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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission
DOCKETED

NOV 25 2015

DOCKETED BY [Signature]

In the matter of:) DOCKET NO. S-20926A-15-0116
Deer Park Development Corporation,) DECISION NO. 75333
Marty O'Malley and Julie Unruh O'Malley,) ORDER TO CEASE AND DESIST, ORDER
husband and wife,) FOR RESTITUTION, ORDER FOR
) ADMINISTRATIVE PENALTIES AND
10 Robert D. Bjerken,) CONSENT TO SAME
)
11 Respondents.) BY: RESPONDENTS MARTY O'MALLEY
) AND JULIE UNRUH O'MALLEY, HUSBAND
) AND WIFE

Respondent Marty O'Malley ("O'Malley" or "Respondent") and Julie Unruh O'Malley ("Respondent Spouse) elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 et seq. ("Securities Act") with respect to this Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same ("Order"). Respondent and Respondent Spouse admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. Deer Park Development Corporation ("DPDC") is a Nevada corporation organized under the laws of the state of Nevada in November 2005. DPDC has not been registered by the Commission as a securities salesman or dealer.

1 2. Robert D. Bjerken (“Bjerken”), has been at all relevant times an unmarried man and
2 resident of the state of Arizona. Bjerken has not been registered by the Commission as a securities
3 salesman or dealer.

4 3. During the relevant timeframe, i.e. throughout the years 2009 – 2013, Bjerken was
5 the CFO of DPDC. Bjerken was also DPDC’s accountant.

6 4. Respondent O’Malley has been at all relevant times a married man and resident of the
7 state of Nevada. O’Malley has not been registered by the Commission as a securities salesman or
8 dealer.

9 5. At all relevant times, O’Malley was President and a Director of DPDC.

10 6. O’Malley and Respondent Spouse also owned at least 30,000,000 shares of DPDC
11 stock.

12 7. DPDC discusses O’Malley’s stock ownership and the authority related to such stock
13 in a “Confidential Private Placement Memorandum” (the “PPM”) which O’Malley caused to be
14 prepared by O’Malley’s legal counsel and distributed to several DPDC investors.

15 8. The PPM states that, prior to the DPDC stock offering that is the subject of this case,
16 O’Malley owned 31,000,000 of the then-outstanding 37,500,000 DPDC shares. The stock offering
17 would result in 50,000,000 total outstanding shares. As the PPM drafted by O’Malley’s attorney
18 makes clear, before and after the stock offering, DPDC’s key officers, including O’Malley, would
19 have control over the election of directors and officers and over the company’s major decisions.

20 9. Respondent Spouse was at all relevant times the spouse of Respondent. Respondent
21 Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the
22 liability of the marital community.

23 10. At all times relevant, Respondent was acting for the benefit of DPDC, his own benefit
24 and for the benefit or in furtherance of Respondent and Respondent Spouse’s marital community.

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1 DPDC's real-property business and the stock offering

2 11. In 2005, DPDC was a start-up company attempting to get in the business of buying
3 and reselling both commercial and residential property.

4 12. Based on the experience of DPDC's principals, DPDC would acquire discounted or
5 distressed single-family residences in Phoenix and Las Vegas and resale them for a profit.

6 13. To finance this business, DPDC intended to sell 200 "units" of stock. Each unit
7 contained 62,500 shares and was to be sold for \$25,000 for a total aggregate offering of
8 \$5,000,000.

9 14. From approximately January 2009 until approximately July 2013, Respondents
10 offered and sold DPDC stock to at least 40 investors within or from Arizona. Several of the
11 investors made multiple purchases.

12 15. In exchange for their investments, the DPDC investors received stock certificates
13 signed by "Marty O'Malley" as President of DPDC.

14 16. All of the 40 DPDC stock investors received a document titled "Subscription for
15 Shares" for one or all of their stock purchases. O'Malley, as President of DPDC, signed
16 Subscriptions given to at least 17 investors including seven Subscriptions that he co-signed with
17 Bjerken; Bjerken, as CFO of DPDC, signed Subscriptions given to at least 24 investors including
18 seven Subscriptions that he co-signed with O'Malley.

19 17. Each Subscription included the number of shares being purchased, the price of the
20 shares, and the signature of the subscriber.

21 18. The Subscription given to the DPDC investors contained the following
22 representation: "The subscriber has read, understands and accepts of the Private Placement
23 Memorandum of Deer Park Development Corporation."

24 19. The DPDC stock offering was not registered as a security with the Commission.

25 20. The 40 investors paid a total purchase price of \$842,630 for their DPDC stock.

26 21. Bjerken offered and sold DPDC stock to 39 of the 40 investors.

1 22. Bjerken acted as an accountant for and had longstanding relationships with most of
2 the persons to whom he sold DPDC stock. Several investors relied on Bjerken's favorable opinion
3 of the DPDC investment when deciding to invest.

4 23. The 39 investors to whom Bjerken offered DPDC stock paid a total of \$837,630 for
5 their DPDC stock.

6 24. Multiple DPDC investors deposited their funds into a bank account in Arizona for
7 which Bjerken was a signatory. After investor funds were deposited into this account, Bjerken
8 would forward the funds to an account controlled by O'Malley.

9 25. Seventeen investors received Subscriptions signed by O'Malley. These 17 investors
10 consist of one investor who dealt exclusively with O'Malley.

11 26. The 17 investors that received Subscriptions signed by O'Malley paid a total of
12 \$303,800 for their DPDC stock; this includes \$5,000 from the investor to whom O'Malley solely
13 sold DPDC stock.

14 27. At all relevant times, O'Malley has been a signatory of DPDC's bank account, and
15 another bank account in which investor funds were deposited.

16 Failure to disclose previous Commission orders and other actions

17 28. Respondents failed to disclose to investors previous actions involving the
18 Commission.

19 29. In 1991, 1996, and 2003, the Commission entered orders against Bjerken for
20 violations of the Securities Act (the "Commission Action(s)").

21 30. On June 6, 1991, the Commission found that Bjerken sold unregistered securities
22 without being licensed to sell securities, and that Bjerken violated A.R.S. § 44-1991. Among other
23 things, the factual findings show that Bjerken overstated the potential return on the investment and
24 failed to disclose the risks. The Commission ordered Bjerken to pay jointly and severally restitution
25 of \$67,500 and a \$7,000 penalty.
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1 31. On December 18, 1996, the Commission found that Bjerken sold unregistered stock
2 in a company called "Go Unified, Inc." Bjerken was not licensed to sell securities. The
3 Commission also held that Bjerken violated A.R.S. § 44-1991 for multiple omissions and
4 misrepresentations. Among other things, Bjerken failed to disclose the 1991 Commission order; he
5 claimed that the company issuing stock had \$8,000,000 in assets when financial statements showed
6 that it had approximately \$200,000; he claimed that the company had an 8.5 to 1 "price-earnings"
7 ration when in fact the company had no earnings or established market price (the company was a
8 barely-functioning startup); and Bjerken represented that he was selling a "desperate shareholder's"
9 stock, when in fact he sold his own and the company's stock. This order required Bjerken to pay
10 \$119,000 in restitution, \$42,000 in penalties, and an additional \$5,000 penalty for violating the
11 Commission's 1991 order.

12 32. In the 2003 order, the Commission found that Bjerken, while not licensed with the
13 Commission, fraudulently offered and sold securities in the form of promissory notes. The
14 Commission also found that Bjerken violated the antifraud provisions of the Securities Act by
15 failing to disclose the 1991 and 1996 Commission orders to investors. This order required Bjerken
16 to pay \$8,234,144 in restitution and a \$10,000 penalty.

17 33. O'Malley was named as a respondent in the Commission's 1996 action involving
18 the Go Unified stock offering.

19 34. Additionally, one investor sued O'Malley for his role in the Go Unified stock
20 offering. Bjerken was also named as a defendant in the complaint. The investor obtained an
21 arbitration award against O'Malley and Go United for \$14,400.

22 35. A second lawsuit against O'Malley involved O'Malley and Go United selling a
23 \$50,000 promissory note. This lawsuit resulting in a judgment against O'Malley of \$2,130 and
24 \$62,609.27 (\$50,000 of this was principal).

1 36. Respondents failed to disclose to investors the 1991, 1996 and 2003 orders and the
2 civil litigation, arbitration award and judgment against O'Malley. These orders and actions are also
3 not disclosed in the PPM.

4 Failure to disclose O'Malley's 2002 bankruptcy

5 37. In its PPM, DPDC touted O'Malley's significant business and financial experience
6 and expertise. This included stating that O'Malley graduated with a degree in business, oversaw the
7 expansion of a real-estate company into eight different states, built his own real-estate investment
8 company, and acquired a communications company in 1996. The PPM further describes O'Malley:
9 "Having spent his entire business career in real estate in one form or another, he understands the
10 ups and downs of the market and how to make them profitable depending on the cycle."

11 38. DPDC failed, however, to disclose facts that would make these representations not
12 misleading. In 2002, O'Malley filed for Chapter 11 Bankruptcy in Arizona. On 2/10/03, O'Malley
13 converted his bankruptcy to a Chapter 7. On 2/3/2004, the bankruptcy was discharged.

14 39. The PPM was given to all investors prior to their purchase of DPDC stock; these
15 two investors provided copies of their PPMs to the Division. Additionally, at least 33 investors
16 represented in their Subscriptions that they had read and accepted the PPM. The PPM did not
17 disclose O'Malley's 2002 bankruptcy.

18 Failure to disclose 2011 DPDC audit results

19 40. DPDC had an independent audit conducted that showed a net loss for 2010 with an
20 accumulated deficit of \$1,235,322. The date of the independent audit for DPDC was July 15, 2011.
21 The results of the independent audit, specifically the net loss and accumulated deficit, were not
22 disclosed to at least three of the 20 investors who invested after that date.

23 41. At all times relevant to this matter, no shares of DPDC stock were advertised for
24 sale to the general public, in any media, by either DPDC or Respondents.

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II.

CONCLUSIONS OF LAW

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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 2. Respondent and DPDC offered or sold securities within or from Arizona, within the
6 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

7 3. Respondent and DPDC violated A.R.S. § 44-1841 by offering or selling securities
8 that were neither registered nor exempt from registration.

9 4. Respondent and DPDC violated A.R.S. § 44-1842 by offering or selling securities
10 while neither registered as a dealer or salesman nor exempt from registration.

11 5. Respondent and DPDC violated A.R.S. § 44-1991 by (a) employing a device,
12 scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material
13 facts, or (c) engaging in transactions, practices, or courses of business that operate or would operate
14 as a fraud or deceit. Respondent and DPDC's conduct includes the following:

15 a. Failing to disclose to investors the Commission actions resulting in orders against
16 Bjerken and the civil litigation and judgment against O'Malley described above;

17 b. Failing to disclose O'Malley's 2002 bankruptcy to the persons who received a PPM;
18 and

19 c. Failing to disclose the net loss and accumulated deficit reported in DPDC independent
20 audit to those investors who invested after the date of the audit.

21 6. Respondent directly or indirectly controlled DPDC and is therefore a controlling
22 person of that entity within the meaning of A.R.S. § 44-1999; Respondent is jointly and severally
23 liable with and to the same extent as DPDC for DPDC's violations of the anti-fraud provisions of
24 the Securities Act.

25 7. Respondent's and DPDC's conduct is grounds for a cease and desist order pursuant
26 to A.R.S. § 44-2032.

1 Payment is due in full on the date of this Order. Payment shall be made to the "State of
2 Arizona" to be placed in an interest-bearing account controlled by the Commission. Any principal
3 amount outstanding shall accrue interest at a rate of 4.25% from the date of this Order until paid in
4 full.

5 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
6 records of the Commission. Any restitution funds that the Commission cannot disburse because an
7 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
8 investor because the investor is deceased and the Commission cannot reasonably identify and
9 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
10 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
11 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
12 shall be transferred to the general fund of the state of Arizona.

13 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent, individually,
14 and the marital community of Respondent and Respondent Spouse, jointly and severally shall,
15 jointly and severally with DPDC, pay an administrative penalty in the amount of \$45,000 as a result
16 of the conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on
17 the date of this Order. Payment shall be made to the "State of Arizona." Any amount outstanding
18 shall accrue interest as allowed by law.

19 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
20 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
21 shall be applied to the penalty obligation.

22 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If
23 Respondent does not comply with this Order, any outstanding balance may be deemed in default
24 and shall be immediately due and payable.

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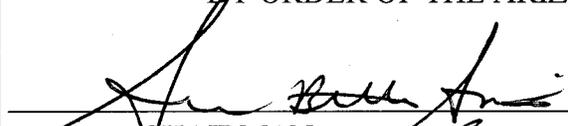
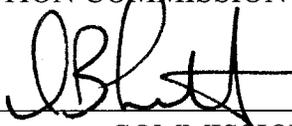
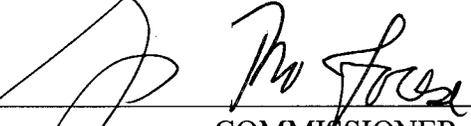
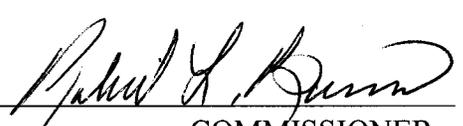
IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

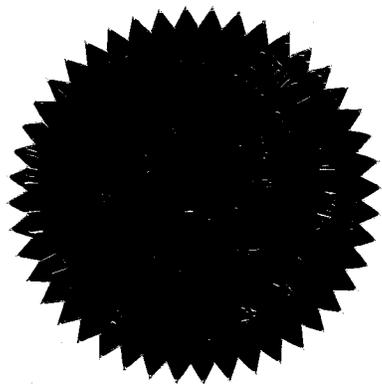
IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this Order shall be deemed binding against any Respondent under this Docket Number who has not consented to the entry of this Order.

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

 CHAIRMAN	 COMMISSIONER	
 COMMISSIONER	 COMMISSIONER	 COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 25th day of November, 2015.



JODI JERICH
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(RJM)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent and Respondent Spouse admit the jurisdiction of the Commission over
3 the subject matter of this proceeding. Respondent and Respondent Spouse acknowledge that they
4 have been fully advised of their right to a hearing to present evidence and call witnesses and they
5 knowingly and voluntarily waives any and all rights to a hearing before the Commission and all
6 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. Respondent and Respondent Spouse acknowledge that this Order to Cease
8 and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same
9 (“Order”) constitutes a valid final order of the Commission.

10 2. Respondent and Respondent Spouse knowingly and voluntarily waive any right
11 under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or
12 extraordinary relief resulting from the entry of this Order.

13 3. Respondent and Respondent Spouse acknowledge and agree that this Order is
14 entered into freely and voluntarily and that no promise was made or coercion used to induce such
15 entry.

16 4. Respondent and Respondent Spouse have been represented by an attorney in this
17 matter, they have reviewed this order with their attorney, Joseph C. Crary, Esq., and understand all
18 terms it contains. Respondent and Respondent Spouse acknowledge that their attorney has apprised
19 them of their rights regarding any conflicts of interest arising from dual representation. Respondent
20 and Respondent Spouse acknowledge that they have each given their informed consent to such
21 representation.

22 5. Respondent and Respondent Spouse admit the Findings of Fact and Conclusions of
23 Law contained in this Order. Respondent and Respondent Spouse agree that they shall not contest
24 the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present
25 or future proceeding in which the Commission is a party.
26

1 6. Respondent and Respondent Spouse further agree that they shall not deny or contest
2 the Findings of Fact and Conclusions of Law contained in this Order in any present or future: (a)
3 bankruptcy proceeding, or (b) non-criminal proceeding in which the Commission is a party
4 (collectively, "proceeding(s)"). They further agree that in any such proceedings, the Findings of
5 Fact and Conclusions of Law contained in this Order may be taken as true and correct and that this
6 Order shall collaterally estop them from re-litigating with the Commission or any other state
7 agency, in any forum, the accuracy of the Findings of Fact and Conclusions of Law contained in
8 this Order. In any current bankruptcy proceeding and in the event Respondent or Respondent
9 Spouse pursues bankruptcy protection in the future, they further agree that in such bankruptcy
10 proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:

11 A. The obligations incurred as a result of this Order are a result of the conduct set forth
12 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of
13 Arizona state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

14 B. This Order constitutes a judgment, order, consent order, or decree entered in a state
15 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by
16 Respondent and Respondent Spouse pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court
17 order for damages, fine, penalty, citation, restitution payment, disgorgement payment, attorney
18 fee, cost or other payment owed by Respondent and Respondent Spouse pursuant to 11 U.S.C.
19 § 523(a)(19)(B)(iii).

20 7. By consenting to the entry of this Order, Respondent agrees not to take any action or
21 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
22 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
23 basis.

24 8. While this Order settles this administrative matter between Respondent and the
25 Commission, Respondent understands that this Order does not preclude the Commission from
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1 instituting other administrative or civil proceedings based on violations that are not addressed by
2 this Order.

3 9. Respondent understands that this Order does not preclude the Commission from
4 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
5 that may be related to the matters addressed by this Order.

6 10. Respondent understands that this Order does not preclude any other agency or
7 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
8 proceedings that may be related to matters addressed by this Order.

9 11. Respondent agrees that he will not apply to the state of Arizona for registration as a
10 securities dealer or salesman or for licensure as an investment adviser or investment adviser
11 representative until such time as all restitution and penalties under this Order are paid in full.

12 12. Respondent agrees that he will not exercise any control over any entity that offers or
13 sells securities or provides investment advisory services within or from Arizona until such time as
14 all restitution and penalties under this Order are paid in full.

15 13. Respondent agrees that he will continue to cooperate with the Securities Division
16 including, but not limited to, providing complete and accurate testimony at any hearing in this
17 matter and cooperating with the state of Arizona in any related investigation or any other matters
18 arising from the activities described in this Order.

19 14. Respondent and Respondent Spouse acknowledge that any restitution or penalties
20 imposed by this Order are obligations of the Respondent as well as the marital community.

21 15. Respondent and Respondent Spouse consent to the entry of this Order and agree to
22 be fully bound by its terms and conditions.

23 16. Respondent and Respondent Spouse acknowledge and understand that if they fail to
24 comply with the provisions of the Order and this consent, the Commission may bring further legal
25 proceedings against them, including application to the superior court for an order of contempt.
26

1 17. Respondent and Respondent Spouse understand that default shall render them liable
2 to the Commission for its costs of collection and interest at the maximum legal rate.

3 18. Respondent and Respondent Spouse agree and understand that if they fail to make
4 any payment as required in the Order, any outstanding balance shall be in default and shall be
5 immediately due and payable without notice or demand. Respondent and Respondent Spouse agree
6 and understand that acceptance of any partial or late payment by the Commission is not a waiver of
7 default by the Commission.

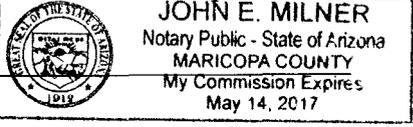
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9 
Marty O'Malley, Respondent

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11 
Julie Unruh O'Malley, Respondent Spouse

13 STATE OF _____)
14 County of _____) ss

15 SUBSCRIBED AND SWORN TO BEFORE me this 20 day of October, 2015.

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NOTARY PUBLIC

18 My commission expires:
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SERVICE LIST FOR: *Deer Park Development Corporation, et al.*

Joseph C. Crary, Esq.
2000 North 7th Street
Phoenix, AZ 85006
Attorney for the O'Malleys

Robert D. Bjerken
P.O. Box 2921
Scottsdale, AZ 85252

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

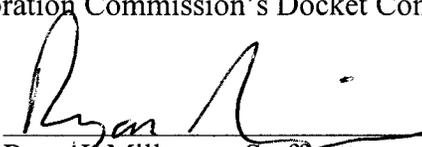
In the matter of:)
Deer Park Development Corporation,)
Marty O'Malley and Julie Unruh O'Malley,)
husband and wife,)
Robert D. Bjerken,)
Respondents.)

DOCKET NO. S-20926A-15-0116

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties, and Consent to Same, Re: Robert D. Bjerken was filed with the Arizona Corporation Commission's Docket Control.

Dated: 11/3/15

By: 
Ryan J. Millecam, Staff Attorney

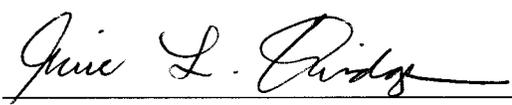
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I hereby certify that I have this day served the foregoing document on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

Joseph C. Crary, Esq.
2339 West Monte Avenue
Mesa, AZ 85202
Attorney for the O'Malleys

Robert Bjerken
P.O. Box 2921
Scottsdale, AZ 85252
Respondent

Dated: 11/3/15

By: 
Emie R. Bridges, Executive Assistant