

ORIGINAL

# NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

SUSAN BITTER SMITH, Chairman  
BOB STUMP  
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2015 DEC 30 P 1:16

AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of: )  
)  
Shadow Beverages and Snacks, LLC, an )  
Arizona limited liability company, )  
)  
Lucio George Martinez and Lisa K. Martinez, )  
husband and wife, )  
)  
Samuel A. Jones, a married man, )  
)  
)  
Respondents. )

DOCKET NO. S-20948A-15-0422

**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 Shadow Beverages and Snacks, LLC, Lucio George Martinez, and Samuel A. Jones 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 further alleges that Lucio George Martinez and Samuel A. Jones directly or indirectly controlled Shadow Beverages and Snacks, LLC within the meaning of A.R.S. § 44-1999, so that they are jointly and severally liable under A.R.S. § 44-1999 to the same extent as Shadow Beverages and Snacks, LLC for its violations of A.R.S. § 44-1991.

Arizona Corporation Commission

DOCKETED

DEC 30 2015

**I.**

**JURISDICTION**

DOCKETED BY

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

1 **II.**

2 **RESPONDENTS**

3 2. Shadow Beverages and Snacks, LLC (“Shadow”) is a limited liability company that has  
4 been organized under the laws of the state of Arizona since July 2008. Shadow has been based in Arizona  
5 since it was created. Shadow has not been registered by the Commission as a securities salesman or  
6 dealer.

7 3. Since at least June 1, 2009, Lucio George Martinez (“Martinez”) has been a married man  
8 and a resident of the state of Arizona. Martinez has not been registered by the Commission as a securities  
9 salesman or dealer.

10 4. Since at least June 1, 2009, Samuel A. Jones (“Jones”) has been a married man and a  
11 resident of the state of Connecticut. Jones has not been registered by the Commission as a securities  
12 salesman or dealer.

13 5. Shadow, Martinez, and Jones may be referred to collectively as “Respondents.”

14 6. Since March 17, 1997, Lisa K. Martinez has been the spouse of Respondent Lucio  
15 George Martinez (Lisa K. Martinez may be referred to as “Respondent Spouse”). Respondent Spouse  
16 is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of her  
17 marital community.

18 7. At all times relevant, Respondent Martinez was acting for his own benefit and for the  
19 benefit or in furtherance of his and Respondent Spouse’s marital community.

20 **III.**

21 **FACTS**

22 8. Shadow created and built product brands for the beverage and snack industry,  
23 including products such as energy beverages, nutritional supplement beverages, and preserved meat  
24 snacks. It contracted with bottlers to produce products that it sold to retailers. Shadow was a  
25 functioning business when each of the relevant investors invested. Shadow ceased operations in early  
26 2015. At its peak, Shadow had approximately 23 employees.

1           9.       Martinez and Jones founded Shadow. Martinez has been a member of the Shadow  
2 board of managers since July 25, 2008. Jones was a member of the Shadow board of managers from  
3 at least July 25, 2008, until approximately May 14, 2013.

4           10.       Martinez has been the President of Shadow since at least January 29, 2010. Martinez's  
5 responsibilities as President of Shadow were day-to-day management of sales and operations and  
6 overseeing administration.

7           11.       Jones was the Chief Executive Officer ("CEO") of Shadow from at least January 29,  
8 2010, to at least May 16, 2011. Jones's responsibilities as CEO included overseeing business strategy  
9 and partnerships and looking for new business.

10          12.       By August 2011, Jones became the Chief Operating Officer ("COO") of Shadow and  
11 remained so until approximately May 14, 2013. Jones's responsibilities as COO included business  
12 development and operation of the product lines, such as beverage formulation and packaging. When  
13 Jones ceased to be COO, Martinez became COO in addition to being President.

14          13.       On June 1, 2009, a nonresident investor ("Investor A") invested \$50,000 in a Shadow  
15 promissory note signed by Martinez. Martinez met with the investor in Arizona about making this  
16 investment. The note offered 15% annual interest and was due on December 31, 2009. Shadow  
17 defaulted on this note on that date. This note remained unpaid for over two years until August 15,  
18 2012.

19          14.       On February 17, 2010, an Arizona investor ("Investor B") invested \$50,000 in a  
20 Shadow promissory note signed by Jones. Before investing, this investor was not informed of  
21 Shadow's default on Investor A's note. The note offered 25% annual interest and was due on August  
22 17, 2010. Shadow defaulted on this note on that date. Martinez and Jones personally guaranteed  
23 payment of this note but never personally made any payment for this note. On May 17, 2011, a  
24 judgment was entered in the Maricopa Superior Court against Shadow, Martinez, Jones, and other  
25 defendants in favor of this investor. This note was eventually fully paid by Shadow in 2011.

26

1           15.     Investor B made a second investment, investing \$200,000 more on March 17, 2010,  
2 in a Shadow promissory note signed by Martinez. In a loan agreement signed by Martinez and Jones  
3 in connection with the investment, Shadow stated that it was not in default on any indebtedness for  
4 borrowed money. Actually, Shadow had been in default on Investor A's note since December 31,  
5 2009. The note offered 25% annual interest and was due on September 17, 2010. Shadow defaulted  
6 on this note on that date. This note was eventually fully paid by Shadow in 2011.

7           16.     On September 1, 2010, a nonresident investor ("Investor C") invested \$75,000 in a  
8 Shadow promissory note signed by Martinez and Jones. Martinez and Jones met with the investor in  
9 Arizona about making this investment. Before investing, this investor was not informed of Martinez  
10 and Jones's failure to perform on a previous personal guarantee for a Shadow note. The note offered  
11 15% annual interest and was due on December 31, 2010. Shadow defaulted on this note on that date.  
12 Martinez and Jones personally guaranteed this note but never personally made any payments for this  
13 note. This note was eventually fully paid by Shadow in 2011.

14           17.     On January 3, 2011, an Arizona investor ("Investor D") invested \$125,000 in a  
15 Shadow promissory note signed by Martinez and Jones. Martinez and Jones met with the investor in  
16 Arizona about making this investment. Before investing, this investor was not informed of Shadow's  
17 defaults on previous notes. The note offered 10% annual interest and was due on March 1, 2011.  
18 Shadow defaulted on this note on that date. This note was eventually fully paid by Shadow in 2011.

19           18.     On January 14, 2011, an Arizona investor ("Investor E") invested \$100,000 in a  
20 Shadow promissory note signed by Martinez and Jones. Before investing, this investor was not  
21 informed of Shadow's defaults on previous notes. The note offered 10% annual interest and was due  
22 on December 31, 2011. To date, Shadow has made two payments for the note totaling approximately  
23 \$5,000.

24           19.     In approximately August 2011, Shadow received approximately \$2,000,000 from an  
25 equity investment in membership units by a group of beverage industry executives. Shadow used  
26 these funds to fully pay the principal balances of some of the above notes.

1           20.     On October 15, 2012, Shadow signed a \$1,000,000 factoring agreement with a bank.  
2 In the agreement, Shadow granted the bank a security interest in collateral that included all present  
3 and future accounts receivable and proceeds of Shadow's inventory, which the bank recorded. The  
4 bank continued to hold this security interest until October 29, 2014.

5           21.     On March 7, 2013, a nonresident investor ("Investor F") invested \$500,000 in a  
6 Shadow promissory note signed by Martinez. Martinez and Jones met with the investor in Arizona  
7 about making this investment. The investor also received a security interest in Shadow's product  
8 inventory and accounts receivable. Before investing, this investor was not informed of Martinez and  
9 Jones' failure to perform on previous personal guarantees for Shadow notes or the existing security  
10 interests in Shadow's product inventory and accounts receivable. The note offered interest of \$25,000  
11 every 30 days and was due on May 6, 2013. Shadow defaulted on this note on that date. Martinez  
12 and Jones personally guaranteed this note but never personally made any payments for this note.  
13 Shadow has never made any payments for this note.

14           22.     On April 5, 2013, a nonresident investor ("Investor G") invested \$250,000 in a  
15 Shadow promissory note signed by Martinez. The investor also received a security interest in  
16 Shadow's product inventory and accounts receivable. Martinez communicated with the investor  
17 about making this investment. Before investing, this investor was not informed of Shadow's defaults  
18 on previous notes or the existing security interests in Shadow's product inventory and accounts  
19 receivable. The note offered 12% annual interest and was due on April 5, 2014. Shadow defaulted on  
20 this note on that date. Shadow has never made any payments for this note.

21           23.     Investor G invested a second time, investing \$250,000 on April 17, 2014, in the name  
22 of the investor's limited liability company, in a Shadow promissory note signed by Martinez. Before  
23 investing, this investor was not informed of Shadow's defaults on other investors' notes or a recent  
24 \$1,400,000 judgment against Shadow. The note offered a fixed sum of \$20,000 in interest and was  
25 due on May 19, 2014. Shadow defaulted on this note on that date. Shadow has never made any  
26 payments for this note.

1           24.     On December 6, 2013, two Arizona investors (“Investors H and I”) invested \$25,000  
2 in a loan agreement with Shadow signed by Martinez. The loan agreement was an investment made  
3 for the purpose of making a profit. The investors received a security interest in some of Shadow’s  
4 accounts receivable. Before investing, these investors were not informed of Shadow’s previous  
5 defaults on its notes or the existing security interests in Shadow’s accounts receivable. These  
6 investors never had any management role at Shadow. Consideration for the loan was \$5,000 to be  
7 paid based on the rate of Shadow’s product sales. The loan did not have a fixed maturity date, but  
8 payments based on product sales were due beginning two weeks after the first receipt of sale proceeds  
9 from products funded by the loan, and the first payment was due on approximately March 6, 2014.  
10 Shadow defaulted on this loan on that date. Shadow has never made any payments for this loan.

11           25.     Investors H and I invested a second time, investing \$50,000 on May 9, 2014, in the  
12 name of their limited liability company. They invested in a Shadow promissory note signed by  
13 Martinez. Before investing, the investors were not informed of Shadow’s defaults on previous notes  
14 or a recent \$1,400,000 judgment against Shadow. The note offered a fixed sum of \$10,000 in interest  
15 and was due on September 8, 2014. Shadow defaulted on this note on that date. Shadow has never  
16 made any payments for this note.

17           26.     On January 13, 2014, a nonresident investor (“Investor J”) invested \$30,000 in a  
18 Shadow promissory note signed by Martinez. Before investing, this investor was not informed of  
19 Shadow’s defaults on previous notes. The noted offered a fixed sum of \$2,500 in interest and was  
20 due on April 13, 2014. Shadow defaulted on this note on that date. Shadow has never made any  
21 payments for this note.

22           27.     On January 12, 2014, a nutrition company was awarded a \$1,400,000 default  
23 judgment against Shadow (“Nutrition Company Judgment”) that has not been paid.

24           28.     On January 15, 2014, two Arizona investors (“Investors K and L”) invested \$50,000  
25 in a Shadow promissory note signed by Martinez. Before investing, these investors were not informed  
26 of Shadow’s defaults on previous notes, Martinez’s failure to perform on prior personal guarantees,

1 or the Nutrition Company Judgment. The note offered a fixed sum of \$7,500 in interest and was due  
2 on July 15, 2014. Shadow defaulted on this note on that date. Martinez personally guaranteed  
3 payment of this note, but on information and belief he never personally made any payments for this  
4 note. Shadow has never made any payments for this note.

5       29. On March 21, 2014, an Arizona investor ("Investor M") invested \$115,000 in a  
6 Shadow promissory note signed by Martinez and Jones. This investor received a security interest in  
7 Shadow's accounts receivable and some of its product inventory. Martinez provided the investor with  
8 a personal financial statement that misrepresented that Martinez was not a guarantor for any  
9 company, misrepresented that no judgment had ever been entered against him, and omitted his  
10 personal guarantees of outstanding Shadow notes from a list of his personal liabilities. Before  
11 investing, this investor was not informed of Shadow's defaults on previous notes, the existing  
12 security interests in Shadow's accounts receivable and product inventory, or the Nutrition Company  
13 Judgment. The note offered interest of up to \$10,000 based on the volume of Shadow's product sales  
14 within a specific timeframe, and the note was due on September 21, 2014. Shadow defaulted on this  
15 note on that date. To date, Shadow and Martinez have made payments totaling \$40,000 for the note.

16       30. On July 18, 2014, an investor of unknown residence ("Investor N") invested \$50,000  
17 in a Shadow promissory note signed by Martinez. Before investing, this investor was not informed  
18 of Shadow's defaults on previous notes, Martinez's failure to perform on prior personal guarantees,  
19 or the Nutrition Company Judgment. The note offered a fixed sum of \$7,500 in interest and was due  
20 on October 18, 2014. Shadow defaulted on this note on that date. Martinez personally guaranteed  
21 payment of this note, but on information and belief he never personally made any payments for this  
22 note. Shadow has never made any payments for this note.

23       31. On July 18, 2014, a nonresident investor ("Investor O") invested \$100,000 in a  
24 Shadow promissory note signed by Martinez. Before investing, this investor was not informed of  
25 Shadow's defaults on previous notes, Martinez's failure to perform on prior personal guarantees, or  
26 the Nutrition Company Judgment. The note offered a fixed sum of \$15,000 in interest and was due

1 on October 17, 2014. Shadow defaulted on this note on that date. Martinez personally guaranteed  
2 payment of this note, but on information and belief he never personally made any payments for this  
3 note. Shadow has never made any payments for this note.

4 32. Shadow raised a total of \$2,020,000 from Investors A through O. Shadow and  
5 Martinez have paid back approximately \$545,000 in principal payments to investors.

6 33. Shadow found investors among its employees' contacts and from contacts of those  
7 contacts.

8 34. Shadow never gave any guidelines to its employees about what they were allowed or  
9 required to tell prospective investors about Shadow.

10 35. A particular Shadow employee was a significant source for finding new investors, and  
11 Shadow offered him commissions for finding investors. Shadow eventually gave him the title of  
12 Senior Vice President of Capital Acquisition. Shadow did not instruct this employee about any limits  
13 or guidelines on how he was allowed to find investors. This employee's efforts included asking his  
14 contacts to suggest potential investors to him from among their contacts.

15 36. Shadow never inquired whether note investors were investing for their own account.

16 **IV.**

17 **VIOLATION OF A.R.S. § 44-1841**

18 **(Offer or Sale of Unregistered Securities)**

19 37. From on or about June 1, 2009, Respondents Shadow and Martinez offered or sold  
20 securities in the form of notes and an investment contract, within or from Arizona.

21 38. From on or about February 17, 2010, to on or about March 4, 2014, Respondent Jones  
22 offered or sold securities in the form of notes, within or from Arizona.

23 39. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
24 Securities Act.

25 40. This conduct violates A.R.S. § 44-1841.

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1 V.

2 VIOLATION OF A.R.S. § 44-1842

3 (Transactions by Unregistered Dealers or Salesmen)

4 41. Respondents offered or sold securities within or from Arizona while not registered as  
5 dealers or salesmen pursuant to Article 9 of the Securities Act.

6 42. This conduct violates A.R.S. § 44-1842.

7 VI.

8 VIOLATION OF A.R.S. § 44-1991

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

10 43. In connection with the offer or sale of securities within or from Arizona, Respondents  
11 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements  
12 of material fact or omitted to state material facts that were necessary in order to make the statements  
13 made not misleading in light of the circumstances under which they were made; or (iii) engaged in  
14 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon  
15 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

16 a) Shadow and Martinez failed to disclose to Investors D, E, G, H, I, J, K, L, M, N,  
17 and O that Shadow had defaulted on prior notes;

18 b) Jones also failed to disclose to Investors D, E, and M that Shadow had defaulted  
19 on prior notes, and Shadow and Jones failed to disclose it to Investor B for his first investment;

20 c) Shadow and Martinez failed to disclose to Investors C, F, K, L, N, and O that  
21 Martinez and Jones had failed to perform on prior personal guarantees of Shadow notes;

22 d) Jones also failed to disclose to Investors C and F that Martinez and Jones had  
23 failed to perform on prior personal guarantees of Shadow notes;

24 e) Shadow and Martinez failed to disclose to Investors F and M, to Investor G for  
25 his first investment, and to Investors H and I for their first investment, that Shadow had already granted  
26 security interests in the same collateral to other creditors;

1 f) Jones also failed to disclose to Investors F and M that Shadow had already  
2 granted security interests in the same collateral to other creditors;

3 g) Shadow and Martinez failed to disclose the Nutrition Company Judgment to  
4 Investors K, L, M, N, and O, to Investor G for his second investment, and to Investors H and I for their  
5 second investment;

6 h) Jones also failed to disclose the Nutrition Company Judgment to Investor M;

7 i) Shadow and Martinez failed to disclose to Investor M that Martinez's liabilities  
8 included his personal guarantees of Shadow notes;

9 j) Shadow and Martinez misrepresented to Investor M that Martinez was not a  
10 guarantor for any company, when in fact, he was a guarantor for outstanding Shadow notes;

11 k) Shadow and Martinez misrepresented to Investor M that no judgment had ever  
12 been entered against Martinez, when in fact, a judgment in favor of an investor had been entered against  
13 him on May 17, 2011; and

14 l) Shadow, Martinez, and Jones misrepresented to Investor B, for his second  
15 investment, that Shadow was not in default on any indebtedness for borrowed money, when in fact,  
16 Shadow was in default on a note to an investor at the time.

17 44. This conduct violates A.R.S. § 44-1991.

18 45. Respondent Martinez, and Respondent Jones until approximately May 14, 2013, directly  
19 or indirectly controlled Shadow within the meaning of A.R.S. § 44-1999. Therefore, Martinez and Jones  
20 are jointly and severally liable under A.R.S. § 44-1999 to the same extent as Shadow for its violations  
21 of A.R.S. § 44-1991.

## 22 VII.

### 23 REQUESTED RELIEF

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

25 1. Order Respondents to permanently cease and desist from violating the Securities Act,  
26 pursuant to A.R.S. § 44-2032;



1 ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov). Requests should  
2 be made as early as possible to allow time to arrange the accommodation. Additional information  
3 about the administrative action procedure may be found at:

4 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

5 **IX.**

6 **ANSWER REQUIREMENT**

7 Pursuant to A.A.C. R14-4-305, if a Respondent or Respondent Spouse requests a hearing, the  
8 requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to  
9 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007,  
10 within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained  
11 from Docket Control by calling (602) 542-3477 or on 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, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007,  
16 addressed to Paul Kitchin.

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 of  
22 an allegation, the respondent shall specify that part or qualification of the allegation and shall admit  
23 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 Answer  
25 for good cause shown.

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Dated this 30 day of December, 2015.

  
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Matthew J. Neubert  
Director of Securities