordingly deny the same.

25 40. Answering Paragraph 40 of the Amended Notice, the ER Respondents state they
26 are without sufficient information to form a belief as to the truth of the allegations and they
27 accordingly deny the same.

28

1 41. Answering Paragraph 41 of the Amended Notice, the ER Respondents state they
2 are without sufficient information to form a belief as to the truth of the allegations and they
3 accordingly deny the same.

4 42. Answering Paragraph 42 of the Amended Notice, the ER Respondents state they
5 are without sufficient information to form a belief as to the truth of the allegations and they
6 accordingly deny the same.

7 43. Answering Paragraph 43 of the Amended Notice, the ER Respondents deny that
8 that Bersch and Wanzek were business partners throughout the referenced timeframe. The ER
9 Respondents admit the remaining allegations of the paragraph.

10 44. Answering Paragraph 44 of the Amended Notice, the ER Respondents state they
11 are without sufficient information to form a belief as to the truth of the allegations and they
12 accordingly deny the same.

13 45. Answering Paragraph 45 of the Amended Notice, the ER Respondents state that
14 this allegation is specious, and that any reference to “ER Financial and Advisory Service” refers
15 to “ER Financial and Advisory Services, LLC”, and Arizona entity which existed as set forth in
16 Paragraph 5 of the Amended Notice.

17 46. The ER Respondents admit the allegations of Paragraph 46 of the Amended
18 Notice.

19 47. Answering the allegations of Paragraph 47 of the Amended Notice, the ER
20 Respondents admit that Mr. Bersch and Mr. Wanzek served on Concordia’s board for a certain
21 period of time, but deny that it was the entirety of the time alleged.

22 48. Answering Paragraph 48 of the Amended Notice, the ER Respondents state that
23 the referenced documents speak for themselves and they deny any attempt to characterize them.
24 The ER Respondents state that they are without sufficient information to form a belief as to the
25 truth of the remaining allegations and they accordingly deny the same.

26 49. Answering Paragraph 49 of the Amended Notice, the ER Respondents state that
27 the referenced documents speak for themselves and they deny any attempt to characterize them.

28

1 The ER Respondents state that they are without sufficient information to form a belief as to the
2 truth of the remaining allegations and they accordingly deny the same.

3 50. Answering Paragraph 50 of the Amended Notice, the ER Respondents state they
4 are without sufficient information to form a belief as to the truth of the allegations and they
5 accordingly deny the same.

6 51. Answering Paragraph 51 of the Amended Notice, the ER Respondents state they
7 are without sufficient information to form a belief as to the truth of the allegations and they
8 accordingly deny the same.

9 52. Answering Paragraph 52 of the Amended Notice, the ER Respondents state they
10 are without sufficient information to form a belief as to the truth of the allegations and they
11 accordingly deny the same.

12 53. Answering Paragraph 53 of the Amended Notice, the ER Respondents state that
13 the referenced documents speak for themselves and they deny any attempt to characterize them.
14 The ER Respondents state that they are without sufficient information to form a belief as to the
15 truth of the remaining allegations and they accordingly deny the same.

16 54. Answering Paragraph 54 of the Amended Notice, the ER Respondents state that
17 the referenced documents speak for themselves and they deny any attempt to characterize them.
18 The ER Respondents state that they are without sufficient information to form a belief as to the
19 truth of the remaining allegations and they accordingly deny the same.

20 55. Answering Paragraph 55 of the Amended Notice, the ER Respondents state that
21 the referenced documents speak for themselves and they deny any attempt to characterize them.
22 The ER Respondents state that they are without sufficient information to form a belief as to the
23 truth of the remaining allegations and they accordingly deny the same.

24 56. Answering Paragraph 56 of the Amended Notice, the ER Respondents state that
25 the referenced documents speak for themselves and they deny any attempt to characterize them.
26 The ER Respondents state that they are without sufficient information to form a belief as to the
27 truth of the remaining allegations and they accordingly deny the same.

28

1 57. Answering Paragraph 57 of the Amended Notice, the ER Respondents state that
2 the referenced documents speak for themselves and they deny any attempt to characterize them.
3 The ER Respondents state that they are without sufficient information to form a belief as to the
4 truth of the remaining allegations and they accordingly deny the same.

5 58. Answering Paragraph 53 of the Amended Notice, the ER Respondents state that
6 the referenced documents speak for themselves and they deny any attempt to characterize them.
7 The ER Respondents state that they are without sufficient information to form a belief as to the
8 truth of the remaining allegations and they accordingly deny the same.

9 59. Answering Paragraph 53 of the Amended Notice, the ER Respondents state that
10 the referenced documents speak for themselves and they deny any attempt to characterize them.
11 The ER Respondents state that they are without sufficient information to form a belief as to the
12 truth of the remaining allegations and they accordingly deny the same.

13 60. Answering Paragraph 53 of the Amended Notice, the ER Respondents state that
14 the referenced documents speak for themselves and they deny any attempt to characterize them.
15 The ER Respondents state that they are without sufficient information to form a belief as to the
16 truth of the remaining allegations and they accordingly deny the same.

17 61. Answering Paragraph 53 of the Amended Notice, the ER Respondents state that
18 the referenced documents speak for themselves and they deny any attempt to characterize them.
19 The ER Respondents state that they are without sufficient information to form a belief as to the
20 truth of the remaining allegations and they accordingly deny the same. Upon information and
21 belief, the ER Respondent allege that Sunset Financial, an affiliate of Kansas City Life, was
22 authorized to offer the truck financing contracts to customers.

23 62. Answering Paragraph 62 of the Amended Notice, the ER Respondents state they
24 are without sufficient information to form a belief as to the truth of the allegations and they
25 accordingly deny the same.

26 63. Answering Paragraph 63 of the Amended Notice, the ER Respondents state they
27 are without sufficient information to form a belief as to the truth of the allegations and they
28 accordingly deny the same.

1 64. Answering Paragraph 64 of the Amended Notice, the ER Respondents state they
2 are without sufficient information to form a belief as to the truth of the allegations and they
3 accordingly deny the same.

4 65. Answering Paragraph 65 of the Amended Notice, the ER Respondents state they
5 are without sufficient information to form a belief as to the truth of the allegations and they
6 accordingly deny the same.

7 66. Answering Paragraph 66 of the Amended Notice, the ER Respondents state they
8 are without sufficient information to form a belief as to the truth of the allegations and they
9 accordingly deny the same.

10 67. Answering Paragraph 67 of the Amended Notice, the ER Respondents state that
11 the referenced documents speak for themselves and they deny any attempt to characterize them.
12 The ER Respondents further state that the referenced statute speaks for itself and accordingly
13 denies any characterization of it. The ER Respondents deny that an escrow license was required.
14 The ER Respondents also deny any implication that the Commission has authority over escrow
15 agents or to adjudicate issues under the escrow statutes, and the ER Respondents refer the
16 Commission to the Motion to Dismiss herein. The ER Respondents state that they are without
17 sufficient information to form a belief as to the truth of the remaining allegations and they
18 accordingly deny the same.

19 68. Answering Paragraph 68 of the Amended Notice, the ER Respondents state that
20 the referenced documents speak for themselves and they deny any attempt to characterize them.
21 The ER Respondents further state that the referenced statute speaks for itself and accordingly
22 denies any characterization of it. The ER Respondents deny that an escrow license was required.
23 The ER Respondents also deny any implication that the Commission has authority over escrow
24 agents or to adjudicate issues under the escrow statutes, and the ER Respondents refer the
25 Commission to the Motion to Dismiss herein. The ER Respondents state that they are without
26 sufficient information to form a belief as to the truth of the remaining allegations and they
27 accordingly deny the same.

28

1 69. Answering Paragraph 69 of the Amended Notice, the ER Respondents state that
2 that the referenced statute speaks for itself and accordingly denies any characterization of it. The
3 ER Respondents deny that an escrow license was required. The ER Respondents also deny any
4 implication that the Commission has authority over escrow agents or to adjudicate issues under
5 the escrow statutes, and the ER Respondents refer the Commission to the Motion to Dismiss
6 herein. The ER Respondents state that they are without sufficient information to form a belief as
7 to the truth of the remaining allegations and they accordingly deny the same.

8 70. Answering Paragraph 70 of the Amended Notice, the ER Respondents state they
9 are without sufficient information to form a belief as to the truth of the allegations and they
10 accordingly deny the same.

11 71. Answering Paragraph 71 of the Amended Notice, the ER Respondents state they
12 are without sufficient information to form a belief as to the truth of the allegations and they
13 accordingly deny the same.

14 72. Answering Paragraph 72 of the Amended Notice, the ER Respondents state they
15 are without sufficient information to form a belief as to the truth of the allegations and they
16 accordingly deny the same.

17 73. Answering Paragraph 73 of the Amended Notice, the ER Respondents state they
18 are without sufficient information to form a belief as to the truth of the allegations and they
19 accordingly deny the same.

20 74. Answering Paragraph 74 of the Amended Notice, the ER Respondents state they
21 are without sufficient information to form a belief as to the truth of the allegations and they
22 accordingly deny the same.

23 75. Answering Paragraph 75 of the Amended Notice, the ER Respondents state they
24 are without sufficient information to form a belief as to the truth of the allegations and they
25 accordingly deny the same.

26 76. Answering Paragraph 76 of the Amended Notice, the ER Respondents state they
27 are without sufficient information to form a belief as to the truth of the allegations and they
28 accordingly deny the same.

1 77. Answering Paragraph 77 of the Amended Notice, the ER Respondents state they
2 are without sufficient information to form a belief as to the truth of the allegations and they
3 accordingly deny the same.

4 78. Answering Paragraph 78 of the Amended Notice, the ER Respondents state they
5 are without sufficient information to form a belief as to the truth of the allegations and they
6 accordingly deny the same.

7 79. Answering Paragraph 79 of the Amended Notice, the ER Respondents state they
8 are without sufficient information to form a belief as to the truth of the allegations and they
9 accordingly deny the same.

10 80. Answering Paragraph 80 of the Amended Notice, the ER Respondents state they
11 are without sufficient information to form a belief as to the truth of the allegations and they
12 accordingly deny the same.

13 81. Answering Paragraph 81 of the Amended Notice, the ER Respondents state they
14 are without sufficient information to form a belief as to the truth of the allegations and they
15 accordingly deny the same.

16 82. Answering Paragraph 82 of the Amended Notice, the ER Respondents state they
17 are without sufficient information to form a belief as to the truth of the allegations and they
18 accordingly deny the same.

19 83. The ER Respondents deny the allegations of Paragraph 83 of the Amended
20 Notice.

21 84. The ER Respondents deny the allegations of Paragraph 84 of the Amended
22 Notice.

23 85. The ER Respondents deny the allegations of Paragraph 85 of the Amended
24 Notice.

25 86. The ER Respondents deny the allegations of Paragraph 86 of the Amended
26 Notice.

27 87. The ER Respondents deny the allegations of Paragraph 87 of the Amended
28 Notice.

1 **II. Second Affirmative Defense – Due Process.**

2 101. The United States Constitution and the Arizona Constitution require that the State
3 of Arizona, including its instrumentality the Commission, act in accordance with Due Process of
4 Law.

5 102. The claims set forth in the Amended Notice are too old to be heard without
6 violating the due process clauses of the Arizona Constitution and the United States Constitution.

7 **III. Third Affirmative Defense - Laches.**

8 103. The Securities Division has unreasonably delayed in bringing the claims set forth
9 in the Amended Notice, because they are brought seven to seventeen years after the alleged
10 violations.

11 104. The Division's delay prejudiced the ER Respondents, through the loss of records,
12 as set forth in the Affidavit of David John Wanzek, submitted as Exhibit E to the ER
13 Respondents' Motion to Compel filed on February 10, 2015.

14 105. The Division's delay has also prejudiced the ER Respondents, through the
15 dimming of memories, as well as the deaths of some investors.

16 106. The prejudice is only magnified by the fact that the Division is pursuing fraud
17 charges against the ER Respondents, requiring them to litigate the contents of conversations
18 from seven to seventeen years ago.

19 107. Pursuing charges this old violates fundamental fairness.

20 **IV. Fourth Affirmative Defense - Reasonable Reliance on Concordia.**

21 108. The ER Respondents relied on the assurances of Concordia that the contracts in
22 question were not securities. The ER Respondents' reliance on Concordia was reasonable.

23 109. Throughout its existence, Concordia was represented by a reputable law firm or
24 firms, a fact that the ER Respondents knew and relied on.

25 110. During much of the relevant timeframe, Concordia has been audited by a
26 reputable accounting firm or firms, a fact that the ER Respondents knew and relied on.

27 111. Concordia also did business with a Chino Bank and Sunset Financial, a fact that
28 the ER Respondents knew and relied on.

1 112. The ER Respondents acted in good faith and in reasonable reliance on
2 Concordia's assurances.

3 **V. Additional Affirmative Defenses.**

4 113. The application of A.R.S. § 44-2031(C) in this case exceeds the authority granted
5 to the Commission by the Arizona Constitution.

6 114. To the extent the documents that were allegedly offered or sold are determined to
7 be securities the ER Respondents and the subject documents are exempt from the registration
8 provisions of the Arizona Securities Act.

9 115. All actions taken by the ER Respondents were taken for a proper purpose and in
10 good faith.

11 116. The claims set forth in the Notice are barred by waiver, estoppel, laches, or
12 acquiescence.

13 117. The ER Respondents allege that they did not know, and in the exercise of
14 reasonable care could not have known, of any alleged untrue statements or material omissions as
15 set forth in the Notice.

16 118. The ER Respondents did not act with the requisite scienter.

17 119. The ER Respondents state that the alleged purchasers have suffered no injuries or
18 damages as a result of the ER Respondents' acts.

19 120. The ER Respondents did not cause any damages.

20 121. The alleged purchasers relied on others, and not the ER Respondents, in
21 connection with the matters at issue in the Notice.

22 122. An award of restitution is barred because the damages, if any, were caused by the
23 purchasers' own acts or omissions.

24 123. Restitution is barred, in whole or in part, because purchasers failed to mitigate
25 their damages.

26 124. The claims in the Notice and restitution are barred, in whole or in part, because
27 purchasers' damages, if any, were caused by the acts of others over whom Respondent had no
28 control, and for whose acts Respondent is not legally answerable.

1 125. The claims in the Notice and restitution are barred, in whole or in part, because
2 purchasers' damages, if any, were caused by the intervening and/or superseding acts of others
3 over whom ER Respondents had no control, and for whose acts the ER Respondents are not
4 legally answerable.

5 126. The claims in the Notice and the requested restitution are barred, in whole or in
6 part, because of payment, accord and satisfaction.

7 127. The claims in the Notice and the requested restitution are barred, in whole or in
8 part, because of ratification.

9 128. The claims in the Notice and the requested restitution are precluded, in whole or
10 in part, by offsets.

11 129. The claims in the Notice and the requested restitution are barred, in whole or in
12 part, by the doctrine of contributory negligence.

13 130. The claims in the Notice and the requested restitution are barred, in whole or in
14 part, because when damages were caused, in whole or in part, by factors beyond the ER
15 Respondents' control including the unexpected and historic collapse of the used big rig financing
16 market and the lack of liquidity in the economy caused, in part, by lenders' failures to fund
17 development.

18 131. The ER Respondents allege such other affirmative defenses set forth in Arizona
19 Rule of Civil Procedure 8(c), as may be determined to be applicable through discovery.

20 132. The ER Respondents reserves the right to amend this Answer to assert additional
21 defenses after completion of appropriate discovery.

22 133. The alleged purchasers of the Servicing Agreements were aware of all material
23 facts with respect to the Servicing Agreements and the Truck Financing Agreements.

24 134. The State of Arizona lacks personal jurisdiction over Linda Wanzek.

25 135. The restitution and any other monetary relief requested in the Amended Notice is
26 barred by the First Amendment and Second Amendment signed by almost all of the investors.

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RESPECTFULLY SUBMITTED this 8th day of June 2015.

By Timothy J. Sabo

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