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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

AZ CORP COMMISSION
DOCKET CONTROL

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

DOCKET NO. S-20906A-14-0063

In the matter of:

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

ER FINANCIAL & ADVISORY
SERVICES, L.L.C.,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

SECURITIES DIVISION'S MOTION FOR
LEAVE TO FILE AMENDED NOTICE OF
OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION

Pursuant to R14-3-106(E), the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") respectfully moves for an order granting it leave to file its proposed Amended Notice Of Opportunity For Hearing Regarding Proposed Order To Cease And Desist, Order For Restitution, Order For Administrative Penalties, And Order For Other Affirmative Action ("Amended Notice"). A copy of the Amended Notice is attached as Exhibit 1. Attached as Exhibit 2 is a redline showing how the text of the Amended Notice differs from that of the original Notice Of Opportunity For Hearing filed on February 27, 2014 ("Original Notice").

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Arizona Corporation Commission
DOCKETED

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MEMORANDUM OF POINTS AND AUTHORITIES

I. The Background And Contents Of The Amended Notice

From the outset of this case, the Respondents have claimed, “The [Original] Notice does not give fair notice to the Respondents of the charges against them.”¹ This Tribunal properly rejected those claims.² Nonetheless, the ER Respondents in particular have continued to claim the Original Notice is inadequate: “Only weeks from the hearing, the ER Respondents still do not know the specifics of what allegedly fraudulent statements the Division believes were made, to which investors, by which respondent, and when.” ER Respondents’ Response to Motion to Quash (filed 3/27/2015) at 5:5-7.

The Division’s proposed Amended Notice addresses the ER Respondents’ expressed concerns and will streamline this case. Among other things, the proposed Amended Notice:

- Reduces the number of distinct investments at issue from 446 as alleged in the Original Notice to 137 investments, and states the exact 10-year period when Respondents sold those investments – *see* Exhibit 1 at ¶¶ 83-87;
- Specifies the number of investors, fifty-eight (58), whom the Division alleges are still owed the return of their principal totaling \$3,078,909 – *see* Exhibit 1 at ¶ 64;
- With respect to those fifty-eight (58) investors, the Amended Notice alleges that Respondent Bersch was the salesman for 27 of them, and Respondent Wanzek was the salesman for at least 20 of them; *see* Exhibit 1 at ¶ 65;
- Alleges facts detailing why the Division contends the Servicing Agreements and accompanying Custodial Agreements at issue constituted investment contracts within the definition of a “security” under A.R.S. § 44-1801(26) - *see* Exhibit 1 at ¶¶ 15-19, 31-41;

¹ Motion to Dismiss and Answer of the ER Financial & Advisory Services, LLC, Lance Michael Bersch, David John Wanzek and Linda Wanzek (collectively, “the ER Respondents”) (filed 4/4/2014) at 12:20-21; Joinder by Respondent Concordia Financing Company, Ltd. (“Concordia”) (filed 4/25/2014).

² *See* Fourth Procedural Order (filed 8/13/2014) at 21:12 to 23:16.

- 1 • Specifies the dates and the amounts of at least (i) four investments that Respondent Bersch
2 sold and (ii) eight investments Respondent Wanzek sold by misrepresenting the investments
3 as “liquid” – *see* Exhibit 1 at ¶¶ 55, 57, 59-60; and
- 4 • Specifies the dates and the amounts of at least (i) two investments that Respondent Bersch
5 sold and (ii) three investments Respondent Wanzek sold by misrepresenting that the
6 investments were “a product approved by” a third-party insurer – *see* Exhibit 1 at ¶¶ 56, 58,
7 61.

8 The proposed Amended Notice also supplements the Original Notice’s count for the ER
9 Respondents’ alleged violations of the antifraud statute, A.R.S. § 44-1991(A), by alleging:

- 10 • Unbeknownst to Concordia, Respondents Bersch and Wanzek falsely held themselves out as
11 Concordia’s “Investor Relations Office” - *see* Exhibit 1 at ¶¶ 48-51, 88(a);
- 12 • The ER Respondents did not disclose to potential investors that Concordia would pay them a
13 finder’s fee if the investor invested - *see* Exhibit 1 at ¶¶ 73-74, 88(d); and
- 14 • The ER Respondents did not disclose to investors that by serving as the Custodian of the
15 underlying truck financing contracts and truck titles, ER Financial was conducting an
16 unlicensed escrow business in violation of Arizona law. *See* Exhibit 1 at ¶¶ 24-28, 66-71,
17 88(e).

18 Finally, the proposed Amended Notice requests an Order requiring: (i) all Respondents to
19 make restitution in the principal amount of \$3,078,909; and (ii) Respondents Bersch and Wanzek to
20 forfeit the \$2,529,337 in custodial fees and the \$565,424 in finder’s fees Concordia paid them
21 through ER Financial. *See* Exhibit 1 at 17:20-25.

22 The proposed Amended Notice does not seek a forfeiture from Linda Wanzek of the \$493,158
23 in custodial fees she received for three investments. *See* Exhibit 1 at ¶¶ 75-76. Because the three
24 investments were by Mrs. Wanzek’s parents and in-laws, the Division does not believe it will be
25 able to elicit the evidence to prove that she was the salesperson within the meaning of A.R.S. §§
26 44-1841 and 44-1842.

1 **II. The Legal Standards For Amended Pleadings**

2 Commission Rule R14-3-106(E) expressly allows for amendments to pleadings.³ Like the
3 Arizona Rules of Civil Procedure, the Commission's Rules "shall be liberally construed to secure
4 the *just and speedy* determination of all matters presented to the Commission." R14-3-101(B)
5 (emphasis added); *cf.* Ariz. R. Civ. P. 1. Like Rules 15(a) and (b), Arizona Rules of Civil
6 Procedure, R14-3-106(E) does not prescribe any time limit within which a party may apply for
7 leave to amend.

8 "[A]mendments to pleadings should be granted with great liberality, so that cases may be
9 decided on the merits...." *Cagle v. Carr*, 101 Ariz. 225, 227, 418 P.2d 381, 383 (1966).
10 "Amendments should be permitted unless there is a finding of undue delay in the request, bad faith,
11 undue prejudice, or futility in the amendment." *MacCollum v. Perkinson*, 185 Ariz. 179, 185, 913
12 P.2d 1097, 1103 (App. 1996) (reversing trial court's denial of amendment to add claims for
13 securities fraud and the sale of unregistered securities). Absent those circumstances, leave to
14 amend a pleading should be granted "[i]f the underlying facts or circumstances relied upon ... may
15 be a proper subject of relief." *Id.* at 185, 913 P.2d at 1103 (quoting *Spitz v. Bache & Co. Inc.*, 122
16 Ariz. 530, 531, 596 P.2d 365, 366 (1979)).

17 "Quite appropriately the courts have not imposed any arbitrary timing restrictions on
18 requests for leave to amend and permission has been granted under Rule 15(a) at various stages of
19 the litigation." 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1488
20 (3rd ed. 2015) (citing cases where leave to amend has been granted when the case is on the trial
21 calendar and has been set for a hearing;⁴ at the beginning,⁵ during,⁶ and at the close of trial;⁷ after a

22 ³ R14-3-106(E) provides: "Amendments to formal documents. The Commission or presiding
23 officer, in his discretion, may allow any formal document to be amended or corrected. Formal
24 documents will be liberally construed and defects which do not affect substantial rights of the
25 parties will be disregarded. The Commission or presiding officer shall cause parties or formal
26 documents to be redesignated whenever necessary in accordance with these rules."

⁴ *State Federal Sav. & Loan Ass'n of Lubbock v. Campbell*, 848 F.2d 1186, 1189 (11th Cir. 1988)
(trial court properly permitted party to amend counterclaim three days before trial).

⁵ *Seifert v. Solem*, 387 F.2d 925, 929 (7th Cir. 1967) (trial court properly granted plaintiff leave to
amend his complaint on the first day of trial to include a claim for exemplary damages).

1 judgment has been entered;⁸ and even on remand following an appeal⁹). “It would be unreasonable
2 to restrict a party’s ability to amend to a particular stage of the action inasmuch as the need to
3 amend may not appear until after discovery has been completed or testimony has been taken at
4 trial.” 6 Wright & Miller, *Federal Practice & Procedure* § 1488.

5 Denial of leave to amend is generally an abuse of discretion where the amendment merely
6 advances a new legal theory. *MacCollum*, 185 Ariz. at 185, 913 P.2d at 1103.

7
8 **III. The Division Should Be Granted Leave To File Its Amended Notice.**

9 The proposed Amended Notice will advance both objectives of R14-3-101(B): justice and
10 speed. The Amended Notice’s detailed factual allegations precisely inform Respondents of the
11 Division’s claims against them, including the dates and amounts of specific transactions in which the
12 ER Respondents misrepresented to particular investors that their investment in Concordia would be
13 “liquid” and was “approved” by an insurance company. Because the Division has produced all the
14 investment contracts at issue, the ER Respondents can easily determine those investors’ identities and
15 be better prepared at hearing.

16 Further, the Amended Notice’s precise factual allegations will make for a more focused and
17 streamlined presentation of evidence at the hearing, and may well reduce the number of hearing days
18 necessary for the Division to present its case. At the Procedural Conference set for April 28th, 2015,
19 the Division will be prepared to discuss reducing the number of hearing days.

20 In addition, the Amended Notice’s additional fraud allegations will “maximize the likelihood
21 of a decision on the merits,” *Allstate Ins. Co. v. O’Toole*, 182 Ariz. 284, 287, 896 P.2d 254, 257
22 (1995), thus advancing the Commission’s ultimate objective to reach a just determination of this
23

24 ⁶ *Zatina v. Greyhound Lines, Inc.*, 442 F.2d 238, 242-43 (8th Cir. 1971) (trial court properly
allowed amendment at close of testimony).

25 ⁷ *Ford v. Burke*, 529 F. Supp. 373, 379 (N.D. N.Y. 1982) (granting motion to amend at the close of
the evidence).

26 ⁸ *Newark Branch, N.A.A.C.P. v. Town of Harrison, N.J.*, 907 F.2d 1408, 1417 (3d Cir. 1990).

⁹ *Modrey v. American Gage & Mach. Co.*, 478 F.2d 470, 473 n.4 (2d Cir. 1973).

1 matter. The Original Notice alleged the ER Respondents received substantial finder's fees.¹⁰ The
2 Amended Notice amplifies the securities fraud count by alleging that the ER Respondents did not
3 disclose those finder's fees to investors. See Exhibit 1 at ¶¶ 74 and 88(d).

4 With respect to the Amended Notice's new theory that ER Financial was conducting an
5 unlicensed escrow business in violation of Arizona law and it was a fraudulent omission not to
6 disclose that fact to investors, there is no undue delay, bad faith or prejudice in adding that theory.
7 The Securities Division very recently developed this theory after reviewing and producing many
8 thousands of pages of documents to Respondents, including every Servicing Agreement and
9 Custodial Agreement specifying ER Financial's duties as a Custodian.

10 Nor is the "unlicensed escrow business" theory futile. Under the Servicing Agreements,
11 ER Financial, as the Custodian, was obligated to hold the truck financing contracts and vehicle
12 titles for the benefit of Concordia and the investor[s]. See Exhibit 1 at ¶ 24; see also § 4.1 of the
13 sample Servicing Agreement attached as Exhibit 1 to the ER Respondent's Motion to Dismiss (filed
14 4/4/2014).¹¹ If Concordia defaulted on its interest payments to an investor, ER Financial was to
15 deliver the truck financing contracts and vehicle titles to that investor. See Exhibit 1 at ¶ 26; § 4.2 of
16 the sample Servicing Agreement. If Concordia was not in default and gave notice that a truck
17 purchaser had paid off the truck financing contract, ER Financial was to return the truck financing
18 contract and vehicle title to Concordia. See Exhibit 1 at ¶ 25; § 4.3 of the sample Servicing
19 Agreement. ER Financial's duties and activities as Custodian fit squarely within the definition of an
20 escrow agent under A.R.S. § 6-801(4) and (5).¹²

21 ¹⁰ See Original Notice at ¶ 30.

22 ¹¹ Although the ER Respondents have repeatedly claimed that they disposed of or lost their
23 relevant documents years ago, they were miraculously able to locate and attach the sample
24 Servicing Agreement to their dismissal motion.

25 ¹² A.R.S. § 6-801(4) provides:

26 "Escrow" means any transaction in which any escrow property is delivered
with or without transfer of legal or equitable title, or both, and irrespective
of whether a debtor-creditor relationship is created, to a person not
otherwise having any right, title or interest therein in connection with the
sale, transfer, encumbrance or lease of real or personal property, to be

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CONCLUSION

For all the foregoing reasons, the Securities Division respectfully requests a Procedural Order granting it leave to file its proposed Amended Notice.

RESPECTFULLY SUBMITTED this 24th day of April, 2015.

ARIZONA CORPORATION COMMISSION

By 
James D. Burgess
Attorney for the Securities Division
Arizona Corporation Commission

1 ORIGINAL and 8 copies of the foregoing
2 Response to Motion to Continue Hearing
3 filed this 24th day of April, 2015, with:

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

8 COPY of the foregoing hand-delivered
9 this 24th day of April, 2015, to:

10 The Honorable Mark H. Preny
11 Administrative Law Judge
12 Arizona Corporation Commission
13 1200 W. Washington St.
14 Phoenix, AZ 85007

15 COPIES of the foregoing sent via
16 U.S. Mail and email this 24th day of April, 2015, to:

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Exhibit 1

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of: CONCORDIA FINANCING COMPANY, LTD, a/k/a "CONCORDIA FINANCE," ER FINANCIAL & ADVISORY SERVICES, L.L.C., LANCE MICHAEL BERSCH, and DAVID JOHN WANZEK and LINDA WANZEK, husband and wife, Respondents.) DOCKET NO. S-20906A-14-0063)))) AMENDED NOTICE OF OPPORTUNITY) FOR HEARING REGARDING PROPOSED) ORDER TO CEASE AND DESIST, ORDER) FOR RESTITUTION, ORDER FOR) ADMINISTRATIVE PENALTIES, AND) ORDER FOR OTHER AFFIRMATIVE) ACTION)))
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NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Concordia Financing Company, Ltd., also known as "Concordia Finance," ER Financial & Advisory Services, L.L.C., Lance Michael Bersch and David John Wanzek (collectively, "Respondents") have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Lance Michael Bersch and David John Wanzek are persons controlling ER Financial & Advisory Services, L.L.C. within the meaning of A.R.S. § 44-1999(B), so that they are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as ER Financial & Advisory Services, L.L.C. for violations of the antifraud provisions of the Securities Act.

I.

JURISDICTION

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3 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
4 Arizona Constitution and the Securities Act.

5 II.

6 RESPONDENTS

7 2. Concordia Financing Company, Ltd. ("Concordia"), also known as "Concordia
8 Finance," is a California corporation that did business within or from the State of Arizona from at least
9 February 18, 1998 through at least December 2011. During that period, Concordia did not apply to the
10 Commission to do business as a foreign corporation in Arizona and therefore was not authorized to
11 do any business in Arizona.

12 3. Lance Michael Bersch, C.P.A. ("Bersch") has been licensed as a certified public
13 accountant by the Arizona State Board of Accountancy since December 16, 1985. Upon information
14 and belief, Bersch has worked as an accountant in Lake Havasu, Arizona from at least February 18,
15 1998 through at least December 2011.

16 4. David John Wanzek, C.P.A. ("Wanzek") has been licensed as a certified public
17 accountant by the Arizona State Board of Accountancy since April 17, 1995. Upon information and
18 belief, Wanzek worked as an accountant in Lake Havasu, Arizona from at least February 18, 1998
19 through at least March 2010.

20 5. ER Financial & Advisory Services, L.L.C. ("ERF&AS") was an Arizona limited
21 liability company organized on October 9, 2001. ERF&AS did business within or from the State of
22 Arizona from that date until at least December 2011. ERF&AS filed with the Commission its *Articles*
23 *of Termination* on October 31, 2012. The Commission issued to ERF&AS a *Certificate of*
24 *Termination* on November 5, 2012.

25 6. From at least February 18, 1998 through at least October 9, 2001, when they formed
26 ERF&AS, Bersch and Wanzek did business as "ER Financial and Advisory Service" with respect to

1 their sale of the investment contracts alleged below.

2 7. From at least February 18, 1998 through the present, Linda Wanzek has been the
3 spouse of Respondent David John Wanzek. Linda Wanzek may be referred to as "Respondent
4 Spouse."

5 8. From at least February 18, 1998 through at least March 2010, Linda Wanzek acted for
6 the benefit or in furtherance of her marital community. She is joined in this action under A.R.S. § 44-
7 2031(C) to determine the liability of her marital community.

8 9. From at least February 18, 1998 through at least March 2010, David John Wanzek
9 acted for his own individual benefit and for the benefit or in furtherance of his marital community.

10 **III.**

11 **FACTS**

12 **A. The Terms and Structure of Concordia's Investment Offerings**

13 10. Concordia was incorporated in California in 1994 with the purpose of purchasing and
14 servicing contracts for the sale of used "big rig" trucks ("Truck Financing Contracts" or "Contracts").
15 Concordia sought capital from investors to purchase more Truck Financing Contracts. To raise
16 capital, Concordia issued: (i) promissory notes ("Promissory Notes"); and (ii) investment contracts
17 comprised of Sale of Contracts and Servicing Agreements ("Servicing Agreements") and
18 accompanying Custodial Agreements.

19 11. To purchase Truck Financing Contracts, Concordia pooled money it raised from
20 investors with revenue Concordia received from (i) truckers' installment payments on their Truck
21 Financing Contracts and (ii) sales of repossessed trucks.

22 **1. Concordia's Promissory Notes**

23 12. Concordia sold Promissory Notes to Arizona residents in at least five transactions
24 between September 10, 2002 and February 28, 2007. Of those five transactions, (i) Bersch offered
25 and sold Promissory Notes on September 10, 2002 in the amount of \$100,000, and on November 6,
26

1 2006 in the amount of \$225,000; and (ii) Wanzek sold a Promissory Note on November 6, 2006 in
2 the amount of \$53,109.

3 13. Through the Promissory Notes, Concordia promised to pay the investors monthly
4 interest payments for the two-year term of the Notes. The interest rates offered through the Notes
5 varied between 0.833 percent per month to 12 percent per year. Upon the expiration of the two-
6 year term, Concordia promised to pay any unpaid interest and return any unpaid principal.

7 **2. Concordia's Servicing Agreements and Custodial Agreements**

8 14. Several dozen Arizona residents, most of whom lived in Lake Havasu City, invested
9 by entering Servicing Agreements and accompanying Custodial Agreements.

10 15. Pursuant to the Servicing Agreements, in exchange for the investor's investment
11 amount, Concordia agreed to sell, assign and transfer to the investor Truck Financing Contracts
12 from Concordia's inventory of such Contracts. Concordia warranted to the investor that, prior to
13 purchasing the Contracts to be assigned and transferred to the investor, Concordia had conducted a
14 credit check of the truck purchaser to determine the payment risk.

15 16. In Section 4.1 of the Servicing Agreements, Concordia represented that it would
16 deliver to a Custodian "the originally executed Contracts and all evidences of title with respect to
17 the vehicles covered by the Contracts, with separate assignments executed by Concordia which
18 effect the assignment and transfer of the Contracts and title to Investor...."

19 17. The investor agreed to hire Concordia to service the assigned Truck Financing
20 Contracts by sending monthly invoices to truck purchasers for payment, collecting payments,
21 imposing late payment fees and NSF charges, and at Concordia's sole discretion, initiating "all
22 collection decisions, actions and activities, including repossession, retention of attorneys or collection
23 agents, making repairs to damaged vehicles, reselling repossessed vehicles and all other matters and
24 decisions relating to the Contracts and vehicles covered by the Contracts, as if in all respects
25 Concordia remained the owner of the Contracts and had sole authority with respect to the collection
26 and disposition of the Contracts."

1 18. If one of an investor's assigned Truck Financing Contracts went into default,
2 Concordia agreed it would replace it by assigning and transferring to the investor a substitute Truck
3 Financing Contract of an equal or lesser principal balance than the defaulting Contract.

4 19. Concordia agreed to send investors monthly checks for the amounts due to them
5 under the Servicing Agreements. For the Servicing Agreements sold prior to January 2004,
6 Concordia offered a twelve percent (12%) annual return. For Servicing Agreements sold after January
7 2004, Concordia reduced the annual return it agreed to pay investors to ten percent (10%).

8 20. Section 6.3 of the Servicing Agreement explained how Concordia was to profit from
9 the arrangement:

10 "As its fee for servicing each [Truck Financing] Contract, Concordia shall be
11 entitled to retain, during the entire term of the Contract, (a) all late payment
12 fees, (b) all NSF charges, and (c) all interest and other fees or charges in
13 excess of that amount required to pay Investor a ... return ... on the then
existing principal balance due under the Contracts."

14 21. Each Servicing Agreement referenced an accompanying Custodial Agreement
15 between Concordia, the investor and a Custodian.

16 22. Each Custodial Agreement provided that it incorporated by reference "all the terms
17 and provisions" of the associated Servicing Agreement.

18 23. The Custodian was to hold the Truck Financing Contracts, vehicle titles and any
19 substitute Contracts that Concordia represented in Section 4.1 that it had assigned to the investor
20 and would deliver to the Custodian.

21 24. The Custodian was obligated to hold the Contracts for the benefit of Concordia and
22 the investor.

23 25. Pursuant to § 4.1 of the Servicing Agreements and Custodial Agreements, the
24 Custodian would return a Contract to Concordia upon Concordia's written representation to the
25 Custodian and the investor that the Contract "either (a) has been paid in full and must be returned to
26 the [truck purchaser], or (b) has incurred a Contract Default and is to be concurrently replaced with

1 a substitute Contract.”

2 26. Pursuant to § 4.2 of the Servicing Agreements and Custodial Agreements, following
3 any default under the Servicing Agreement by Concordia and its failure to cure the default within
4 30 days, upon the investor’s instructions, the Custodian was obligated “to release to Investor the
5 originally executed Contracts and all executed assignments then in the possession of the
6 Custodian.”

7 27. With respect to the investments for which the Custodian held Truck Financing
8 Contracts, vehicle titles and any substitute Contracts in Arizona, the Custodian acted as an escrow
9 agent within the meaning of A.R.S. § 6-801(4) and (5).¹ As such, the Custodian was required to be
10 licensed by the Arizona Department of Financial Institutions pursuant to A.R.S. § 6-813.

11 28. A.R.S. § 6-813 prohibited any designated Custodian from “engag[ing] in or
12 carry[ing] on ... the escrow business or act[ing] in the capacity of an escrow agent in [Arizona]
13 without first obtaining a license.”

14 29. The individual or entity who signed the Custodial Agreement for the designated
15 Custodian was in almost all instances also the salesperson who presented the investor with the
16 Servicing Agreements and Custodial Agreements for execution.

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18

19 ¹ A.R.S. § 6-801(4) provides:

20 “Escrow” means any transaction in which any escrow property is delivered with
21 or without transfer of legal or equitable title, or both, and irrespective of whether a
22 debtor-creditor relationship is created, to a person not otherwise having any right,
23 title or interest therein in connection with the sale, transfer, encumbrance or lease
24 of real or personal property, to be delivered or redelivered by that person upon the
25 contingent happening or nonhappening of a specified event or performance or
nonperformance of a prescribed act, when it is then to be delivered by such person
to a grantee, grantor, promisee, promisor, obligee, obligor, bailee or bailor, or any
designated agent or employee of any of them. Escrow includes subdivision trusts
and account servicing.

26 A.R.S. § 6-801(5) provides: ““Escrow agent” means any person engaged in the business of accepting
escrows.”

1 30. Pursuant to Section 6 of the Custodial Agreement, Concordia agreed to pay the
2 Custodian “a fee for his [or her] services in the amount of 0.25% per month of the principal balance
3 [of the underlying investment], payable monthly.”

4 31. In the Servicing Agreements, the investors had to acknowledge that delinquencies in
5 the assigned Truck Financing Contracts “will not be unusual and there may be a large number of
6 Substitute Contracts.” For those reasons, investors had to further acknowledge “the importance of
7 utilizing an experienced servicing agent for such Contracts” and agree that Concordia would be the
8 servicing agent during the entire term of the Truck Financing Contracts.

9 32. Under the Servicing Agreements, the investors also granted Concordia an
10 “irrevocable power of attorney ... to do any and all things Concordia deems necessary and proper
11 to carry out the purpose(s) of [the] Agreement.”

12 33. The investors did not have any input as to which Truck Financing Contracts and
13 vehicle titles were assigned to them under the Servicing Agreements and Custodial Agreements.

14 34. Neither the Promissory Notes nor the Servicing Agreements and Custodial
15 Agreements empowered an investor to direct Concordia’s business operations.

16 35. Concordia paid investors their monthly interest payments from its account at Chino
17 Bank. Concordia’s deposits into that account came from a variety of sources, including installment
18 payments from truckers with Truck Financing Contracts.

19 36. Concordia did not segregate within its Chino Bank account revenue received on one
20 Truck Financing Contract versus another. Rather, it pooled those revenues together with revenues
21 from other sources, such as its sales of repossessed trucks and dealer discount reserves.

22 37. Concordia used those pooled funds to make its interest payments to investors.

23 38. Prior to 2009, when Concordia stopped making interest payments to investors, if the
24 trucker on a Truck Financing Contract defaulted, that default did not impact whether or not
25 Concordia continued to make its monthly interest payments to the investor to whom the defaulted
26 Contract had been assigned.

1 39. Concordia's monthly interest payments to an investor were not tied to a trucker's
2 payment or non-payment of amounts due under the assigned Truck Financing Contract.

3 40. Concordia made its monthly interest payments to investors pursuant to the rate
4 stated in the Servicing Agreements, not pursuant to the performance of the Truck Financing
5 Contracts assigned under the Servicing Agreements.

6 41. The source of Concordia's interest payments to investors was the revenue it pooled
7 together from a variety of sources, including installment payments from truckers with Truck
8 Financing Contracts, proceeds from its sales of repossessed trucks, and dealer discount reserves.

9 **B. Bersch's and Wanzek's Sale of Servicing Agreements and Custodial**
10 **Agreements**

11 42. Investment in Concordia was primarily offered and sold by Bersch or Wanzek,
12 individually or through ERF&AS.

13 43. From at least February 18, 1998 through at least March 2010, Bersch and Wanzek
14 were certified public accountants licensed in the State of Arizona and business partners in an
15 accounting practice in Lake Havasu City, Arizona.

16 44. By at least February 18, 1998, Bersch and Wanzek began offering and selling
17 investment in Concordia to others, including their own accounting clients. Bersch and Wanzek did
18 business as "ER Financial and Advisory Service", which they represented at various times was "an
19 Arizona business" or "an Arizona company."

20 45. The Commission does not have any record of "ER Financial and Advisory Service"
21 ever being organized as an Arizona limited liability company, registered as a foreign limited
22 liability company authorized to transact business in Arizona, or otherwise as an entity registered
23 with the Commission to do business in Arizona.

24 46. In October 2001, Bersch and Wanzek organized ERF&AS as a member-managed
25 limited liability company and established themselves as ERF&AS's sole members.

26 47. Bersch and Wanzek served on Concordia's Board of Directors from at least 2000
through approximately 2007.

1 48. In 2000 and/or 2001 and beyond, Bersch and Wanzek held themselves out as
2 Concordia's "Investor Relations Office." In one marketing piece dated either 2000 or 2001, Bersch
3 or Wanzek wrote:

4
5 Concordia invites interested investors to contact them for more
6 information. The main office is located in Ontario, California. Investor
7 relations is [sic] handled by the office in Lake Havasu City, Arizona. You
8 may wish to contact either Michael Bersch, CPA or David Wanzek, CPA at
9 ER Finance – Investor Relations.

10 The marketing piece then provided the address and phone number of Bersch's and Wanzek's
11 accounting firm in Lake Havasu City.

12 49. In another marketing piece dated 2000 or 2001, Bersch or Wanzek wrote:

13 Concordia Finance invites interested investors to contact them for more
14 information. Our Investor Relations Office is located in Lake Havasu City,
15 Arizona.

16 CONTACTS:

17 Investor Relations:

18 Michael Bersch, CPA

19 David Wanzek, CPA

20 Concordia Finance [address and phone number of Bersch's and
21 Wanzek's accounting firm in Lake Havasu City, Arizona].

22 50. According to Concordia, however, it never had an "Investor Relations Office" or
23 any other office in Lake Havasu City. Concordia was unaware that Bersch and Wanzek held
24 themselves out as Concordia's "Investor Relations Office."

25 51. According to Concordia, the statements by Bersch and Wanzek that they were
26 Concordia's "Investor Relations Office" were false statements.

 52. Bersch and Wanzek, individually or through ERF&AS, repeatedly sold Servicing
Agreements and accompanying Custodial Agreements by representing that the investor's
investment in Concordia would be "liquid."

1 53. Bersch or Wanzek, individually or through ERF&AS, showed presentation materials
2 to at least some potential investors. The presentation materials stated, among other things, the
3 following:

4 a. “Since 1994, Concordia Finance has purchased over \$10,000,000 in
5 conditional truck sales contracts from commercial truck dealers.... These dealers sell their
6 truck financing contracts to Concordia at a discount rate so as to receive immediate cash to
7 replenish their truck inventory.... Concordia raises capital to purchase these contracts from
8 investors in the form of Servicing Agreements (many of which are held by our present
9 clients);”

10 b. “These notes meet our client’s needs regarding... [s]afety of principal[,]
11 higher guaranteed interest [and] [l]iquidity;”

12 c. “Servicing Agreements provide a safety of principal guarantee and 100%
13 liquidity in the event of emergency need;” and

14 d. “Higher guaranteed yield to offset inflation, safety of principal backed by
15 collateral and 100% liquidity has made Concordia Servicing Agreements the preferred fixed
16 income investment for many of our clients.”

17 54. The above-described presentation materials explained how an investor would invest
18 in a Concordia Servicing Agreement and Custodial Agreement, stating:

19 a. “Inform us of what amount you would like to invest...;”

20 b. “We complete a Concordia Sales and Servicing Agreement specifying the
21 investment amount and whether interest is to be paid monthly or left to accrue;”

22 c. “We send the check and agreement to them. Concordia then begins sending
23 you monthly interest checks along with a monthly report;” and

24 d. The “[c]ustodian holds contracts and assigned vehicle titles as investor
25 collateral.”

26 55. At a minimum, Bersch sold Servicing Agreements and accompanying Custodial

1 Agreements within or from Arizona on or about the following dates in the following amounts by
2 representing to the investor[s] that their investment in Concordia would be "liquid":

Date	Amount
05/11/2004	\$100,000
11/25/2005	\$100,000
12/01/2005	\$100,000
04/01/2008	\$100,000

11
12 56. In at least the sales identified in the preceding paragraph dated 11/25/2005 and
13 12/1/2005, Bersch presented the investors with a flowchart of how investments in Concordia
14 worked and the relationships between Concordia; ER Financial, CPAs Bersch and Wanzek; and the
15 investor. The flowchart indicated that a Concordia investment was a "product approved by" a
16 third-party insurance company.

17 57. At a minimum, Wanzek sold Servicing Agreements and accompanying Custodial
18 Agreements within or from Arizona on or about the following dates in the following amounts by
19 representing to the investor[s] that their investment in Concordia would be "liquid":

Date	Amount
11/02/2002	\$50,000
02/17/2004	\$50,000
03/06/2004	\$75,000
09/01/2004	\$250,000
12/08/2004	\$100,000

10/24/2005	\$100,000
12/01/2005	\$150,000
12/05/2005	\$100,000

1
2
3
4 58. In at least the sales identified in the preceding paragraph dated 11/02/2002,
5 10/24/2005 and 12/01/2005, Wanzek presented the investors with the flowchart referenced above in
6 Paragraph 49, which indicated that a Concordia investment was a "product approved by" a third-
7 party insurance company.

8 59. Contrary to what Bersch and Wanzek represented in connection with the sales of
9 Servicing Agreements and Custodial Agreements identified above, investments in Concordia were
10 never liquid. To the contrary, the Servicing Agreements restricted the investor's ability to liquidate
11 the investment by selling or assigning the assigned Truck Financing Contracts to a third party. An
12 investor who needed cash and wanted to sell or assign the Contracts to a third party had to first
13 offer to sell the Contracts back to Concordia for only 95% of the then existing principal balance
14 due under the Contracts, and give Concordia 90 days to accept or reject the offer.

15 60. Nor did Concordia intend for the Servicing Agreements and Custodial Agreements
16 to be liquid investments. According to Concordia, it lacked the readily-available resources to
17 refund the investors' principal. It needed the investors' principal to purchase additional Truck
18 Financing Contracts, pay its overhead and operate its business.

19 61. Despite what was stated in the flowchart, the third-party insurer identified in the
20 flow chart never insured, underwrote, guaranteed or in any other way "approved" investment in
21 Concordia.

22 62. According to its records, Concordia raised at least \$27,103,887 from 142 investors
23 between 1997 and 2013. Concordia paid those investors a total of \$27,934,228, which consisted of
24 interest payments due under the Promissory Notes and Servicing Agreements and some repayments
25 of principal.
26

1 63. Specifically, Concordia's records reflect that with respect to eighty-four (84)
2 investors who invested a total of \$14,368,597, it repaid them \$18,277,848.

3 64. Fifty-eight (58) other investors who invested a total of \$12,735,289 have only
4 received payments back from Concordia of \$9,656,380 according to Concordia's records.
5 Concordia has not repaid \$3,078,909 of the principal those fifty-eight (58) investors invested.

6 65. Of those fifty-eight (58) investors, Bersch was the salesman for at least 27 of them
7 and Wanzek was the salesman for at least 20 of them.

8 66. ERF&AS or "ER Financial and Advisory Service" were the designated Custodians
9 in the Custodial Agreements for at least 132 investments, including those by the fifty-eight (58)
10 investors who are still owed \$3,078,909 of principal.

11 67. As the designated Custodians for those investments, ERF&AS or Bersch and
12 Wanzek doing business as "ER Financial and Advisory Service" engaged in and carried on an
13 escrow business and acted in the capacity of escrow agents within the meaning of A.R.S. § 6-801
14 and A.R.S. § 6-813.

15 68. As the designated Custodians for those investments, ERF&AS or Bersch and
16 Wanzek doing business as "ER Financial and Advisory Service" were required to be licensed by
17 the Arizona Department of Financial Institutions pursuant to A.R.S. § 6-813.

18 69. Neither ERF&AS, nor Bersch nor Wanzek were licensed by the Arizona Department
19 of Financial Institutions to engage in or and carry on an escrow business, or to act in the capacity of
20 escrow agents.

21 70. The Securities Division is not aware of any instance in which ERF&AS, Bersch or
22 Wanzek disclosed to an investor that by serving as a Custodian, they were engaged in the conduct
23 of an unlicensed escrow business.

24 71. Upon information and belief, neither ERF&AS, nor Bersch nor Wanzek ever
25 disclosed to any investor that by serving as a Custodian, they were engaged in the conduct of an
26 unlicensed escrow business.

1 72. According to Concordia's records, Concordia paid Bersch and Wanzek, through
2 ERF&AS, custodian fees of at least \$2,529,337.

3 73. According to Concordia's records, it also paid Bersch and Wanzek, through
4 ERF&AS, finders' fees of at least \$565,424. This compensation was calculated as a percentage of
5 the principal invested as a result of the sales efforts of Bersch and Wanzek and their company,
6 ERF&AS.

7 74. Bersch, Wanzek and ERF&AS did not disclose to at least several investors that
8 Concordia was going to pay ERF&AS a finder's fee if the investor invested.

9 75. For three investments by her relatives and in-laws, Linda Wanzek was the
10 designated Custodian.

11 76. According to Concordia's records, Concordia paid Linda Wanzek custodian fees of
12 at least \$493,158.

13 77. Concordia began experiencing financial problems by about 2008. By 2009,
14 Concordia could no longer continue making interest payments without jeopardizing its ability to
15 remain in business. To address these problems, about February 1, 2009, Concordia sought investor
16 approval to amend the Servicing Agreements and Promissory Notes to discontinue the monthly
17 "interest payments" as promised and to begin making only monthly returns on principal.

18 78. The first amendment, however, did not resolve Concordia's financial problems.
19 Concordia found itself insolvent. So, about December 1, 2011, Concordia sought investor approval
20 to amend the Servicing Agreements and Promissory Notes for a second time. The purpose of the
21 second amendment was to further reduce Concordia's costs by cancelling as "bad debt" 55% of the
22 principal owed investors.

23 79. When Concordia struggled financially in 2009-2011, Bersch and Wanzek assisted
24 Concordia in its efforts to get investors to accept the first and second amendments to the Servicing
25 Agreements and Promissory Notes.
26

1 VI.

2 VIOLATION OF A.R.S. § 44-1991

3 (Fraud in Connection with the Offer or Sale of Securities)

4 88. From at least February 18, 1998 through July 18, 2008, in connection with the offer or
5 sale of securities within or from Arizona, ERF&AS, and Bersch or Wanzek, individually or through
6 ERF&AS, directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue
7 statements of material fact or omitted to state material facts that were necessary in order to make the
8 statements made not misleading in light of the circumstances under which they were made; and/or (iii)
9 engaged in transactions, practices, or courses of business that operated or would operate as a fraud or
10 deceit upon offerees and investors. Specifically, the conduct by Bersch and/or Wanzek, individually
11 or through ERF&AS, includes:

12 a. Representing to offerees and investors that they were Concordia's "Investor
13 Relations Office" in Lake Havasu City, Arizona, when Concordia never had such an office;

14 b. Representing to offerees and investors that their investments in Concordia
15 would be liquid, although Concordia lacked readily-available resources to refund the
16 investors' principal, Concordia did not intend for the investments to be liquid because it
17 needed the investors' principal to operate, and the Servicing Agreements restricted the
18 investors' ability to liquidate their investments by selling or assigning the assigned Truck
19 Financing Contracts to third parties;

20 c. Representing to offerees and investors that investment in Concordia was
21 "approved" by a third-party insurer, leading investors to believe the insurer insured,
22 underwrote or in some other way guaranteed the investment, when that was never the case;

23 d. Failing to disclose to offerees that Concordia would pay a finder's fee to
24 Bersch's and Wanzek's company, ERF&AS, if the offeree invested; and

1 e. Failing to disclose to offerees and investors that by serving as a Custodian,
2 ERF&AS was engaged in the conduct of an unlicensed escrow business in violation of Arizona
3 law.

4 89. This conduct violates A.R.S. § 44-1991(A).

5 **VII.**

6 **Control Person Liability Pursuant to A.R.S. § 44-1999(B)**

7 90. ERF&AS's Articles of Organization filed with Commission on October 9, 2001,
8 provided that management of ERF&AS was reserved to its members.

9 91. From October 9, 2001 through at least September 20, 2012, Bersch and Wanzek were
10 the sole members of ERF&AS.

11 92. October 9, 2001 through at least September 20, 2012, Bersch and Wanzek directly or
12 indirectly controlled ERF&AS within the meaning of A.R.S. § 44-1999(B).

13 93. Pursuant to A.R.S. § 44-1999(B), Bersch and Wanzek are jointly and severally
14 liable to the same extent as ERF&AS for its violations of A.R.S. § 44-1991(A).

15 **VIII.**

16 **REQUESTED RELIEF**

17 The Division requests that the Commission grant the following relief:

18 1. Order Concordia, Bersch, Wanzek and ERF&AS to permanently cease and desist
19 from violating the Securities Act pursuant to A.R.S. §§ 44-2032, 44-1961 and 44-1962;

20 2. Order Concordia, Bersch, Wanzek and ERF&AS to take affirmative action to
21 correct the conditions resulting from Respondents' acts, practices, or transactions, including a
22 requirement to make restitution in the principal amount of \$3,078,909 pursuant to A.R.S. §§ 44-
23 2032, 44-1961 and 44-1962; and for Bersch and Wanzek to forfeit to the Commission the
24 \$2,529,337 in custodial fees and the \$565,424 in finder's fees Concordia paid them through
25 ERF&AS;

1 Bernal, ADA Coordinator, by calling 602-542-3931 or emailing sabernal@azcc.gov. Requests
2 should be made as early as possible to allow time to arrange the accommodation. Additional
3 information about the administrative action procedure may be found at [http://www.azcc.gov/
4 divisions/securities/enforcement/AdministrativeProcedure.asp](http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp).

5 **X.**

6 **ANSWER REQUIREMENT**

7 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
8 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
9 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
10 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
11 obtained from Docket Control by calling 602-542-3477 or the Commission's Internet web site at
12 <http://www.azcc.gov/divisions/hearings/docket.asp>.

13 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
14 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
15 copy of the Answer to the Division at 1300 West Washington Street, 3rd Floor, Phoenix, Arizona,
16 85007, addressed to James D. Burgess.

17 The Answer shall contain an admission or denial of each allegation in this Notice and the
18 original signature of the answering respondent or respondent's attorney. A statement of a lack of
19 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
20 denied shall be considered admitted.

21 When the answering respondent intends in good faith to deny only a part or a qualification
22 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
23 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

24 The officer presiding over the hearing may grant relief from the requirement to file an
25 Answer for good cause shown.
26

1 Dated this April ___, 2015.

2
3 _____
4 Matthew J. Neubert
5 Director of Securities
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Exhibit 2

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH, BOB STUMP,

Chairman

GARY PIERCE

BRENDA BURNS

BOB STUMP

BOB BURNS

SUSAN BITTER SMITH

DOUG LITTLE

TOM FORESE

DOCKET NO. S-20906A-14-0063

In the matter of:

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

ER FINANCIAL & ADVISORY
SERVICES, L.L.C.,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

**AMENDED NOTICE OF OPPORTUNITY
FOR HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Concordia Financing Company, Ltd., also known as "Concordia Finance," ER Financial & Advisory Services, L.L.C., Lance Michael Bersch and David John Wanzek (collectively, "Respondents") have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Lance Michael Bersch and David John Wanzek are persons controlling ER Financial & Advisory Services, L.L.C. within the meaning of A.R.S. § 44-1999(B),

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1 so that they are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as ER
2 Financial & Advisory Services, L.L.C. for violations of the antifraud provisions of the Securities Act.

3 I.

4 JURISDICTION

5 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
6 Arizona Constitution and the Securities Act.

7 II.

8 RESPONDENTS

9 2. Concordia Financing Company, Ltd. ("Concordia"), also known as "Concordia
10 Finance," is a California corporation ~~doing that did~~ business within or from the State of Arizona ~~at all~~
11 ~~relevant times from at least February 18, 1998 through at least December 2011. During that period,~~
12 ~~Concordia did not apply to the Commission to do business as a foreign corporation in Arizona and~~
13 ~~therefore was not authorized to do any business in Arizona.~~

14 3. Lance Michael Bersch, C.P.A. ("Bersch") has been licensed as a certified public
15 accountant by the Arizona State Board of Accountancy since December 16, 1985. Upon information
16 and belief, Bersch has worked as an accountant in Lake Havasu, Arizona from at least February 18,
17 1998 through at least December 2011.

18 4. David John Wanzek, C.P.A. ("Wanzek") has been licensed as a certified public
19 accountant by the Arizona State Board of Accountancy since April 17, 1995. Upon information and
20 belief, Wanzek worked as an accountant in Lake Havasu, Arizona from at least February 18, 1998
21 through at least March 2010.

22 3.5. ER Financial & Advisory Services, L.L.C. ("ERF&AS") was an Arizona limited
23 liability company organized on October 9, 2001. ERF&AS did business within or from the State of
24 Arizona ~~at all relevant times from that date until at least December 2011.~~ ERF&AS filed with the
25 Commission its *Articles of Termination* on October 31, 2012. The Commission issued to ERF&AS a
26 *Certificate of Termination* on November 5, 2012.

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1 ~~4. Lance Michael Bersch ("Bersch"), also known as "Michael" or "Mike," resides in~~
2 ~~Arizona.~~

3 ~~5. David John Wanzek ("Wanzek") resides in Arizona.~~

4 ~~6. From at least February 18, 1998 through at least October 9, 2001, when they formed~~
5 ~~ERF&AS, Bersch and Wanzek did business as "ER Financial and Advisory Service" with respect to~~
6 ~~their sale of the investment contracts alleged below.~~

7 ~~7. From at least February 18, 1998 through the present, Linda Wanzek has been the~~
8 ~~spouse of Respondent David John Wanzek at all relevant times. Linda Wanzek may be referred to as~~
9 ~~"Respondent Spouse." Respondent Spouse~~

10 ~~6-8. From at least February 18, 1998 through at least March 2010, Linda Wanzek acted for~~
11 ~~the benefit or in furtherance of her marital community. She is joined in this action under A.R.S. § 44-~~
12 ~~2031(C) solely for purposes of determining to determine the liability of the her marital community.~~

13 ~~7-9. Wanzek was acting From at least February 18, 1998 through at least March 2010,~~
14 ~~David John Wanzek acted for his own individual benefit and for the benefit or in furtherance of his~~
15 ~~and Respondent Spouse's marital community at all relevant times.~~

16 **III.**
17 **FACTS**

18 **A. The Terms and Structure of Concordia's Investment Offerings**

19 ~~8-10. Concordia was incorporated in California in 1994 with the purpose of purchasing and~~
20 ~~servicing contracts for the sale of pre-owned, Class 8, used "big rig" trucks ("Truck Financing~~
21 ~~Contracts" or "Contracts"). Concordia sought capital from investors to purchase more Truck~~
22 ~~Financing Contracts. To raise capital, Concordia issued: (i) promissory notes ("Promissory Notes");~~
23 ~~and (ii) investment contracts comprised of Sale of Contracts and Servicing Agreements ("Servicing~~
24 ~~Agreements") and promissory notes ("Promissory Notes"). accompanying Custodial Agreements.~~

25 ~~11. The majority of To purchase Truck Financing Contracts, Concordia pooled money it~~
26 ~~raised from investors entered into a Servicing Agreement. with revenue Concordia received from~~

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1 (i) truckers' installment payments on their Truck Financing Contracts and (ii) sales of repossessed
2 trucks.

3 **1. Concordia's Promissory Notes**

4 12. Concordia sold Promissory Notes to Arizona residents in at least five transactions
5 between September 10, 2002 and February 28, 2007. Of those five transactions, (i) Bersch offered
6 and sold Promissory Notes on September 10, 2002 in the amount of \$100,000, and on November 6,
7 2006 in the amount of \$225,000; and (ii) Wanzek sold a Promissory Note on November 6, 2006 in
8 the amount of \$53,109.

9 13. Through the Promissory Notes, Concordia promised to pay the investors monthly
10 interest payments for the two-year term of the Notes. The interest rates offered through the Notes
11 varied between 0.833 percent per month to 12 percent per year. Upon the expiration of the two-
12 year term, Concordia promised to pay any unpaid interest and return any unpaid principal.

13 **2. Concordia's Servicing Agreements and Custodial Agreements**

14 14. Several dozen Arizona residents, most of whom lived in Lake Havasu City, invested
15 by entering Servicing Agreements and accompanying Custodial Agreements.

16 15. Pursuant to ~~this agreement~~the Servicing Agreements, in exchange for the investor's
17 investment amount, Concordia agreed to sell, assign and transfer to the investor a ~~specific~~ Truck
18 Financing ~~Contract or~~ Contracts ~~purchased for the amount~~from Concordia's inventory of money
19 ~~invested and promised~~such Contracts. Concordia warranted to substitute a performing contract for
20 any defaulting ~~contract~~the investor that, prior to purchasing the Contracts to be assigned to the
21 Servicing Agreement. ~~and transferred to the investor, Concordia had conducted a credit check of~~
22 the truck purchaser to determine the payment risk.

23 16. In Section 4.1 of the Servicing Agreements, Concordia represented that it would
24 deliver to a Custodian "the originally executed Contracts and all evidences of title with respect to
25 the vehicles covered by the Contracts, with separate assignments executed by Concordia which
26 effect the assignment and transfer of the Contracts and title to Investor...."

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1 17. The investor agreed to ~~fund the investment and~~ hire Concordia to service ~~any~~the
2 assigned Truck Financing ~~Contract. The Servicing Agreement explains~~Contracts by sending
3 ~~monthly invoices to truck purchasers for payment, collecting payments, imposing late payment fees~~
4 ~~and NSF charges, and at Concordia's sole discretion, initiating "all collection decisions, actions and~~
5 ~~activities, including repossession, retention of attorneys or collection agents, making repairs to~~
6 ~~damaged vehicles, reselling repossessed vehicles and all other matters and decisions relating to the~~
7 ~~Contracts and vehicles covered by the Contracts, as if in all respects Concordia remained the owner of~~
8 ~~the Contracts and had sole authority with respect to the collection and disposition of the Contracts."~~

9 18. ~~If one of an investor's assigned Truck Financing Contracts went into default,~~
10 ~~Concordia agreed it would replace it by assigning and transferring to the investor a substitute Truck~~
11 ~~Financing Contract of an equal or lesser principal balance than the defaulting Contract.~~

12 19. Concordia agreed to send investors monthly checks for the amounts due to them
13 under the Servicing Agreements. For the Servicing Agreements sold prior to January 2004,
14 Concordia offered a twelve percent (12%) annual return. For Servicing Agreements sold after January
15 2004, Concordia reduced the annual return it agreed to pay investors to ten percent (10%).

16 9.20. ~~Section 6.3 of the Servicing Agreement explained how the two parties are~~Concordia
17 ~~was~~ to profit from the arrangement:

18 ~~"As its fee for servicing each [Truck Financing] Contract, Concordia shall be~~
19 ~~entitled to retain, during the entire term of the Contract, (a) all late payment~~
20 ~~fees, (b) all NSF charges, and (c) all interest and other fees or charges in~~
21 ~~excess of that amount required to pay Investor a ... return ... on the then~~
22 ~~existing principal balance due under the Contracts."~~

23 ~~Initially, Concordia offered a 12% per year return on investment, but, beginning in January 2004,~~
24 ~~Concordia reduced the offered return to 10% per year.~~

25 21. ~~The~~Each Servicing Agreement ~~incorporates a~~referenced ~~an~~ accompanying
26 ~~Custodial Agreement. Pursuant to these agreements, between Concordia, the investor and a~~
~~eustodian is~~Custodian.

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1 22. Each Custodial Agreement provided that it incorporated by reference “all the terms
2 and provisions” of the associated Servicing Agreement.

3 23. The Custodian was to hold the Truck Financing Contracts, vehicle titles and any
4 substitute Contracts that Concordia represented in Section 4.1 that it had assigned to a Servicing
5 Agreement and the investor and would deliver to the Custodian.

6 24. The Custodian was obligated to hold the titles to the vehicles subject to
7 those Contracts for the benefit of Concordia and the investor.

8 25. Pursuant to § 4.1 of the Servicing Agreements and Custodial Agreements, the
9 Custodian would return a Contract to Concordia upon Concordia’s written representation to the
10 Custodian and the investor that the Contract “either (a) has been paid in full and must be returned to
11 the [truck purchaser], or (b) has incurred a Contract Default and is to be concurrently replaced with
12 a substitute Contract.”

13 26. Pursuant to § 4.2 of the Servicing Agreements and Custodial Agreements, following
14 any default under the Servicing Agreement by Concordia and its failure to cure the default within
15 30 days, upon the investor’s instructions, the Custodian was obligated “to release to Investor the
16 originally executed Contracts and all executed assignments then in the possession of the
17 Custodian.”

18 27. With respect to the investments for which the Custodian held Truck Financing
19 Contracts. The custodian, in turn, is to be paid by Concordia, vehicle titles and any substitute
20 Contracts in Arizona, the Custodian acted as an escrow agent within the meaning of A.R.S. § 6-
21 801(4) and (5).¹ As such, the Custodian was required to be licensed by the Arizona Department of

22 ¹ A.R.S. § 6-801(4) provides:

23 “Escrow” means any transaction in which any escrow property is delivered with
24 or without transfer of legal or equitable title, or both, and irrespective of whether a
25 debtor-creditor relationship is created, to a person not otherwise having any right,
26 title or interest therein in connection with the sale, transfer, encumbrance or lease
of real or personal property, to be delivered or redelivered by that person upon the
contingent happening or nonhappening of a specified event or performance or
nonperformance of a prescribed act, when it is then to be delivered by such person

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1 Financial Institutions pursuant to A.R.S. § 6-813.

2 28. A.R.S. § 6-813 prohibited any designated Custodian from “engag[ing] in or
3 carry[ing] on ... the escrow business or act[ing] in the capacity of an escrow agent in [Arizona]
4 without first obtaining a license.”

5 29. The individual or entity who signed the Custodial Agreement for the designated
6 Custodian was in almost all instances also the salesperson who presented the investor with the
7 Servicing Agreements and Custodial Agreements for execution.

8 ~~40.30.~~ Pursuant to Section 6 of the Custodial Agreement, Concordia agreed to pay the
9 Custodian “a fee for his [or her] services in the amount of 0.25% per month of the principal balance
10 [of the underlying investment], payable monthly.”

11 ~~11. — A few individuals invested in Concordia through a Promissory Note. Through the~~
12 ~~Promissory Notes, Concordia promised monthly interest payments for the term of the note, which~~
13 ~~was typically between 90 days and two years. Upon the expiration of the term, Concordia~~
14 ~~promised to pay any unpaid interest and return any unpaid principal. The interest rate offered~~
15 ~~through the notes varied between 10% per year and 1.25% per month.~~

16 31. In the Servicing Agreements, the investors had to acknowledge that delinquencies in
17 the assigned Truck Financing Contracts “will not be unusual and there may be a large number of
18 Substitute Contracts.” For those reasons, investors had to further acknowledge “the importance of
19 utilizing an experienced servicing agent for such Contracts” and agree that Concordia would be the
20 servicing agent during the entire term of the Truck Financing Contracts.

21 32. Under the Servicing Agreements, the investors also granted Concordia an
22 “irrevocable power of attorney ... to do any and all things Concordia deems necessary and proper

23 to a grantee, grantor, promisee, promisor, obligee, obligor, bailee or bailor, or any
24 designated agent or employee of any of them. Escrow includes subdivision trusts
25 and account servicing.

26 A.R.S. § 6-801(5) provides: “‘Escrow agent’ means any person engaged in the business of accepting
escrows.”

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1 to carry out the purpose(s) of [the] Agreement.”

2 33. The investors did not have any input as to which Truck Financing Contracts and
3 vehicle titles were assigned to them under the Servicing Agreements and Custodial Agreements.

4 12.34. Neither the ~~Servicing Agreement~~Promissory Notes nor the ~~Promissory Notes~~
5 ~~empower~~Servicing Agreements and Custodial Agreements empowered an investor to direct
6 Concordia’s business operations.

7 35. Concordia paid investors their monthly interest payments from its account at Chino
8 Bank. Concordia’s deposits into that account came from a variety of sources, including installment
9 payments from truckers with Truck Financing Contracts.

10 36. Concordia did not segregate within its Chino Bank account revenue received on one
11 Truck Financing Contract versus another. Rather, it pooled those revenues together with revenues
12 from other sources, such as its sales of repossessed trucks and dealer discount reserves.

13 37. Concordia used those pooled funds to make its interest payments to investors.

14 38. Prior to 2009, when Concordia stopped making interest payments to investors, if the
15 trucker on a Truck Financing Contract defaulted, that default did not impact whether or not
16 Concordia continued to make its monthly interest payments to the investor to whom the defaulted
17 Contract had been assigned.

18 39. Concordia’s monthly interest payments to an investor were not tied to a trucker’s
19 payment or non-payment of amounts due under the assigned Truck Financing Contract.

20 40. Concordia made its monthly interest payments to investors pursuant to the rate
21 stated in the Servicing Agreements, not pursuant to the performance of the Truck Financing
22 Contracts assigned under the Servicing Agreements.

23 41. The source of Concordia’s interest payments to investors was the revenue it pooled
24 together from a variety of sources, including installment payments from truckers with Truck
25 Financing Contracts, proceeds from its sales of repossessed trucks, and dealer discount reserves.

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B. Bersch's and Wanzek's Sale of Servicing Agreements and Custodial Agreements

1
2 ~~13.42.~~ Investment in Concordia was primarily offered and sold by Bersch or Wanzek,
3 individually or through ERF&AS.

4 ~~14.43. At all relevant times~~ From at least February 18, 1998 through at least March 2010,
5 Bersch and Wanzek were certified public accountants licensed in the State of Arizona and business
6 partners in an accounting practice in Lake Havasu City, Arizona.

7 ~~44. About~~ By at least February 18, 1998, Bersch and Wanzek began offering and selling
8 investment in Concordia to others, including their own accounting clients. ~~Eventually,~~ Bersch and
9 Wanzek ~~sought to separate their accounting~~ did business ~~from the~~ as "ER Financial and Advisory
10 Service", which they represented at various times was "an Arizona business" or "an Arizona
11 company."

12 45. The Commission does not have any record of "ER Financial and Advisory Service"
13 ever being organized as an Arizona limited liability company, registered as a foreign limited
14 liability company authorized to transact business in Arizona, or otherwise as an entity registered
15 with Concordia. the Commission to do business in Arizona.

16 ~~15.46.~~ In October 2001, Bersch and Wanzek organized ERF&AS as a member-managed
17 limited liability company and established themselves as ERF&AS's sole members.

18 47. Bersch and Wanzek served on Concordia's Board of Directors from at least 2000
19 through approximately 2007.

20 48. In 2000 and/or 2001 and beyond, Bersch and Wanzek held themselves out as
21 Concordia's "Investor Relations Office." In one marketing piece dated either 2000 or 2001, Bersch
22 or Wanzek wrote:

23
24 Concordia invites interested investors to contact them for more
25 information. The main office is located in Ontario, California. Investor
26 relations is [sic] handled by the office in Lake Havasu City, Arizona. You
may wish to contact either Michael Bersch, CPA or David Wanzek, CPA at
ER Finance – Investor Relations.

1 The marketing piece then provided the address and phone number of Bersch's and Wanzek's
2 accounting firm in Lake Havasu City.

3 49. In another marketing piece dated 2000 or 2001, Bersch or Wanzek wrote:

4 Concordia Finance invites interested investors to contact them for more
5 information. Our Investor Relations Office is located in Lake Havasu City,
6 Arizona.

7 CONTACTS:

8 Investor Relations:

9 Michael Bersch, CPA

10 David Wanzek, CPA

11 Concordia Finance [address and phone number of Bersch's and
12 Wanzek's accounting firm in Lake Havasu City, Arizona].

13 50. According to Concordia, however, it never had an "Investor Relations Office" or
14 any other office in Lake Havasu City. Concordia was unaware that Bersch and Wanzek held
15 themselves out as Concordia's "Investor Relations Office."

16 51. According to Concordia, the statements by Bersch and Wanzek that they were
17 Concordia's "Investor Relations Office" were false statements.

18 46.—Bersch and Wanzek, individually and eventually through ERF&AS, showed a
19 brochure entitled "CONCORDIA FINANCE / INVESTING IN TRANSPORTATION" to at least some
20 prospective investors. This brochure explains the business of Concordia, stating, "Concordia
21 Finance specializes in the financial needs of the commercial-used truck market." The brochure also
22 explains or through ERF&AS, repeatedly sold Servicing Agreements and accompanying Custodial
23 Agreements by representing that the investor's investment opportunity, stating:

24 Since 1994 Concordia Finance has been buying truck ("big rig") conditional
25 sales contracts from dealers and collecting the payments.—Concordia
26 investors receive net 1.0% EACH MONTH in interest² for providing the
necessary capital.—Concordia qualifies the buyer, purchases the contract
from the dealer and collects the payments.—The investor then receives a
check or the money is credited to his account. This is done under a service
agreement with the investor. in Concordia guarantees each contract. If any

² The return was, at some point, reduced from 1% per month to 10% per year.

~~go into repossession, Concordia will replace it with one of equal or greater value.~~

~~52. (Emphasis in original). The word "Guaranteed" is in bold print elsewhere on the front of the brochure would be "liquid."~~

~~47, 53.~~ Bersch or Wanzek, individually or through ERF&AS, ~~also~~ showed presentation materials to at least some potential investors. The presentation materials ~~stated~~stated, among other things, the following:

a. "Since 1994, Concordia Finance has purchased over \$10,000,000 in conditional truck sales contracts from commercial truck dealers.... These dealers sell their truck financing contracts to Concordia at a discount rate so as to receive immediate cash to replenish their truck inventory.... Concordia raises capital to purchase these contracts from investors in the form of Servicing Agreements (many of which are held by our present clients);"

b. "These notes meet our client's needs regarding... [s]afety of principal[,] higher guaranteed interest [and] [l]iquidity;"

~~e. "Investment principal is secured by collateral represented by assigned vehicle titles" and "Concordia guarantees to replace any non-performing contract with one of equal or greater value;"~~

~~d. "Servicing Agreements pay a guaranteed 12% rate of return" and "pay a guaranteed 12% annually;"~~³

~~e. "Servicing Agreements use assigned vehicle titles as collateral to guarantee the safety of principal;"~~

~~f. Investors "can lock in guaranteed returns;"~~

~~g.c.~~ "Servicing Agreements provide a safety of principal guarantee and 100% liquidity in the event of emergency need;" and

³ The 12% figure was at some point crossed out and 10% was handwritten into the presentation materials.

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1 ~~h.d.~~ “Higher guaranteed yield to offset inflation, safety of principal backed by
2 collateral and 100% liquidity has made Concordia Servicing Agreements the preferred fixed
3 income investment for many of our clients.”

4 ~~48.54.~~ The above-described presentation materials ~~explain~~explained how an investor ~~places~~
5 ~~money would invest~~ in a Concordia Servicing Agreement and Custodial Agreement, stating:

- 6 a. “Inform us of what amount you would like to invest...;”
- 7 b. “We complete a Concordia Sales and Servicing Agreement specifying the
8 investment amount and whether interest is to be paid monthly or left to accrue;”
- 9 c. “We send the check and agreement to them. Concordia then begins sending
10 you monthly interest checks along with a monthly report;” and
- 11 d. The “[c]ustodian holds contracts and assigned vehicle titles as investor
12 collateral.”

13 ~~55. Further~~At a minimum, Bersch or Wanzek, individually or through ERF&AS, used a
14 ~~flow chart to market~~sold Servicing Agreements and accompanying Custodial Agreements within or
15 from Arizona on or about the following dates in the following amounts by representing to the
16 investor[s] that their investment in Concordia ~~to~~would be “liquid”:

<u>Date</u>	<u>Amount</u>
<u>05/11/2004</u>	<u>\$100,000</u>
<u>11/25/2005</u>	<u>\$100,000</u>
<u>12/01/2005</u>	<u>\$100,000</u>
<u>04/01/2008</u>	<u>\$100,000</u>

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26 ~~49.56. In~~ at least ~~some potential~~ the sales identified in the preceding paragraph dated

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~~11/25/2005 and 12/1/2005, Bersch presented the investors. This flow chart indicates with a flowchart of how investments in Concordia worked and the relationships between Concordia; ER Financial, CPAs Bersch and Wanzek; and the investor. The flowchart indicated that a Concordia investment is was a "product approved by" a specified third-party insurance company.~~

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~~20. In practice, Concordia did not use any particular investor's capital to purchase the Truck Financing Contract assigned to the investor's Servicing Agreement. Instead, Truck Financing Contracts were purchased using monies pooled from the principal supplied by multiple investors, as well as monies from other sources.~~

~~21. Not all At a minimum, Wanzek sold Servicing Agreements had assigned to them specific performing Truck Financing Contracts. At times, Concordia did not own sufficient performing Truck Financing Contracts to replace a non-performing contract assigned to an investment with one of equal and accompanying Custodial Agreements within or greater value.~~

~~22. Moreover, the vehicle titles subject to the Truck Financing Contracts were not put in the name of the investors nor were investors listed as lien holders on the vehicle titles.~~

~~23-27. Finally, the interest Concordia paid from Arizona on a given investment was not dependent upon or about the following dates in the performance of specific Truck Financing Contracts assigned following amounts by representing to the particular investment. Instead, Concordia used the pooled proceeds derived from all the Truck Financing Contracts and other sources of income to pay interest payments to its investors. investor[s] that their investment in Concordia would be "liquid":~~

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~~Contrary to the presentation materials, Concordia investments~~

<u>Date</u>	<u>Amount</u>
<u>11/02/2002</u>	<u>\$50,000</u>
<u>02/17/2004</u>	<u>\$50,000</u>
<u>03/06/2004</u>	<u>\$75,000</u>
<u>09/01/2004</u>	<u>\$250,000</u>

<u>12/08/2004</u>	<u>\$100,000</u>
<u>10/24/2005</u>	<u>\$100,000</u>
<u>12/01/2005</u>	<u>\$150,000</u>
<u>12/05/2005</u>	<u>\$100,000</u>

58. In at least the sales identified in the preceding paragraph dated 11/02/2002, 10/24/2005 and 12/01/2005, Wanzek presented the investors with the flowchart referenced above in Paragraph 49, which indicated that a Concordia investment was a “product approved by” a third-party insurance company.

59. Contrary to what Bersch and Wanzek represented in connection with the sales of Servicing Agreements and Custodial Agreements identified above, investments in Concordia were never liquid because investor principal, whether invested through a Servicing Agreement or a Promissory Note, was used to purchase one. To the contrary, the Servicing Agreements restricted the investor’s ability to liquidate the investment by selling or reassigning the assigned Truck Financing Contracts to a third party. An investor who needed cash and pay for company overhead and wanted to sell or assign the Contracts to a third party had to first offer to sell the Contracts back to Concordia for only 95% of the then existing principal balance due under the Contracts, and give Concordia 90 days to accept or reject the offer.

24.60. Nor did Concordia intend for the Servicing Agreements and Custodial Agreements to be liquid investments. According to Concordia, it lacked the readily-available resources to refund the investors’ principal. It needed the investors’ principal to purchase additional Truck Financing Contracts, pay its overhead and operate its business.

25.61. Despite what was stated in the flow chartflowchart, the third-party insurer identified in the flow chart never insured, underwrote, guaranteed or in any other way “approved” investment in Concordia.

26.62. According to its records, Concordia raised a total of about \$35,206,803 in investment principal at least \$27,103,887 from approximately 446 distinct investments made by

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1 ~~about 192142~~ investors, ~~approximately 116 of which are Arizona residents.~~ As of about July,
2 ~~between 1997 and 2013,~~ Concordia ~~had paid out to those investors in a total of \$27,934,228, which~~
3 ~~consisted of interest payments due under the form of principal Promissory Notes and Servicing~~
4 ~~Agreements and some repayments and profits approximately \$32,929,066 of principal.~~

5 63. Specifically, Concordia's records reflect that with respect to eighty-four (84)
6 investors who invested a total of \$14,368,597, it repaid them \$18,277,848.

7 64. Fifty-eight (58) other investors who invested a total of \$12,735,289 have only
8 received payments back from Concordia of \$9,656,380 according to Concordia's records.
9 Concordia has not repaid \$3,078,909 of the principal those fifty-eight (58) investors invested.

10 65. Of those fifty-eight (58) investors, Bersch was the salesman for at least 27 of them
11 and Wanzek was the salesman for at least 20 of them.

12 66. ERF&AS or "ER Financial and Advisory Service" were the designated Custodians
13 in the Custodial Agreements for at least 132 investments, including those by the fifty-eight (58)
14 investors who are still owed \$3,078,909 of principal.

15 67. As the designated Custodians for those investments, ERF&AS or Bersch and
16 Wanzek doing business as "ER Financial and Advisory Service" engaged in and carried on an
17 escrow business and acted in the capacity of escrow agents within the meaning of A.R.S. § 6-801
18 and A.R.S. § 6-813.

19 68. As the designated Custodians for those investments, ERF&AS or Bersch and
20 Wanzek doing business as "ER Financial and Advisory Service" were required to be licensed by
21 the Arizona Department of Financial Institutions pursuant to A.R.S. § 6-813.

22 69. Neither ERF&AS, nor Bersch nor Wanzek were licensed by the Arizona Department
23 of Financial Institutions to engage in or and carry on an escrow business, or to act in the capacity of
24 escrow agents.

1 70. The Securities Division is not aware of any instance in which ERF&AS, Bersch or
2 Wanzek disclosed to an investor that by serving as a Custodian, they were engaged in the conduct
3 of an unlicensed escrow business.

4 71. Upon information and belief, neither ERF&AS, nor Bersch nor Wanzek ever
5 disclosed to any investor that by serving as a Custodian, they were engaged in the conduct of an
6 unlicensed escrow business.

7 72. According to Concordia's records, Concordia paid Bersch and Wanzek, through
8 ERF&AS, custodian fees of at least \$2,529,337.

9 73. According to Concordia's records, it also paid Bersch and Wanzek, through
10 ERF&AS, finders' fees of at least \$565,424. This compensation was calculated as a percentage of
11 the principal invested as a result of the sales efforts of Bersch and Wanzek and their company,
12 ERF&AS.

13 74. Bersch, Wanzek and ERF&AS did not disclose to at least several investors that
14 Concordia was going to pay ERF&AS a finder's fee if the investor invested.

15 75. For three investments by her relatives and in-laws, Linda Wanzek was the
16 designated Custodian.

17 76. According to Concordia's records, Concordia paid Linda Wanzek custodian fees of
18 at least \$493,158.

19 ~~27-77.~~ Concordia began experiencing financial problems ~~in~~by about 2008. By 2009,
20 Concordia could no longer continue making interest payments without jeopardizing its ability to
21 remain in business. To address these problems, about February 1, 2009, Concordia sought investor
22 approval to amend the Servicing Agreements and Promissory Notes to discontinue the monthly
23 "interest payments" as promised and to begin making only monthly returns on principal.

24 ~~28-78.~~ The first amendment, however, did not resolve Concordia's financial problems.
25 Concordia found itself insolvent. So, about December 1, 2011, Concordia sought investor approval
26 to amend the Servicing Agreements and Promissory Notes for a second time. The purpose of the

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1 second amendment was to further reduce Concordia's costs by cancelling as "bad debt" 55% of the
2 principal owed investors.

3 ~~29. The connection between Concordia, on one hand, and Bersch, Wanzek and~~
4 ~~ERF&AS, on the other, is as follows:~~

5 ~~a. Bersch and Wanzek served on Concordia's board beginning in 2000.~~

6 ~~b. Most of Concordia's investors were introduced to Concordia either directly~~
7 ~~or indirectly through Bersch or Wanzek, individually or through ERF&AS.~~

8 ~~c. The typical investor obtained the investment materials from Bersch, Wanzek~~
9 ~~or ERF&AS, signed and returned the investment materials to Bersch, Wanzek or ERF&AS,~~
10 ~~and Bersch, Wanzek or ERF&AS sent the signed investment materials, together with the~~
11 ~~investor's money, to Concordia.~~

12 ~~d. In most Servicing Agreements, the custodian is identified as ERF&AS. Only~~
13 ~~in a very few instances was ERF&AS not the custodian under a Servicing Agreement.~~
14 ~~Bersch or Wanzek, either directly or through ERF&AS, were paid custodian fees of at least~~
15 ~~\$2,904,929.~~

16 ~~e.79. And when~~ When Concordia struggled financially in 2009-2011, Bersch and Wanzek
17 assisted Concordia in its efforts to get investors to accept the first and second amendments to the
18 Servicing Agreements and Promissory Notes.

19 ~~30. For their part, Concordia paid Bersch and Wanzek, directly or through ERF&AS,~~
20 ~~compensation of at least \$552,400.25. This compensation was calculated as a percentage of the~~
21 ~~principal invested as a result of the sales efforts of Bersch or Wanzek, directly or through~~
22 ~~ERF&AS.~~

23 ~~31.80. Concordia's Sale of Contracts and Servicing Agreements and Custodial Agreements~~
24 are not registered as securities with the Arizona Corporation Commission.

25 ~~32.81. Likewise, Concordia's Promissory Notes are not registered~~ as securities with the
26 Arizona Corporation Commission.

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1 ~~33-82.~~ No Respondent was registered with the Arizona Corporation Commission as a
2 ~~brokerdealer~~ or salesman at any relevant time.

3 IV.

4 VIOLATION OF A.R.S. § 44-1841

5 (Offer or Sale of Unregistered Securities)

6 ~~34-83.~~ From ~~about~~ at least February 18, 1998 ~~to 2009~~ through July 18, 2008, Bersch, Wanzek,
7 ERF&AS and/or Concordia offered or sold securities one-hundred-and-thirty-seven (137) times in the
8 form of investment contracts and promissory notes within or from Arizona.

9 ~~35-84.~~ The securities referred to above were not registered pursuant to Articles 6 or 7 of the
10 Securities Act.

11 ~~36-85.~~ This conduct violates A.R.S. § 44-1841.

12 V.

13 VIOLATION OF A.R.S. § 44-1842

14 (Transactions by Unregistered Dealers or Salesmen)

15 ~~1-86.~~ From ~~about~~ at least February 18, 1998 ~~to 2009~~ through July 18, 2008, Bersch, Wanzek,
16 ERF&AS and/or Concordia offered or sold securities one-hundred-and-thirty-seven (137) times within
17 or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

18 ~~2-87.~~ This conduct violates A.R.S. § 44-1842.

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VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

3-88. ~~In~~From at least February 18, 1998 through July 18, 2008, in connection with the offer or sale of securities within or from Arizona, ERF&AS, and Bersch or Wanzek, individually or through ERF&AS, directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and/or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Specifically, the conduct by Bersch and/or Wanzek, individually or through ERF&AS, ~~mislead investors into believing investment in Concordia was safer than it actually was by representing, among other things, the following includes:~~

a. ~~They represented that investor principal was secured by truck titles, when the subject trucks were not titled in the name of any individual investor and the investor was not identified as a lien holder on the title;~~

a. ~~They represented~~Representing to offerees and investors that they were Concordia's "Investor Relations Office" in Lake Havasu City, Arizona, when Concordia never had such an office;

b. ~~Representing to offerees and investors that investment~~their investments in Concordia ~~was 100% would be~~ liquid, ~~though~~although Concordia lacked readily-available resources to refund the investors' principal; ~~and, Concordia did not intend for the investments to be liquid because it needed the investors' principal to operate, and the Servicing Agreements restricted the investors' ability to liquidate their investments by selling or assigning the assigned Truck Financing Contracts to third parties;~~

c. ~~They represented~~Representing to offerees and investors that investment in Concordia was "approved" by a third-party insurer, leading investors to believe the

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1 ~~company insurer~~ insured, underwrote or in some other way guaranteed the investment, when
2 that ~~has was~~ never ~~been~~ the case;

3 d. Failing to disclose to offerees that Concordia would pay a finder's fee to
4 Bersch's and Wanzek's company, ERF&AS, if the offeree invested; and

5 e. Failing to disclose to offerees and investors that by serving as a Custodian,
6 ERF&AS was engaged in the conduct of an unlicensed escrow business in violation of Arizona
7 law.

8 4-89. This conduct violates A.R.S. § 44-1991-(A).

9 **VII.**

10 **Control Person Liability Pursuant to A.R.S. § 44-1999(B)**

11 90. ERF&AS's Articles of Organization filed with Commission on October 9, 2001,
12 provided that management of ERF&AS was reserved to its members.

13 91. From October 9, 2001 through at least September 20, 2012, Bersch and Wanzek are
14 persons controlling were the sole members of ERF&AS.

15 92. October 9, 2001 through at least September 20, 2012, Bersch and Wanzek directly or
16 indirectly controlled ERF&AS within the meaning of A.R.S. § 44-1999(B). Therefore,

17 5-93. Pursuant to A.R.S. § 44-1999(B), Bersch and Wanzek are jointly and severally
18 liable to the same extent as ERF&AS for its violations of A.R.S. § 44-1991(A).

19 **VIII.**

20 **VII.**

21 **REQUESTED RELIEF**

22 The Division requests that the Commission grant the following relief:

23 1. Order Concordia, Bersch, Wanzek and ERF&AS to permanently cease and desist
24 from violating the Securities Act pursuant to A.R.S. §§ 44-2032, 44-1961 and 44-1962;

25 2. Order Concordia, Bersch, Wanzek and ERF&AS to take affirmative action to
26 correct the conditions resulting from Respondents' acts, practices, or transactions, including a

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1 requirement to make restitution pursuant to A.R.S. §§ 44-2032 in the principal amount of \$3,078,909
2 pursuant to A.R.S. §§ 44-2032, 44-1961 and 44-1962; and for Bersch and Wanzek to forfeit to the
3 Commission the \$2,529,337 in custodial fees and the \$565,424 in finder's fees Concordia paid
4 them through ERF&AS;

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5 3. Order Concordia, Bersch, Wanzek and ERF&AS to pay the state of Arizona
6 administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities
7 Act, pursuant to A.R.S. § 44-2036;

8 4. Order Respondents to pay the state of Arizona administrative penalties, pursuant to
9 A.R.S. §§ 44-1961 and 44-1962;

10 4.5. Order that the marital community of Respondent David and Linda Wanzek be subject
11 to any order of restitution, rescission, administrative penalties, or other appropriate affirmative
12 action pursuant to A.R.S. § 25-215; and

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13 5.6. Order any other relief that the Commission deems appropriate.

14 IX.

15 VIII.

16 HEARING OPPORTUNITY

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17 Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S.
18 § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing,**
19 **the requesting respondent must also answer this Notice.** A request for hearing must be in writing
20 and received by the Commission within 10 business days after service of this Notice of Opportunity
21 for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona
22 Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007. Filing instructions
23 may be obtained from Docket Control by calling 602-542-3477 or the Commission's Internet website
24 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

25 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
26 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the

1 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
2 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
3 Opportunity for Hearing.

4 Persons with a disability may request a reasonable accommodation such as a sign language
5 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
6 Bernal, ADA Coordinator, by calling 602-542-3931 or emailing sabernal@azcc.gov. Requests
7 should be made as early as possible to allow time to arrange the accommodation. Additional
8 information about the administrative action procedure may be found at [http://www.azcc.gov/
9 divisions/securities/enforcement/AdministrativeProcedure.asp](http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp).

10 **IX.**

11 **ANSWER REQUIREMENT**

12 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
13 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
14 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
15 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
16 obtained from Docket Control by calling 602-542-3477 or the Commission's Internet web site at
17 <http://www.azcc.gov/divisions/hearings/docket.asp>.

18 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
19 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
20 copy of the Answer to the Division at 1300 West Washington Street, 3rd Floor, Phoenix, Arizona,
21 85007, addressed to ~~Stephen J. Womaek~~James D. Burgess.

22 The Answer shall contain an admission or denial of each allegation in this Notice and the
23 original signature of the answering respondent or respondent's attorney. A statement of a lack of
24 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
25 denied shall be considered admitted.

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